

TENDER NO. RC/IMM/ENGINE/8422LRU/68/1
EXCHANGE OF PROPRIETARY INFORMATION
AND NON-DISCLOSURE AGREEMENT

This Agreement is entered into on _____ of _____ 2020 by and between:

HINDUSTAN AERONAUTICS LIMITED, a Company duly organized and existing under the laws of India, having its Registered Office at #15/1 Cubbon Road, Bangalore – 560001, India and represented by its Rotary Wing Research & Design Centre Division, Vimanapura Post, Bangalore – 560 017, India (hereinafter called “HAL-RWR&DC”)

And

_____, a Company duly organized and existing under the laws of _____, having its Registered Office at _____ (hereinafter called “_____”)

HAL-RWR&DC and _____ being hereinafter referred to as “Party (ies)”.

“Disclosing Party” means that Party which directly or indirectly provides or makes available Proprietary Information to the other in connection with this Agreement.

“Receiving Party” means that Party which receives or obtains Proprietary Information directly or indirectly from the Disclosing Party in connection with this Agreement.”

WITNESSETH

WHEREAS, HAL-RWR&DC and _____ wish to pursue exploratory discussions concerning a possible collaboration between themselves relating to the supply of _____ for Light Utility Helicopter (LUH) and Light Combat Helicopter (LCH) (hereinafter referred to as: the “Purpose of this Agreement”); and

WHEREAS during the course of discussions it may become desirable or necessary for the Parties hereto disclose to each other certain technical or business information of a proprietary or confidential nature (hereinafter referred to as “Proprietary Information”); and

WHEREAS the Parties hereto are willing to provide for the conditions of such disclosure of Proprietary Information and the rules governing the use and the protection thereof;

NOW, THEREFORE, the Parties agree as follows:

1. As used in this Agreement, the term ‘Proprietary Information’ shall mean any information or data disclosed by either Party to the other pursuant to this Agreement, either in writing or orally, subject to the conditions set forth hereafter, and including without limitation any written or printed documents, samples, models or any means of disclosing such Proprietary Information that HAL-RWR&DC and _____ may elect to use during the life of this Agreement.
2. Nothing in this Agreement may be construed as compelling either Party hereto to disclose any Proprietary Information to the other, or to enter into any further contractual relationships or to result in any claim whatsoever by one Party against the other Party for reimbursement of the cost for any effort expended hereunder.

3. Each Party, to the extent of its right to do so, shall disclose to the other Party only such Proprietary Information which the Disclosing Party deems appropriate to fulfill the Purpose of this Agreement.

HAL-RWR & DC and _____ hereby represent that the disclosure of Proprietary Information by and between themselves is not contrary to the laws and regulations of India.

4. Any information or data in whatever form, disclosed by either Party to the other and which is designated as proprietary to the Disclosing Party by an appropriate stamp, legend or any other notice in writing, or when disclosed orally, has been identified as proprietary at the time of disclosure and has been promptly (thirty (30) days at the latest) confirmed and designated in writing as Proprietary Information of the Disclosing Party, shall be subject to the relevant terms and conditions of this Agreement (the information or data orally disclosed being deemed 'Proprietary Information' during the above period of time required for written confirmation for all the purposes of this Agreement). In the event that the Disclosing Party inadvertently or accidentally fails to identify information or data disclosed to the Receiving Party as being Proprietary Information in accordance with above provisions, the Disclosing Party may correct such inadvertence or accident by notifying the Receiving Party in writing within thirty (30) days after the discovery thereof, provided that Receiving Party shall have no liability with regard to any disclosure or uses of the unidentified or unmarked Confidential Information which occurred prior to the receipt of such notification.

