**NON DISCLOSURE AGREEMENT**

Between

**OFFICE NATIONAL D'ETUDES ET DE RECHERCHES AEROSPATIALES**,

a French Agency (Etablissement Public à caractère Industriel et Commercial) registered with the Evry commercial and companies registry under the number 775 722 879, having its head office at Chemin de la Hunière PALAISEAU (91120) - FRANCE

duly represented by Ms Magali Charil de Villanfray, acting as Legal Director,

hereinafter referred to as "**ONERA**"

On the first part

and,

**XXX**

a \_\_\_ Company, registered with [place and number of registration], having its head office at:

\_\_\_

\_\_\_,

duly represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

hereinafter referred to as "**XXX**"

On the second part,

Hereinafter referred to individually as the "Party" and/or the “Discloser or the Disclosing Party” and/or the “Recipient or the Receiving Party” or collectively as the "Parties".

**WHEREAS**

ONERA and XXX, wish to exchange and discuss certain non-public, confidential or proprietary information concerning the supply of a 3 MeV proton accelerator and an associated beamline in the framework of the HERMES project for the benefit of the ONERA center in Toulouse, hereinafter called the "Purpose.”

The Parties acknowledge and recognise that the information to receive from each other may be of a proprietary or confidential nature and the damage that could result to the Disclosing Party if such proprietary and/or confidential information disclosed to a third party.

**NOW THEREFORE**, for and in consideration of the premises and mutual covenants herein contained, the Parties hereto agree as follows:

1. **CONFIDENTIAL INFORMATION**

The term "Confidential Information" as used herein shall mean any of the information of scientific, technological, know-how, commercial, financial or any other nature, whether patentable or not, disclosed by the Discloser to the Recipient in electronic, oral, visual, written (or other tangible) form, or in any other format or media, or learnt by observation or examination.

All Confidential Information must be identified as “confidential”:

(i) Written information must be identified at the time of the disclosure with an appropriate legend, marking, stamp or positive written identification on the face thereof as Confidential Information or proprietary;

(ii) Verbal or visual information shall be so identified at the time of the disclosure by informing the Recipient of its confidential nature and the Discloser shall notify the Recipient in writing within fifteen (15) calendar days of the disclosure and specifically identify the Confidential Information previously disclosed verbally or visually. It is understood that this Information shall be treated as confidential during these fifteen (15) calendar days.

1. **OBLIGATIONS OF THE PARTIES**

2.1 Within the term of this Agreement and ten (10) years after its expiration or termination, the Recipient has the obligation to protect the received Confidential Information pursuant to the following provisions.

2.2 In particular, the Recipient hereby undertakes that Confidential Information received from the Discloser shall:

1. be protected and kept strictly confidential and be treated with the same manner and with the same degree of care and protection as the Recipient uses to treat its own confidential information of like importance;
2. be disclosed internally by the Recipient only to those of its employees having a need to know in connection with the Purpose and made aware of the confidential nature of such Confidential Information, and which shall be used subject to the provisions of this Agreement;

c) not be used, in whole or in part, directly or indirectly, for any other purpose than the Purpose, without the previous written agreement of the Discloser;

d) not be disclosed, directly or indirectly, to any third party or any other persons than those mentioned in article 2.2 b), without the previous written authorization of the Discloser, and provided that such third party undertakes in writing to comply with the same confidentiality obligations as provided herein;

e) neither be copied, nor otherwise reproduced, except for the need of 2.2.b), nor published, totally or partially, without the previous written authorization of the Discloser;

f) remain identified with its initial designation relating to the confidential, classified or proprietary nature of the Confidential Information which shall not be removed, altered or obscured by the Receiving Party;

g) not be reversed engineered, disassembled or de-compiled.

Each Party hereby undertakes to ensure that adequate internal safeguards are in place to guarantee the protection of the Confidential Information, in particular safeguards to ensure that employees whom Confidential Information is disclosed to do not use or release such Confidential Information in breach of this Agreement.

The Receiving Party shall be liable for the acts, omissions and defaults of any person to whom it has passed Confidential Information which cause a breach of the obligations contained in article 3, as if such a breach has committed by the relevant Party itself. Accordingly, the relevant Party shall indemnify and hold harmless the Disclosing Party against any and all losses, damages claims arising from such breach.

* 1. Immediately upon knowledge of an unauthorised disclosure, the Receiving Party shall take all measures to (i) notify the unauthorized recipient of the Disclosing Party's proprietary interest, (ii) notify the Disclosing Party of such unauthorized disclosure, (iii) avoid any further disclosure and (iv) request the return of the disclosed material together with any copies, personal notes or correspondence concerning the Confidential Information contained in the disclosed material, without prejudice of any claims that may be filed by the Disclosing Party.
  2. The Disclosing Party shall ensure that any disclosure made under this Agreement is 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 applicable to the Parties.

