

## CONTRACT TO UPDATE E-LEARNING MODULES

Between the undersigned :

[\*] (“[\*]”), a company incorporated under [\*] law, having its registered headquarters at [\*] and registered with [\*] under reference number [\*],

duly represented by [\*] in his/her capacity as [\*],

hereinafter referred to as the “**Service Provider**”,

on the one hand,

and

the **WORLD CUSTOMS ORGANIZATION**<sup>1</sup> (the “WCO”), having its registered headquarters at Rue du Marché 30, 1210 Brussels (Belgium),

duly represented by Mr. Ray McDonagh in his capacity as Head of Administration and Personnel,

hereinafter referred to as the “**Client**”,

on the other hand,

hereinafter also referred to individually as a “**Party**” and collectively as the “**Parties**”.

### WHEREAS :

In order to meet the training needs of its Members, the WCO has, since 2003, been developing a distance learning training policy (e-learning). To date, the WCO has created a system of more than 150 e-learning modules in both English and French on various Customs issues.

The WCO launched a call for tender (hereinafter the “**Call for Tender**” - Appendix 1) for the purposes of outsourcing the technical and/or graphics and/or content updating of some of the above e-learning modules (hereinafter the “**e-learning Modules**”) to a private company.

[\*] responded to this Call for Tender and confirmed that it has the required experience and human and technical resources to offer the requested services to the WCO and to ensure that such services would comply with the quality requirements expected of an international company specialized in this field (hereinafter the “**Offer**” - Appendix 2). Out of the offers received, the WCO decided to award the project to [\*] under the terms and conditions set out below, as accepted by [\*],

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<sup>1</sup> Established in 1952 under the name Customs Co-operation Council.

**IT HAS THEREFORE BEEN AGREED AS FOLLOWS :**

**ARTICLE 1 – Contract Documents**

The contract documents (hereinafter the “**Contract Documents**”) are, in descending order of priority :

1. this Contract and any amendments hereto (hereinafter the “**Contract**”);
2. the Annexes to this Contract;
3. the Offer;
4. the Call for Tender.

In the event of discrepancies between the above documents, the higher-priority document shall prevail.

**ARTICLE 2 – Subject of the Contract**

Under this Contract, the Service Provider undertakes to provide to the Client :

- (i) technical update;
- (ii) SCORM compliance [version 1.2 or version 2004]; and
- (iii) graphics update

of the e-learning Modules listed in Annex 1 to this Contract, in compliance with the terms and conditions of execution laid down in the Contract Documents.

**ARTICLE 3 – Term of the Contract**

This Contract shall enter into force on the date on which the Contract is signed by the last Contracting Party, and shall remain in force until the Date of Final Acceptance, unless terminated by either Party in accordance with Article 12 of this Contract.

Any obligations and duties which, by their nature, continue beyond the expiry or termination of this Contract, including – but not limited to - the obligations set out in Article 6, shall remain in force beyond the expiry or termination of this Contract and shall bind the Parties and their legal representatives, heirs and transferees.

**ARTICLE 4 – Delivery of source files by the Client**

[To be completed on the basis of the Offer selected]

**ARTICLE 5 – Implementing rules**

[To be completed on the basis of the Offer selected]

## **ARTICLE 6 – Guarantees**

### **1. Guarantee of conformity**

The Service Provider shall guarantee the conformity of the Updated e-learning Modules with the Contract Documents.

The Service Provider undertakes, for a period of \_\_\_\_(\_) year following the Date of Final Acceptance, to correct at its own expense any problem, error, anomaly, fault or defect whatsoever affecting the Updated e-learning Modules (“**Warranty Period**”).

The Service Provider shall undertake to provide an amended version of the Updated e-learning Module within five (5) working days following the Client’s notification of the problem or the error, anomaly, fault or defect in question.

### **2. Guarantee of interoperability**

The Service Provider shall guarantee the compatibility and interoperability of the Updated e-learning Modules with the Client’s operating platform.

