

NON-DISCLOSURE AGREEMENT

Ref: WSRF/NDA/01

This NON DISCLOSURE AGREEMENT shall be effective from 20th March 2020 (the "Effective Date") and is made by and between (i) QINETIQ LIMITED a company registered in England and Wales under company number 03796233 whose registered office is at Cody Technology Park, Ively Road, Farnborough, Hampshire, GU14 0LX ("QinetiQ" or "Administrative Co-ordinator"), (ii) the legal entities listed in Annex A to this NDA who shall be the initial signatories to this Agreement (together with QinetiQ each hereafter referred to as an "*Initial Party*"), and (ii) any other legal entity which subsequently, after being invited to do so, signs the Participation Pledge Form at Annex B in accordance with the provisions of Clause 8 of this Agreement and becomes an additional party to this Agreement (each hereinafter referred to as an "*Additional Party*").

In this Non-Disclosure Agreement, the Initial Parties and any Additional Parties are referred to collectively as the "*Parties*" and each of them individually is referred to as a "*Party*".

WHEREAS:

- A. The Parties intend to disclose to each other certain technical and business information to support complex weapons, energetics, general munitions and novel weapons and other weapons based research requirements, definition, and planning undertaken within the Weapons Sector Research Framework ("WSRF") with a view to evaluating the technical and business information, the provision of advice to Dstl and industry stakeholders on technologies and capabilities relevant to future weapon programmes and prior to possible tasks being placed under the WSRF Framework Agreement (hereinafter the "Purpose").
- B. This NDA will not cover tasks under WSRF, which may require the contributing parties under the task to agree a bespoke NDA for the task.
- C. The Parties acknowledge and agree that all or part of the information each Party will disclose to the other Parties in connection with the Purpose will be confidential, proprietary and commercially sensitive. The Parties therefore agree to enter into this Agreement in order to protect and restrict the use and disclosure of such Proprietary Information (as defined below), and for that purpose have agreed to the terms and conditions of protection herein contained.
- D. The Parties agree that this Agreement replaces and supersedes all previous Non-Disclosure Agreements related to any previous programme which has been superseded or replaced by the WSRF including the Weapons Science & Technology Centre programme.

IT IS AGREED as follows:

1. For the purposes of this Agreement, the Parties agree that "Administrative Co-Ordinator" shall be QinetiQ for the purposes of performing the functions set out in clause 8 of this NDA, "Proprietary Information" means, in relation to a Party, any and all information relating to that Party's business including but not limited to business methods or plans, customers, suppliers, finances, ideas, strategies, concepts, methodologies, inventions, intellectual property rights, processes, formulae, products, software, programs, source code and other information for the time being in that Party's possession or owned by that Party, (including any information which can be obtained by examination, testing or analysis of any hardware or any component part thereof provided by the Disclosing Party) and which is disclosed by a Party (the "Disclosing Party") to another Party ("the Receiving Party") under this Agreement and which is in tangible or visible form and clearly marked or designated by the Disclosing Party as Proprietary or, is communicated orally or visually on a basis of confidentiality and subsequently presented in tangible or visible form to the Receiving Party within a period of not more than 30 (thirty) days of such communication, it being understood that such information shall be protected hereunder for the said 30 (thirty) day period. If Proprietary Information is in the form of computer software, magnetic recording or some other machine-readable form, it shall be identified as Proprietary at the time of disclosure, and the container and any physical embodiment thereof shall be clearly marked as Proprietary.
2. The Parties acknowledge that each Party may disclose its Proprietary Information to one or more of the other Parties using one or more methods, including in writing, visually, or orally, by way of samples, prototypes or models. The Parties agree that the obligations of confidentiality and non-use as set out in this Agreement shall apply to such Proprietary Information irrespective of the method of disclosure.
3. As a condition of each of the Disclosing Parties providing the other Parties with its Proprietary Information each Receiving Party undertakes to the Disclosing Party that it will:
 - 3.1 use the Disclosing Party's Proprietary Information disclosed to and/or acquired by it only in order to carry out the Purpose;
 - 3.2. maintain as confidential all the Disclosing Party's Proprietary Information which may come into its possession in any manner and all other information derived from it;
 - 3.3 not, without the prior written consent of the Disclosing Party, disclose any of the Disclosing Party's Proprietary Information whether directly or indirectly to any third party. The expression 'third party' as used herein shall include any co signatory to this Agreement, and any subsidiary, holding, parent, partner or associated company or the employees or agents of such third parties
 - 3.4 not directly and/or indirectly use and/or disclose any of the Disclosing Party's Proprietary Information in whole or in part except in accordance with this Agreement;

- 3.5 not reproduce the Proprietary Information or any part thereof except as reasonably necessary for the Purpose (and, for the avoidance of doubt, any such copies shall constitute Proprietary Information and be subject to the protections of this Agreement);
 - 3.6 only allow access to the Disclosing Party's Proprietary Information to those employees, consultants, and/or professional advisors who need to see and use it for the performance of the Purpose on condition that, in respect of those consultants and/or professional advisors the Receiving Party first binds those individuals/companies by obligations of confidentiality which are no less onerous than those imposed on the Receiving Party under this Agreement.
4. A Party's Proprietary Information shall not include any information which:
- 4.1. the Receiving Party can prove was information already in its possession and at its free disposal at the date of receipt of the information pursuant to this Agreement;
 - 4.2. the Receiving Party can prove was independently developed by it without reference to the Disclosing Party's Proprietary Information;
 - 4.3. is after the date of this Agreement disclosed to the Receiving Party without any obligations of confidentiality by a third party (not being a Party hereto) who is not in breach of any duty of confidentiality in doing so; or
 - 4.4. is in or subsequently enters the public domain through no act or default or breach of this Agreement on the part of the Receiving Party.
 - 4.5. has been approved for unlimited release or use by written authorisation of the Disclosing Party.

Proprietary Information of a technical nature will not be deemed to be in the public domain unless both the principles and also each of the key elements of the technology concerned are in the public domain.

5. The Receiving Party shall not be in breach of this Agreement by its disclosure of the Disclosing Party's Proprietary Information if such disclosure is required by law and/or the rules of any recognised stock exchange or other regulatory authority which the Receiving Party is subject to on condition that the Receiving Party;
- 5.1. gives the Disclosing Party the earliest possible notice of such a requirement to disclose; and that the Receiving Party first notifies the Disclosing Party prior to disclosure. The Receiving Party shall use all reasonable endeavours in cooperating with the Disclosing Party to preserve the confidentiality of the Proprietary Information; and
 - 5.2. takes full advantage of any available exemptions from the requirement to disclose; and
 - 5.3. if, notwithstanding the provisions of Clause 5.2, the Receiving Party is obliged to

disclose Proprietary Information it shall only disclose such Proprietary Information as is strictly required in order to comply with its legal obligations referred to in Clause 5 above.

6. The Receiving Party undertakes to use at least the same degree of care to protect the use and/or disclosure of the Disclosing Party's Proprietary Information as it uses to protect its own Proprietary Information (subject to the fact that the Receiving Party must have used at least a reasonable level of care to prevent unauthorised use and/or disclosure).
7. If the Receiving Party becomes aware of any unauthorised use and/or disclosure of the Disclosing Party's Proprietary Information, the Receiving Party must immediately both inform the Disclosing Party of all the circumstances surrounding the unauthorised use and/or disclosure and take all steps to prevent any further unauthorised use and/or disclosure.
8. This Agreement shall come into force with respect to the Initial Parties which sign it, as of *20th March 2020* and shall bind those Parties who are signatories of the Agreement as of that date. For any Additional Party, this Agreement shall come into force upon subsequent signature by such Party of the Participation Pledge Form at Annex B in accordance with Clause 8.2.
 - 8.1 Prior to any additional party being invited to join the Agreement the Administrative Co-Ordinator shall inform all other Initial Parties via electronic notification and enquire as to whether any such Parties have objections to the said additional party being accepted into the Agreement (any objection to be raised only on reasonable and valid grounds). If no such objection is forthcoming within 10 days of notification issue, the said additional party shall be invited to join the Agreement as set out in Clause 8.2. If any objection is made within this timescale, then the Administrative Co-Ordinator shall consider the objection and attempt to reach a resolution with the objecting Party/ies which permits the party to join the Agreement.
 - 8.2 Each additional party invited to join the Agreement and which accepts such invitation, shall do so by signing two copies of the Additional Party Participation Pledge Form as set out in Annex B and sending one copy to the Administrative Co-Ordinator, who shall distribute a copy of the signed Participation Pledge Form to each of the Parties within 10 (ten) days of receipt. From the date of receipt of the duly completed Additional Party Participation Pledge Form, that party shall become a Party to this Agreement and be bound by its terms.
 - 8.3 Non signatories shall not be entitled to receive confidential, proprietary or commercially sensitive information relating to the Purpose hereof, until such time as they do become signatories.
 - 8.4 Any Party shall be entitled to withdraw from this Agreement at any time by giving no less than 30 day's advance notice in writing sent to the Administrative Co-Ordinator according to the address and details set out in Annex C, whereupon it shall cease to have any rights under this Agreement. The obligations under this Agreement shall continue to apply to the withdrawing Party and all other Parties in relation to the Proprietary Information exchanged between the withdrawing Party and any other Party, notwithstanding any such withdrawal.

- 8.5 In the event that any Party breaches the terms of this Agreement, then any other Party affected by the breach shall be entitled to require that the participation of the defaulting Party in this Agreement be terminated, by serving notice to such effect on all other Parties. Upon such notice being received, the Administrative Co-Ordinator shall liaise with all affected Parties to evaluate whether any alternative to the termination of the defaulting Party's participation exists, but if no such resolution is reached within 14 days following service of the notice then the participation of the defaulting Party shall be terminated whereupon it shall cease to have any rights under this Agreement. The obligations under this Agreement shall continue to apply to the terminated Party and all other Parties in relation to the Proprietary Information exchanged between the terminated Party and any other Party, notwithstanding any such termination.
- 9.
- 9.1. This Agreement shall terminate on the *31st March 2030*. However, irrespective of the termination of this Agreement, the obligations of confidentiality contained in this Agreement shall continue to bind the Parties for 10 years from the date of having received the Proprietary Information (or, in the case of any information which is retained on any Receiving Party's computer systems beyond this time in accordance with Clause 10, for the duration such information is held on such systems).
- 9.2. The Parties shall at Annex C to this Agreement designate a single address and person in their organisation to receive written disclosures and identifications of Proprietary Information hereunder, and to be responsible (on behalf of the Party for whom they represent) for ensuring the observance of this Agreement or such other individuals as may be notified by one Party to the others in writing from time to time.
- 9.3 Nothing herein shall be deemed to replace, or prejudice, any protective marking referenced on any part of the Proprietary Information, and Receiving Party undertakes to respect and observe all regulations and restrictions relating to any such protective marking called up in the Proprietary Information and to accord such material a degree of security at least equivalent to that applicable in the country of its origin, such obligation to continue for such time as the appropriate authority and the law of the applicable country shall deem proper.
- 9.4 Notices hereunder shall be deemed validly given if delivered by hand (supported by positive transmission report) or by post (first class recorded delivery, with proof of posting) or commercial courier to the individual referred to at their address specified at Annex C and shall be deemed effective upon the date of dispatch.
10. The Receiving Party agrees, at the Disclosing Party's request made at any time to deliver up to that Disclosing Party all documents, material and/or other media which may be in its possession, power or control which comprises or contains any part of the Disclosing Party's Proprietary Information and permanently delete such information from its computer systems. Where it is impossible for the

Receiving Party to comply fully with the above or to remove all traces of the Disclosing Party's Proprietary Information from its business and/or its computer systems then any residual Proprietary Information will continue to be subject to the confidentiality obligations set out in this Agreement but the Receiving Party shall have no further right to use such Proprietary Information.

