

## NON-DISCLOSURE AGREEMENT

## BETWEEN

[ ] incorporated under the Companies Acts in Scotland (number ?) and having its principal place of business at [ ] ; and

## THE SCOTTISH MINISTERS

## WHEREAS:

Each party is willing to disclose orally and/or in writing to the other party for the limited business purposes of tendering for the Provision of [ ] and on the terms and conditions set forth in this Agreement, certain proprietary information as defined below.

## IT IS AGREED AS FOLLOWS:

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms and expressions shall have the following meanings:

**"Business Purpose of Disclosure"** means the negotiations and exchange of information regarding works, research and reports commissioned between [ ] and the Scottish Ministers in connection with all information regarding a tender for the Provision of [ ] issued to [ ] by the Scottish Ministers.

**"Disclosing Party"** means a party who discloses Proprietary Information to the other party in connection with this Agreement;

**"Effective Date"** means [ ]

**"Intellectual Property"** means (i) patents, designs, trademarks and trade names (whether registered or unregistered), copyright and related rights, database rights and know-how ; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) all applications, renewals, and extensions in relation to any such rights;

**"Proprietary Information"** means all information of a confidential nature relating to the business and/or operations of the disclosing party or (in the case of [ ]) any company, employee or associate of [ ] (whether such information is disclosed in writing, by delivery of items, orally, by visual presentation, by means of providing access to such information (when, for example, the information is contained on a database) or otherwise) including but not limited to:

- any such information subsisting in any Intellectual Property of the disclosing party or (in the case of [     ]) any company in the [     ];
- any such information which is commercially sensitive or price sensitive;

**"Receiving Party"** means a party to which Proprietary Information is disclosed by a Disclosing Party;

## 2. TERM

- This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of 5 years or until the Proprietary Information ceases to be confidential, whichever is the earlier. Notwithstanding the foregoing, the obligations contained in this Agreement shall survive in respect of any Trade Secret until such time as the disclosing party no longer considers that the information is a trade secret.

## 3. OBLIGATIONS OF THE RECEIVING PARTY

- The receiving party agrees:
  - to hold the disclosing party's Proprietary Information in confidence as a fiduciary and to take all necessary precautions to protect the Proprietary Information, including without limitation, all precautions the disclosing party employs with respect to its own confidential materials (but in no event less than a reasonable degree of care given the nature of the information);
  - to only use the Proprietary Information for the Business Purpose of Disclosure;
  - not to divulge any such Proprietary Information or any information derived there from unless required to do so by law, to comply with any court order or with any decision of any other competent authority to any third person without the disclosing party's prior written consent and nothing contained herein shall prevent the Scottish Ministers from disclosing any Proprietary Information to the Scottish Parliament;
  - not to make any use whatsoever at any time of such Proprietary Information except to evaluate whether to enter into the business relationship contemplated by Business Purpose of Disclosure with the disclosing party and if the relationship is consummated, to implement it as agreed;
  - not used;
  - not copy the Proprietary Information except as required to accomplish the Business Purpose of Disclosure. Any reproduction of the Proprietary Information shall include all confidentiality or proprietary rights, notices or legends as the original, except when such information is required to be passed to the Scottish Parliament, unless otherwise approved by the disclosing party in writing.





- The receiving party may only disclose the Proprietary Information to those employees, officers, advisors or other authorised representatives who have a need to know the Proprietary Information in connection with the Business Purpose of Disclosure provided always that the receiving party ensures that those persons who gain access to Proprietary Information are made aware of its confidential nature.
- [ ] may disclose the Scottish Ministers' Proprietary Information to any company within the [ ] group, and such third party companies as may be necessary in order to further the Business Purpose of Disclosure, PROVIDED THAT [ ] shall cause third party company to observe the same conditions as provided in this Agreement.
- For the purpose of this Agreement, information shall not be considered as Proprietary Information if:
  - 3.4.1 it is in the public domain (and is readily available without substantial effort) at the time of disclosure or which thereafter enters the public domain, other than as a direct result of the information being disclosed in breach of this Agreement, or
  - 3.4.2 it was in its lawful possession or known by the receiving party prior to receipt from the disclosing party, or
  - 3.4.3 it was rightfully disclosed to the receiving party by another person who was not subject to restrictions on disclosure, or
  - 3.4.4 it was independently developed by the receiving party without reference to any information received from the disclosing party.
- [ ] shall be entitled to disclose Proprietary Information which it is required by law or judicial order, or by any competent regulatory authority or recognised stock exchange to disclose, provided that it provides the disclosing party with:
  - 3.5.1 prior written notice of such requirement prior to such disclosure and an opportunity to respond or object to the disclosure ; or
  - 3.5.2 if prior notice is not permitted or practical under the circumstances, prompt notice of such disclosure.
- 3.6 [ ] accepts that the Scottish Ministers shall be entitled to disclose Proprietary Information which it is required to do so by law or judicial order, or by any competent authority without prior written notification of the disclosure. Scottish Ministers will notify [ ] of any such disclosure as soon as is reasonably practicable.

