

Ministry of Defence

Confidentiality Agreement

THIS AGREEMENT is made the day of [REDACTED]
.

BETWEEN

THE SECRETARY OF STATE FOR DEFENCE (hereinafter called "the Holder"), AND

[...] (hereinafter called "the Recipient").

WHEREAS:

- A. The Holder owns valuable property and equitable rights in information contained, identified or referenced in certain contractual and procurement documentation relating to the Holder and the Armed Forces Recruitment Programme (the "Programme");
- B. The Holder has agreed that Confidential Information may be disclosed to the Recipient for the Purpose in accordance with the terms of this Agreement;
- C. The Recipient is willing to receive and hold the Confidential Information subject to the terms of this Agreement;

NOW the parties to this Agreement agree that:

DEFINITIONS AND INTERPRETATION

1. The following definitions and rules of interpretation in this clause apply in this agreement:

"**Confidential Information**" means all confidential information provided by or on behalf of the Holder to achieve the Purpose (however conveyed) and which relates to the Holder or the Programme, including information relating to operations, processes, plans or intentions, developments, trade secrets, know-how, design rights, market opportunities, personnel, customers and suppliers of the Holder disclosed by the Holder or its Representatives to Recipient after the date of this Agreement including but not limited to:

- (a) the terms of this agreement; and
- (b) any information or analysis derived from the Confidential Information;

but not including any information that:

- (c) is or becomes generally available to the public other than as a result of its disclosure by Recipient in breach of this agreement or of any other undertaking of confidentiality addressed to the Holder (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
- (d) was available to Recipient on a non-confidential basis prior to disclosure by the Holder; or
- (e) was, is or becomes available to Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not bound by a confidentiality agreement with the Holder or otherwise prohibited from disclosing the information to the Recipient; or
- (f) was lawfully in the Recipient's your possession before the information was disclosed to it by the Holder; or
- (g) the parties agree in writing is not confidential or may be disclosed;

"Programme" shall have the meaning given to it in the recitals;

"Purpose" means [to allow the Recipient to respond to an Invitation to Tender ("ITT") (including any subsequent negotiations and/or performance of a related contract) No []]; and

"Representative" means employees, agents and other representatives of or advisors of the Holder.

2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

4. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

5. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.

6. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

7. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

Obligations of Confidentiality

8. The Recipient shall, subject to the following provisions of this Agreement:

- a. hold the Confidential Information under conditions of strict confidence;
- b. not use or exploit, the Confidential Information, in whole or in part, in any manner or form other than for the Purpose;
- c. not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement;
- d. not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Holder);
- e. not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;
- f. keep the Confidential Information in tangible or documented form separate from other tangibles or documents held by the Recipient;
- g. apply the same security measures and degree of care to the Confidential Information as the Recipient would apply to their own confidential information, which Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use; and
- h. keep a written record of any document or other Confidential Information received from the Holder in tangible form and any copy made of the Confidential Information.

9. The Recipient may disclose the Confidential Information under an obligation of confidence

only to those of its officers and employees as need to know the Confidential Information for the Purpose. If the Recipient needs to disclose the Information to potential sub-contractors the Recipient shall first inform the Holder for approval, obtain from the potential sub-contractor an agreement on behalf of the Holder in the same form as this Agreement, and forward it promptly to the Holder.

10. The Recipient shall not be in breach of this Agreement where it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Recipient shall ensure that any new recipient of the Confidential Information is made aware of and asked to respect its confidentiality, and that any such disclosure is to the minimum extent possible. Such disclosure shall in no way diminish the obligations of the parties under this Agreement.

Termination and Return of Information

11. This Agreement shall come into effect on the date of this Agreement or on the date of the first disclosure of Confidential Information from the Holder to the Recipient (whichever is the earlier) and the obligations of each party shall continue in full force and effect until this Agreement is terminated by the Holder by giving notice of termination to the Recipient.

