

Ministry of Defence
Confidentiality Agreement

THIS AGREEMENT is made the day of 20 .

BETWEEN

[hereinafter called "the Holder"] of the one part, AND

[hereinafter called "the Recipient"] of the other part.

WHEREAS:

- A. The Holder owns certain valuable property and equitable rights in information identified or referenced in Appendix 1 to this Agreement (hereinafter referred to as "the Information");
- B. The Holder has agreed, by contract or otherwise with the Secretary of State for Defence (hereinafter called "the Authority") that Information may be disclosed to the Recipient in order that the Recipient may, for the purposes of the Authority, respond to Invitation to Tender No..... ("the ITT"). The Authority has agreed that such disclosures will only be made to parties who have signed an appropriate confidentiality agreement with the Holder;
- C. The Recipient is willing to receive and hold the Information subject to the terms of this Agreement;

NOW the parties to this Agreement agree that in consideration of the disclosure of Information by the Holder or the Authority to the Recipient:

- 1. The Recipient shall, subject to the following provisions of this Agreement, hold the Information under conditions of strict confidence and shall not use, copy, or disclose to other than the Authority the Information in whole or in part in any manner or form for other than the sole purpose of enabling the Recipient to respond to the ITT and, in the case of being awarded the contract, to perform that contract.
- 2. The Recipient may disclose the Information only to those of its officers and employees as need to know the Information for the purposes set out in paragraph 1. If the Recipient needs to disclose the Information to potential sub-contractors the Recipient shall first inform the Authority and 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.
- 3. The restrictions and obligations in paragraphs 1 and 2 shall not apply to any of the Information which the Recipient can show:
 - a. is already known to the Recipient (without restrictions on disclosure or use) prior to its disclosure to the Recipient directly or indirectly from the Authority or the Holder; or
 - b. is received by the Recipient without any obligation of confidence from a third party having a right to disclose it; or
 - c. has been generated independently by the Recipient ; or

d. is in or enters the public domain otherwise than by breach of this or another undertaking;

provided the relationship to the remainder of the Information is not revealed.

4. The Recipient shall return to the Authority all the Information, and any copies thereof, promptly upon being notified that the Recipient's bid has been unsuccessful or in the event that the Recipient decides not to respond to the Invitation to Tender, becomes unable to respond to the Invitation to Tender, or withdraws its Tender after submission.
5. In the event that the Recipient is awarded the contract pursuant to its response to the ITT, the Recipient agrees that the terms of this Agreement shall apply to the 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 Information by the Recipient for the duration of the contract. On completion or termination of the contract the Recipient shall promptly return to the Authority the Information, and any copies of it, when this Agreement shall terminate except for the restrictions and obligations in paragraphs 1 and 2.
6. 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 Authority in respect of the Information.
7. This Agreement does not include, constitute or imply any transfer, assignment or licence or rights in any information, whether or not identified in Appendix 1, owned by the Holder, other than that specified in paragraph 1.
8. The Recipient hereby acknowledges that the Information is disclosed to the Recipient by or on behalf of the Authority on the basis that the Holder shall have no liability whatsoever to the Recipient arising from any use of the Information by the Recipient and the Recipient will bring no claim against the Holder in relation to the Information or any use of it .
9. 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 which shall not 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.
10. 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. However, nothing in this Agreement shall affect the rights or obligations of either party in relation to the Authority in respect of the Information.
11. 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. 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.
12. This Agreement is made subject to English[Scottish] law and to the exclusive jurisdiction of the English[Scottish] courts, and shall be effective as from the date of signature by the Recipient, and despatch to the Holder.

Signed on behalf of
the Recipient by:

Signed of behalf of
the Holder by:

In the capacity of:

In the capacity of:

Date:

Date:

INFORMATION TO BE PROTECTED UNDER THIS AGREEMENT

[ITT Reference C17CSAE/0027]