

AGREEMENT BETWEEN
THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF THE REPUBLIC OF INDIA
CONCERNING SECURITY MEASURES FOR THE PROTECTION
OF CLASSIFIED MILITARY INFORMATION

The Government of Japan and the Government of the Republic of India (hereinafter referred to as "the Parties" and separately as a "Party"),

Wishing to ensure the reciprocal protection of classified military information exchanged between the Parties;

Have agreed as follows:

ARTICLE 1

For the purposes of this Agreement:

- a. "Classified Military Information" (hereinafter referred to as "CMI") means any defence-related information which requires protection against unauthorised disclosure in the interests of national security of the Providing Party and which is subject to a Security Classification and generated by, or for the use of, or under the jurisdiction of the Competent Authorities of the Providing Party. CMI may be in any form, including oral, visual, electronic, magnetic, or documentary forms or equipment or technology;
- b. "Providing Party" means the Party which transmits CMI to the Receiving Party;
- c. "Receiving Party" means the Party to which CMI is transmitted by the Providing Party;
- d. "Security Classification" means the identification assigned by a Party to indicate the necessary level of protection that information must be afforded;

- e. "Competent Authorities" means, in relation to the Government of Japan, the government agencies, and in relation to the Government of the Republic of India, the government agencies, which are designated by each Party as the authorities responsible, within their respective competence under the national laws and regulations, for the protection of CMI and Transmitted CMI;
- f. "Transmitted CMI" means CMI which is transmitted directly or indirectly between the Parties. CMI becomes Transmitted CMI upon receipt by the Receiving Party;
- g. "Personnel Security Clearance" means an eligibility for handling securely CMI and Transmitted CMI granted to individuals in accordance with each Party's appropriate procedures; and
- h. "Contractor" means an individual or an entity, including a subcontractor, that performs a contract with the Receiving Party.

ARTICLE 2

Transmitted CMI shall be protected under the terms set forth herein, provided that such terms are consistent with the national laws and regulations of the Receiving Party.

ARTICLE 3

Each Party shall notify the other of any changes to its national laws and regulations that would affect the protection of Transmitted CMI under this Agreement. In such a case, the Parties shall consult each other as provided for in Article 19, to consider possible amendments to this Agreement. In the interim, Transmitted CMI shall continue to be protected according to the provisions of this Agreement, provided that those provisions are consistent with the national laws and regulations of the Receiving Party, unless otherwise approved in writing by the Providing Party.

ARTICLE 4

1. CMI to be provided under this Agreement shall be marked with one of the following Security Classifications:

For the Government of Japan, CMI is marked GOKUHI (KIMITSU) 極秘 (機密), TOKUTEI HIMITSU (KIMITSU) 特定秘密 (機密), GOKUHI 極秘, TOKUTEI HIMITSU 特定秘密, or HI 秘;

For the Government of the Republic of India, CMI is marked TOP SECRET, SECRET, CONFIDENTIAL, or RESTRICTED.

2. For CMI where a marking is not physically possible, the Providing Party shall inform the Receiving Party of the Security Classification. If the Receiving Party so requests, the Providing Party shall inform the Security Classification in writing.

3. The Receiving Party shall mark, where practicable, all Transmitted CMI with the name of the Providing Party and the corresponding Security Classification of the Receiving Party, as described in paragraph 4 of this Article.

4. The corresponding Security Classifications are:

Japan	The Republic of India
GOKUHI (KIMITSU) 極秘 (機密) / TOKUTEI HIMITSU (KIMITSU) 特定秘密 (機密)	TOP SECRET
GOKUHI 極秘 / TOKUTEI HIMITSU 特定秘密	SECRET
HI 秘	CONFIDENTIAL
NO CORRESPONDING SECURITY CLASSIFICATION, BUT SHALL BE PROTECTED AS IF IT IS HI 秘, UNLESS OTHERWISE ADVISED BY THE GOVERNMENT OF THE REPUBLIC OF INDIA	RESTRICTED

ARTICLE 5

1. The National Security Authorities shall be:

For the Government of Japan:

Ministry of Foreign Affairs;

For the Government of the Republic of India:

Ministry of Defence.

2. The National Security Authorities shall serve as a point of coordination and liaison with regard to the implementation and interpretation of this Agreement.
3. The National Security Authorities and the Competent Authorities shall monitor the implementation of this Agreement within their competence.
4. The Parties shall notify each other in writing of their respective Competent Authorities through diplomatic channels.

