

Mutual Nondisclosure Agreement

Parties.

1. This Mutual Nondisclosure Agreement (the "Agreement") is entered into as of the **XX** day of **XXXXXXX**, 201**X** (the "Effective Date") by and between Headquarters, Supreme Allied Commander Transformation ("HQ SACT"), with a business address at 7857 Blandy Road, Suite 100, Norfolk, Virginia 23551-2490 and **[COMPANY NAME & ADDRESS]** (collectively referred to as the "Parties") for the purpose of preventing the unauthorized disclosure of proprietary information (as defined below).

Summary.

2. The Parties may disclose proprietary information to each other for the purpose of obtaining a clearer understanding of each other's prospective needs and requirements. Such disclosure may never result in a business relationship; however, the Parties are willing to disclose such proprietary information provided such information is not disclosed or used except for the purpose expressed above. The Parties mutually agree to enter into a confidential relationship with respect to the disclosure by one or each (the "Disclosing Party") to the other (the "Receiving Party") of proprietary information.
3. The Agreement does not grant any right of access to NATO facilities, property, or equipment, or to NATO classified information or to NATO communication and information systems. Such access will only be permitted by separate actions, and in accordance with NATO security regulations and, if applicable, those of the appropriate National Security Authority.
4. Accordingly, any information carrying a NATO security marking will retain its classification no matter if disclosed to **[COMPANY NAME]**. It will not be or become subject to this Agreement, but shall be handled separately and in accordance with NATO Security Regulations and any national regulations in force. Furthermore, for the purposes of this agreement the markings "NATO UNCLASSIFIED" and "NATO / [XXX] UNCLASSIFIED" serve to identify NATO / ACT proprietary information and thus no further designation is required.

Definition of Proprietary Information.

5. For purposes of this Agreement, "proprietary information" shall include all information or material identified as proprietary information by the Disclosing Party, whether in oral, written, visual, electronic and/or other form. Such information may include trade secrets or information that is organizationally sensitive. Not all information presented by either

Disclosing Party is proprietary information, and each Disclosing Party has the responsibility to clearly identify any proprietary information provided to the Receiving Party. If proprietary information is disclosed orally or visually, then the Disclosing Party has an obligation to designate it as proprietary information at the time of disclosure.

Exclusions from Proprietary Information.

6. The Receiving Party's obligations under this Agreement shall not extend to information that is:
 - (a) Demonstrated by Recipient to already be in their possession before receipt from the Discloser;
 - (b) Publicly known at the time of disclosure under this Agreement or subsequently becomes publicly known through no fault of the Receiving Party;
 - (c) Independently discovered or created by the Receiving Party prior to the time of disclosure by the Disclosing Party;
 - (d) Disclosed by the Discloser to a third party without a duty of confidentiality on the third party;
 - (e) Disclosed by the Recipient with the Discloser's prior written approval. If a Recipient is required by a government body or court of law to disclose Confidential Information, to the extent permitted by law, the Recipient agrees to give the Discloser reasonable advance notice so that Discloser may contest the disclosure or seek a protective order; or
 - (f) Otherwise learned by the Receiving Party through legitimate means other than from the Disclosing Party or anyone connected or associated with the Disclosing Party.

Obligations of the Receiving Party.

7. Level of Care. The Receiving Party shall hold and maintain the proprietary information of the other Party in confidence for the sole and exclusive benefit of the Disclosing Party, using a standard no less than that of the Disclosing Party, and shall refrain from disclosing any such information to third parties except as expressly provided in this Agreement. To facilitate this, the parties shall exchange, at the appropriate level, information to establish the expected level of care and assurance.
8. Permitted Use. The Receiving Party may use the proprietary information only for the purposes of assessing needs and requirements as it relates to the Disclosing Party. The Receiving Party may share the proprietary information only with the Receiving Party's officers, directors, employees, or contractors who need to know the proprietary information in order for the Receiving Party to accomplish these permitted purposes. The Receiving Party shall ensure that any such officers, directors, employees, or contractors, prior to receiving any proprietary information, understand this Agreement, and have agreed to abide by its terms as if they were the Receiving Party.
9. Prohibited Use. The Receiving Party shall not, without prior written approval of the Disclosing Party, use for the Receiving Party's own benefit, publish, copy, or otherwise

disclose to others, or permit the use by others for their benefit or to the detriment of the Disclosing Party, any of the proprietary information.

