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MSTS Control No.:	
<i>Contact the MSTS Law Department at NDA@nv.doe.gov for an assigned control number</i>	

NON-DISCLOSURE AGREEMENT

Parties

The parties to this Non-Disclosure Agreement (“Agreement”) are:

Mission Support and Test Services LLC (“MSTS”)

and

Basis

[Summarize the reason why the Agreement is necessary]

Terms and Conditions

1. Points of Contact. The points of contact with respect to the transmission and control of Proprietary or Protected Information are:

Company:	MSTS
Name:	
Address 1:	P.O. Box 98521, M/S
Address 2:	Las Vegas, NV 89193-8521
Phone No:	
Fax No:	

Company:	
Name:	
Address 1:	
Address 2:	
Phone No:	
Fax No:	

Each party may change its designation by written notice to the other.

2. Proprietary or Protected Information. Proprietary or Protected Information includes the following:

- (a) Documents and other tangible materials marked with an appropriate restrictive legend; A restrictive legend need not take any particular form, but must clearly indicate that the document/material is to be protected from unauthorized disclosure (examples include, but are not limited to, legends indicating that the documents or materials are proprietary, confidential, non-public government-owned information, business sensitive information, or information protected by Federal, state, or local Laws, Regulations, or Government-wide Policies (LRGWPs) such as Unclassified Controlled Nuclear Information (UCNI), Export Controlled Information (ECI), and Controlled Unclassified Information (CUI).
- (b) All drawings, engineering specifications, sketches, designs, building plans, illustrations, models, plans, schematics, and other design information shared by the Disclosing Party regardless of whether they are marked with a restrictive legend.
- (c) All disclosures identified as Proprietary or Protected Information at the time of disclosure which have subsequently been reduced to a written listing or summary and marked with an appropriate restrictive legend and delivered to the receiving party within two weeks after disclosure.

Proprietary or Protected Information disclosed pursuant to 2(c) above, shall be provided the same protection between the time of disclosure and the delivery of the written listing or summary as Proprietary or Protected Information marked with a restrictive legend in accordance with 2(a) above.

3. Treatment of Proprietary or Protected Information. The receiving party shall:

- (a) at a minimum, protect and hold Proprietary or Protected Information in confidence using the same standard of care that it applies to its own proprietary or protected information, but no less than reasonable care;
- (b) use and protect special categories of Proprietary or Protected Information which are governed by Federal, state, or local LRGWPs in accordance with the applicable legal, regulatory, or policy requirements. These include, but are not limited to:
 - a. UCNI which must be used and protected in accordance with DOE Order O 471.1B and 10 CFR 1017, *Identification and Protection of Unclassified Controlled Nuclear Information* (available at: <https://www.directives.doe.gov/directives-documents/400-series/0471.1-BOrder-b/@/@images/file> and <https://www.ecfr.gov/current/title-10/chapter-X/part-1017?toc=1>), including Access To and Physical Protection Requirements.
 - b. ECI which must be used and protected in accordance with applicable export compliance LRGWPs, such as the Arms Export Control Act (22 USC Sec 2751, et seq., 2752, 2778, 2797), the International Traffic in Arms Regulations (22 CFR Parts 120-130), the Export Administration Regulations (15 CFR Parts 730-774), and the Atomic Energy Act of 1954, as amended, and its implementing regulations and policies (42 USC 2011 *et. seq.*; 10 CFR Parts 110 and 810; NNSA Policy Letter NAP 476.1).
 - c. CUI information, including PII and other categories of CUI information, which must be used and protected in accordance with DOE Order 471.7 (available at: <https://www.directives.doe.gov/news/new-doe-o-471-7-controlled-unclassified-information>);

Failure to comply with these requirements can result in civil penalties.

(c) make Proprietary or Protected Information available only to its employees who are bound by and have been made aware of the restrictions contained herein concerning the use of such Proprietary or Protected Information, and who have a “need to know” in order to carry out their respective functions in connection with the authorized purpose;

(d) not otherwise use or disclose Proprietary or Protected Information without authorization in writing by the disclosing party, except that it may be disclosed to the United States Government if the authorized purpose requires such disclosure, provided, however, that it must be disclosed with its original restrictive legends and such other markings as may be required under United States LRGWPs to preserve its proprietary nature;

(e) ensure that any complete or partial reproduction of the Proprietary or Protected Information bears the original restrictive legends; and

(f) control access to all Proprietary or Protected Information and take all reasonable precautions to ensure that Proprietary or Protected Information is not inadvertently disclosed to persons or entities not authorized to receive it.

4. Permitted Third-Party Disclosures. The receiving party may disclose Proprietary Information received pursuant to this Agreement to a third-party if, prior to the disclosure to the third-party:

- a) MSTS authorizes the further disclosure in writing;
- b) the receiving party seeking to further disclose the Proprietary Information requires the third-party recipient to enter into a Non-Disclosure Agreement containing terms and conditions no less stringent than those imposed under this Agreement; and
- c) the receiving party seeking to further disclose the Proprietary Information provides an executed copy of the Non-Disclosure Agreement with the third-party recipient to MSTS.