12. Termination of this agreement shall not affect any accrued rights or remedies to which either party is entitled.

13. On completion or termination of the Purpose or on written instruction from the Holder to the Recipient, the Recipient shall at the discretion of the Holder either (i) promptly return the Confidential Information, and any copies of it, to the Holder, or (ii) destroy the Confidential Information, taking all reasonable steps to permanently expunge all electronic copies of the Confidential Information, and in each case this Agreement shall terminate except for the restrictions and obligations in paragraphs 8, 9 and 14.

14. At the request of the Holder, the Recipient shall promptly certify in writing to the Holder that the Recipient has complied with the requirements of clause 11, provided that the Recipient may retain documents and materials containing, reflecting, incorporating, or based on Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence that they have performed their obligations under this Agreement. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient.

15. In the event that the Recipient is awarded the contract pursuant to its response to an ITT as part of the Purpose, the Recipient agrees that the terms of this Agreement shall apply to the Confidential Information disclosed (and any amended or extended versions of it) to the Recipient under the contract supplemented only by those requirements in the contract which relate to the use of the Confidential Information by the Recipient for the duration of the contract. On completion or termination of the contract the Recipient shall promptly return or destroy the Confidential Information in accordance with paragraph 13 above.

Reservation of Rights and Acknowledgement

16. The provisions of this Agreement shall be in addition to and not in substitution for any obligation of confidence, whether arising under contract or otherwise, between the Recipient and the Holder in respect of the Confidential Information.

17. This Agreement does not include, constitute or imply any transfer, assignment or licence or rights in any information or Confidential Information, including intellectual property rights. No obligations are imposed on the Holder other than those expressly stated in this Agreement.

18. The Recipient hereby acknowledges that the Confidential Information is disclosed to the Recipient on the basis that the Holder makes no express or implied warranty or representation concerning the Confidential Information, and shall have no liability whatsoever to the Recipient arising from any use of the Confidential Information by the Recipient. The Recipient will bring no claim against the Holder in relation to the Confidential Information or any use of it.

19. The disclosure of Confidential Information by the Holder shall not form any offer by, or

representation or warranty on the part of the Holder to enter into any further discussions or agreements with the Recipient.

20. The Recipient shall indemnify and keep fully indemnified the Holder at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Holder) arising from any breach of this agreement by the Recipient.

21. The Recipient acknowledge that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Holder shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.

Unauthorised Possession of Confidential Information

22. The Recipient shall immediately notify the Holder if it becomes aware of, or reasonably suspects, any loss, unauthorised use or knowledge, or other compromise of any of the Confidential Information. At the request of the Holder, the Recipient shall provide all assistance to remedy such unauthorised possession, use or knowledge as the Holder shall reasonably require.

23. The assistance described at clause 22 shall be at the Recipient's expense (unless the unauthorised possession, use or knowledge is the sole of the Holder or other third party in receipt of the Confidential Information directly or indirectly from the Holder, in which case such assistance shall be at the Holder's expense).

Assignment

24. This Agreement is personal to the Holder and the Recipient and shall not be assigned by either one of them without the prior written consent of the other (such consent not to be unreasonably withheld), provided that in all cases of assignment the assignee effectively undertakes to perform all the obligations of the assignor as though the assignee had been an original party to this Agreement.

Entire Agreement, Variation and Waiver

25. This Agreement (including Appendix 1) sets out the entire agreement between the Holder and the Recipient in connection with the subject matter of this Agreement.

26. Neither this Agreement nor any of its provisions shall be amended or waived unless agreed to in writing by duly authorised representatives of the Holder and the Recipient.

27. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

Notices

28. Any notice or other communication required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery, or by commercial courier, to each party required to receive the notice or communication at the registered address.

Governing Law

29. This Agreement is made subject to English law and to the exclusive jurisdiction of the English courts.

Signed on behalf of
the Recipient by:

Signed on behalf of
the Holder by:

In the capacity of:

In the capacity of:

Date:

Date: