

**CONFIDENTIALITY AGREEMENT**

Between

**BAE SYSTEMS (Operations) Limited**

and

**BAE Systems Integrated Systems Technologies Limited**

and

**Aerosystems International**

and

**MBDA UK Limited**

and

**YorkMetrics Limited**

and

**QinetiQ Limited**

and

**EDS Defence Limited**

and

**IBM United Kingdom Limited**

and

**University of Newcastle upon Tyne**

and

**University of York**

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### **THIS AGREEMENT IS MADE BETWEEN:**

- BAE SYSTEMS (Operations) Limited (company number 1996687) whose registered office is at PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire, GU14 6YU acting through its Military Air Solutions, Autonomous Systems & Future Capability business unit having a place of business at Warton Aerodrome, Warton, Preston, Lancashire, PR4 1AX and through its Advanced Technology Centre business unit having a place of business at PO Box 5, Filton, Bristol, BS34 7QW (both hereinafter referred to as "BAE Systems");
- BAE Systems Integrated Systems Technologies Limited (company number 3456325) whose registered office is at PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire, GU14 6YU, having a place of business at Eastwood House, Glebe Road, Chelmsford, Essex, CM1 1QW (hereinafter referred to as "BAE INSYTE");
- Aerosystems International Limited (company number 01001553) whose registered office is at Lupin Way, Alvington, Yeovil, Somerset, BA22 8UZ (hereinafter referred to as "Aerosystems International");
- MBDA UK Limited a company registered in England (company number 3144919) whose registered office is at Six Hills Way, Stevenage, Hertfordshire, SG1 2DA, having a place of business at P.O. Box 5, Filton Bristol BS34 7QW (hereinafter referred to as MBDA");
- YorkMetrics Limited a company registered in England (company number 04626018) whose registered office is at IT Centre, York Science Park, Heslington, York YO10 5DG (hereinafter referred to as "York Metrics");
- QinetiQ Limited, Company No. 3796233 whose registered office is 85 Buckingham Gate, London, SW1E 6PD, United Kingdom, acting through its Trusted Information Management Division and having a place of business at Malvern Technology Centre, St. Andrews Road, Malvern, Worcestershire, WR14 3PS, (hereinafter referred to as "QinetiQ");
- EDS Defence Limited a company registered in England (company number 936751) whose registered office is at 4 Roundwood Avenue, Stockley Park, Uxbridge, Middlesex, UB11 1BQ, having a place of business at 1-3 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9XA (hereinafter referred to as "EDS");
- IBM United Kingdom Limited a company registered in England (company number 741598) whose registered office is PO Box 41, North Harbour, Portsmouth PO6 3AU (hereinafter referred to as "IBM");

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- University of Newcastle upon Tyne whose administrative offices are at 6 Kensington Terrace, Newcastle upon Tyne, NE1 7RU, United Kingdom (hereinafter referred to as "Newcastle University");
- University of York whose administrative office is at the Finance Department, Heslington, York, YO10 5DD (hereinafter referred to as "University of York");

(BAE Systems, BAE INSYTE, Aerosystems International, MBDA, YorkMetrics, QinetiQ, EDS, IBM, Newcastle University and University of York, being referred to in this Agreement individually as a "Party" and together as "Parties" where the context so permits or requires.)

Template - subject to agreement

**WHEREAS**

- A.** BAE Systems, BAE INSYTE, Aerosystems International, MBDA, YorkMetrics, QinetiQ, EDS, IBM, Newcastle University and University of York intend to disclose to each other proprietary and confidential information relating to the Software Systems Engineering Initiative (SSEI) project (which has the objective of developing software and systems engineering skills, practices and techniques and exploitation within the acquisition community and industry to enable effective equipment acquisition) for the purpose of:
- i) preparing and submitting a joint proposal to FBG-C, Ministry of Defence; and
  - ii) establishing future areas of collaboration within the SSEI project between the Parties provided always that the Disclosing Party's Proprietary Information may only be so used if that Disclosing Party is proposed to be involved in such future collaboration.
- B.** The Parties wish to protect such proprietary and confidential information in accordance with the provisions set out below.