5. The Receiving Party hereby covenants that, for a period to ten (10) years from the effective date of this Agreement, the Proprietary Information received from the Disclosing Party shall:

- a) Be protected and kept in strict confidence by the Receiving Party, which must use the same degree of precaution and safeguards as it uses to protect its own Proprietary Information of like importance, but in no case any less than reasonable care;
- b) Be only disclosed to and used by those persons within the Receiving Party's organization who have a need to know and solely for the Purpose of this Agreement. In this regard, the Receiving Party will be responsible for ensuring that the obligations of confidentiality and non-use contained herein are observed by those persons
- c) Not to be used, in whole or in part, for any purpose other than the Purpose of this Agreement without the prior written consent of the Disclosing Party;
- d) Neither be disclosed nor caused to be disclosed, whether directly or indirectly, to any third party or persons other than those mentioned in subparagraph b) above, except that HAL-RWR&DC is entitled to disclose Proprietary Information to its sister Divisions of HAL only to the extent of need to know basis and for the purpose of this Agreement, subject to confidentiality conditions similar to those contained herein. Similarly, _____ is entitled to disclosed Proprietary Information to subsidiaries of the _____ only to the extent of need to know basis and for the purpose of this Agreement, subject to confidentiality conditions similar those contained herein;
- e) Neither be copied nor otherwise reproduced nor duplicated, in whole or in part, other than for the purpose of this Agreement, where such copying, reproduction or duplication have not been specifically authorized in writing by the disclosing Party.

6. Any Proprietary Information and copies thereof disclosed by either Party to the other shall be returned by the Receiving Party immediately upon request and certify in writing that all copies thereof in its possession have been returned and/or destroyed

7. Notwithstanding the provisions of paragraph-5 above, the Receiving Party shall have no obligations or restrictions with respect to any Proprietary Information, which the Receiving Party can prove:

- a) Has come into the public domain prior to or after the disclosure thereof, and in such case through no wrongful act of the Receiving Party; or
- b) Is already known to the Receiving Party, as evidenced by written documentation in the files of the Receiving Party provided that immediately upon the disclosure by the Disclosing Party, the Receiving Party will bring such fact to the attention of the Disclosing Party; or
- c) Has been lawfully received from a third party without restrictions or breach of this Agreement; or
- d) Has been or is published without violation of this Agreement; or
- e) Is independently developed in good faith by employees of the Receiving Party who did not have access to the Proprietary Information; or
- f) Is approved for release or use by written authorization of the Disclosing Party ; or
- g) Is not properly designated or confirmed as proprietary
- h) Is required to be disclosed by any law, order or demand of a court of competent jurisdiction or government, the Receiving Party shall promptly and to the extent possible before making such disclosure notify the Disclosing Party of such order/demand and provide reasonable assistance to prevent such disclosure. Nevertheless Proprietary Information disclosed pursuant to this disclosure shall otherwise continue to be Proprietary Information protected in accordance with all provisions of this Agreement.

8. With respect to any exchange of Proprietary Information which may occur as a result of this Agreement, it is expressly understood and agreed that the below listed employees shall, on behalf of the respective Parties, be the exclusive individuals authorized to receive and / or transmit Proprietary Information under this Agreement:

For HAL –RWRDC	For _____

9. As regards the individuals identified in paragraph 8 above, each Party shall have the right and power to redesignate such persons within its organization as are authorized to receive and/or transmit Proprietary Information exchanged under this Agreement. Any such redesignations made by either Party shall be effected by rendering written notice of such change to the other Party.

10. Any Proprietary Information disclosed by the Parties under this Agreement which is Classified Information shall be identified by the Disclosing Party as Classified Information at the time of disclosure, and the disclosure, protection, use and handling of such information shall be in accordance with security procedures prescribed by the appropriate Government of India. This obligation shall continue for the duration of this Agreement and thereafter until such time as the said authority shall deem appropriate

11. It is expressly understood and agreed by the Parties hereto that the disclosure and provision of Proprietary Information under this Agreement by either Party to the other shall not be construed as granting to the receiving Party any rights, whether express or implied, by license or otherwise, on the matters, inventions or discoveries to which such Proprietary Information pertains or any copyright, trademark, trade secret or any other Intellectual Property Rights.

