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गृह मन्त्रालय
Ministry of Home Affairs
राष्ट्र सरकार
Government of India

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Agreement
Between
the Republic of India
and
Ukraine
on the Mutual Protection of Classified Information

The Republic of India and Ukraine, hereinafter referred to as "the Parties", intending to ensure the mutual protection of all classified information, which has been classified by one Party and transferred to the other Party, desiring to establish the rules for the mutual protection of classified information which shall extend to all agreements on cooperation to be concluded between the Parties and organizations and to contracts which provide for exchange of classified information

HAVE AGREED AS FOLLOWS:

Article 1
Definitions and Comparison of the Terms

For the purposes of this Agreement:

The term "classified information" means information with limited access in any form and any documents, products, substances or physical fields on/in which information is contained or may be recorded and which, in the interests of national security of the Parties, in accordance with their applicable legislation, require protection against unauthorized access and have been appropriately classified including those jointly created by the organizations of the Parties in the framework of cooperation and classified on the basis of the applicable legislation of the Parties and jointly coordinated criteria;

The term "originating Party" means the Party, which has classified and transferred classified information;

The term "Recipient Party" means the Party to which classified information is transferred;

The term "organization" means ministry, other state body, any legal or physical person that participates in the international cooperation or in the implementation of the contracts, which are covered by this Agreement.

The term "competent authority" means a State authority controlling the implementation of this Agreement or its separate articles and designated so in accordance with Article 12 of this Agreement;

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The terms 'contract', 'customer' and 'contractor' will have the same meaning as normally assigned to them.

"Information with limited access" shall include, inter alia:

(a) In Ukraine:

Information which covers the areas of defence, economy, science and technology, external affairs, state security and law enforcement, disclosure of which may damage state security and which is recognized as state secrets and is subject to protection by the state, and also information which cannot be disclosed and disseminated in mass media in accordance with national legislation.

Implementation of limitations on spreading of and access to information with limited access shall be fulfilled by classifying of documents and other information as follows:

"Of Great Importance" shall be applied to information in the area of defence and state security, disclosure of which can cause exceptionally grave damage to the national security of Ukraine;

"Top Secret" shall be applied to information, disclosure of which can cause grave damage to the state interests and national security of Ukraine;

"Secret" shall be applied to information, disclosure of which can cause damage to the state interests and national security of Ukraine;

"Restricted" shall be applied to information with limited access, which has confidential character and cannot be disclosed or disseminated in mass media;

(b) in the Republic of India:

Information protected by the State in its military, foreign policy, economy areas, as well as in the areas of science and technology, intelligence, counter-intelligence and investigation of crimes, disclosure of which may damage the security and other essential interests of the Republic of India:

Depending on the damage to the security or other essential interests of the Republic of India resulting from an unauthorized disclosure of classified information, such information shall be classified as follows:

"Top Secret" shall be applied to information and material, the unauthorized disclosure of which could be expected to cause exceptionally grave damage to the national security or national interest;

"Secret" shall be applied to information and material, the unauthorized disclosure of which could be expected to cause serious damage to the national security or national interests or cause serious embarrassment to the Government in its functioning;

"Confidential" shall be applied to information and material, the unauthorized disclosure of which could be expected to cause damage to the national security or would be prejudicial to the national interests or would embarrass the Government in its functioning;

"Restricted" shall be applied to information and material, which is essentially meant for official use only and which should not be published or communicated to any one except for official purpose.

Article 2 Comparison of Classification Levels

The Parties agree that classification levels are comparable as follows:

<i>In the Republic of India</i>	<i>In Ukraine</i>
TOP SECRET	Of Great Importance ОСОБЛИВОЇ ВАЖЛИВОСТІ
SECRET	Top Secret ЦІЛКОМ ТАЄМНО
CONFIDENTIAL	Secret ТАЄМНО
RESTRICTED	Restricted ДЛЯ СЛУЖБОВОГО КОРИСТУВАННЯ

Article 3 Measures of Protection

1. The Parties, in the framework of their national legislation, shall take all necessary measures for the protection of classified information transferred or created. They shall ensure at least the same level of protection of such classified information as stipulated for their own classified information with commensurate level of classification.
2. The Parties shall not grant access to such classified information to a third Party without the prior written consent of the Party under order of which it has been classified. This provision is in force particularly for the rules of archiving and publicizing set up by the Parties. Classified information shall be used exclusively for the specified purposes. In particular, access to classified information shall be granted only to authorized persons in the course of their official duties.
3. The clearance procedure for granting access to authorized persons shall not be different from what is necessary for gaining access to the equivalent classified information of their own State.
4. The Parties shall ensure necessary inspection checks and observance of the rules for mutual protection of classified information within their own territory.

