NON-DISCLOSURE AGREEMENT

BETWEEN

The Customs Co-operation Council, known as the WORLD CUSTOMS ORGANIZATION (WCO), an international organization having its headquarters at rue du Marché 30, 1210 Brussels, Belgium,

hereinafter referred to as the “WCO”,

AND

__________________________________________

having its registered headquarters at _________________________________

registered under company number _________________________

duly represented by Mr./Ms. ________________________________________, acting in
his/her capacity as _________________________,

hereinafter referred to as the “Co-Contracting Party”,

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

WHEREAS:

A. The WCO has launched a call for tenders for the development of an upgraded system known as ‘CENcomm’.

B. The Co-Contracting Party is interested in submitting a tender. In order to estimate the scope of the work which will fall to it in the event it should be elected by the WCO to develop the CENcomm software, the Co-Contracting Party will receive a temporary access to, amongst others, information, files and documents of the WCO.

C. Taking into account the above, the Parties wish to enter into this agreement (hereinafter the “Agreement”) in order to ensure the non-disclosure of confidential information of the WCO.

1 Please insert the company name.
2 Please insert the registered office address of the company.
3 Please insert the company number under which your company is registered.
4 Please insert the name of the representative signing the contract.
5 Please insert the capacity of the representative signing the contract.
ARTICLE 1 – DEFINITION

The Parties agree, as of now, that the following information shall be considered to be “Confidential Information”: any information, files and documents provided by the WCO in the framework of the call for tenders after the signing of this Agreement.

ARTICLE 2 – SCOPE

2.1 The Co-Contracting Party agrees that the obligations which it enters into under the terms of this Agreement shall constitute obligations as regards results.

2.2 This Agreement shall not:

(i) create any legal bond between the Parties other than that for which it was provided,

(ii) be interpreted in such a way as to compel the WCO to communicate Confidential Information to the Co-Contracting Party.

ARTICLE 3 – TERM

This Agreement shall commence as of the date of signature thereof by the Co-Contracting Party and shall continue to bind the Co-Contracting Party without limitation of time.

ARTICLE 4 – USE OF INFORMATION

The Co-Contracting Party receiving the Confidential Information shall undertake to:

(i) use the Confidential Information solely for purposes of estimating the scope of the work which will fall to it in the event it shall be elected by the WCO to develop the CENcomm software;

(ii) recognize that the Confidential Information remains at all events the property of the WCO;

(iii) not to copy, in any form and on any kind of medium, all or part of the Confidential Information; and

(iv) refrain from asserting a title to intellectual property or from registering in its name or in the name of a third party a request for intellectual property application on works using, incorporating or implementing all or part of the Confidential Information.

ARTICLE 5 – DISCLOSURE

Disclosure of the Confidential Information by the Co-Contracting Party is not authorized vis-à-vis third parties such as sub-contractors.
ARTICLE 6 – EXCLUSIONS

Obligations stemming from this Agreement shall not apply to information for which the Co-Contracting Party can demonstrate that:

(i) it has been disclosed after obtaining prior, written consent from the WCO;
(ii) the disclosure was by the WCO;
(iii) it passed into the public domain subsequent to disclosure, providing that it is not the result of the violation of confidentiality obligations with respect to the Co-Contracting Party transmitting the Confidential Information;
(iv) it is the result of internal developments with no use of Confidential Information within the terms of this Agreement;
(v) it was received from a third party with no violation of a confidentiality obligation; or
(vi) disclosure was dictated by the application of a mandatory legal or regulatory provision or by the application of a final legal decision. However, in the latter cases, the Co-Contracting party shall assure that the following conditions are fulfilled:
   a. the Co-Contracting Party shall inform the WCO beforehand, in writing, of the obligation for disclosure; and
   b. the Co-Contracting Party shall restrict disclosure to the absolute minimum to comply with its obligations.

ARTICLE 7 – TRANSFER

The Co-Contracting Party may not assign or transfer this Agreement or any of its rights or obligations under this Agreement.

