**CONFIDENTIALITY AGREEMENT N°[**to be completed by MBDA**]**

Between :

**MBDA UK** Limited a company incorporated under the laws of England and Wales (registered number 3144919), whose registered office is at Six Hills Way, Stevenage, Hertfordshire SG1 2DA, England

hereinafter referred to as “MBDA UK”

And :

**SUPPLIER,** having a capital of [●], registered on the Trade and Companies Register in [●] under the number [●], having its registered office at [●] as represented by [●] in its quality of [●], duly empowered for the purposes hereof,

hereinafter referred to as the “SUPPLIER”,

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

**WHEREAS**

1. The Complex Weapons Innovation Technology Partnership (“CW ITP”) is a joint ambition of the United Kingdom Ministry of Defence (“UK MoD”) and the French Direction Générale de l’Armement (“DGA”), duly represented by Defence Science and Technology Laboratory ("Dstl”) acting on behalf of the UK MoD together with the DGA (all together referred to as the “Customer”), in order to provide a focus for Anglo-French collaboration and co-ordination of research on complex weapons technologies involving both French and UK MoD, industries, Small Medium Enterprises (SMEs), and academia.
2. MBDA France have recognised know-how in the area of defence systems and in particular systems based on missiles. MBDA France has been awarded by the Customer the CW ITP contract. MBDA France and MBDA UK will both act as the Programme Office to ensure the performance of the Prime Contract. MBDA France and UK require the technical assistance of organisations specialized in specific areas of CW ITP technology recognized for their skills (hereinafter referred to as “ETA Lead”). The ETA Lead are listed in Annex 1 of the Agreement. ETA Leads will be in charge of the management of specific projects in their technical area. Such projects will be performed by the SUPPLIER.
3. The SUPPLIER has a recognized know-how in the area of ............... ***(to be filled in by the SUPPLIER)***
4. Within the framework of the CW ITP programme, the Parties wish to enter into discussions and may need to disclose to one another certain technical and business information which are proprietary and confidential regarding the SUPPLIER’s project bids relating to the CW ITP (the "Purpose”).
5. Therefore, each Party to this confidentiality agreement (hereinafter the “Agreement”) wishes to protect its proprietary and confidential information so disclosed, and to afford all necessary protection to said information, the rules governing its transmission, use, protection and return or destruction, and for that purpose has agreed to the terms and conditions of protection hereinafter.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

“Disclosing Party” shall mean that Party disclosing Confidential Information.

“Receiving Party” shall mean that Party receiving Confidential Information.

“Confidential Information” shall mean any information of any kind whatsoever, notably technical, scientific or commercial, any documents, data (personal data or other data), designs, drawings, sample, models, specifications, software, know-how, whatever its form (written or printed documents, CD Rom, digital media …), its mode of transmission (written, oral, visual, electronic transmission including networks and/or electronic mail…), belonging to or in possession of the Disclosing Party and transmitted to the Receiving Party or which such Party may have access to (in particular during visits or presentations) within the frame of the discussions related to the Purpose, throughout the period of validity of the Agreement and provided that such information conforms with the requirements of this Article.

Confidential Information disclosed by the Disclosing Party shall also include any information or result which can be obtained by examination, testing, analysis or use of sample, material, software, or any component part thereof provided by the Disclosing Party to the Receiving Party notwithstanding the fact that the requirements for marking and/or designation referred to hereunder are not fulfilled. The aforementioned provisions shall apply without prejudice to the restrictions on use defined in Article 2 hereunder.

1.1 Written information :

Any Confidential Information shall be identified as such whenever it is written on paper or forms marked "CONFIDENTIAL" or "PROPRIETARY" or by any other appropriate words clearly indicating the confidential nature thereof.

1.2 Oral/Visual information :

The Disclosing Party shall inform the Receiving Party that an oral or visual information is a Confidential Information at the time of its disclosure, and shall confirm it in writing to the Receiving Party in accordance with the provisions of Article 1.1, no later than thirty (30) days after such oral or visual disclosure.

It is understood that during said period, the information shall be considered and protected as Confidential Information by the Receiving Party.

1. OBLIGATIONS OF THE PARTIES

2.1 The Receiving Party hereby undertakes, from the date of receipt of the Confidential Information and until the end of a period of ten (10) years following expiration or termination of the Agreement, that such Confidential Information:

1. shall be protected and kept strictly confidential and shall be treated by the Receiving Party with at least the same degree of care and protection as it uses to treat its own confidential information of like importance, but in any event without being less than a reasonable level of precaution and protection so as to avoid any public disclosure, and
2. shall be disclosed only to those of its employees and sworn consultants having a need to know such Confidential Information and provided that they are duly informed beforehand of the confidential nature of such Confidential Information and they are subject to confidentiality obligations at least as strict as those provided herein, and
3. shall not be used, in whole or in part, for another purpose than the Purpose, and
4. shall not be, directly by the Receiving Party or indirectly, reverse engineered, decompiled, disassembled, modified, adapted, translated and/or used to create any derivative information and/or result, without the prior written authorization of the Disclosing Party, and
5. shall not be disclosed nor likely to be disclosed either directly or indirectly to any third party including subcontractors or any persons other than those mentioned in paragraph b) here above, without the prior written authorization of the Disclosing Party and provided that such third party undertakes beforehand in writing to comply with confidentiality obligations at least as strict as those provided herein, the Receiving Party remaining liable to the Disclosing Party for any failure by the third party to abide by said obligations, and
6. shall not be copied, nor reproduced in whole or in part without the prior written authorization of the Disclosing Party, except for the copies strictly necessary to fulfil the Purpose, and for the only persons mentioned in paragraphs b) and e), and