**IT IS AGREED** as follows:

**1** In this Agreement:

**1.1** "Proprietary Information" means any technical or commercial information including (without limitation) specifications, drawings, designs, samples, models, equipment, computer software and know-how disclosed by one Party ("the Disclosing Party") to another Party ("the Receiving Party") directly or through another Party under this Agreement which is in written, other visual or machine readable form and clearly marked or designated by the Disclosing Party as proprietary (or is communicated orally on a basis of confidentiality and subsequently presented in written, visual or machine readable form to the Receiving Party within thirty (30) days of such communication). All the protections and restrictions in this Agreement relating to the use and disclosure of Proprietary Information shall apply during such thirty (30) day period.

**1.2** Proprietary Information also includes any information which can be obtained by examination, testing or analysis of any hardware or material substance or any component part of such hardware or material substance provided by the Disclosing Party even though the requirements in Clause 1.1 for marking and designation have not been fulfilled.

**1.3** Proprietary Information does not include any information which:

- (a) is in or which comes into the public domain otherwise than as a result of a breach of this Agreement by any person to whom a disclosure of

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Proprietary Information is made as permitted under this Agreement or of any other duty of confidentiality relating to the Proprietary Information of which the Receiving Party has knowledge; or

- (b) was lawfully obtained by the Receiving Party from a third party with full rights of disclosure; or
  - (c) the Receiving Party can show was already in its unrestricted possession at the date of receipt of the information under this Agreement; or
  - (d) the Receiving Party can show has been developed by it or for it at any time, independently of any Proprietary Information.
- 2.** In consideration of the foregoing, the Receiving Party undertakes during the term of this Agreement and for a period of five (5) years following the expiry of this Agreement:
- 2.1** to keep confidential and not to disclose Proprietary Information received under this Agreement to any Party and any third party except with the prior written consent of the Disclosing Party;
  - 2.2** not to disclose such Proprietary Information to any personnel within its own company other than those personnel who have a need to receive such Proprietary Information for the purposes of this Agreement referred to in the Recitals;
  - 2.3** not to use or allow to be used such Proprietary Information otherwise than solely for the purposes referred to in the Recitals to this Agreement, unless (and then only to the extent to which) a further use by the Receiving Party is specifically authorised in writing by the Disclosing Party;
  - 2.4** to ensure that each third party to whom Proprietary Information is disclosed by the Receiving Party under this Agreement is made aware of the provisions of this Agreement prior to such disclosure to it and that each such third party is bound by obligations of confidentiality which are no less onerous than those contained in this Agreement;
  - 2.5** not to copy reproduce or reduce to writing any part of such Proprietary Information except as may be reasonably necessary for the purpose referred to in the Recitals of this Agreement;

**PROVIDED THAT** the Receiving Party shall be entitled to make any disclosure required by court order or government or regulatory requirement of the Disclosing Party's Proprietary Information subject to notifying the Disclosing Party as soon as possible of such requirement.

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3. The obligation to keep Proprietary Information confidential to itself will be satisfied if the Receiving Party uses the same controls as it employs to avoid disclosure, publication and dissemination of its own Proprietary Information of a similar nature, provided not less than a reasonable standard of care is used.
4. Nothing in this Agreement shall replace or prejudice any government security classification referenced on any part of the Proprietary Information and the Receiving Party undertakes to respect and observe any such classification and comply with all matters relating to it. The provisions of this Clause shall survive termination of this Agreement.
5. Subject to Clause 4, this Agreement shall apply in lieu of the terms or conditions in any specific legend or restrictive statement associated with any Proprietary Information exchanged under this Agreement.
6. No right or licence is granted to the Receiving Party in relation to any Proprietary Information of the Disclosing Party other than those rights conferred by this Agreement herein.
7. Each Party shall perform its respective obligations under this Agreement without charge to the other Parties.
8. This Agreement is intended to facilitate only 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, or other business organisation or agency arrangement and no Party shall have the authority to bind any of the others without the other Parties' separate prior written agreement. No Party has an obligation to supply information under this Agreement and no Party has an obligation to enter into any contract with any other Party. No Party has an obligation under this Agreement to offer for sale products using or incorporating the Proprietary Information.
9. This Agreement shall come into force upon signature by the last of the Parties to sign and shall remain in force for 4 years from that date and shall then automatically expire unless renewed by mutual consent in writing.
10. On termination of this Agreement for any reason the Receiving Party shall retain no Proprietary Information disclosed to it under this Agreement and shall upon the request of the Disclosing Party either return to the Disclosing Party or destroy all such Proprietary Information which is in a tangible form and is in the possession of the Receiving Party pursuant to this Agreement, together with all copies.
- 11.1 The Parties shall each designate the individual (together with a single address) in their organisation who shall usually receive disclosures under this Agreement.

