

Confidentiality and Non-Disclosure Agreement

This Confidentiality and Non-Disclosure Agreement (the “Agreement”) is entered into effective as of _____(date) by and among **NAVFAC Engineering Service Center (ESC)**, with its principal place of business at 1100 23rd Ave, Port Hueneme, California 93043-4370 and _____(company), a _____(state) corporation with its principal place of business at _____(address). Each of ESC and _____(company) shall hereinafter be referred to as a “Party” and collectively as the “Parties”.

1. **Introduction.** The Parties desire to discuss certain technical information related to the **Explosive Safety Siting (ESS)** application and to exchange information for the purpose of offering a proposal in response to the ESS Maintenance solicitation N62583-10-R-0339. In order to facilitate these discussions and in furtherance of these purposes, and in order for the Parties to receive from each other, either orally or in writing, certain technical and business information under terms that will protect the confidential and proprietary nature of such information, the Parties have entered into this Agreement.
2. **Confidential Information Defined.** The term “Confidential Information” shall mean all information, oral or written, or reduced to any electronic or other medium, disclosed by one Party to the other Party, whether by their agents, principals, employees or representatives, and whether to the other Party’s agents, principals, employees or representatives, including without limitation, all ideas, improvements, inventions, methodologies, works and other innovations of any kind, authored, conceived, developed, made or reduced to practice by the disclosing Party, whether or not eligible for copyright, patent, trademark, trade secret or other legal protection, (including, without limitation, formulas, processes, databases, mechanical and electronic hardware, electronic components, computers and their parts, computer programs and their documentation, encoding techniques, marketing and new product plans, production, processes, advertising, packaging and marketing techniques, marketing plans, product plans, technical plans, business strategies, strategic alliances and partners, financial information, engineering data, methodologies and processes, forecasts, personnel information, customer lists, trade secrets, product design, capabilities, specifications, the identity of potential and actual customers, and suppliers and all documentation, materials and media provided by one Party to the other). Confidential Information of ESC and _____(company) shall include any software provided for evaluation under any license granted by ESC or _____(company), respectively, and all information that is confidential and proprietary to ESC affiliates, which are currently Logistics & Environmental Support Services Corporation (LESCO) and Targeted GeoSystems, and the affiliates of _____(company), including but not limited to _____(subcontractor(s)).
3. **Obligations.** In consideration of any Party’s disclosure of Confidential Information to another Party, each Party agrees with respect to the Confidential Information received from another Party, that it: (a) will maintain such Confidential Information in the strictest confidence; (b) will not disclose, transfer or otherwise make available any of such Confidential Information to any third party unless such Confidential Information must be disclosed for at least one of the purposes set forth in paragraph 1 above, in which event the secondary disclosing Party shall, prior to such disclosure, obtain

written consent from the primary disclosing Party and obtain from the third person a written agreement acknowledging the binding effect of these restrictions regarding the Confidential Information; and (c) will not, directly, indirectly or in concert with any person, use the Confidential Information for any purpose other than in the furtherance of a business relationship with the other Party in accordance with paragraph 1. Each Party shall take reasonable measures to protect the Confidential Information of the other Party or Parties. Those measures shall not be less than the measures taken to protect the receiving Party's own Confidential Information. Confidential Information of the other Party may be provided to a Party's employees only on a need-to-know basis, and prior to such provision, the Party will notify each employee to whom such disclosure is made that such Confidential Information is subject to this Agreement and has been received in confidence and shall be kept in confidence by such employee.