shall be immediately destroyed upon request of the Disclosing Party, as well as all copies and reproductions if any (except if the Disclosing Party exceptionally requests their restitution); in case of destruction, the Receiving Party undertakes to immediately cease any use of said Confidential Information and to certify in writing of their destruction. The Disclosing Party may, at its own discretion, authorise the Receiving Party to keep one (1) copy of said Confidential Information for archiving purposes exclusively.

1. Furthermore, notwithstanding anything to the contrary above, Confidential Information disclosed by the SUPPLIER to MBDA UK may, in turn, be disclosed by MBDA UK to MBDA France, subject to such disclosure being on similar terms as the original disclosure to MBDA UK under the Agreement, provided always that MBDA UK shall be liable to the SUPPLIER for any failure by MBDA France to abide by those terms.
2. Notwithstanding the provisions of Article 2.1 above, the SUPPLIER agrees that for the purposes of the CW ITP programme, Confidential Information disclosed by the SUPPLIER to MBDA UK may in turn be disclosed by MBDA UK to the ETA leads listed in Annex 1, in order for the ETA lead to assess the project, subject to such disclosure being on similar terms as the original disclosure to MBDA UK under the Agreement, provided always that MBDA UK shall be liable to the SUPPLIER for any failure by the ETA Lead to abide by those terms.

1. Moreover, notwithstanding the provisions of Article 2.1 above, MBDA UK may disclose Confidential Information disclosed by the SUPPLIER to the Customer for the sole purpose of performing its obligations of the Prime Contract.

2.2 Any disclosure of Confidential Information shall be made in full compliance with any applicable export control laws, rules and regulations.

2.3 Nothing in the Agreement may be construed as compelling any Party hereto to disclose any Confidential Information to the other Party or enter into any further contractual relationships.

1. EXCEPTIONS TO CONFIDENTIALITY

However, the Receiving Party shall be under no obligation or restriction whatsoever with regard to such Confidential Information when the Receiving Party can prove that the information :

1. becomes publicly available prior to disclosure or its access by the Receiving Party or after disclosure or its access by the Receiving Party, and in such case through no wrongful act of the Receiving Party ; or
2. is already known by the Receiving Party as evidenced by appropriate documentation in said Party’s records ; or
3. is rightfully received from a third party; or
4. is the result of in-house development performed in good faith by employees of the Receiving Party who have not had access to such Confidential Information ; or
5. has been approved in writing for use or disclosure by the Disclosing Party; or
6. was disclosed by the Receiving Party in order to comply with any law or regulation, legal demand by a competent court of law or act or demand by other legally invested authority binding upon the Receiving Party, provided that, to the extent permitted by law, the Receiving Party promptly notifies the Disclosing Party and cooperates with it in order to give the Disclosing Party the opportunity to contest such requirement by all legal means.
7. THE COORDINATORS

The Parties shall each designate one or more coordinators which respectively on behalf of the Parties, shall be the only individuals entitled to receive and/or transmit written Confidential Information or the confirmation of the confidential nature of oral or visual Confidential Information; it being understood that the number of coordinators shall be limited to what is strictly necessary for the Purpose. Each Party shall notify the other in writing of the name and address of the coordinators as soon as practicable.

Each Party shall be entitled to replace the appointed coordinators and to designate other persons within its own organisation.

This replacement or new designations shall be notified to the other Party in writing; for the purpose hereof, email shall be deemed to constitute a written notification.

1. INTELLECTUAL PROPERTY

The disclosure of Confidential Information may under no circumstances be construed as granting, whether expressly or implicitly, to the Receiving Party any right whatsoever on all or part of Confidential Information (under a license or an assignment of rights) other than the right to use Confidential Information for the Purpose in accordance with the terms and conditions of this Agreement.

Subject to third parties’ rights, all Confidential Information disclosed under this Agreement shall remain the property of the Disclosing Party.

1. CONFIDENTIALITY OF THE AGREEMENT

The existence and content of the Agreement (including the Purpose) shall be treated as Confidential Information by the Parties.

1. CLASSIFICATION OF CONFIDENTIAL INFORMATION- RESTRICTION OF DISCLOSURE OF CONFIDENTIAL INFORMATION

7.1 Classified Confidential Information:

Any and all Confidential Information which are subject to a National Defence security classification shall be identified as such by the Disclosing Party at the time of disclosure and in particular the disclosure, marking, transmission, reproduction, preservation and destruction of such Confidential Information shall be made pursuant to the provisions of the aforementioned Instructions.