#### 4. OFFICIAL SECRETS ACTS 1911 TO 1989

- 4.1 [ ] and the members of [ ] shall comply with the Official Secrets Acts 1911 to 1989 in connection with the performance of this Agreement and shall take all reasonable steps to ensure such compliance by its employees, agents, consultants and sub-contractors. In particular, and without prejudice to the generality of the



foregoing, shall take all reasonable steps to ensure that all persons engaged on any work in connection with this Agreement have notice that these statutory provisions apply after the expiry or termination of any Agreement placed as a result of this ITT.

#### **4. RETURN OF PROPRIETARY INFORMATION**

- Immediately upon receipt of a written request by the disclosing party at any time, the receiving party will return to the disclosing party all Proprietary Information of the disclosing party and all documents or media containing any such Proprietary Information and any and all copies thereof. To the extent that such information cannot be returned (for instance, if a portion was delivered electronically or if electronic copies were made as permitted above onto the information systems of the receiving party) then the receiving shall destroy or delete such Proprietary Information and provide evidence of such destruction or deletion provided that neither the receiving party nor any person to whom the receiving party has disclosed Proprietary Information in accordance with this Agreement shall have to destroy or permanently erase records or files that contain insignificant extracts from or references to Proprietary Information, or which the receiving party is required to keep copies of by law.

#### **5. FREEDOM OF INFORMATION**

- If the Scottish Ministers receive a request for information relating to Proprietary Information under the Freedom of Information (Scotland) Act 2002 (the Act) the Scottish Ministers shall:-

5.1.1 take all reasonable steps to notify [ ] of the request as soon as possible; and

5.1.4 as soon as reasonably practicable indicate to [ ] what [ ] Proprietary Information they intend to release in response to the request,

#### **6. LIABILITY**

- [ ] warrants the accuracy and completeness of any Proprietary Information supplied by it or on its behalf to the Scottish Ministers pursuant to this Agreement.
- Nothing in this Agreement shall operate to limit or exclude either party's liability to the other for death or personal injury caused by that party's negligence, fraudulent misrepresentation or fraudulent concealment, or any liability which cannot be limited or excluded by law.
- Neither party shall be liable to the other for any indirect or consequential loss or damage arising under or in connection with this Agreement.

#### **7. GENERAL**

- Each party shall retain all right, title and interest to such party's Proprietary Information. No right or licence is either granted or implied by the disclosure of Proprietary Information, including, without limitation any licence under any trade mark,





patent or copyright or application for the same which are now or thereafter may be obtained by such party.

- Each party understands that nothing herein (i) requires the disclosure of any Proprietary Information of the disclosing party, or (ii) requires either party to proceed with any proposed transaction or relationship in connection with this Agreement.
- Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement (or any product utilising any such data) to any country for which the U.K. government, or any agency thereof, or applicable foreign government body at the time of export, requires an export licence or other governmental approval without first obtaining such licence or approval and, if obtaining such approval requires disclosure of the information to such government body, either party must obtain the disclosing party's written consent to make such disclosure.
- This Agreement will be governed by the laws of Scotland. Any disputes under this Agreement shall be brought in the Scottish courts and the parties irrevocably submit to the jurisdiction of these courts. In any action to enforce this Agreement the prevailing party shall be entitled to recovery of legal fees.
- In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions hereof shall remain in full force and effect.
- This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the parties with respect the subject matter hereof. No waiver or modification of any aspect of this Agreement will be binding upon either party unless made in writing and signed by a duly authorised representative of such party and no failure or delay in enforcing any right will be deemed a waiver.
- Neither party may assign or transfer the whole or any part of its rights and/or obligations under this Agreement without prior written consent of the other party. This Agreement will bind and inure to the benefit of the parties and their successors and assigns.
- This Agreement may be executed in two or more counterparts, each of which is deemed to be an original but all of which constitute the same agreement.



**ACKNOWLEDGED AND AGREED by:**

**Bidder's name:**

**SCOTTISH MINISTERS**

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)

Date:

Date:

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)

Date:

In order for a company to sign it needs to be signed by 2 Directors, a Director and Secretary or Director and witness.