5. Exceptions. Information shall not be afforded the protection of this Agreement after the first of the following events occurs:

- (a) when it is lawfully obtained without restriction by the receiving party from a third-party;
- (b) when it becomes publicly available other than through the fault or negligence of the receiving party; or
- (c) when it is released by the owner without restriction by the disclosing party to anyone, including the United States Government.

6. Cooperation. If the receiving party is subjected to legal action or a requirement under an LRGWP to disclose Proprietary or Protected Information, then the receiving party shall as soon as possible notify the disclosing party, and, upon the request and at the expense of the disclosing party, shall cooperate with the disclosing party in contesting such disclosure.

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7. Limitation of Liability. Neither party shall be liable for damages for any disclosure of information received hereunder required by LRGWPs, or by the order of a court or administrative body with jurisdiction over the matter provided; however, the recipient shall notify the other party prior to disclosing Proprietary or Protected Information to any third party so that the party may intervene to protect its Proprietary or Protected Information. Proprietary or Protected Information may only be disclosed to the extent required under the LRGWP or order of a court or administrative body with jurisdiction, and such disclosure shall not affect the obligations of confidentiality under this Agreement relating to the Proprietary or Protected Information and non-disclosure to other third-parties.
8. Ownership of Proprietary or Protected Information. All Proprietary or Protected Information shall remain the property of the disclosing party and the receiving party shall return such information to the disclosing party or destroy it upon request, together with all copies thereof and upon request, and the receiving party shall send the disclosing party the appropriate documentation stating that it fully complied with the request.
9. No Grant of License or Other Rights. No license under any patents, copyrights, or any other proprietary right is granted or conveyed by the disclosure of Proprietary or Protected Information to another party. Nor shall such a disclosure constitute any representation, warranty, assurance, guaranty or inducement by the disclosing party with respect to infringement of patent, copyrights, or any other proprietary right of others. The disclosing party shall not be liable for damages arising from the receiving party's use of or reliance on information disclosed pursuant to this Agreement.
10. Jurisdiction/Venue. This Agreement shall be construed and interpreted under the laws of the State of Nevada without regard to or application of its principles or laws regarding conflict of laws. If the U.S. District Court for the District of Nevada has jurisdiction over any controversy arising from or related to this Agreement, then any action to enforce this Agreement shall be commenced therein. If the U.S. District Court for the District of Nevada does not have jurisdiction over the controversy, then the state courts for the State of Nevada shall have exclusive jurisdiction over any controversy arising out of or related to this Agreement and any action to enforce this Agreement shall be commenced therein.
11. Assignment. Except as stated below, neither party may assign or transfer its rights or obligations contained herein without the prior written consent of the other party, which consent shall not be unreasonably withheld. However, MSTs may assign this Agreement to a successor contractor under contract with the U.S. Department of Energy (or its successor) for the management and operation of the Nevada National Security Site, and assignment may be made to any entity succeeding to the entire interest of a party's business or the business of the division or group originally responsible for performance hereunder.
12. Warranties. All Proprietary or Protected Information provided by either party under this Agreement is provided "As-Is" and the disclosing party warrants only that it has the right to make the disclosures under this Agreement. No other warranties, express or implied, statutory or otherwise, including warranties of merchantability, title, fitness for purpose or use, or against infringement, are made by either party under this Agreement.
13. No Obligation to Provide Information. Neither party is obligated hereunder to furnish Proprietary or Protected Information, or any other information, to the other party.

14. Entire Agreement. This is the entire Agreement between the parties relative to the Proprietary or Protected Information described herein and it supersedes any prior agreements. Any amendment to this Agreement must be in writing and signed by both parties' authorized representatives.

15. Term and Termination of Agreement. The opportunity to receive Proprietary or Protected Information under this Agreement may be terminated at any time upon written notice by one party to the other party. If not terminated by either Party earlier, the opportunity to receive Proprietary or Protected Information under this Agreement shall automatically terminate _____ months **[fill in number of months not to exceed 36]** after its effective date. The termination of the opportunity to receive Proprietary or Protected Information under this Agreement shall not affect a party's obligations imposed by this Agreement with respect to the use and protection of Proprietary or Protected Information received by a party prior to such termination. All rights and obligations under this Agreement shall survive the termination of any business relationship between the parties hereto.

16. No Further Obligations. This Agreement shall not be construed as a teaming agreement, joint venture, partnership, or other such arrangement, and is for the sole purpose of protecting Proprietary or Protected Information. The disclosure of information (proprietary/protected or otherwise) shall not obligate a party to enter into any business relationship with the other party, nor shall such disclosure limit or affect the right of a party to enter into a business relationship with any person or business who is not a party hereto.

17. Violation of Agreement. The parties agree that monetary damages for the violation of this Agreement are not adequate and that injunctive relief is appropriate in addition to any other remedies authorized by law.

18. Effective Date/Prior Disclosures. This Agreement shall become effective on the date it has been signed by both parties. Any Proprietary or Protected Information that was disclosed prior to the effective date of this Agreement, which would have been covered if it had been disclosed after the Agreement became effective, shall be treated as if it had been disclosed subsequent to the effective date of this Agreement.

19. Signatures. The persons whose signatures are set forth below declare that they are authorized to bind their party to this Agreement.

Mission Support & Test Services
Signature & Date
Print Name & Title

Signature & Date
Print Name & Title