ARTICLE 6

The Parties shall ensure that:

- a. The Receiving Party shall not release Transmitted CMI to any government, person, firm, institution, organisation, or other entity of a third country without the prior written approval of the Providing Party;
- b. The Receiving Party shall, in accordance with its national laws and regulations, afford Transmitted CMI a level of protection equal to that which it affords its own CMI at the corresponding level of Security Classification;
- c. The Receiving Party shall not use Transmitted CMI for any purpose other than that for which it is provided without the prior written approval of the Providing Party;
- d. The Receiving Party shall observe intellectual property rights such as patents, copyrights, or trade secrets applicable to Transmitted CMI, in accordance with its national laws and regulations;
- e. Each Party shall maintain a register of individuals with a Personnel Security Clearance and who are authorised to have access to CMI and Transmitted CMI;

- f. The Receiving Party shall establish procedures for the identification, location, inventory and control of Transmitted CMI to manage the dissemination of and access to Transmitted CMI; and
- g. The Providing Party shall inform the Receiving Party of any subsequent change in the Security Classification of the CMI which it has provided to the Receiving Party.

ARTICLE 7

1. No government official shall be entitled to have access to Transmitted CMI solely by virtue of rank, appointment, or a Personnel Security Clearance.
2. Access to Transmitted CMI shall be granted only to those government officials whose official duties require such access and who have been granted a Personnel Security Clearance in accordance with the national laws and regulations of the Receiving Party.
3. The Receiving Party shall ensure that the determination on the granting of a Personnel Security Clearance to a government official is consistent with the interests of national security and based upon all relevant information indicating whether the government official is trustworthy and reliable in the handling of Transmitted CMI.
4. The Receiving Party shall implement appropriate procedures to ensure that the criteria referred to in the preceding paragraph have been met, in accordance with its national laws and regulations, in respect of any government official to be granted access to Transmitted CMI.
5. Before a representative of the Providing Party provides CMI to a representative of the Receiving Party, the Providing Party shall obtain an assurance from the relevant Competent Authority of the Receiving Party that the proposed recipient holds the necessary level of Personnel Security Clearance appropriate to the corresponding level of Security Classification in accordance with Article 4.

ARTICLE 8

1. Visits that involve access by individuals or Contractors of one Party to CMI held by the other Party shall be undertaken only with the prior approval of the other Party. Approval for such visits may be granted only to those individuals or Contractors who hold the necessary level of Personnel Security Clearance pursuant to Articles 7 and 16, and who require such access for the performance of their official duties.

2. Requests for visits shall be submitted by the relevant Competent Authority of the visiting Party through Government to Government channels to the relevant Competent Authority of the other Party and shall include verification of the fact that the visiting individuals or Contractors hold the necessary level of Personnel Security Clearance pursuant to Articles 7 and 16.

ARTICLE 9

CMI shall be transmitted between the Parties through Government to Government channels. The Providing Party shall be responsible for custody, control, and security of all CMI until its receipt by the Receiving Party, subject to the national laws and regulations of the Providing Party.

ARTICLE 10

The minimum requirements for the security of the CMI during transmission between the Parties shall be as follows:

- a. CMI in the form of documents or other media:
 - (i) CMI shall be transmitted in a sealed or tamper-indicating envelope enclosed within another sealed or tamper-indicating envelope or within a security pouch, the innermost envelope bearing only the Security Classification of the documents or other media and the organisational address of the intended recipient, the outer envelope or the security pouch bearing the organisational address of the recipient, the organisational address of the sender, and the registration number, if applicable.

- (ii) No indication of the Security Classification of the enclosed documents or other media shall be shown on the outer envelope or the security pouch.
 - (iii) Receipts shall be prepared for packages containing CMI. A receipt for the enclosed CMI shall be signed by the Receiving Party's final recipient and returned to the Providing Party's sender.
- b. CMI in the form of, or which is contained in, equipment:
 - (i) CMI shall be transmitted in sealed and covered vehicles, or be securely packaged or protected, in order to prevent identification of its contents and kept under continuous control to prevent access by unauthorised individuals.
 - (ii) CMI that is awaiting shipment shall be placed in protected storage areas that provide protection commensurate with the level of Security Classification of the CMI. Only authorised individuals with the necessary level of Personnel Security Clearance shall have access to the equipment.
 - (iii) Receipts shall be obtained on every occasion when CMI changes hands en route and is delivered to the Receiving Party's final recipient. All receipts shall be returned to the Providing Party's sender.
- c. Electronic Transmissions:
 - (i) CMI shall be protected during transmission using encryption appropriate for the relevant level of Security Classification. Information systems' standards for processing or storing Transmitted CMI or conveying CMI shall receive security accreditation by the appropriate authority of the Party employing the system.
 - (ii) The Receiving Party shall maintain a log of the receipt of Transmitted CMI. This log shall be made available to the Providing Party upon request.

ARTICLE 11

Each Party shall be responsible for the security of all governmental facilities where Transmitted CMI is kept and shall ensure that for each such facility government officials are appointed who shall have the responsibility and authority for the control and protection of Transmitted CMI.

ARTICLE 12

The Receiving Party shall store Transmitted CMI in a manner that ensures access is limited to authorised individuals pursuant to Articles 7 and 16.

ARTICLE 13

Transmitted CMI which is to be destroyed shall be done so in a manner that prevents its reconstruction in whole or in part in accordance with the national laws and regulations of the Receiving Party.

