

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made **BETWEEN:**

- (1) THE SECRETARY OF STATE FOR DEFENCE acting through the Defence Science and Technology Laboratory of Porton Down, Salisbury, Wiltshire SP4 0JQ, England (hereinafter referred to as "**Dstl**"), of the one part

AND

- (2) ADS GROUP LTD a company incorporated and registered in England under number [Reg. No 7016635.] whose registered office is at Salmanca Square, 9 Albert Embankment, London, SE1 7SP (hereinafter referred to as "**ADS**") of the other part;

collectively referred to herein as the "**Parties**" or in the singular as a "**Party**".

WHEREAS:

- (A) **Dstl** possesses valuable technical information relating to, and is in receipt of valuable technical information in the form of proposals received from bidders responding to, the 4 Centre for Defence Enterprise (CDE) competitions that form the 'MOD funded DGP Innovation Challenge'
- (B) The individuals listed in Annex A are seconded into DSC ("**The Secondees**")
- (C) **The Secondees** possess valuable technical and commercial information useful in the assessment of the proposals relating to the above CDE competitions.
- (D) For the Purpose set out below it is necessary for **The Secondees** to receive valuable technical and commercially sensitive information made available by **Dstl** / CDE.
- (E) **The Secondees** will receive and review information, including the CDE proposals, in order to advise CDE on whether it contains a technical capability that may be relevant to the above CDE competition and to:
- i/ comment against a set of criterion using the CDEs Assessment Portal;
 - ii/ take part in pre and post contract surgeries with representative from the bidders and CDE, and
 - iii/ provide advice to the relevant CDE competition assessment and decision conferences,

hereinafter referred to as ("**the Purpose**").

In consideration of the benefits to the Parties of the disclosure of the information **THE PARTIES HEREBY AGREE** as follows:

1. As used in this Agreement the term "**Proprietary Information**" shall mean any information, whether in writing or other documentary form, in oral or visual or machine readable form, or in the form of samples or models, disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") under this Agreement, provided that:

(a) where such information is in writing or other documentary form, it is clearly and conspicuously marked at the time of disclosure as proprietary or commercially sensitive (for example with a marking such as "Proprietary" or "Commercial-in-Confidence"); or

(b) where such information is disclosed in oral or visual or machine readable form, or in the form of samples or models, it is clearly designated proprietary or commercially sensitive at the time of disclosure and is confirmed in writing as such within thirty (30) days of the disclosure, in which event all the protections and restrictions in this Agreement as to the use and disclosure of said Proprietary Information shall apply from the date of such disclosure.

Proprietary Information shall also include any information which can be obtained by examination, testing or analysis of any hardware, software or material substance, or any component part thereof, provided by the Disclosing Party under the terms of this Agreement, even though the requirements for marking and designation referred to above shall not have been fulfilled in connection with such obtained information.

2. Subject to the provisions of Clause 7 hereof, the Receiving Party undertakes:

(a) to keep in confidence and not disclose to any third party in whole or in part any Proprietary Information disclosed to it under this Agreement except as expressly permitted by this Agreement;

(b) not to copy Proprietary Information disclosed to it under this Agreement, except as reasonably necessary for the Purpose;

(c) not to use Proprietary Information disclosed to it under this Agreement other than for the Purpose, except with the prior written permission of the Disclosing Party;

(d) to restrict access to the Proprietary Information disclosed to it under the terms of this Agreement to the Secondees and employees of Dstl / CDE who need to know the same for the Purpose, provided that it informs such Secondees and employees of Dstl / CDE of the proprietary nature of the Proprietary Information before such access is granted and is responsible at all times for these Secondees' and employees of Dstl / CDE's compliance with the obligations set out in this Agreement.

3. The protections and restrictions in this Agreement as to the use and disclosure of Proprietary Information shall not apply to any information which the Receiving Party can show:

(a) is, at the time of disclosure hereunder, already published or otherwise publicly available; or

(b) is, after disclosure hereunder, published or becomes available to the public other than by breach of this Agreement; or

(c) is rightfully in the Receiving Party's possession with rights to use and disclose, prior to receipt from the Disclosing Party; or

(d) is rightfully disclosed to the Receiving Party by a third party with rights to use and/or disclose; or

(e) is independently developed by or for the Receiving Party without reference or access to Proprietary Information disclosed hereunder; or

(f) is used and disclosed solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation, in which event the Receiving Party shall give prompt notice of such requirement to the Disclosing Party.

4. Neither Party shall be in breach of the Agreement where it can show that any disclosure of Proprietary Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Receiving Party shall consult the Other Party where the Receiving Party are considering the disclosure of Proprietary Information under the Act or the Regulations and, in any event, shall provide prior notification to the Other Party of any decision to disclose the Proprietary Information. The Disclosing Party acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Proprietary Information in order to comply with the Act or the Regulations is a matter in which the Receiving Party shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

5. Nothing contained in this Agreement shall be construed as:

(a) conferring upon the Receiving Party any right of use in or title to Proprietary Information received by it from the Disclosing Party, other than as expressly provided herein or as conferred in writing upon the Receiving Party by the Disclosing Party subsequent to the date of this Agreement; or

(b) constituting a warranty as to the accuracy of the Proprietary Information or the suitability thereof for any purpose whatsoever; or

(c) diminishing the rights either Party has under Statute; or

(d) implying that a further contractual arrangement will be concluded between the Parties; or

(e) overriding or prejudicing any Government security classification or export control regulation applicable to any part of the Proprietary Information; or

(f) requiring either Party to disclose to the other any particular Proprietary Information.

6. All Proprietary Information in whatever form received or obtained hereunder, and any copies thereof made by the Receiving Party, shall be and remain the Disclosing Party's property and shall be delivered up promptly by the Receiving Party to the Disclosing Party on receipt of a written request from the Disclosing Party for such delivery.

7. This Agreement shall remain in force for a period of **two (2) years** following the latest date of signature below after which it will terminate unless renewed by mutual consent in writing or to the extent that it is superseded by another agreement or contract between the Parties. The obligations and restrictions relating to the disclosure, and use and return of Proprietary Information shall however survive the termination of this Agreement in perpetuity. Termination of this Agreement shall not affect any accrued rights or remedies to which either Party is entitled.

8. This Agreement constitutes the entire existing Agreement between the Parties concerning the exchange of Proprietary Information for the Purpose and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to the Purpose. The Agreement shall not be amended except by written agreement signed by authorised representatives of both Parties.

9. Neither Party shall, without the express consent in writing of the other Party, assign or in any manner transfer its rights in, or obligations under, this Agreement or any part thereof.

10. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other Party, nor authorise either Party to make or enter into any commitments for or on behalf of the other Party.

11. Failure to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

12. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

13. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the English courts.

Signed on behalf of THE SECRETARY OF STATE FOR DEFENCE

Signature:.....

Printed Name:

Title:

Date:

Annex A

The Secondees;

I confirm I have read and understood the terms of this Agreement

Signature:.....

Printed Name:

Parent Company:

I confirm I have read and understood the terms of this Agreement

Signature:.....

Printed Name:

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