The Disclosing Party shall clearly identify and label any Confidential Information which is of classified nature with a dedicated stamp or legend, and shall notify the classified nature of the Confidential Information to the Receiving Party at the time of its disclosure. The Receiving Party shall ensure the Confidential Information is protected in accordance with the requirements of such classification.

Should prior governmental or agency authorisation or approval for disclosure or transfer of Confidential Information be required, each Party shall only disclose and transfer the Confidential Information to the other Party once the said approval has been obtained. Any Confidential Information subject to export control shall be so identified by the Disclosing Party and bear the licence or agreement number on the face thereof.

For any disclosed Confidential Information which is subject to export controls under the laws and regulations of the United States, the European Union, and/or the national law or regulation of a Party, each Party shall comply with such laws and regulations and agrees to transfer the Confidential Information under export control only to persons and/or entities in the places and/or territories specifically stated and allowed in the licence and subject to any other obligations under the Agreement. The Receiving Party undertakes not to export, re-export or otherwise transfer Confidential Information of the other Party to a third party and/or to its own non-national employees, without first obtaining all required United States, European Union and/or national authorisations or licenses.

* 1. When the Disclosing Party's Confidential Information is no longer needed for the Purpose, or at any time upon request of the Disclosing Party, within the period stated in article 2.1 above, the Receiving Party undertakes in respect of Confidential Information disclosed to it in tangible form (together with all copies and/or personal notes remaining in the Receiving Party's possession or control) either to return it to the Disclosing Party or destroy it. Such return or destruction shall be certified in writing by the Receiving Party to the Disclosing Party within thirty (30) calendar days of the request for return or destruction. However, the Receiving Party may retain a copy of the Confidential Information (a) solely to the extent necessary to comply with applicable law, court order, or other legal requirement, or (b) automatically made in the ordinary course of its information technology backup processes to protect against network failures or data loss, and otherwise generally inaccessible. Any retained copies will be maintained as confidential.
  2. The execution, existence and content of this Agreement shall be kept confidential by the Parties and shall not be disclosed without the prior written consent of the other Party.
  3. It is understood between the Parties, that the Purpose shall be considered and treated as Confidential Information by the Parties.

2.9 The Parties shall have no obligation to enter into any further agreement with each other regarding the Purpose.

2.10 The receiving party agrees that any site visits to facilities of the disclosing party will be further subject to and will observe all facility regulations and guidelines relating to visitors including, but not limited to, guidelines for personal protective equipment, safety and traffic rules, and the like. In addition, the parties agree that no cameras or recording devices of any kind will be used at the disclosing party’s premises without the disclosing party’s prior written permission. Notwithstanding the foregoing, if one party’s personnel signs subsequent badging/visitor’s forms or individual nondisclosure agreements with the other party, the provisions of this NDA will supersede the provisions of such forms or agreements.

1. **EXCEPTION TO CONFIDENTIALITY**

The obligations contained in Article 2.2 will not apply to Confidential Information, which the Recipient is able to show promptly and/or provide documentary evidence at the written request of the Discloser that, the information:

a) is, at the time of disclosure by Discloser, already part of the public domain or becomes available to the public, by publication or otherwise, through no breach by the Recipient of this Agreement,

b) was already in its possession prior to the disclosure by Discloser,

c) was independently and in good faith developed by the Recipient without use of any of the Confidential Information of the Discloser as evidenced by its prior written documents and records,

d) is approved for release by written agreement of the Discloser,

e) was acquired in good faith by Recipient from a third party which is legally entitled to disclose it and which is not bound by a secrecy obligation towards Discloser, or

f) is required to be disclosed by law, governmental regulations, judicial or agency order, provided that the Recipient gives notice to the Discloser prior to such disclosure, so that the Discloser may have the opportunity to object to such disclosure to the extent possible and it being understood that such disclosure shall not relieve the Recipient from its obligation to keep the Confidential Information in confidence regarding future disclosures.

The burden of showing that any Confidential Information is within the foregoing exceptions shall rest on Recipient.

1. **REPRESENTATIVES**

The respective representative(s) of each Party with respect to the transmission and/or receipt of all Confidential Information under this Agreement are:

|  |  |
| --- | --- |
| For **ONERA** | **M. Laurent ARTOLA/** **[laurent.artola@onera.fr](mailto:laurent.artola@onera.fr)**  **M. Romain Rey / [romain.rey@onera.fr](mailto:romain.rey@onera.fr)**  **Ms. Julie DUTAULT / [julie.dutault@onera.fr](mailto:julie.dutault@onera.fr)**  **Ms. Alexandra LOISEAU / [alexandra.loiseau-ext@onera.fr](mailto:alexandra.loiseau-ext@onera.fr)** |
| For **XXX** | **M. ................coordonnées/e-mail**  **M. ............... coordonnées/e-mail**  **M. ............... coordonnées/e-mail** |

Each Party may replace representatives above-mentioned by written information sent to the other Party.

