

Agreement

between

the Government of the Federal Republic of Germany

and

the Government of the Republic of Lithuania

on the

Exchange and Mutual Protection of Classified Information

The Government of the Federal Republic of Germany
and
the Government of the Republic of Lithuania
(hereinafter referred to as the Contracting Parties),

Recognising that effective co-operation in political, economic, military and any other area may require exchange of classified information,

Intending to ensure the protection of classified information that is exchanged between the competent authorities of the Federal Republic of Germany and the Republic of Lithuania as well as with contractors or between contractors of the Contracting Parties,

Referring to the Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Lithuania on the mutual protection of classified information of 5 March 1998,

Acknowledging nationally applicable laws and regulations governing the protection of classified information,

Have agreed as follows:

Article 1 Objective and Scope

The objective of this Agreement is to establish a set of rules regulating the exchange and mutual protection of classified information that shall apply to all classified information exchanged, generated or handled in the process of cooperation between the Contracting Parties including classified contracts, activities or arrangements involving an exchange of classified information.

Article 2 Definitions

For the purposes of this Agreement

1. “classified information” is

(a) in the Federal Republic of Germany

facts, items or intelligence which, regardless of how they are presented, are to be kept secret in the public interest. They shall be classified by, or at the instance of, an official agency in accordance with their need for protection;

(b) in the Republic of Lithuania

any data, regardless of its form and the means it was generated or transmitted that in accordance with laws and regulations was recognized as classified and is marked with national classification markings;

2. a “classified contract” is a contract between an authority or an enterprise from the state of one Contracting Party and an enterprise from the state of the other Contracting Party (contractor) which involves the exchange and generation of Classified Information.

Article 3 Comparability

The Contracting Parties stipulate that according to the nationally applicable laws and regulations the following classifications shall be comparable and that classified information

shall be marked as follows:

Federal Republic of Germany	Republic of Lithuania	Equivalent in English
STRENG GEHEIM	VISIŠKAI SLAPTAI	TOP SECRET
GEHEIM	SLAPTAI	SECRET
VS-VERTRAULICH	KONFIDENCIALIAI	CONFIDENTIAL
VS-NUR FÜR DEN DIENSTGEBRAUCH	RIBOTO NAUDOJIMO	RESTRICTED

Article 4

Classification Markings

- (1) Received classified information shall be marked with the comparable national classification as provided under Article 3 by, or at the instance of, the competent authority of the recipient.
- (2) Classified information which is generated in the state of the receiving Contracting Party in connection with classified contracts as well as copies made in the state of the receiving Contracting Party shall be marked accordingly.
- (3) Classifications shall not be amended or revoked without authorization of the competent authority of the originating Contracting Party.
- (4) The competent authority of the originating Contracting Party shall inform the competent authority of the other Contracting Party immediately of the amendment or revocation of any classification.

Article 5
Competent Authorities

(1) The Contracting Parties shall inform each other in writing about the details of their respective National Security Authorities (hereinafter – NSAs) or Designated Security Authorities (hereinafter – DSAs) immediately after the Agreement has entered into force and shall also provide updates to these details as necessary.

(2) The exchange of cooperation related information between the NSAs or DSAs of the Contracting Parties shall be effected either in the national language of the authority to be informed or in English.

Article 6
National Security Measures

(1) Within the scope of their nationally applicable laws and regulations, the Contracting Parties shall take all appropriate measures to guarantee the protection of classified information generated, exchanged or handled under the terms of this Agreement. They shall afford such classified information a degree of protection at least equal to that required by the receiving Contracting Party for its own classified information of the comparable level of classification.

(2) The classified information shall be used solely for the designated purpose. The recipient shall not disclose or use, or permit the disclosure or use of, any classified information except for the purposes and within any limitations stated by or on behalf of the originator. The originator of the classified information must have given its written consent to any arrangement to the contrary.

(3) The translation, reproduction and destruction of classified information shall be carried out according to the provisions that are set in the nationally applicable laws and regulations

of the Contracting Parties for their own classified information of the comparable level of classification.