### **3. Guarantee of upgradeability**

The Service Provider shall guarantee that the Updated e-learning Modules can be upgraded to meet potential changes in the Client’s requirements.

### **4. Antivirus guarantee**

The Service Provider shall guarantee that the Updated e-learning Modules are free of any computer virus on the Date of Final Acceptance.

### **5. Counterfeiting**

The Service Provider shall guarantee that the Updated e-learning Modules do not constitute an infringement of an intellectual property right, or constitute an act of unfair or parasitic competition.

To this end, the Service Provider shall, at its own expense, guarantee the Client against any action or claim based directly or indirectly on the infringement of an intellectual property right linked to the use and/or exploitation of the Updated e-learning Modules under any form whatsoever.

In the event that all or part of the Updated e-learning Modules are declared counterfeit or considered to constitute any other infringement of a third party’s rights, the Service Provider shall, at the Client’s discretion, either provide the Client with other Updated e-learning Modules having the same functions within deadlines compatible with the Client’s activity, or purchase at its own expense the right for the Client to continue using the Updated e-learning Modules.

## **ARTICLE 7 – Financial conditions**

In return for the services rendered pursuant to this Contract, the Service Provider shall be entitled to payment from the Client of a total, fixed and final amount of [\*] euro exclusive of tax, as provided for in the terms of its Offer (the “**Total Amount**”).

Any supplementary fee, cost or expense whatsoever borne by the Service Provider in excess of the above amount shall be payable exclusively and in full by the Service Provider.

The Total Amount shall be paid to the Service Provider on the Date of Final Acceptance.

[If the Service Provider requests the payment of a deposit, the Client shall request that an advance payment bond be lodged with an international bank having a place of business in Belgium.]

## **ARTICLE 8 - Penalties chargeable to the Service Provider**

[To be completed on case to case basis]

## **ARTICLE 9 – Intellectual property**

By express agreement, the ownership of the Updated e-learning Modules and of any other document created by the Service Provider under this Contract shall, without exception or reservation, be transferred to the Client.

To this end the Service Provider shall, without exception, transfer all its property rights on the Updated e-learning Modules and any other document it has created under this Contract as well as any reproduction and performance rights, adaptation rights, arrangement rights, translation rights, distribution rights, rental rights and rights to use the material in any form whatsoever.

The Client may extensively reproduce and use the Updated e-learning Modules and any other document created by the Service Provider under this Contract, by any current or future means, on any device or media, magnetic tape, disk, CD-ROM etc.

The Client may also freely adapt and modify the Updated e-learning Modules and any other document created by the Service Provider under this Contract, add or delete functions or merge them with other files or software.

The Client may freely use, market or hire out the Updated e-learning Modules and any other document created by the Service Provider under this Contract for any use or purpose whatsoever, whether it be personal or for a third party, in particular to carry out IT services or data processing.

This transfer shall be agreed for the Updated e-learning Modules and any other document created by the Service Provider under this Contract for an unlimited period and for the world as a whole.

The Client shall acquire ownership of the Updated e-learning Modules and any other document created by the Service Provider under this Contract as and when they are created. In the event of termination of this Contract, for whatever reason, the Client shall be granted ownership of the Updated e-learning Modules and any other document created by the Service Provider under this Contract, as they stand.

#### **ARTICLE 10 - Confidentiality**

The Service Provider shall refrain from divulging to any person, directly or indirectly, any or part of any commercial, industrial, technical, financial, nominal, etc. information communicated to it by the Client or which it has obtained when executing this Contract.

The following in particular shall be considered confidential (this list is not exhaustive) :

- the content of the e-learning Modules;
- the source codes of the e-learning Modules; and
- any information relating to WCO staff and to the project developed.

The Service Provider acknowledges that any disclosure would damage the interests of the other Party and that it would be held responsible for such disclosure.

The Service Provider shall vouch for compliance with the above-mentioned confidentiality clause by its duly authorized employees, representatives and sub-contractors.