11. In furnishing any Proprietary Information hereunder the Disclosing Party makes no warranty, guarantee, or representation under this Agreement, either express or implied:
 - 11.1 as to its adequacy, accuracy, sufficiency or freedom from defects; or
 - 11.2 that use or reproduction of any information or data shall be free from any patent, trade secret, trademark or copyright infringement (provided that each Party, where acting as a Disclosing Party, undertakes that to the best of its knowledge and belief, it is authorised to make disclosure and permit the use of its Proprietary Information for the Purpose); and the Disclosing Party shall not be liable in damages of whatever kind as a result of the other Party's receipt or use of, or reliance on, any such information or data furnished hereunder.
12. Each Party shall be liable under this Agreement for the acts or omissions of its own employees, consultants, professional advisors as if they were its own acts or omissions under this Agreement.
13. A person who is not party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
14. No Party may assign its rights and/or obligations under this Agreement to any third party (whether in whole or in part) without the prior written consent of the other Parties, such consents not to be unreasonably withheld and/or delayed.
15. Nothing in this Agreement shall place any obligation on a Party to disclose its Proprietary Information to the other Parties. Disclosure is entirely at each Party's discretion.
16. Each Party acknowledges and agrees that a Receiving Party does not acquire by implication or otherwise any right, title and/or interest in the Disclosing Party's Proprietary Information except as expressly set out in this Agreement.
 - 16.1 Nothing herein shall disentitle the Receiving Party from re-disclosing, at the request of a UK Government body acting in order to comply with its obligations under the Freedom of Information Act 2000, Proprietary Information received from the Disclosing Party, provided that the Receiving Party so requested shall promptly notify the Disclosing Party and either co-operate, at the demand of the latter, in any reasonable and proper action to oppose such request on a legally justifiable basis, or, if no such demand is made within 10 working days of such notification the Receiving Party shall be entitled so to re-disclose such Proprietary Information after so informing the Disclosing Party.

- 16.2 This Agreement supersedes all prior and collateral communications, reports and understandings between the Parties in relation to the Purpose, provided that nothing in this clause shall exclude any liability for fraudulent misrepresentation. This Agreement shall be deemed to supplement, and shall not prejudice the applicability of any specific legend or statement associated with any Proprietary Information disclosed.
- 16.3 This Agreement is intended only to facilitate the exchange of Proprietary Information and is not intended to be, and shall not be construed to create a teaming agreement, joint venture, association, partnership (as defined or interpreted by the Partnership Act 1890) or other business organisation or agency agreement and none of the Parties shall have the authority to bind another Party without the separate prior written agreement thereof.
- 16.4 This Agreement shall only be amended or varied by the written agreement of all Parties hereto as endorsed by their authorised representatives.
17. It is a condition precedent to becoming a member of the WSRF that the potential member becomes a Party to this Agreement, and accepts and signs the undertaking attached at Annex B in accordance with the process set out in Clause 8.
18. This Agreement shall be governed by and construed in accordance with English law.
19. Each Party hereby irrevocably submits to the exclusive jurisdiction of the English Courts PROVIDED THAT each Party shall have the right to enforce a judgment of the English Courts in a jurisdiction in which the other Party is incorporated or in which any assets of the other Party may be situated.
20. The Parties acknowledge and agree that any breach of this Agreement could result in serious damage to the Disclosing Party in respect of which damages may not be an adequate remedy. Notwithstanding Clause 19, each Party shall have the right to seek specific performance of this Agreement and injunctive relief in relation to any breach and/or imminent breach of this Agreement by one or both of the other.
21. It is agreed by the Parties that this Agreement can be validly executed by the Administrative Co-Ordinator arranging for signature by each of the other Parties to a signature sheet to this Agreement, which when taken together shall constitute valid execution of this Agreement. Upon each Party having submitted a signature sheet, the Administrative Co-Ordinator shall notify each Party that the Agreement has been validly executed and shall furnish a photocopy of all signature sheets together with a copy of the Agreement which shall stand as the executed version of the Agreement. the Administrative Co-Ordinator shall retain and act as the custodian of the originals of the signature sheets.

IN WITNESS TO THE ABOVE, the Parties hereto at Annex A have caused this Non-Disclosure Agreement to be executed by their undersigned authorised representatives, effective as of the day and year of the last signature of this Agreement.