For BAE Systems that address and person shall be:

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Address: BAE Systems, Building 142/1, Brough, East Yorkshire, HU15 1EQ

For the attention of: Jane Fenn

Telephone No.: 01482 664689

Fax. No.: 01482 664203

For BAE INSYTE that address and person shall be:

Address: BAE Systems Integrated Systems Technologies,  
The Airport, Broad Oak, Portsmouth, Hampshire  
PO3 5PQ

For the attention of: John K Davies

Telephone No.: 023 9251 5286

Fax. No.: 023 9251 5333

For Aerosystems International, that address and person shall be:

Address: Lupin Way, Alvington, Yeovil, Somerset, BA22  
8UZ

For the attention of: Barry White

Telephone No.: 01935 443000

Fax No.: 01935 443111

For MBDA, that address and person shall be:

Address: P.O. Box 5, Filton Bristol BS34 7QW

For the attention of: Colin Mcdonald

Telephone No.: 0117 931 8891

Fax No.: 0117 931 8675

For YorkMetrics, that address and person shall be:

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Address: IT Centre, York Science Park, Heslington, York  
YO10 5DG

For the attention of: Antony Powell

Telephone No.: 08700 420 450

Fax No: 08700 420 450

For QinetiQ, that address and person shall be:

Address: Trusted Information Management Division, Bldg  
Woodward Rm A109, Malvern Technology Centre,  
St. Andrews Road, Malvern, Worcestershire,  
WR14 3PS

For the attention of: Colin O'Halloran

Telephone No.: 01684 894320

Fax No: 01684 896113

For, EDS, that address and person shall be:

Address: 1-3 Bartley Wood Business Park, Bartley Way,  
Hook, Hampshire, RG27 9XA

For the attention of: Mark Hawksfiled

Telephone No.: 01252 818196

Fax No:

For IBM, that address and person shall be:

Address: IBM Defence and Security, Meudon House,  
Meudon Avenue, Farnborough, Hants, GU14 7NB

For the attention of: Alan Brown

Telephone No.: 020 7202 5465

Fax No:

For Newcastle University, that address and person shall be:

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Address: Business Development Directorate, Newcastle University, 6 Kensington Terrace, Newcastle Upon Tyne, NE1 7RU

For the attention of: The Director

Telephone No.: 0191 222 8060

Fax No: 0191 222 8788

For University of York, that address and person shall be:

Address: Department of Computer Science, The University of York, Heslington, York YO10 5DD

For the attention of: Professor John McDermid

Telephone No.: 01904 432726

Fax No: 01904 432767

- 11.2** Notices under this Agreement shall be in writing in the English language and shall be deemed validly given if delivered by hand or post (recorded delivery with proof of posting) to the individual and address referred to in Clause 11.1 and shall be deemed to have been received, if delivered by hand, at the time of delivery, or in the case of a notice sent by post as above, 72 hours after the date of posting.