It shall also refrain from revealing to third parties the existence of this Contract or any information on all or part of the task with which it has been entrusted.

The Service Provider shall ensure that members of its staff and any other person with full or partial access to confidential information personally sign a comparable confidentiality agreement.

For its part, the Client undertakes not to divulge any information relating to the expertise of the other Party.

This reciprocal agreement shall continue to apply for five (5) calendar years after expiry of this Contract.

If either of the Parties does not comply with the terms of this confidentiality agreement, it shall automatically owe the other Party fixed compensation equal to ten thousand (10,000) euro, without prejudice to any other penalty, compensation or damages which the other Party might invoke in accordance with this Contract.

#### **ARTICLE 11 - Force majeure**

In the framework of this Contract, '**Force Majeure**' shall mean any unanticipated event which is beyond the reasonable control of the Parties, or any foreseeable occurrence having consequences which may not reasonably be avoided, which arises after the date of signature

of this Contract and which prevents the execution of this Contract, in whole or in part, by either Party.

If *Force Majeure* occurs, the execution of the Parties' obligations under this Contract shall be suspended for the duration of the delay caused by the *Force Majeure*, and the period of execution shall automatically be extended, without any penalty, for an equivalent period.

During this period of suspension, the Parties agree that the costs incurred shall be covered by the Party claiming *Force Majeure*.

The Party claiming *Force Majeure* shall promptly inform the other Party to this effect by registered letter, explaining its reasons for doing so.

In the event of *Force Majeure*, the Parties shall immediately consult one another with a view to finding a fair solution and shall use all reasonable efforts to minimize its consequences. If the conditions of *Force Majeure* prevail for more than twenty (20) calendar days and the Parties are unable to reach a fair solution, the other Party shall have the right to terminate this Contract, as provided for in Article 12 of this Contract.

#### **ARTICLE 12 - Termination**

Each Party shall have the right to terminate this Contract immediately by sending a registered letter with acknowledgement of receipt to the other Party specifying the reasons for the termination, if any of the following events occur :

- (i) a Party materially breaches any of its obligations under this Contract and, notwithstanding a written request by registered letter with acknowledgement of receipt from the other Party to rectify the situation, fails to comply with such a request within thirty (30) calendar days of that registered letter being sent;
- (ii) a case of *Force Majeure* prevails for more than twenty (20) calendar days and the Parties are unable to find a fair solution pursuant to Article 11 of this Contract; or
- (iii) a Party becomes insolvent, enters into liquidation or files for bankruptcy, or a receiver is appointed.

Within five (5) working days of receipt of the notice of termination, the Service Provider shall undertake to :

- (i) deliver, to the Client's headquarters, the Updated e-learning Modules and any other document or file created by the Service Provider under this Contract, as they stand;
- (ii) deliver, to the Client's headquarters, the Source Files and any other document or file which it has received from the Client under this Contract; and
- (iii) certify in writing that no copies, on any media whatsoever, of the Source Files and any other file or document which it has received from the Client under this Contract remain in its possession.

The Service Provider shall pay to the Client, as a penalty, the sum of one thousand (1,000) euro for each calendar day which passes above and beyond this period of five (5) working days until the Service Provider has satisfactorily complied with the above obligations.

Both Parties expressly agree that the above clause shall apply without any need for formalities or notice.

These penalties are conventional injunctions, without prejudice to any damages that the Client could be entitled to claim due to delays on the part of the Service Provider in executing its obligations under this Contract.

The Service Provider shall not be held responsible for any delay caused solely by the Client or any third party under contract to the Client. In this event, the days of delay for which the Client or any third party under contract to the Client has sole responsibility shall be taken into account for the purposes of applying and calculating the daily penalty referred to above.