1. **DATA PROTECTION**

The Parties comply with the European regulation 2016/679 relating to the protection of natural persons with regard to the processing of personal data on the date of application and to any regulations relating to the processing of personal data into force during the Non Disclosure Agreement (NDA) (« the Applicable Data Protection Legislation »).

As soon as either Party carries out any processing of the other Party’s personnel contact details, the Parties shall conduct such processing, each as a Data Controller, only for administrative management purposes.

In addition, each Party undertakes to communicate the information notice provided by the other Party (if applicable) to each of the natural person of its company in order to enable such other Party to comply with the Applicable Data Protection Legislation.

1. **PROPERTY – RETURN OF CONFIDENTIAL INFORMATION**

Any and all Confidential Information disclosed to the Recipient in accordance with this Agreement and all copies, reproductions and/or duplications shall remain the exclusive property of the Discloser, without prejudice to third parties’ rights.

When the Discloser's Confidential Information is no longer needed for the Purpose or at any time upon request of the Discloser, or upon termination of the Agreement, all Confidential Information disclosed shall be returned to the Discloser or destroyed. Such return or destruction shall be certified in writing by the Recipient to the Discloser within thirty (30) calendar days of the request for return or destruction.

1. **DURATION**

6.1 This Agreement shall enter into force upon the last signature by the Parties and will take effect retroactively on 20/06/2025.

6.2 This Agreement expires five (5) years from its Effective Date, except that a Party may terminate it at any time by giving a thirty (30) days prior written notice to the other Party.

The provisions of the articles 2, 3, 5, 7 and 9 shall survive the expiration or termination of the Agreement for the duration set forth in article 2.

6.3 After expiration or termination of this Agreement, the Recipient shall:

- stop using the received Confidential Information immediately, and

- return Confidential Information according to article 5.

1. **NO WARRANTY**
   1. Each Party warrants that it has the right to disclose exchange, transmit, publish or otherwise use the Confidential Information it discloses to the other Party. Each Party shall indemnify and hold harmless the other Party, including any person who has received Confidential Information in accordance with the terms of this Agreement, for any damages, losses or expenses arising from any breach of this warranty or such damages, losses or expenses arising from an action brought by a third party as a result of the unauthorised disclosure of any of the Confidential Information.
   2. The Disclosing Party does not make any representation or warranty as to the accuracy or fitness of the Confidential Information for the intended purpose of the other Party and/or for the potential results to obtain with the use of this Confidential Information.
2. **MISCELLANEOUS PROVISIONS**

Nothing in this Agreement shall be construed as granting the right to one of the Parties to bind the other Party without its previous written approval.

This Agreement shall not be amended or modified other than by separate written amendment, signed by the authorized representatives of the Parties.

Neither Party shall assign its rights or duties under this Agreement without the prior written approval of the other Party.

Any failure, at any time, by a Party to enforce any provision under this Agreement or any extension of time granted shall not constitute a waiver of such provision or prejudice that Party's right to enforce such provision at any subsequent time.

If any provision hereto is invalid or unenforceable, the remainders of this Agreement shall remain in full force and effect and the Parties shall negotiate in good faith to replace invalid or unenforceable provisions, with provisions that are valid and enforceable and effectuate insofar as possible the basic purposes of the invalid or unenforceable provisions.

1. **GOVERNING LAW – DISPUTES**

This Agreement shall be governed by the laws of France.

The Parties shall endeavour to settle their disputes amicably.

All disputes arising out of or in connection with this Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The place of arbitration shall be Paris, unless otherwise agreed upon by the conflicting Parties.

The award of the arbitration will be final and binding upon the Parties.

Nothing in this Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.

1. **COUNTERPARTS**

Parties agree that any electronic signature affixed in the context of this contract shall be considered to have the same evidential value as a handwritten signature, in accordance with the applicable provisions of French law and international standards regarding electronic signatures. The electronic signature must be executed using a reliable identification process that guarantees the link between the signature and the document to which it is attached, as well as the integrity of that document, in compliance with the requirements of Articles 1366 and 1367 of the French Civil Code, as well as Regulation (EU) No. 910/2014 of the European Parliament and of the Council of July 23, 2014.

Parties shall respect the conditions for implementing the electronic signature, particularly by ensuring that the signer has been duly informed of the terms of the contract and has had the opportunity to review the document in digital format.

**IN WITNESS HEREOF**, the undersigned have executed this Agreement in two (2) original copies, one for each Party.

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| --- | --- |
| For ONERA | For XXX |
| Date :  Place :  Name : Magali Charil de Villanfray  Title : Legal Director  Signature | Date :  Place :  Name :  Title :  Signature |