Article 4

Preparation of the Transfer of Classified Information

When the Originating Party intends to transfer classified information to an organization of the recipient Party or assigns its organization to do so it shall preliminarily request the competent authority of the Recipient Party for assurance confirming that the organization of the Recipient Party has passed the procedure granting it security clearance to handle classified information of necessary classification level and has appropriate means to ensure proper protection of classified information. This assurance shall contain an obligation to ensure that measures of protection used by the security cleared organization are in compliance with the requirements of national law and are subject to control and supervision of the competent authority.

Article 5

Carrying out the Transfer of Classified Information

1. The Competent Authority of the Originating Party shall be responsible for marking all classified information transferred or created in the framework of a contract. Upon request of the competent authority of the Recipient Party it shall notify the markings of the transferred classified information in the form of a list (the list of markings). In such a case the competent authority of the Recipient Party shall simultaneously notify that the organization which receives classified information has undertaken to handle classified information given at its disposal like classified information of corresponding classification level of its own State.
2. When the Competent Authority of the Recipient Party receives requested list of markings, it shall acknowledge in writing the receipt and if necessary forward the list to contractor.
3. The Competent Authority of the Recipient Party shall ensure that the organization which receives classified information handles classified information of the other Party like classified information of corresponding classification level of its own State.
4. Parties shall ensure that the contract with contractors is concluded only after the contractor has taken the necessary steps to protect the classified information.
5. The Parties shall ensure that the contract is concluded and works to which the requirements of protection of classified information apply are commenced only after appropriate protective measures are taken by the contractor.

Article 6
Marking

1. The Recipient Party shall mark classified information of the Originating Party with appropriate classification markings in accordance with Article 2 of this Agreement.

2. Copies and translations of classified information of the Originating Party shall be marked with the same classification markings as the originals and they shall be handled like originals.

3. Classified information, created in the Recipient Party on the basis of the classified information transferred by the Originating Party, shall be marked with the corresponding classification marking which shall not be lower than the classification marking of the transferred classified information.

4. The Recipient Party may change or cancel classification levels of the transferred classified information upon request of the Originating Party. The Originating Party shall notify the Recipient Party about its intention to change or cancel classification level six weeks beforehand.

Article 7 Transfer of Classified Information

1. Classified information shall be transferred from one State to the other, as a rule, through diplomatic or military couriers. The competent authority shall confirm the receipt of classified information and transmit it further to the recipient in accordance with the national rules of protection of classified information.

2. In specific cases competent authorities may agree in general or subject to conditions indicated in paragraph 4 of this Article, that classified information, excluding "Top Secret" and "Secret" in case of India and "Особливої важливості" ("Of great importance") and "Таємно" ("Top Secret") in case of Ukraine, may be transferred by some other means if use of diplomatic or military couriers would unreasonably complicate the transfer provided that the confidentiality is not compromised.

3. If confidential materials are transmitted using information technologies, the relevant responsible organizations of the Parties shall take concerted measures for their protection in accordance with national legislation.

4. It shall be necessary for the cases indicated in paragraph 2 of this Article that:

- the person who carries out transportation is security cleared for classified information of corresponding classification level;
- the list of classified information being transferred is left in the forwarding organization; a copy of this list shall be handed over to the recipient for forwarding to the competent authority;
- the package of classified information is carried in accordance with the rules set up for the transportation within the State;
- the receipt is taken confirming that the classified information is received;

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- the person who carries out transportation has courier certificate granted by the competent authority of one of the Parties.

5. For transportation of classified materials of considerable volume, the competent authorities shall establish for each case the method of transportation, route and accompanying guards. The bearer shall be authorized for access to classified information of the comparable security classification. Furthermore, classified information transmitted by Electronic means shall be encrypted followed by confirmation through diplomatic channels.

Article 8 Visits

1. Each Party may grant to the representatives of the other Party access to classified information subject to the prior written consent of the competent authority of the visited State. The permission shall be granted only to persons duly authorized and security cleared by the sending State.

2. The consent of the visited State shall be given on an application by the sending State containing the following data about the representative:

- Name, surname, date and place of birth and address.
- Passport number, place and date of issue.
- Position or title, name of the employer.
- Details of security clearance.
- Purpose of the visit.
- Name of organizations and facilities to be visited.
- Names and designations of persons intended to meet.

Article 9 Return/Destruction of Classified Documents/Information

1. Classified documents/information shall be returned or destroyed following a written notification of the relevant responsible organization of the Party that handed them over.

2. The destruction of classified documents/information shall be documented, and the process of destruction shall prevent their reproduction in the future.

Article 10 Violations of Confidentiality Requirements and Payment of Damages

1. Any violation of rules of protection of classified information, which has resulted or may result in disclosure of classified information, shall be immediately communicated to the other Party.

2. The authorities shall investigate the violation of the rules of protection of classified information and those found responsible shall be prosecuted in accordance with the law

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of the State in whose territory the violation takes place. Upon request, the other Party shall render assistance during the investigation; the results of the investigation shall be reported to it.

3. The organization responsible for unauthorized disclosure of classified information shall compensate the other for the damage caused. The amount and terms of compensation shall be specified in individual agreements or contracts.

Article 11 Expenses

The costs for implementation of security measures shall be borne by the Recipient Party after receipt of classified information.

Article 12 Competent Authorities

Fulfillment of the requirements of this Agreement shall be under the control of the following authorities:

In the Republic of India – Ministry of Home Affairs.
In Ukraine – Security Service of Ukraine;

The Parties shall notify each other about the authorities, which are competent for the implementation of this Agreement or its separate articles in appropriate areas of state activity.

Article 13 Dispute Resolution

All disputes regarding interpretation or application of this Agreement shall be resolved through negotiations between the Parties. During the negotiations the Parties shall continue to fulfill their obligations under this Agreement.

Article 14 Consultations

1. The competent authorities of the Parties shall get acquainted with the rules of protection of classified information applicable within the territory of the other Party.
2. With the aim of ensuring close cooperation during the implementation of this Agreement, the competent authorities shall consult each other upon request.
3. Each Party shall allow the representatives of the competent authority of the other Party or any other authority determined by the mutual consent to carry out visits to its territory to discuss with the representatives of the competent authority their own procedures and means for the protection of classified information granted by the other

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Party. Each Party shall provide support to such representatives while determining whether classified information granted to it by the other Party is sufficiently protected. The details shall be specified by the competent authorities.

Article 15
Entry into Force, Period of Validity, Changes, Termination

1. This Agreement shall enter into force on the date of receipt of the last written notification about fulfillment by the Parties of internal procedures that are necessary for its entering into force.
2. Each Party at any time may submit a proposal in written form as to the changes or amendments to this Agreement. When one Party submits a corresponding proposal the negotiations concerning the changes and amendments to this Agreement shall be held between the Parties. Changes and amendments to this Agreement shall be drawn up as protocols constituting an integral part of the Agreement and entering into force in accordance with the procedure envisaged by paragraph 1 of this Article.
3. The Agreement shall remain in force until either Party sends through diplomatic channels to the other Party a written notice six months in advance of its intention to terminate this Agreement.

In case of termination of Agreement the classified information which has been transferred or resulted from cooperation shall continue to be treated in accordance with Article 3 of this Agreement until the originating Party cancels the security classification.

Done at New Delhi... this...12th day of August 2003.....in duplicate in Hindi, Ukrainian, and English languages, all texts being equally authentic. In case of divergence in interpretation of the provisions of this Agreement the English text shall prevail.

For the Republic of India

For Ukraine