1. PROTECTION OF PERSONAL DATA

In accordance with the provisions of the EU regulation 2016/679 of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, as well as those of the applicable national regulation on the matter, the Parties commit to take all useful and necessary precautions in order to preserve the security of the personal data received or they have access to in the framework of the Agreement, and in particular to prevent it from being deformed, damaged or transmitted to any unauthorised persons. In all cases, the above mentioned personal data shall be treated confidentially by the Receiving Party, and shall not, in any case, be transferred by such Receiving Party to any third party – in or outside the European Union – without the prior written consent of the Disclosing Party.

1. NOTICE OF RESERVATION OF INTELLECTUAL PROPERTY AND CONFIDENTIALITY

The Parties shall retain or reproduce copyright and confidentiality notices marked on the Confidential Information.

1. WARRANTY

The Confidential Information will be supplied "as is" without any express or implied warranty, and in particular without warranty that the information disclosed is complete, accurate, free from defects and fit for the intended purpose.

1. TERM - TERMINATION

The Agreement is made for a term of 8 (*eight*) years from the date of its effective date.

It may be terminated by either Party at any time, as of right and without further formalities, upon thirty (30) days’ prior written notice given to the other Party by registered letter with acknowledgement of receipt.

The expiry or termination of the Agreement shall not release the Receiving Party from its obligations under the Agreement, which by nature or by express stipulation of the Agreement shall survive the expiry or termination of the Agreement and in particular those specified in ARTICLE 2, ARTICLE 7 and ARTICLE 8 of the Agreement.

1. ASSIGNMENT

12.1 The Agreement is personal to the Parties; neither Party shall assign or transfer directly or indirectly all or part of its rights and obligations without the prior written consent of the other Party, which consent cannot be unreasonably withheld.

12.2 In the event of a change of control of the SUPPLIER, the latter undertakes to promptly inform MBDA France thereof. MBDA France then reserves the right to terminate the Agreement by written notification without prior notice.

1. ENTIRE AGREEMENT

The Agreement represents the entire understanding and agreement of the Parties with respect to the subject matter hereof and prevails over any previous representations, commitments, undertakings, communications whether oral or written, confidentiality agreements between the Parties with respect to the Purpose.

However, any rights and obligations which, by their nature, are to remain in effect beyond expiration or termination of such prior agreements, will survive.

1. APPLICABLE LAW / DISPUTE

The Agreement is governed by and construed and take effect in all respects in accordance with the laws of England and Wales.

All disputes between the Parties in connection with or arising out of the Agreement or any terms thereof, in particular relating to the existence, validity, interpretation, performance or non-performance, interruption or termination of the Agreement, shall be finally settled under the LCIA Rules by one or more arbitrators appointed in accordance with the said Rules. The seat of arbitration procedure shall be in London (UK) in the English language.

The arbitration shall be final and binding upon the Parties.

1. EFFECTIVE DATE

The Agreement shall become effective at the date of its signature by the Parties.

IN WITNESS WHEREOF, the Parties have executed the Agreement in Le Plessis-Robinson (France) in (2) two originals, on…………………….

|  |  |
| --- | --- |
| **For [To be completed by the supplier]**(1)Signature : | **For MBDA France**(1)Signature : |
| Name :Title :Stamp of the Company | Name :Title :Stamp of the Company |

(1) The Parties will specify the name and the surname of the signatory and will initial each page of the Agreement.

 **ANNEX 1 – LIST OF ETA Leads**

* **Commissariat à l’Energie Atomique et aux Energies Alternatives (CEA),** a French state-owned research entity with a scientific, technical and industrial activity duly organised under the laws of France and having its registered office located at 25 rue Leblanc, Bâtiment « Le Ponant D », 75015 Paris, France, and declared at the Paris Register of Commerce and Trade (“Registre du Commerce et des Sociétés de Paris”) under the following registration number: R.C.S. PARIS B 775 685 019,
* **LEONARDO MW Ltd,** Whose registered office is at Sigma House, Christopher Martin Road, Basildon, Essex SS14 3EL, England, and registered under UK Company Number 2426132
* **MBDA UK** Limited a company incorporated under the laws of England and Wales (registered number 3144919), whose registered office is at Six Hills Way, Stevenage, Hertfordshire SG1 2DA, England,
* **ROXEL UK Limited,** Limited a company incorporated under the laws of England and Wales (registered number 04543318, having its registered office at Summerfield Lane, Summerfield, Kidderminster, Worcestershire, DY11 7RZ, England;
* **SAFRAN POWER UNITS,** having a capital of 3379200€, registered on the Trade and Companies Register in Toulouse, France, under the number 630800084, having its registered office at 8 chemin du pont de Rupé, BP 62089 31019 Toulouse cedex 2, France;
* **THALES LAS France SAS,** having a capital of 199 800 722 €, registered on the Trade and Companies Register in Versailles, France under the number 319 159 877, having its registered office at 2 avenue Gay Lussac, 78990 Elancourt, France,
* **THALES UK LIMITED,** a company registered in England, (number 868273)whose registered office is at 350 Longwater Avenue, Green Park, Reading RG2 6GF, England;