10. Return of Proprietary Information. The Receiving Party shall return to the Disclosing Party, or destroy and certify such destruction in writing, any and all (be it original, copies, or summaries) documents, records, notes, and other written, printed, or tangible materials, and/or shall erase all electronic files, in its possession which pertain to the proprietary information immediately on the written request of the Disclosing Party. Upon the termination of this Agreement or any relationships between the Parties and unless otherwise waived all Proprietary Information shall be returned to the Disclosing Party without further request and within the timeline set out below for the survival of the Agreement.
11. Unauthorised disclosure. The Receiving Party shall notify the Disclosing Party immediately by the most expeditious means upon discovery of any unauthorised use or disclosure of proprietary information or any other breach of this Agreement by the Receiving Party and its officers, directors, employees, or contractors, and will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of the information and prevent its further unauthorised use or disclosure.

Termination and Survival of Agreement.

12. This Agreement is concluded for an indefinite period of time. It may be terminated by either Party giving 30 (thirty) days written notification. Irrespectively, the nondisclosure and confidentiality provisions of this Agreement shall survive the termination of this Agreement and of any relationship between the Disclosing Party and the Receiving Party for a period up to three (3) years following the date of termination.

Directed/Ordered Disclosure.

13. The Receiving Party shall not be liable for disclosure of proprietary information in response to a valid order of a court or agency or when the disclosure is at the direction of higher authorities within the North Atlantic Treaty Organization, provided that the Receiving Party immediately notifies the Disclosing Party in writing of any such order, and that, prior to any such disclosure, the Receiving Party takes reasonable steps to avoid or minimize any such disclosure.

Miscellaneous.

14. Intellectual Property. All proprietary information remains the property of the Disclosing Party. Nothing in this Agreement shall be construed to convey to the Receiving Party any right, title, or interest in the proprietary information, or any right to license or use, sell, exploit, copy, or further develop the proprietary information. The Parties agree that any works prepared for each other by employing proprietary information and which are eligible for copyright protection shall not assign rights, title or interest in the copyright to the other Party unless otherwise agreed between the Parties.

15. Compliance with Export Laws. It is the responsibility of the Disclosing Party to ensure that the sharing of proprietary information comports with applicable export control laws.
16. Right to Injunctive Relief. The Receiving Party acknowledges and agrees that its actual or threatened use or disclosure of the proprietary information in breach of this Agreement may cause irreparable harm to the Disclosing Party, for which monetary damages may be an inadequate remedy or difficult to ascertain, entitling the Disclosing Party to preliminary and permanent injunctive relief, in addition to any other remedies that may be available to it.
17. Relationship; No Obligation to Enter into Business Relationship. Nothing contained in this Agreement shall be deemed to constitute either Party a partner, joint venturer or employee of the other Party for any purpose, or to bind either Party to enter into a further agreement or other business relationship with the other Party. It is understood between the Parties that only warranted contracting officials within HQ SACT are authorized to conclude contracts on behalf of HQ SACT and that any claims or assertions by any other representative of HQ SACT do not give rise to a contractual claim or expectations of favourable treatment.
18. Amendments in Writing. This Agreement may not be amended except in a writing signed by the Parties' duly authorized representatives and specifically referencing this Agreement.
19. Notifications. All notices that are required to be given under this Agreement shall be in writing and sent to the address of the recipient Party set out in this Agreement.
20. Severability. Should any part of this Agreement for any reason be declared or deemed invalid, this shall not affect the validity or enforceability of any remaining portion, which remaining portion shall remain in full force and effect as if this Agreement had been executed with the invalid or unenforceable portion thereof eliminated. Should any material term of this Agreement be in conflict with any laws or regulations, the Parties shall in good faith attempt to negotiate a lawful modification of this Agreement which will preserve, to the greatest extent possible, the original expectation of the Parties.
21. Choice of Law. The validity and interpretation of this Agreement and the legal relationship between the Parties shall be governed by the laws of the State of New York, United States of America, without regard to principles of conflicts of law or choice of law.
22. Integration. This Agreement expresses the complete understanding of the Parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings.
23. Assignability. Neither Party may assign this Agreement or the rights and obligations hereunder to any other Party, except with the prior written consent of the non-assigning Party.

24. Agreement Binding on Successors. This Agreement and each Party's obligations shall be binding on the legal successors of each Party.

25. Headings and Captions. All headings and captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement, and in no way define, limit, extend or describe the scope or intent of any provision hereof.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound thereby, have executed this Agreement through their duly authorized representatives, effective as of the Effective Date first written above.

FOR HEADQUARTERS, SUPREME ALLIED COMMANDER TRANSFORMATION:

C A Johnstone-Burt, OBE
Vice Admiral, GBR N
Chief of Staff
HQ Supreme Allied Command Transformation
7857 Blandy Road, Suite 100, Norfolk, VA

DATE: [DATE OF SIGNING FOR ACT]

FOR [COMPANY NAME]:

[NAME]
[ADDRESS]

DATE: [DATE OF SIGNING FOR COMPANY]