


Leonardo Helicopters
Leonardo-Finmeccanica S.p.A
Piazza Monte Grappa, 4
00195 Roma, Italy

Registered mail

Lisbon,


24 MAR 2017

Ref: Contract Number: 2017/EMSA/OP/12/2016-Lot 3

Subject: Non-Disclosure Agreement


Dear 

With reference to Framework Contract No 2017/EMSA/OP/12/2016-Lot 3 signed on 6 March 2017 between Leonardo-Finmeccanica S.p.A and the European Maritime Safety Agency ("EMSA"), EMSA hereby proposes to the Contractor the attached Non-Disclosure Agreement.

The object of this Non-Disclosure Agreement is to establish the terms and conditions under which  and EMSA shall maintain as confidential all information exchanged between them during the implementation of the above mentioned Framework Contract. This Non-Disclosure Agreement complements Annex III (IPR Identification Form) to the above mentioned Framework Contract and takes into account the concerns of the 2017/EMSA/OP/12/2016 contractors.

I would be grateful if you could date and sign both copies of the Non-Disclosure Agreement. Please ensure that all pages are initialled by you, and that both of the signed and initialled copies are returned to EMSA by courier or express mail to the following address:

European Maritime Safety Agency


Praça Europa 4
1249-206 Lisbon
Portugal

Yours sincerely,

Annex: 2 copies of the Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

Framework Contract No 2017/EMSA/OP/12/2016

BETWEEN

The European Maritime Safety Agency (hereinafter referred to as "EMSA"), with its seat at Praça Europa 4, 1249-206 Lisbon, Portugal, VAT registration no.: 507 685 326, represented by [REDACTED]

on the one part,

and

Leonardo S.p.A
Piazza Monte Grappa, 4
00195 Roma
Italy

(hereinafter referred to as "the Contractor"), represented by represented by [REDACTED]
[REDACTED]

on the other part

(hereinafter collectively referred to as "the Parties"),

WHEREAS

The object of this NON-DISCLOSURE AGREEMENT (hereinafter the "Agreement") is to further establish the terms and conditions under which the Parties shall maintain as confidential information exchanged between them during the performance of Framework Contract No 2017/EMSA/OP/12/2016 signed by EMSA and the Contractor on 6 March 2017 (hereinafter the "Framework Contract"). Such confidential information shall comprise all information which requires protection against third parties, and which has been duly identified in compliance with the following Agreement.

AGREED AS FOLLOWS:

ARTICLE 1 – CONFIDENTIAL INFORMATION

- 1.1** Confidential Information shall mean any information that is transmitted in any form between the Parties which is proprietary or confidential in nature and which relates to a party's business including, but not limited to, such information as:
- a. any and all commercial information, technical specifications, datasheets, plans, patents, trademarks, drawings, design, samples, models, equipment, processes, methods, data, technology, research and applications, software (in object or source code) and know-how;
 - b. financial, commercial, corporate, marketing and other confidential business data;
 - c. any and all operational information (location and parts to the operations, CONOPS, flight related data, measurements data,...);
 - d. personal data and information on organisations involved in the operations
- 1.2** The provisions of the Agreement shall only be applied to that information clearly marked as "Confidential", "Proprietary" or bear any other appropriate notice indicating the sensitive nature of such information, and which has been delivered to the other Party following all the necessary security measures. Operational information indicated in 1.1.c are Confidential Information per se and do not require markings as "Confidential", "Proprietary" or other appropriate notice.
- 1.3** This Agreement or the disclosure of Confidential/Proprietary Information shall not constitute nor imply any obligation to enter into further contractual relations between the Parties.
- 1.4** The Parties acknowledge that Confidential/Proprietary Information is and shall remain the exclusive property of the discloser and that no license or right is granted to the recipient under this Agreement, either expressly or implicitly, to any patent, copyright, know-how, trade mark or other intellectual property right.

ARTICLE 2 – OBLIGATIONS OF THE PARTIES

- 2.1** The Parties undertake to use the Confidential Information solely and exclusively for the purpose of the Framework Contract, and in accordance with the terms of this Agreement. The Confidential Information must not be used totally or partially, directly or indirectly, for any other purpose.
- 2.2** The Parties shall keep the Confidential Information secure by effective and reasonable means in such a way as to prevent unauthorised access. The Parties shall ensure the protection of the Confidential Information with the same level of protection as its own confidential information and in any case with due

diligence. The Parties shall restrict access to Confidential Information to employees who need to know Confidential Information in order to execute their duties during the performance of the Framework Contract. The Parties shall be responsible for its employees and shall ensure that they adhere to the restrictions expressed in this Agreement.