ARTICLE 14

When the Receiving Party reproduces Transmitted CMI in the form of documents or other media, it shall also reproduce all original Security Classification markings thereon or mark them on each copy. The Receiving Party shall place such reproduced Transmitted CMI under the same controls as the original Transmitted CMI. The Receiving Party shall limit the number of copies to that required for official purposes.

ARTICLE 15

The Receiving Party shall ensure that any translation of Transmitted CMI is carried out by individuals with the necessary level of Personnel Security Clearance pursuant to Articles 7 and 16. The Receiving Party shall keep the number of copies of a translation to a minimum and control any distribution. Such translations shall bear markings of the Security Classification of the Receiving Party corresponding to the original Security Classification and suitable notation in the language into which such translation was made indicating that such translation contains Transmitted CMI. The Receiving Party shall place such translations under the same controls as the original Transmitted CMI.

ARTICLE 16

Prior to the release to a Contractor of any Transmitted CMI, the Receiving Party shall, subject to its national laws and regulations, take appropriate measures to ensure that:

- a. no individual is entitled to have access to Transmitted CMI solely by virtue of rank, appointment, or a Personnel Security Clearance;
- b. the Contractor's facilities have the capability to protect Transmitted CMI at the relevant level of Security Classification;
- c. all individuals whose official duties require access to Transmitted CMI have the necessary level of Personnel Security Clearance;
- d. the granting of a Personnel Security Clearance is determined in the same manner as provided for in paragraph 2 of Article 7;
- e. access to Transmitted CMI is limited to those individuals whose official duties require such access;
- f. appropriate procedures are implemented to provide assurance that the criteria referred to in paragraph 3 of Article 7 have been met with respect to any individual granted access to Transmitted CMI;
- g. all individuals having access to Transmitted CMI are informed of their responsibilities to protect Transmitted CMI;
- h. initial and periodic security inspections are carried out by the Receiving Party at each Contractor's facility where Transmitted CMI is stored or accessed to ensure that it is protected in the same manner as required in relevant provisions of this Agreement;
- i. a register of individuals with a Personnel Security Clearance and who are authorised to have access to Transmitted CMI is maintained at each Contractor's facility;

- j. individuals are appointed at each Contractor's facility who shall have the responsibility and authority for the control and protection of Transmitted CMI;
- k. Transmitted CMI is transmitted in the same manner as provided for in Articles 9 and 10;
- l. Transmitted CMI is stored in the same manner as provided for in Article 12;
- m. Transmitted CMI in the form of documents or other media, or in the form of, or which is contained in, equipment is destroyed in the same manner as provided for in Article 13;
- n. Transmitted CMI in the form of documents or other media is reproduced and placed under control in the same manner as provided for in Article 14; and
- o. translation of Transmitted CMI is carried out and treated in the same manner as provided for in Article 15.

ARTICLE 17

1. The Providing Party shall be informed immediately of all losses or compromises, as well as suspected losses or compromises, of Transmitted CMI, and the Receiving Party shall investigate to determine the circumstances.
2. The results of the investigation and information regarding measures taken to prevent recurrence shall be provided in writing to the Providing Party.

ARTICLE 18

Competent Authorities, within their competence, may mutually determine Implementing Arrangements, which are subordinate to this Agreement and which shall specify supplementary provisions regarding the handling of Transmitted CMI.

ARTICLE 19

1. The Parties shall consult each other regarding the implementation of this Agreement.

2. Any matter relating to the interpretation, implementation or application of this Agreement and any Implementing Arrangements shall be resolved amicably and solely through consultation or negotiation between the Parties.

3. The Competent Authorities of the Parties shall settle disputes that may arise concerning the implementation of any Implementing Arrangements through consultation or negotiation between the Competent Authorities.

4. Where a dispute cannot be settled under the provisions of paragraph 3 of this Article, the dispute shall be settled in accordance with the provisions of paragraph 2 of this Article.

ARTICLE 20

Each Party shall bear its own costs incurred in the course of implementing its obligations under this Agreement, in accordance with its national laws and regulations and within the limit of its annual budgetary appropriations.

ARTICLE 21

1. This Agreement shall enter into force on the date of signature.

2. This Agreement may be amended at any time by written agreement between the Parties. Any amendment of this Agreement shall follow the same procedure as its entry into force.

3. This Agreement shall remain in force for a period of five years, and shall continue in force thereafter until terminated in accordance with the provisions of paragraph 4. of this Article.

4. Either Party may, by giving ninety days written notice to the other Party, terminate this Agreement at the end of the initial five year period or at any time thereafter. If this Agreement is terminated, either Party may request in writing consultations concerning any matter arising from the termination of this Agreement.

5. Notwithstanding the termination of this Agreement, all Transmitted CMI provided pursuant to this Agreement shall continue to be protected according to the terms set forth in this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at New Delhi, this twelfth day of December, 2015, in two originals each in the Japanese, Hindi and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government
of Japan:

For the Government
of the Republic of India: