

## Non-Disclosure Agreement

This agreement (the “**Agreement**”), entered into on the **XX of YY 2021** (the “**Effective Date**”), by and between:

**Forsvarets forskningsinstitutt, Instituttveien 20, PO Box 25, N-2027 Kjeller, Norway,  
Registration number: NO970963340**

AND

**XX AS, yyy,  
Registration number:**

## PREAMBLE

- Whereas: Both Parties possess deep insight into ; and
- Whereas: They both recognise that they together will have the opportunity to further develop and gain insight into xxx (the "Purpose"); and
- Whereas: Each Party wishes to provide to the other Party certain of its own technical, operational and/or business information for the purpose of looking into the Purpose; and
- Whereas: Both Parties wish to explore the Purpose together in order to see if there may be grounds for future collaboration and development under a separate agreement between them; and
- Whereas: The Parties have agreed that the rules governing the use and protection of such information in order to achieve the Purpose are set out in this Agreement as stated below.

### 1. Definition and presentation of Proprietary Information

- 1.1. For the purposes of this Agreement "**Proprietary Information**" shall mean information of whatever nature (proprietary, confidential or otherwise) disclosed to the other Party including and without any limitation, being; specifications, drawings, designs, computer software, know-how, programs, data, process techniques and formulae. It further includes; information relating to any research project, future development, marketing and sales leads.

Also covered is any work in progress being related; engineering, technical, manufacturing, service, commercial, financial and personnel information relating to present and future business. In addition, it covers information related to inventions, techniques, processes, devices, discoveries and improvements - whether given in oral, written, graphic, electronic or other machine-readable form, including any copies.

Disclosure by the disclosing Party shall clearly and conspicuously be marked as either "**PROPRIETARY INFORMATION**" or "**CONFIDENTIAL INFORMATION**" or identified as either proprietary or confidential information at the time of disclosure or any other information that would be considered proprietary or confidential in a court of law.

- 1.2. Any information which is communicated orally on a basis of confidentiality shall be subsequently documented in writing to the receiving Party within a period of not more than 30 (thirty) days of such communication, it being understood that such information meanwhile shall be protected in the said 30 (thirty) day period.
- 1.3. The disclosing Party shall clearly mark information they wish to protect under this Agreement as either "**PROPRIETARY INFORMATION**" or "**CONFIDENTIAL INFORMATION**", unless the Security Legislation (Sikkerhetsloven) already protect it by applying appropriate legends. In the latter case the Parties are required to enter into a separate security agreement.

## **2. Release of Proprietary Information**

- 2.1. Each Party, to the extent of its right to do so may, at its sole option and discretion and without charge, disclose to the other Party for the term of this Agreement such information, including Proprietary Information, deemed appropriate by the disclosing Party for the Purpose.
- 2.2. Any Proprietary Information (and copies thereof) disclosed by any Party to the other, shall remain the property of the disclosing Party.

## **3. Protection of Proprietary Information**

- 3.1. The receiving Parties each undertake in respect of Proprietary Information disclosed to them, in each case from the relevant date of disclosure to:
  - (a) treat and safeguard as confidential all the Proprietary Information they have received including ensuring proper and safe storage of such Proprietary Information using at least the same degree of care that they would normally use in protecting their own proprietary or confidential information of a similar nature, which care shall be no less than reasonable care;
  - (b) not copy or to cause to be made copies of such Proprietary Information, in whole or in part, for any reason including any re-disclosure whether directly or indirectly to any third party, other than for the Purpose;
  - (c) not disclose any Proprietary Information to any other person or entity, other than personnel within their own organisations, including personnel within affiliated group members (controlled or owned or being controlled or owned with 50, 1 % or more) or personnel from the Norwegian defence sector (Norwegian Ministry of Defence with subordinated entities), which have a need to receive such Proprietary Information for the Purpose;
  - (d) not disclose any Proprietary Information to agents, sub-contractors or any other third parties without the prior written consent, such consent not to be unreasonably withheld, of the disclosing Party;
  - (e) not use or allow to be used such Proprietary Information, in whole or in part, except solely in relation to the Purpose, unless (and then only to the extent which) a further use of the Proprietary Information is specifically authorised in writing by the disclosing Party;
  - (f) upon the disclosing Party's written request and option, either to return to the disclosing Party such of the disclosing Party's Proprietary Information as is in tangible form (together with all copies thereof within its possession or control) or make such other disposal thereof as may be reasonably stipulated by the disclosing Party; and
  - (g) ensure that adequate internal safeguards are in place to ensure that personnel to whom Proprietary Information is disclosed to, do not release such Proprietary Information in breach of this Agreement. Further that the receiving party and its personnel are using at least the same degree of care that he and/or they would normally use in protecting their own proprietary or confidential information of a similar nature, which care shall be no less than reasonable care.

