

NON DISCLOSURE AGREEMENT

This Agreement is made on **[insert date]** between:

(1) the Minister for the Cabinet Office ("**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP (the "**Authority**"); and

(2) **[COMPANY NAME]** which is a company registered in **[insert]** under company number **[insert company no.]** and whose registered office is at **[insert address]** (the "**Bidder**").

(each a "**Party**" and together referred to as the "**Parties**").

1. Background

1.1 The Bidder has expressed an interest in the RM3822 procurement for the provision of Managed Learning Services for the purpose of this Agreement, this is referred to as the "**Service**".

Now it is hereby agreed as follows:

2. Confidential Information

2.1 In consideration of certain confidential information relating to the Service ("**Confidential Information**") being made available to the Bidder by the Authority, the Bidder unconditionally and irrevocably agrees to keep Confidential Information confidential pursuant to the terms of this Agreement.

2.2 Such Confidential Information shall include, without limitation:

- a) all staffing information detailed in the Schedule to this Agreement;
- b) any other staffing information in relation to the Service in whatever form supplied (whether in oral, written, magnetic, electronic, digital or other form) which is directly or indirectly disclosed or made available to the Bidder before or after the date of this Agreement, and
- c) all copies, analyses, compilations, studies and other documents which contain or otherwise reflect or are generated from any such staffing information.

3. Obligation of confidentiality

3.1 Subject to paragraphs 4 and 6, the Bidder shall at all times keep secret and confidential the Confidential Information and the terms of this Agreement.

4. Excluded information

4.1 The obligation to maintain the confidentiality of Confidential Information does not apply to Confidential Information which the Bidder can demonstrate:

- a) is or becomes generally available in the public domain other than as a result of a breach by the Bidder or the Bidder's Representatives (as defined in paragraph 6.1) of the undertakings contained in this Agreement (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information);
- b) was lawfully in the possession of the Bidder before the information was disclosed to the Bidder as evidenced by written records; or
- c) the Parties agree in writing is no longer confidential and may be disclosed.

4.2 The Bidder may disclose Confidential Information only if the Bidder is required to disclose it by any applicable law or regulation of regulatory authority or by the order or ruling of a court or administrative body of competent jurisdiction provided that:

- a) if disclosure of Confidential Information is required for the purpose set out in paragraph 4.2, prior to such disclosure the Bidder shall give the Authority prompt written notice of the information the Bidder proposes to disclose (being the minimum amount of information consistent with satisfying your obligations) and shall take into account any reasonable comments the Authority may have in relation to the content, timing and manner of despatch of the disclosure and take such steps as the Authority may reasonably require to enable the Authority to mitigate the extent of or avoid the requirement of any such disclosure;
- b) if the Bidder is legally prohibited from informing the Authority before any such Confidential Information is disclosed, the Bidder shall (to the extent permitted by law) inform the Authority of the full circumstances of the disclosure or announcement and the information that has been disclosed immediately after such disclosure or announcement is made.

5. Permitted use

5.1 The Bidder may use the Confidential Information solely for taking part in the Service and any preparation necessary to do so or to consider whether to do so but for no other purpose.

6. Permitted disclosure

6.1 The Bidder may disclose Confidential Information only to those of its directors, officers, employees and professional advisers (together the "**Representatives**" and each a "**Representative**") who are directly and necessarily concerned with the Bidder's participation in the Service and whose knowledge of the Confidential Information is essential for that purpose, provided that, if the Authority requests in writing, any professional advisers to whom the Bidder proposes to disclose (or has disclosed) Confidential Information enter into a confidentiality agreement with the Authority

substantially on the same terms as this Agreement prior to the disclosure of any Confidential Information to them.

- 6.2 The Bidder shall procure that each Representative to whom any disclosure of Confidential Information is made is made aware, and adheres to the terms of the undertakings contained in this Agreement as if he, she or it were a party to them. The Bidder shall, in any event, be responsible for any breach by its Representatives of the undertakings contained in this Agreement.
- 6.3 The Bidder shall notify the Authority immediately in writing of the details of each Representative to whom any Confidential Information is proposed to be disclosed by the Bidder or on the Bidder's behalf.
- 6.4 The Bidder shall also notify the Authority immediately upon becoming aware that any of the Confidential Information has been disclosed to, or obtained by, a third party otherwise than as permitted by this Agreement, together with details of such unauthorised disclosure.

7. Announcements

- 7.1.1 No announcement, communication or disclosure of the Bidder's interest in the Service or the fact of the Parties discussions shall be made or indicated by the Bidder or on its behalf without the Authority's prior written consent, unless such announcement or disclosure is required by law or by the rules of any relevant stock exchange or by any supervisory, governmental or regulatory body or court of competent jurisdiction or other authority with relevant powers to whose rules the Bidder is subject.