(4) Access to classified information may be granted only to individuals having a need-to-know and – having been security-cleared or being eligible to access classified information by virtue of their function. Security clearance shall be granted only after completion of a security screening under standards no less stringent than those applied for access to national classified information of the comparable classification level. In the case of classified information at the VS-NUR FÜR DEN DIENSTGEBRAUCH/RIBOTO NAUDOJIMO level nationally applicable laws and regulations apply.

(5) Access to classified information at the VS-VERTRAULICH/KONFIDENCIALIAI or GEHEIM/SLAPTAI level by a national of the state of one Contracting Party shall be granted without the prior authorization of the originating Contracting Party.

(6) Personnel Security Clearances (hereinafter – PSCs) for nationals of the state of one Contracting Party who reside and require access to classified information in their own state shall be undertaken by their NSAs or DSAs or other competent national authorities.

(7) In accordance with nationally applicable laws and regulations PSCs for nationals of the state of a Contracting Party who have been legally resident in the territory of the state of the other Contracting Party for at least 5 years and apply for a security-sensitive job in that state shall be undertaken by the competent security authority of the latter Contracting Party conducting cross-border checks as appropriate.

(8) The Contracting Parties shall, each within their state, ensure that the necessary security inspections are carried out and that this Agreement is complied with.

Article 7

Award of Classified Contracts

(1) Prior to the award of a classified contract of the VS-VERTRAULICH/KONFIDENCIALIAI level or higher, the contract owner shall, through its respective NSA or DSA, obtain a Facility Security Clearance (hereinafter – FSC) from the NSA or DSA of the contractor in order to obtain assurance as to whether the prospective contractor is subject to security oversight by the NSA or DSA of its state and whether such contractor has taken the security precautions required for discharging the performance of the classified contract. Where a contractor has not yet been granted an FSC, an application may be made to that end.

(2) An FSC shall also be obtained if an enterprise has been requested to submit a bid and if classified information will have to be released prior to the award of a classified contract under the bid procedure.

(3) In the cases referred to in paragraphs (1) and (2) above, the following procedure shall be applied:

1. Requests for the issuance of an FSC for contractors from the state of the other Contracting Party shall contain information on the project as well as the nature, the scope and the level of classification of the classified information expected to be released to the contractor or to be generated by it.
2. In addition to the full name of the enterprise, its postal address, the name of its security official, his or her telephone, fax number and e-mail address, FSCs must include information in particular on the extent to which, and the level of classification up to which, security measures have been taken by the respective enterprise on the basis of nationally applicable laws and regulations.
3. The NSAs or DSAs of the Contracting Parties shall inform each other of any

changes in the facts covered by the issued FSCs.

4. FSCs and requests addressed to the respective NSAs or DSAs of the Contracting Parties for the issuance of FSCs shall be transmitted in writing.

(4) In the case of classified contracts at the VS-NUR FÜR DEN DIENSTGEBRAUCH/RIBOTO NAUDJOJIMO level nationally applicable laws and regulations apply.

Article 8

Performance of Classified Contracts

(1) Classified contracts of the VS-VERTRAULICH/KONFIDENCIALIAI level or higher must contain a security requirements clause under which the contractor is under an obligation to make the arrangements required for the protection of classified information pursuant to the nationally applicable laws and regulations of its state.

(2) In addition, the security requirements clause shall contain the following provisions:

1. the comparable classifications of the states of the Contracting Parties in accordance with the provisions of this Agreement;
2. the names of the competent authorities of each Contracting Party empowered either to authorize the release or to coordinate the safeguarding of classified information related to the classified contract;
3. the channels to be used for the transfer of classified information between the competent authorities and contractors involved;
4. the procedures and mechanisms for communicating changes that may arise in

respect of classified information either because of changes in its classification level or its declassification;

5. the procedures for the approval of visits of the contractor's personnel;
6. the procedures for transmitting classified information to contractors where such information is to be handled;
7. the requirement that the contractor shall grant access to classified information only to a person who has a need-to-know, has been security-cleared and authorized to the appropriate level in advance;
8. the requirement that classified information shall only be disclosed to a third party, or that such disclosure shall only be permitted, if this has been approved by the originator in writing;
9. the requirement that the contractor shall immediately notify its NSA or DSA of any actual or suspected loss, leak or unauthorized disclosure of the classified information covered by the classified contract;
10. the requirement that the contractor shall inform its NSA or DSA in case it has been awarded a classified contract; and
11. the requirement that subcontractors may only be involved upon prior approval of the originator. The provisions of Articles 7 and 8 also apply to subcontractors.