ARTICLE 8 – MEASURES AND DUE DILIGENCE

The Co-Contracting Party shall undertake to:

(i) take all the necessary measures to protect the confidentiality of the Confidential Information communicated and, as a minimum, take the same care and make the same efforts as would be taken and made to protect the confidentiality of its own information;

(ii) in all cases, act with due diligence, adapted to the circumstances.
ARTICLE 9 – ENTIRETY AND AMENDMENTS

9.1 This Agreement constitutes the entire agreement between the Parties relating to the subject and the procedures described therein. It cancels, from its signature, any prior written or tacit agreement between the Parties on the same subject.

9.2 Any editing changes, amendments or deletions relating to this Agreement shall be the subject of a written agreement signed by each of the Parties.

ARTICLE 10 – TOLERANCES

Failure by the WCO to exercise any right under the terms of this Agreement or toleration of the non-performance or infringement of one of its Articles may not be interpreted as renouncing that right and/or Article.

ARTICLE 11 – FAIR CONDUCT AND GOOD FAITH

The Co-Contracting Party undertakes that, as a partner, it will behave towards the WCO with fairness and in good faith and, in particular, that it will inform the WCO of any difficulties it may encounter in the framework of the execution of this Agreement.

ARTICLE 12 – PARTIAL INVALIDITY

If any stipulation in this Agreement is invalid this shall not invalidate the entire Agreement and the Parties undertake, in such circumstances, to replace the clause that is invalid by a valid clause with equivalent effect.

ARTICLE 13 – PRIVILEGES AND IMMUNITES

Nothing in this Agreement may be construed as any waiver by the WCO of its privileges and immunities or of those of its officials.

ARTICLE 14 – APPLICABLE LAW

The Parties expressly agree that their rights and obligations shall be governed by this Agreement and, failing that, by Belgian law.

ARTICLE 15 – DISPUTE SETTLEMENT

Any dispute arising between the Parties regarding this Agreement shall be resolved in accordance with the procedure laid down in Part I of the Customs Co-operation Council Decision 331 as follows:

*DECISION OF THE COUNCIL No. 331

117th/118th Sessions - June 2011

Settlement of disputes

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

THE COUNCIL DECIDES:
(i) to rescind Council Decision No. XXXIII of November 1954; and

(ii) 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/her official position enjoys immunity, if immunity has not been waived in accordance with the provisions of Sections 19 and 21 of the Annex to the Convention establishing a Customs Co-operation Council.

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 or agreements, in any form, entered into by the Customs Co-operation Council (the “Council”) shall contain an arbitration clause by which the Council and the other Party (or Parties) to the contract undertake to refer to a tribunal of arbitrators, which shall reach its decision by application of law and without appeal, any disputes involving the Council regarding the interpretation or fulfilment of the contract they have entered into.

Unless otherwise specified, in any contract or agreement entered into by on the one hand, the Council, and on the other hand, one or more States and/or one or more international organizations, the said arbitration clause shall be worded as follows:

1° Settlement of disputes by arbitration

Any claim or dispute regarding the interpretation or fulfilment of this contract shall be settled by a tribunal of three arbitrators (the “Arbitral Tribunal”), who shall render a majority decision, reached by application of law and without appeal.

2° Initiation of the arbitral proceedings

(i) Notice of damage

In order for its claim to be admissible, each Party to the contract shall, within a period of six (6) months from the date when it became aware of the damage sustained, or an absolute time limit of two (2) years beginning on the day after the day when the incident which caused the damage occurred (the action shall be time-barred as soon as one of these time limits has expired), give notice of the claim, by registered letter (with acknowledgment of receipt), to any other Party to the contract against which it wishes to file a claim (the “Notice of damage”).

The Party initiating the Notice of damage shall be called “the Claimant”, and the Party which receives the Notice of damage shall be called “the Respondent”.

(ii) Mandatory conciliation

Beginning on the date when the Notice of damage is sent, there shall be a period of mandatory conciliation between the Parties lasting thirty (30) calendar days (the “conciliation period”).

(iii) Notice of arbitration

In the event that the Parties have not been able to reach an amicable agreement by the end of the conciliation period, it shall be up to the Claimant(s) to notify the Respondent(s) of his/her/their desire to initiate arbitral proceedings by sending a registered letter (with acknowledgment of receipt) (the “Notice of arbitration”) no later than ten (10) calendar days after the end of the conciliation period.