### ADDITIONAL PARTIES

- 12.1** Each Party hereby authorises BAE Systems to act as agent on its behalf in relation to the admission of Additional Parties provided that BAE Systems has notified existing Parties of each proposed Additional Party in writing in accordance with Clause 11.2 above and subject to clause 12.2
- 12.2** If any existing Party can reasonably demonstrate that the inclusion of such an Additional Party would prejudice their business and commercial relationships, that Party shall inform BAE Systems in writing within fifteen (15) working days of that Party receiving notification of the proposed Additional Party. After this time limit and without receipt of reasonable justification to BAE Systems for non inclusion of the Additional Party, consent for the admission of the Additional Party shall be regarded as accepted by those existing Parties. Any Party who can reasonably demonstrate such prejudice will have the right to refuse the admission of an Additional Party into this agreement. This right of refusal will be subject to negotiation solely between BAE Systems and the existing Party raising the right, on a case by case basis.
- 12.3** Each additional party wishing to enter into this Agreement on the terms and subject to the conditions set out herein after the Effective Date shall be required

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to execute a confidentiality undertaking in the form set out at Annex A ("Confidentiality Undertaking"). Each Confidentiality Undertaking shall be countersigned by BAE Systems as agent on behalf of all Parties, and shall take effect as at the date of the relevant Confidentiality Undertaking.

- 12.4 Copies of each Confidentiality Undertaking shall be circulated by BAE Systems to all Parties as soon as reasonably practicable following signature of the Confidentiality Undertaking.
13. No exercise, or failure to exercise, or delay in exercising any right, power or remedy vested in any Party under or pursuant to this Agreement shall constitute a waiver by that Party of that or any other right, power or remedy.
14. This Agreement contains the complete and entire understanding between the Parties on the subject of this Agreement and supersedes all discussions, proposals, understandings or agreements, oral or written, relating to such subject matter provided that nothing in this Clause shall exclude any liability for fraudulent misrepresentation.
15. No Party shall assign or transfer its rights and/or obligations pursuant to this Agreement (other than for the purposes of internal corporate reconstruction, reorganisation, merger or analogous proceeding) without the prior written consent of all of the other Parties.
16. A person who is not a 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.
17. This Agreement shall be governed by and construed in accordance with the Laws of England, and the Parties agree to submit to the exclusive jurisdiction of the English courts.

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Signed for and behalf of BAE Systems (Operations) Limited

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Name .Chris Kelly.....

Position .Procurement & Business Improvement Director

Date .

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Signed for and behalf of BAE Systems Integrated Systems Technologies Limited

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Name .....

Position .....

Date .....

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TEMPLATE

Signed for and behalf of Aerosystems International

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Name .....

Position .....

Date .....

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Signed for and behalf of MBDA UK Limited

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Name .....

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Signed for and behalf of QinetiQ Limited

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Signed for and behalf of EDS Defence Limited

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Name .....

Position .....

Date .....

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TEMPLATE

Signed for and behalf of IBM United Kingdom Limited

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Name .....

Position .....

Date .....

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Signed for and behalf of the University of Newcastle upon Tyne

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Name .....

Position .....

Date .....

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Signed for and behalf of the University of York

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Name .....

Position .....

Date .....

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**ANNEX A**

Dated .....

**CONFIDENTIALITY UNDERTAKING**

By this Confidentiality Undertaking, [name of Additional Party] whose registered office is at [address of Additional Party's registered office] hereby agrees to be bound by the terms and conditions of the agreement annexed hereto between BAE Systems (Operations) Limited whose registered office is at PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire, GU14 6YU acting through its Military Air Solutions Military Air Solutions organisation, (hereinafter "BAE Systems") and other parties (together the "Existing Parties") dated [date of Agreement] (the "Agreement") and agrees to be bound to the Existing Parties and to all other parties who, on or after the date of this Confidentiality Undertaking, become Parties to the Agreement pursuant to Clause 12 of the Agreement, in a direct contractual relationship on the terms and subject to the conditions of the Agreement.

[Name of Additional Party] hereby designates the following individual to receive disclosures and notices pursuant to the Agreement:

Address : [.....]

For the attention of : [.....]

Telephone No : [.....]

Fax No : [.....]

BAE Systems acting as agent of the Existing Parties solely for the purpose of signing this Confidentiality Undertaking and not otherwise, hereby agrees that the Existing Parties shall be bound to [name of Additional Party] in a direct contractual relationship on the terms and subject to the conditions of the Agreement.

Signed: .....

Name: .....

Occupation: .....

duly authorised signatory for and on behalf of [name of Additional Party]

Signed: .....

Name: .....

Occupation: .....

duly authorised signatory of BAE Systems for and on behalf of the Existing Parties