(3) The competent authority of the contract owner shall provide the contractor with a separate list (classification guide) of all documentary records requiring security classification, shall determine the required classification level and shall arrange for this classification guide to be enclosed as an appendix to the classified contract. The competent authority of the contract owner shall also transmit, or arrange for the transmission of, this

classification guide to the competent authority of the contractor.

(4) The originator shall ensure that the contractor will be given access to classified information only after the appropriate FSC has been received from the NSA or DSA of the contractor.

(5) In the case of classified contracts at the VS-NUR FÜR DEN DIENSTGEBRAUCH/RIBOTO NAUDAJIMO level nationally applicable laws and regulations apply.

Article 9

Transmission of Classified Information

(1) Classified information at the STRENG GEHEIM/VISIŠKAI SLAPTAI level shall only be transmitted between Contracting Parties through Government-to-Government channels pursuant to the respective nationally applicable laws and regulations.

(2) As a matter of principle, classified information at the VS-VERTRAULICH/KONFIDENCIALIAI and GEHEIM/SLAPTAI levels shall be transmitted from one state to another by official courier. The NSAs or DSAs of the Contracting Parties may agree on alternative channels of transmission. In accordance with nationally applicable laws and regulations classified information shall be forwarded to the recipient and receipt of classified information shall be confirmed by, or at the instance of, the competent authority.

(3) The NSAs or DSAs may agree – generally or subject to restrictions – that classified information at the VS-VERTRAULICH/KONFIDENCIALIAI and GEHEIM/SLAPTAI levels may be transmitted through channels other than official courier. In such cases:

1. the bearer must be authorized to have access to classified information of the comparable level of classification;

2. a list of the items of classified information transmitted must be retained by the sender; a copy of this list shall be handed over to the recipient for forwarding to the competent authority;
3. items of classified information must be packed in accordance with the regulations governing transportation within national boundaries;
4. items of classified information must be delivered against receipt; and
5. the bearer must carry a courier certificate issued by the competent authority of the sender or the recipient.

(4) In the case referred to in paragraph (3) above, the means of transportation, the route, and, if needed, the escort shall be determined on a case-by-case basis by the competent authorities on the basis of a detailed transport plan.

(5) The electronic transmission of classified information at the VS-VERTRAULICH/KONFIDENCIALIAI or GEHEIM/SLAPTAI level must only take place in an encrypted form. Classified information of these levels of classification may only be encrypted by encryption means approved by mutual agreement by the NSAs or DSAs of the Contracting Parties.

(6) Classified information at the VS-NUR FÜR DEN DIENSTGEBRAUCH/RIBOTO NAUDAJIMO level may be transmitted by post or other delivery services to recipients within the territory of the state of the other Contracting Party, taking into account nationally applicable laws and regulations.

(7) Classified information at the VS-NUR FÜR DEN DIENSTGEBRAUCH/RIBOTO NAUDAJIMO level may be electronically transmitted or made available by means of commercial encryption devices approved by the relevant competent security authority.

Article 10

Visits

(1) As a matter of principle, it is only with the prior permission of the NSAs or DSAs of the Contracting Party whose state is to be visited that visitors from the state of one Contracting Party will, in the state of the other Contracting Party, be granted access to classified information and to facilities in which classified information is being handled. Such permission shall be given only to individuals having a need-to-know and having been authorized to have access to classified information.

(2) Requests for visits shall be submitted, on a timely basis and in accordance with the regulations of the Contracting Party's state whose territory such visitors wish to enter, to the competent authority of that state. The competent authorities shall inform each other of the details regarding such requests and shall ensure that personal data are protected.

(3) Requests for visits shall be submitted in the language of the state to be visited or in English and shall contain the following information:

1. the visitor's first name and surname, date and place of birth, and his or her passport or identity card number;
2. the visitor's citizenship;
3. the visitor's service designation, and the name of his or her parent authority or agency;
4. the level of the visitor's security clearance for access to classified information;
5. the purpose of the visit, and the proposed date of the visit; and

6. the designation of the agencies, the contact persons and the facilities to be visited.