- 3.2. Any release of Proprietary Information to any person or entity outside this Agreement, except for persons covered by ref Clause 3.1 (c), shall be approved in writing by the disclosing Party prior to dissemination and release. Such release is subject to said entity/ person's agreement in writing on similar terms to those set out in this Agreement not to make further disclosure and to use Proprietary Information solely for the Purpose of this Agreement.
- 3.3. If a Party becomes aware of any disclosure concerning Proprietary Information not permitted by this Agreement, it shall immediately inform the other Party and they shall jointly seek to remedy the situation.
- 3.4. The protection of Proprietary Information shall not extend to any information received from the disclosing Party, which the receiving Party can document in writing that:
- (a) at the time of the disclosure was, or thereafter became, part of the public domain, and not through the fault, negligence or omission of the receiving Party; or
  - (b) was lawfully obtained by the receiving Party from a third party, which lawfully could disclose the receiving Party; or
  - (c) at the time of the disclosure, was already in the unrestricted possession of the receiving Party at the date of receipt of such information pursuant to this Agreement; or
  - (d) has been known or developed in good faith independently by the receiving Party without making use of the Proprietary Information of the disclosing Party; or
  - (e) has been or is published without violation of this Agreement; or
  - (f) has been approved for unlimited release or use by written authorisation of the disclosing Party; or
  - (g) the receiving Party is legally obliged to disclose Proprietary Information required by law, regulation or any other lawfully requirement of the receiving Party's government, provided always that the disclosing Party is given prior warning of such disclosure and the receiving Party uses all reasonable endeavours to minimise such disclosure.

#### **4. Receipt of Proprietary Information**

- 4.1. The Parties shall each designate a single address and the person(s) in their organisations to receive written disclosures and identifications of Proprietary Information hereunder;
- 4.1.1 for Forsvarets forskningsinstitutt
- 4.1.1.1 [name, email]
  - 4.1.1.2 Forsvarets forskningsinstitutt, PO Box 25, N-2027 Kjeller, Norway
- 4.1.2 for XX AS
- 4.1.2.1 [name, email]
  - 4.1.2.2

- 4.2. Notices is valid if it is delivered by and/or sent by registered post, courier or electronic communication to the above-authorised persons at the address of the intended recipient as shown above, and shall be deemed effective upon the date of receipt.
- 4.3. A Party may re-designate its respective authorised person and other details by written notice to the other Party.

## **5. Term and Termination**

- 5.1. No amendment or modification of this Agreement shall be binding or effective unless made in writing and signed on behalf of the Parties by their respective duly authorised representatives.
- 5.2. This Agreement, including all rights and obligations of the Parties, may be terminated by any of the Parties at any time upon 30 (thirty) days written notice to the other Party. Unless terminated earlier, this Agreement shall expire X years from its Effective Date (either being the “**Termination Date**”).
- 5.3. Clauses 3, 5, 7, 8 and 9 shall survive the termination of this Agreement. The termination of this Agreement shall not relieve the receiving Parties from compliance with the obligations imposed by Clause 3 with respect to the use and protection of Proprietary Information received prior to the Termination Date or Final Termination. Termination shall not affect the accrued rights and liabilities of any of the Parties.

## **6. Mutual Disclaimer**

- 6.1. This Agreement constitutes a non-disclosure agreement only. It shall not give effect to or otherwise imply a teaming, joint venture, partnership, agency or other such arrangement. Nothing in this Agreement shall grant to any Party the right to make commitments of any kind for or on behalf of the other Party without the prior written consent of the other Party.
- 6.2. It is expressly agreed by the Parties that the disclosure and provision of Proprietary Information under this Agreement by a Party shall not be construed as granting the receiving Party any rights, either express or implied by license or otherwise on the matters, inventions or discoveries to which such information pertains or any patent right (either granted or pending), copyright, trademark or trade secret rights.
- 6.3. Except for the purposes of corporate merger, reorganisation or reconstitution, this Agreement and the rights and obligations may not be transferred or assigned by one Party without the prior written approval of the other Parties, which approval shall not be unreasonably withheld or delayed.
- 6.4. No Party makes any representation or warranty as to the accuracy or completeness, merchantability or fitness for a particular purpose of any Proprietary Information disclosed hereunder.

**7. Entire agreement, indemnity and liability**

- 7.1. Nothing in this Agreement may compel a Party to disclose any Proprietary Information to the other Party or enter into any further contractual relationships. Each Party reserves the right in its own and absolute discretion to terminate discussions and negotiations concerning the Purpose and to terminate this Agreement in accordance with clause 5.2.
- 7.2. Each Party warrants that it has the unrestricted right to disclose, exchange, transmit, publish or otherwise use the Proprietary Information it discloses to the other Party.
- 7.3. Each Party shall be liable for any breach of the terms of this Agreement, including any negligent acts or omissions performed by any person and/or entity to whom it has passed Proprietary Information, which cause a breach of the obligations contained in clause 3.
- 7.4. The rights and obligations provided by this Agreement shall take precedence over specific legends or statements associated with Proprietary Information when received.

**8. Applicable law [and disputes]**

- 8.1. The Parties shall ensure that disclosures under this Agreement are not contrary to the laws and regulations of their respective countries. This Agreement shall be subject to all applicable government security requirements and export regulations binding upon the Parties.
- 8.2. This Agreement is governed by the laws of Norway.
- 8.3. Should the Parties not be able to amicably settle any dispute in connection with or arising out of this Agreement within thirty (30) days of submission of such dispute to the respective management, the dispute shall be settled in ordinary court of law, using Oslo Tingrett as legal venue.

**9. Severability**

- 9.1. In the event of invalidity of any provision of this Agreement, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement and further agree to substitute a valid provision for the invalid one in accordance with the relevant legislation.

**10. Waiver**

- 10.1. No failure or delay by any Party in exercising any rights hereunder shall operate as a waiver, nor will any single or partial exercise, preclude any other or further exercise of any other rights.

This Agreement is executed by its duly authorised officers:

**FORSVARETS FORSKNINGSINSTITUTT**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title:        Research Director  
\_\_\_\_\_

Date: \_\_\_\_\_

**XX AS**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_