#### **ARTICLE 15 – Transfer and subcontracting**

This Contract having been entered into *intuitu personae*, the Parties shall agree, for the duration of this Contract and until its expiry :

- (i) not to transfer this Contract or all or part of its rights or obligations to a third party, for any reason whatsoever, against payment or free of charge, without the prior written consent of the other Party, except for transfers to a third party acquiring all or most of the assets or securities of that Party and which agrees in writing to be bound by the terms of this Contract; and
- (ii) not to subcontract the execution of part or all of their contractual obligations to a third party without obtaining written authorization in advance from the other Party.

If this Contract is terminated prematurely for whatever reason, the Client may enter into a contract with one or several third parties to continue the work unfinished by the Service Provider or to carry out new tasks related in any way whatsoever to those which are the subject of this Contract. This provision shall remain in force notwithstanding the termination of this Contract.

#### **ARTICLE 17 - Amendment – Entirety**

This Agreement shall only be modified via an amendment signed by all Parties.

It represents all undertakings existing between the Parties. It supersedes any former verbal or written undertaking relating to the subject of this Contract.

**ARTICLE 18 - Waiver**

It is formally agreed that any waiver or deviation by one of the Parties in the application of all or part of the provisions of this Contract, however often and for however long, shall not justify an amendment to this Contract or give rise to any right whatsoever.

**ARTICLE 19 – Partial invalidity**

Whenever possible, the provisions of this Contract shall be interpreted in such a way as to be valid and enforceable under applicable law. However, if one or more provisions of this Contract are found to be invalid, illegal or unenforceable, in whole or in part, the remainder of that provision and of this Contract shall continue in full force and effect as if that invalid, illegal or unenforceable provision had never been contained herein.

Moreover, if the Parties decide to amend the invalid, illegal or unenforceable provision(s), or any part thereof, and/or agree on a new provision, they should do so in such a way as to ensure that the new or amended provision embodies insofar as possible the purpose of the invalid, illegal or unenforceable provision(s).

**ARTICLE 20 – Non-waiver**

Nothing in the Contract Documents, including any references to national legislation, may be construed as any waiver by the Client of its privileges and immunities or of those of its officials.

**ARTICLE 21 – Applicable law**

Given that the Client is an international organization, it is expressly agreed that the rights and obligations of the Parties shall be governed by the Contract Documents and, in the alternative, by the provisions of Belgian law.

**ARTICLE 22 – Dispute resolution**

Any dispute between the Parties regarding the interpretation and/or execution of this Contract which cannot be settled amicably within thirty (30) calendar days following notification of the dispute shall be settled in accordance with the procedure laid down in Part I of Customs Co-operation Council Decision XXXIII, a copy of which is attached in Annex 2 to this Contract.

**ARTICLE 23 - Election of domicile**

For the purposes of this Contract and any consequences thereof, the Parties shall elect domicile at their headquarters or address as shown at the beginning of this Contract.

Any change in headquarters or address by one of the Parties shall only have effect vis-à-vis the other Party five (5) working days after it has been duly notified thereof.

**ARTICLE 24 - Notification**

All notifications and other forms of communication required under this Contract must be in writing and delivered or transmitted to the Contact Person designated by each Party via a reputable postal service, by fax with a confirmation sheet or by registered mail (with acknowledgement of receipt) to the address indicated below :

For the attention of the Service Provider :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For the attention of the Client :

World Customs Organization  
For the attention of [*Contact Person*]  
Rue du Marché, 30  
1210 Brussels  
BELGIUM

A notification shall be considered to have been delivered to the recipient's address on the date of delivery if delivered in person, the next working day if sent by fax or three (3) working days following the date of mailing if sent by registered mail.

Either Party may change the address to which notifications are to be delivered or transmitted by giving the other Party written notice to this effect in the manner set forth herein.

\*  
\* \*

Done in Brussels on \_\_\_\_\_ 2010, in two (2) original copies, each Party acknowledging receipt of one.

For the WCO,

For [\*],

\_\_\_\_\_  
Mr. Ray McDonagh,  
Head of Administration and Personnel.

\_\_\_\_\_  
[\*]

**ANNEXES**

Annex 1 – List of e-learning Modules and update specifications

Annex 2 – Decision XXXIII of the Customs Co-operation Council

Annex 3 – Schedule of tasks [signed version to be attached pursuant to Article 5.1 of this Contract]

**APPENDICES**

Appendix 1 – Call for Tender

Appendix 2 – Offer

**ANNEX 1****LIST OF E-LEARNING MODULES AND UPDATE SPECIFICATIONS**

<b>Course</b>	<b>Number of screens</b>	<b>SCORM Compliance</b>	<b>Technical update</b>	<b>Graphics update</b>
Customs Controls	275	Yes	Yes	Yes
Customs Valuation	235	Yes	Yes	Yes
Harmonized System	480	Yes	Yes	Yes
The Istanbul Convention	240	Yes	Yes	Yes
Intellectual Property Rights	100	Yes	Yes	Yes
Ethics	30	Yes	Yes	No
Discover the WCO	20	Yes	Yes	No
CITES	160	Yes	Yes	No
SAFE	20	Yes	No	No
Rules of Origin	50	Yes	No	No
Transfer Pricing	120	Yes	No	No
Ozone Depleting Substances	180	Yes	No	No
<b>TOTAL</b>	<b>1,910</b>			

**ANNEX 2****DECISION No. XXXIII****(November 1954)**

HAVING REGARD to Article IX, Section 24, of the Annex to the Convention establishing the Customs Co-operation Council,

THE COUNCIL DECIDES to adopt the following modes of settlement of disputes arising out of contracts or other disputes of a private character to which the Council is a party and of disputes involving any official of the Council who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of Sections 19 and 21.

I. Mode of settlement of disputes between the  
Customs Co-operation Council and third persons  
(other than its officials) arising out of contracts

All contracts entered into by the Customs Co-operation Council shall carry an arbitration clause by which the Council and the other party to the contract undertake to refer any disputes regarding interpretation or fulfilment of the contract to an Arbitration Tribunal which shall reach its decision by application of law and without appeal.

The said arbitration clause shall be worded as follows :

1. Any claim or dispute arising out of this Agreement or its non-execution, or in respect of this Agreement or its non-execution, shall be settled by an Arbitration Tribunal of three arbitrators who shall render a majority decision, reached by application of law and without appeal.
2. The party wishing to refer a dispute or claim to arbitrate shall give notice thereof to the other party by registered letter naming the person selected as his arbitrator. The other party shall select his own arbitrator within one month of the date of such letter.

The Parties shall thereupon formulate the issues involved and lay them before the arbitrators. The two arbitrators, having had the issues laid before them, shall appoint the third arbitrator.

If the two arbitrators fail to appoint the third arbitrator within fifteen days of receiving the statement of issues from the Parties, the third arbitrator shall be appointed at the request of any one of the Parties or selected arbitrators by the Belgian Minister of Foreign Affairs.

The three arbitrators thus appointed shall constitute the arbitration Tribunal.

3. The arbitrators shall meet at the seat of the Customs Co-operation Council in Brussels and shall decide the dispute or claim by application of Belgian domestic law or, if necessary, of the rules of private international law as applied in Belgium.

The Tribunal shall not be bound in the matter of Rules of Procedure; it shall determine its own rules.

The Tribunal shall decide the manner in which costs and expenses are to be borne by the Parties.

The Tribunal's powers shall expire three months after the termination of the proceedings of the completion of the final enquiry ordered by it.

4. Parties agree to accept the arbitral award rendered in accordance with the foregoing provisions as constituting final settlement of the claim or dispute.
5. The Customs Co-operation Council declares that no provision contained in the present arbitration clause will be considered by it as a waiver, either explicit or implicit, of any privilege or immunity which it may enjoy in law by virtue of its statute.

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**ANNEX 3**  
**SCHEDULE OF TASKS**

**APPENDIX 1 – CALL FOR TENDER**

**APPENDIX 2 - OFFER**