The property in all information and/or data disclosed by either Party to the other pursuant to this Agreement and which is precisely designated, as proprietary shall, subject to any right of any other owner, rest with the disclosing Party.

12. The execution, existence and performance of this Agreement shall be kept confidential by the Parties hereto and shall not be disclosed by either Party without the prior written consent of the other.

13. This Agreement, including all rights and obligations of the Parties hereto except the obligations specified in paragraph 15 below, may be terminated, by operation of law and without demand, by either Party at any time on thirty (30) days prior written notice to the other.

14. Unless earlier terminated as aforesaid in paragraph-13 hereof, this Agreement shall expire three (3) years from its effective date.

15. The end or termination of this Agreement shall not relieve the Receiving Party of complying with the obligations imposed by paragraph-5 thereof with respect to the use and protection of the Proprietary Information received prior to the dated of the termination or end of this Agreement. Such obligations shall continue for the period applicable as set forth in said paragraph.

16. Export Control Laws And Regulations: Information and material to which the Receiving Party may be given access under this Agreement may be subject to the export laws and regulations of any relevant authorities at the Disclosing Party's end. The Proprietary Information as referred above to which Receiving Party is given access under this Agreement is after procuring due clearance of the relevant authorities at Disclosing Parties end, and Receiving Party will not re-export any such information and materials without express approval by the Disclosing Party.

17. Notice of Breach: Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Proprietary Information by Receiving Party, or any other breach of this Agreement by Receiving Party and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Proprietary Information and prevent its further unauthorized use.

18. Remedies: Both Parties hereby agree that in the event of a breach by the Receiving Party/employees in performing its responsibilities under this Agreement the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Proprietary Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder including seeking damages, whether at law or in equity.

19. Amendment: Any amendment to this Agreement must be made in writing and shall be signed on behalf of the Parties.

20. Assignment: Neither Party shall assign or otherwise transfer any of its rights nor shall obligations under this Agreement to any third party inure without the prior written consent of the other Party and any attempted assignment or transfer without such prior written consent shall be null and void.

21. Severability: The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

22. Waiver: The failure of the either Party, at any time, to require performance and/or enforcement of any provision of this Agreement shall not be construed as a waiver of the requiring Party of its rights under this Agreement, nor shall the failure of the requiring Party to take action affect its rights, at some later date, to enforce these rights under this Agreement for breach of any of the provisions of this Agreement.

23. Survival: It is hereby agreed that, the following clauses shall also survive any expiration and/ or termination of this Agreement:

- a. Confidentiality of this Agreement
- b. Survival
- c. Dispute Resolution and Arbitration

Further, any provision of this Agreement, which expressly or by implications from its nature is intended to survive the termination or expiration of this Agreement and any right arising on termination or expiration, shall survive.

24. This Agreement shall be governed by and shall be interpreted in accordance with the laws of India.

25. All disputes or differences whatsoever arising between the Parties in connection with or arising out of the validity, construction, performance and termination of this Agreement (or any terms thereof), which the Parties are unable to resolve themselves within three months from the date of scheduled mandatory meeting, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration by a single arbitrator appointed as per the procedure of said Rules. The venue of arbitration will be Bangalore. The proceedings shall be conducted in English Language. The arbitration award shall be final and binding. During pendency of the arbitration proceedings, the Parties shall continue to perform their obligations under this Agreement

26. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior representations, negotiations, commitments, undertakings, communications whether oral or written, acceptances, understandings and agreements between the Parties with respect to or in connection with any of the matters or things to which this Agreement applies or refers.

27. The effective date of this Agreement shall be the date on which it is executed by both Parties hereto.

For HINDUSTAN AERONAUTICS LTD

For

RWRDC Division

Name:

Name:

Title :

Title:

Date :

Date:

Signature:

Signature:

Witnesses

1.

1.

2.

2.