(4) In the case of visits that involve access to classified information at the VS-NUR FÜR DEN DIENSTGEBRAUCH/RIBOTO NAUDOJIMO level nationally applicable laws and regulations apply, especially with regard to nationals of the Contracting Party visited.

Article 11

Consultations and Settlement of Disputes

(1) The Contracting Parties shall take note of the nationally applicable laws and regulations governing the protection of classified information that apply within the state of the other Contracting Party.

(2) To ensure close cooperation in the implementation of this Agreement, the NSAs or DSAs shall consult each other at the request of one of these authorities.

(3) Each Contracting Party shall, in addition, allow the NSA or DSA of the other Contracting Party or any other authority designated by mutual agreement to visit the territory of its state in order to discuss, with its NSA or DSA, the procedures and facilities for the protection of classified information received from the other Contracting Party. Each Contracting Party shall assist that authority in ascertaining whether classified information received from the other Contracting Party is adequately protected.

(4) Any dispute between the Contracting Parties arising from the interpretation or application of this Agreement shall be resolved solely by consultation or negotiation between the Contracting Parties and shall not be referred to any national or international tribunal or third party for settlement.

Article 12

Violation of Provisions Governing the Mutual Protection of Classified Information

(1) Whenever unauthorized disclosure of classified information cannot be ruled out or if such disclosure is suspected or ascertained, the other Contracting Party shall immediately be informed.

(2) Violations of provisions governing the protection of classified information shall be investigated, and appropriate legal action shall be taken, by the competent authorities and courts in the state of the Contracting Party having jurisdiction, according to nationally applicable laws and regulations. The other Contracting Party should, if so requested, support such investigations and shall be informed of the outcome.

Article 13

Costs

Each Contracting Party shall pay the expenses incurred by it in implementing the provisions of this Agreement.

Article 14

Relationship with Other Agreements, Arrangements and Memoranda of Understanding

Any existing Agreements, Arrangements and Memoranda of Understanding between the Contracting Parties or the competent authorities on the protection of classified information shall be unaffected by the present Agreement in so far as they do not conflict with its provisions.

Article 15
Final Provisions

(1) This Agreement shall enter into force on the date on which the Government of the Republic of Lithuania has notified the Government of the Federal Republic of Germany that the national requirements for such entry into force have been fulfilled. The relevant date shall be the date of receipt of the notification.

(2) This Agreement is concluded for an indefinite period of time.

(3) This Agreement may be amended in writing by mutual agreement between the Contracting Parties. Either Contracting Party may at any time submit a written request for the amendment of this Agreement. If such a request is submitted by one of the Contracting Parties, the Contracting Parties shall initiate negotiations on the amendment of the Agreement. Such amendments shall enter into force in accordance with the provisions of paragraph 1 of this Article.

(4) Either Contracting Party may, through diplomatic channels, denounce this Agreement by giving six months' written notice. In the event of denunciation, classified information transmitted, or generated by the contractor, on the basis of this Agreement shall continue to be treated in accordance with the provisions of Article 5 above for as long as is justified by the existence of the classification.

(5) Registration of this Agreement with the Secretariat of the United Nations, in accordance with Article 102 of the Charter of the United Nations, shall be initiated by the Contracting Party in the state of which the Agreement is signed immediately following its entry into force. The other Contracting Party shall be informed of registration, and of the UN registration number, as soon as this has been confirmed by the Secretariat of the United Nations.

(6) Upon the entry into force of this Agreement, the Agreement between the Government

of the Federal Republic of Germany and the Government of the Republic of Lithuania on the Mutual Protection of Classified Information of 5 March 1998 shall be terminated. Upon entry into force, of the present Agreement, it shall also apply to classified information exchanged under the Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Lithuania on the Mutual Protection of Classified Information of 5 March 1998.

Done at _____ on _____ in two originals, in the German, Lithuanian and English languages, all three texts being authentic. In the case of any divergence of interpretation of the German and Lithuanian texts, the English text shall prevail.

For the Government of the
Federal Republic of Germany

For the Government of
Republic of Lithuania