- 2.3 The receiving party shall not copy, reproduce, disassemble, reverse engineer, decompile, duplicate the Confidential Information and/or distribute, communicate or otherwise make available the Confidential Information, either in whole or in part, to third parties without the written authorisation of the disclosing party.
- 2.4 Notwithstanding the above section, the receiving party may, after notifying the disclosing party, communicate Confidential Information either in whole or in part to third parties, who need to know Confidential Information in order to execute their duties taking into account the purpose as defined in Article 1 of this Agreement (e.g. communication of Confidential Information to national authorities for obtaining permit to fly).
- 2.5 When Confidential Information is distributed, communicated or otherwise made available, either in whole or in part, by the receiving party to third parties either with the written authorisation of the disclosing party or after notification to the disclosing party, the receiving party shall ensure that the third parties keep the Confidential Information secure in such a way as to prevent unauthorised access.
- 2.5 In the event that one party becomes aware of any unauthorised use of the Confidential Information or of any unauthorised copy of the Confidential Information in the public domain or with third parties or of any unauthorised derivative work, it shall immediately inform the other party thereof.
- 2.6 In the event a receiving party is required to disclose Proprietary Information pursuant to a judicial or governmental order, such party shall promptly notify the disclosing party to allow intervention in response to such order.
- 2.7 The obligations for protection of Confidential Information are not applicable to information which:
 - a. becomes public through other means than a breach of the confidentiality obligation;
 - b. is rightfully obtained by one party from a third party without a duty of confidentiality;
 - c. is previously known to one party before receipt from the other party as demonstrated by reasonably documented proof;
 - d. is independently developed by one party before receipt from the other party as demonstrated by reasonably documented proof; or
 - e. is disclosed by the receiving party with the disclosing party's prior written consent.
- 2.8 At any time the disclosing party may request the return of Confidential Information disclosed by it and the receiving party shall return such Confidential Information within 10 (ten) calendar from disclosing party's written request.

ARTICLE 3 – BREACH OF OBLIGATIONS

Should one party breach any of its obligations of confidentiality under this Agreement, and without prejudice to any right of the other party to seek damages before any competent jurisdiction, the other party may, by written notice, withdraw the right of the breaching party to use the Confidential Information for the purpose of the Framework Contract.

ARTICLE 4 – DURATION

This Agreement shall enter into force on the date on which it is signed by the last party and shall terminate upon completion of the Framework Contract.

After the completion of the Framework Contract each party shall proceed to return the Confidential Information received from the other party, together with any copies made

During a period of 3 years after the completion of the Framework Contract, the Parties agree to not disclose Confidential Information to any third party without the prior written consent of the discloser.

ARTICLE 5 – COMMUNICATION

Any communication relating to this Agreement shall be made in writing. Ordinary mail shall be deemed to have been received by the Parties on the date on which it is registered by the responsible department indicated below. Electronic communication must be confirmed by paper communication if requested by any of the parties.

Communications shall be sent to the following addresses:

EMSA:

European Maritime Safety Agency
Unit C.3
Praça Europa 4
1249-206 Lisbon
Portugal



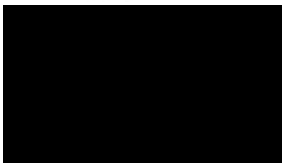
The Contractor:

Leonardo-Helicopters division
Via G. Agusta 520
21017 Cascina Costa di Samarate
Italy



ARTICLE 6 – WAIVER, DISCLAIMER AND LIABILITY

- 6.1 No failure or delay by the Parties in exercising any of their rights under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise of such rights.
- 6.2 The Confidential Information is provided "as is" and the Parties disclaim all warranties of any kind relating to the Confidential Information, whether expressed or implied, including but not limited to any implied warranty against infringement of third party property rights or as to merchantability or suitability for the implementation of the Framework Contract.
- 6.3 The disclosing party shall not be liable for any damages whatsoever including but not limited to damages for loss of business profit, business interruption, loss of business information, or any other pecuniary loss incurred or undertaken by the receiving party as a result of the use or inability to use the Confidential Information.



ARTICLE 7 – DATA PROTECTION

Any personal data included in or relating to the Agreement shall be processed by EMSA pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring this Agreement without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

ARTICLE 8 – FORCE MAJEURE

- 8.1** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the Parties which prevents either of them from performing any of their obligations under this Agreement, was not due to error or negligence on their part, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- 8.2** If either party is faced with force majeure, it shall notify the other party without delay by email with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- 8.3** Neither party shall be held in breach of its obligations under the Agreement if it has been prevented from fulfilling them by force majeure.
- 8.4** The Parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE 9 – AMENDMENTS

Any amendment to the Agreement shall be the subject of a written amendment concluded by the Parties. An oral agreement shall not be binding on the Parties.

ARTICLE 10 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- 10.1** The Agreement shall be governed by European Union law, complemented where necessary by the law of Portugal.
- 10.2** The Parties agree to use reasonable efforts to resolve amicably and expeditiously any disagreement or dispute that may arise regarding this Agreement.
- 10.3** Any dispute between the Parties resulting from the interpretation or application of the Agreement which cannot be settled according to Article 10.2 shall be brought before the courts of Lisbon, Portugal.

ARTICLE 11 – FINAL PROVISIONS

- 11.1 The Parties shall bear their own costs incurred under or in connection with the present Agreement.
- 11.2 The Contractor may assign this Agreement to any company which is a subsidiary of the Contractor and to its subcontractors that participate in the implementation of the Framework Contract.
- 11.3 In case of contradiction between this Agreement and the Framework Contract the latter shall prevail.

SIGNATURES

For the contractor,

For EMSA,