The Notice of arbitration shall, on pain of invalidity, include at least the following: (i) appointment of an arbitrator, (ii) reference to the arbitration clause invoked, (iii) reference to the agreement or relationship out of or in relation to which the dispute arises, (iv) the relief sought and, where appropriate, an estimate of the amount claimed.

Within twenty (20) calendar days following the sending of the Notice of arbitration, the Respondent(s) must select his/her/their own arbitrator and notify the Claimant(s) and the arbitrator already selected by the latter of his/her/their choice. At the same time, the Respondent(s) shall make any counter-claims.
If the Respondent(s) fail(s) to appoint an arbitrator within the time allowed, that arbitrator shall be appointed by the Secretary-General of the Permanent Court of Arbitration (PCA) within thirty (30) calendar days following a request by the Claimant.

Where there is more than one Claimant and/or more than one Respondent, the Claimants jointly shall appoint one arbitrator and the Respondents jointly shall appoint one arbitrator.

3° Composition of the Arbitral Tribunal

(i) Appointment

The two arbitrators appointed by the Claimant(s) and the Respondent(s) shall, by common agreement, select a third arbitrator who shall chair the Arbitral Tribunal de jure.

If the first two arbitrators fail to appoint the third arbitrator within fifteen (15) calendar days of notification of the appointment of the second arbitrator, the third arbitrator shall be nominated by the Secretary-General of the Permanent Court of Arbitration (PCA) within thirty (30) calendar days following a request by the first Party to take action or the arbitrators selected by the Parties.

The three arbitrators thus appointed shall constitute the Arbitral Tribunal.

(ii) Independence and impartiality of the arbitrators

Only persons who are independent of the Parties and of their legal counsel may serve as arbitrators.

Each arbitrator shall sign a declaration of independence in which he/she undertakes to abide by the rules of good conduct set out therein and sets out, in writing, any facts and circumstances that could lead any of the Parties to doubt his/her independence. The Parties shall have twenty (20) calendar days following receipt of each arbitrator’s declaration of independence to make any comments.

Moreover, an arbitrator shall immediately disclose in writing to the Parties any facts or circumstances of a similar nature to those referred to in the preceding paragraph which may arise during the arbitration.

(iii) Challenge and replacement of arbitrators

a. Challenge

Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence.

A Party who intends to challenge an arbitrator shall send notice of his/her challenge within twenty (20) calendar days after the declaration of independence of the challenged arbitrator has been notified to the challenging Party or within twenty (20) calendar days after the circumstances referred to in paragraph (3) (ii) § 3 above became known to that Party.

The challenge shall be notified to the other Party, to the arbitrator who is challenged and to the other members of the Arbitral Tribunal. The notification shall be in writing and shall state the reasons for the challenge.

When an arbitrator has been challenged by one Party, the other Party may agree to the challenge; in that case the arbitrator shall be required to withdraw. The challenged arbitrator may also withdraw voluntarily. In neither case does this imply acceptance of the validity of the grounds for the challenge.

If the other Party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge shall be a matter for the Secretariat of the Permanent Court of Arbitration. The Court shall decide on the admissibility and on the merits of the challenge after it has afforded an opportunity for the arbitrator concerned, the other Parties and the other members of the Arbitral Tribunal to comment in writing within a specified period of time. Such comments shall be communicated to the Parties and to the arbitrators, who may respond to them within the time period specified by the Secretariat of the Permanent Court of Arbitration.

b. Replacement
In the event of an arbitrator's death, challenge, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all Parties, the arbitrator shall be replaced.

Any new arbitrator shall be nominated by the Secretariat of the Permanent Court of Arbitration within thirty (30) calendar days following a request by the first Party to take action or the remaining arbitrators.

4° Procedural rules

(i) Terms of Reference

The Arbitral Tribunal shall draw up its Terms of Reference, signed for acceptance by the Parties and the arbitrators, and including at least the following:

(i) rules of procedure setting out the procedural rules expressly stipulated herein, and also setting out procedural formalities not expressly provided for under the terms of this Decision;

(ii) a summary of the facts and claims of each Party;

(iii) the arbitrators’ signed declarations of independence.

If the Arbitral Tribunal finds it necessary, during the proceedings, to take decisions regarding their organization (by means of “Procedural orders”), the Arbitral Tribunal shall take the decision it deems most appropriate with a view to the sound management of the proceedings, whilst ensuring that the Parties are treated equally and that each Party is given the opportunity of presenting his/her case. However, under no circumstances, except with the agreement of the Parties, shall there be any derogations from the rules expressly stipulated under the terms of this Decision.

(ii) Place of arbitration

The Arbitral Tribunal shall meet at the headquarters of the Customs Co-operation Council in Brussels (Belgium).

(iii) Law applicable

The Arbitral Tribunal shall decide the dispute or claim by application of the standards laid down by the WCO and, failing that, by Belgian law or, if appropriate, the law designated by application of the rules of private international law as applied in Belgium.

The Parties agree that under no circumstances shall the Arbitral Tribunal take its decision on the basis of equitable principles, assume the powers of an amiable compositeur or decide ex aequo et bono.

(iv) Language of the arbitration

The arbitration proceedings shall take place in one of the official languages of the WCO (English, French), as determined by the Parties.

(v) Witness statements and experts

If either Party so requests, at any appropriate stage of the proceedings the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument.

(vi) Interim measures of protection

The Arbitral Tribunal may, at the request of either Party, take any interim measures it deems necessary to preserve the respective rights of either Party or in respect of the matter in dispute.

Such interim measures may be established in the form of an interim award. The Arbitral Tribunal shall be entitled to require security for the costs of such measures.

A request for interim measures addressed by either Party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

(vii) Settlement during proceedings
If, before the award is made, the Parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both Parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms.

(viii) Costs and expenses of arbitration

a. Advance(s)

An advance payment shall be made in respect of the costs of arbitration; it shall be estimated by the Arbitral Tribunal on the basis of the amount of the principal claims and of any counterclaims, according to the Scale of Arbitration Costs of the Belgian Centre for Arbitration and Mediation (CEPANI) in effect on the date of Notice of arbitration.

b. Attribution

The Arbitral Tribunal shall decide upon the final amount of the costs of arbitration in the framework of the final award, in the light of the services rendered and the costs incurred.

Unless the Parties agree otherwise, in principle the costs of arbitration shall be divided equally between the Parties. However, the Arbitral Tribunal may decide on a different apportionment of the costs if it determines that this is reasonable taking into account the circumstances of the case, provided however that it states the reasons for this decision.

Unless the Parties agree otherwise, each Party shall bear the costs it has incurred for legal representation and assistance. However, the Arbitral Tribunal, taking into account the circumstances of the case, shall be free to determine which Party shall bear such costs or may apportion them between the Parties if it determines that this is reasonable, provided however that it states the reasons for this decision.

(ix) Confidentiality

The Parties and the arbitrators undertake to ensure the confidentiality of the arbitral proceedings.

Arbitral Award

(i) Final award, stating the reasons on which it is based

No later than three (3) months after the closing of the proceedings, the Arbitral Tribunal, by majority decision, shall render its final award, stating the factual and legal grounds on which it is based, and communicate it to the Parties.

The Parties agree to accept the arbitral award rendered in accordance with the foregoing provisions as constituting final settlement of the claim or dispute.

The award may be made public, in whole or in part, only with the consent of both Parties unless the Arbitral Tribunal decides otherwise, stating the reasons for its decision, following a specific request made by a Party in the framework of the arbitral proceedings.

(ii) Interpretation of the award

Within twenty (20) calendar days after receipt of the final award or of the corrections made thereto in application of paragraph 5 (iii) below, either Party, with notice to the other Party, may request that the Arbitral Tribunal give an interpretation of the award.

The interpretation shall be given in writing within twenty (20) calendar days after receipt of the request. The interpretation shall form part of the award.

(iii) Correction of the award

Within twenty (20) calendar days after receipt of the final award or of the interpretation given thereof in application of paragraph 5 (ii) above, either Party, with notice to the other Party, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors
of a similar nature. The Arbitral Tribunal may, within twenty (20) calendar days after the communication of the award to the Parties, make such corrections on its own initiative.

6° Privileges and immunities

The 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 or by virtue of its statute.*

* * *

By signing this Agreement, the Co-Contracting Party acknowledges and accepts the obligations stated herein.

For the Co-Contracting Party,

Date: _______________[please insert the date of signature]

_____________________[please insert your signature]

_____________________[please insert your company name]

_____________________[please insert your name]

_____________________[please insert your capacity]