4. Excluded Information. This Agreement shall not apply to any information (a) previously known to either Party free of any obligation to keep it confidential; (b) that has been or which becomes publicly known, through no wrongful act of any Party; (c) which is rightfully received from a third party who is under no obligation of confidence to any Party; (d) which is independently developed by the receiving Party without resort to the Confidential Information that has been disclosed pursuant to this Agreement; or (e) which is required to be disclosed in order to comply with applicable law or regulation or with any requirement imposed by binding judicial or administrative process or any binding governmental or court order.
5. No Grant of Rights, Etc. Each Party's Confidential Information and all rights in it shall remain such Party's sole property. Each Party recognizes that the disclosure of Confidential Information by the disclosing Party shall not be construed as granting any rights, by license or otherwise, concerning any Confidential Information, except as may be explicitly created by this Agreement. Each Party acknowledges that the other Party's Confidential Information includes or may include valuable trade secrets. No Party has any obligation to disclose Confidential Information to the other Party pursuant to this Agreement. **NO PARTY MAKES ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY, COMPLETENESS, CONDITION, FITNESS, and MERCHANTABILITY, OR PERFORMANCE OF ITS CONFIDENTIAL INFORMATION.**
6. Remedies. If any Party causes an unauthorized disclosure of another Party's Confidential Information, the disclosing Party shall immediately report the disclosure to the other Party in writing and shall assist the other Party in limiting the resulting infringement of its rights. The disclosing Party shall cooperate in prosecuting any claims against third parties for unauthorized use. Each Party acknowledges that the unauthorized disclosure, use or disposition, whether actual or threatened, of any Confidential Information would cause irreparable harm and significant injury to the supplying Party, the scope of which would be difficult to ascertain. Each Party agrees, therefore, that in the event of any breach or threatened breach of this Agreement, the supplying Party has the right to obtain an immediate injunction, without the necessity of posting bond even if otherwise required, against any breach, threatened breach or attempted breach of this Agreement, in addition to any other remedies that may be available at law or in equity, including without limitation, the recovery of expenses, costs and attorney's fees arising out of such breach, threatened breach or attempted breach.

7. Return of Confidential Information. All non-oral Confidential Information, in whatever form it may exist, shall be returned to the disclosing Party promptly upon written request. In the event the Parties decide not to enter into a business relationship regarding the subject matter hereof, or upon termination of any contract between the Parties for the performance of services requiring the use of Confidential Information, all disclosed non-oral Confidential Information (and any copies thereof) shall be returned to the Party who provided such Confidential Information, upon request. When returning Confidential Information pursuant to this paragraph, with respect to any oral Confidential Information, the receiving Party shall provide to the disclosing Party an affidavit from each person who has received the oral Confidential Information to the effect that there has been no unauthorized disclosure of the Confidential Information, (or if there has been such unauthorized disclosure, the details with respect to same). Any future business relationship between the Parties regarding the subject matter hereof shall be the subject of a separate agreement to be negotiated and executed by the Parties.
8. Prohibition on Disclosure. No Party hereto shall in any way or in any form distribute, disclose, publicize, issue press releases, or advertise in any manner, including, but not limited to, making representations in court pleadings, except as required under law, the discussions that gave rise to this Agreement, the discussions or negotiations covered by this Agreement or the Confidential Information provided pursuant to this Agreement, without first obtaining the prior written consent of the disclosing Party.
9. Term, Assignment and Survival. This Agreement shall terminate six months from the date first mentioned above, unless extended by mutual written agreement, but may be terminated prior to that time as to receipt of further information by any Party on thirty (30) days written notice. **Each Party's obligations with respect to the Confidential Information, including but not limited to, paragraphs 3, 6, 7, 8 shall survive the termination of this Agreement and/or return of all Confidential Information for a period of three (3) years from the later date of either termination or return of such information. The foregoing notwithstanding, the duty of each Party not to disclose any Confidential Information in the nature of a trade secret of another Party received pursuant to this Agreement shall continue indefinitely,** and the disclosing Party shall be entitled to enforce this Agreement at any time there shall be a breach or threatened breach of the Agreement with respect to any Confidential Information in the nature of a trade secret. Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by any Party.
10. Governing Law. This Agreement shall be governed by and constituted and enforced in accordance with the laws of the _____ (state) (exclusive of the conflict of law rules thereof), and shall be binding upon the Parties hereto in the United States and worldwide.
11. Waiver. No failure by any Party to exercise any rights arising from default by another Party shall impair that right or constitute a waiver of it. No waiver by any Party of any covenant to be performed by the other shall constitute a waiver of any later breach of covenant.
12. Counterparts. This Agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

- 13. Severability. The validity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.
- 14. Remedies. Unless stated otherwise, all remedies are cumulative and in addition to any other remedies available at law or equity.
- 15. Entire Agreement; Amendment. This Agreement contains the entire understanding between and among the Parties and supersedes any prior understanding and agreements among them respecting the subject matter hereof. No amendment to this Agreement shall be valid unless set forth in writing and signed by all Parties.
- 16. Notices. All notices required or permitted hereunder shall be in writing and shall be sent by nationally recognized overnight courier service, or by registered or certified mail, return receipt requested, or by facsimile (with confirmation) to the Party to whom such notice is directed, at its address as set forth above, or to such other address as such Party shall have designated by notice hereunder. Unless otherwise specified, notices shall be deemed given when the return receipt is received.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date and year written above.

NAVFAC Engineering Service Center

By: _____

Signature

Printed Name

Title

Date

(Company)

By: _____

Signature

Printed Name

Title

Date