8. Further obligations

- 8.1 The Bidder and its Representatives shall keep the Confidential Information safe in a secure place and properly protected against theft, damage, loss and unauthorised access (including, but not limited to, access by electronic means) and, without prejudice to the foregoing, the Bidder shall take all reasonable steps and exercise reasonable skill and care to keep the same confidential and exercise in relation to Confidential Information no lesser security measures and degree of care as the Bidder applies to its own confidential information and all documents and other material reproducing or incorporating any of the Confidential Information shall be kept separate from the Bidder's own confidential information.
- 8.2 The Bidder shall mark as confidential any documents, disks or other media containing or reflecting, or which are generated from, any Confidential Information.

9. Return of Confidential Information

- 9.1 Subject to paragraph 9.2 below, the Bidder and its Representatives shall immediately on the earlier of the Bidder receiving written demand from the Authority to do so and the Service or the Bidder's involvement in it ceasing for any reason:
 - a) return to the Authority all Confidential Information other than as mentioned in paragraph 9.1(c) (and all copies, reproductions or extracts thereof or any part thereof);

- b) expunge all Confidential Information from any computer systems, other similar device or virtual facility owned or used by the Bidder or any of its Representatives;
 - c) destroy all notes, analyses, compilations, studies, memoranda and other documents containing or reflecting or generated from any Confidential Information prepared by the Bidder or any of its Representatives; and
 - d) procure that one of its directors certifies to the Authority in writing that to the best of his or her knowledge, information and belief, having made all proper enquiries, the matters set out in paragraphs 9.1(a) to (c) have been done.
- 9.2 The Bidder and its Representatives shall not have to destroy or permanently erase copies which the Bidder is required by law to retain.

10. Accuracy of Confidential Information

- 10.1 The Bidder acknowledges and agrees that, except as may be otherwise agreed in writing in any contract or deed that the Authority subsequently enters into in connection with the Service, the Authority accepts no responsibility for nor make any representation or warranty, express or implied, with respect to the accuracy, reliability or completeness or otherwise of the Confidential Information, and the Authority has no obligation to update or correct any inaccuracies in any Confidential Information provided. Furthermore, the Bidder hereby irrevocably and unconditionally waives any claims, rights or remedies which the Bidder may otherwise have in relation to the accuracy, reliability or completeness of the Confidential Information.
- 10.2 Nothing in this Agreement shall exclude any liability for, or remedy in respect of, any representation made or given fraudulently.

11. Authorised contact

- 11.1 All requests to the Authority for Confidential Information or general enquiries relating to the Service should be made by sending a message via the e-Sourcing suite to the event – RFX Managed Print and Digital Solutions (RM3785) (or to such other persons as the Authority may nominate from time to time) and to no other person.

12. Duration

- 12.1 This Agreement shall terminate upon the entry into force of a contractual agreement between the Bidder and the Authority in respect of the Service.
- 12.2 If the Parties do not enter into a contractual agreement in respect of the Service, this Agreement shall last for a period of five years from the date of this Agreement, unless it is terminated earlier for breach of either Party or by agreement between the Parties.
- 12.3 Termination of this Agreement shall not affect any accrued rights or remedies to which the Authority is entitled.

13. General

- 13.1 The Bidder confirms that the Bidder is acting as principal and not as a representative or broker for any other person, and confirms that the Bidder shall be responsible for

any and all costs incurred by the Bidder or on its behalf in connection with this Agreement.

- 13.2 No right or licence is granted to the Bidder or any of its Representatives in relation to any Confidential Information, except as expressly set out in this Agreement and the Confidential Information shall at all times remain the Authority's property.
- 13.3 Access to the Confidential Information is granted to the Bidder and its Representatives without waiver by the Authority of confidentiality and/or legal professional privilege and/or common interest privilege which attaches to any of the Confidential Information. The Bidder acknowledges and agrees that neither the Bidder nor its Representatives shall, at any time, waive, assign or compromise privilege or confidentiality in relation to the Confidential Information in any way.
- 13.4 The Bidder shall indemnify the Authority and keep it fully indemnified at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by it arising from any breach of this Agreement by the Bidder and from the actions or omissions of any of its Representatives.
- 13.5 The Bidder agrees and acknowledges that because of the valuable nature of the Confidential Information, damages would not be an adequate remedy for a breach of any term of this Agreement and the Bidder, therefore, agrees that the Authority is entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of any term of this Agreement by the Bidder or any of its Representatives without proof of special damage.
- 13.6 The failure to exercise or delay in exercising a right or remedy provided by this Agreement, by law or in equity does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement, by law or in equity, prevents further exercise of the right or remedy or the exercise of another right or remedy available to the Authority, whether contractual, equitable, proprietary or otherwise.
- 13.7 Each of the terms of this Agreement are several and distinct, and to the extent any such provision shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect any other part of that provision or the other provisions of this Agreement which shall remain in full force and effect, and the said provisions (to the extent possible) shall be given effect to in its reduced form as may be decided by any court of competent jurisdiction.
- 13.8 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

14. Assignment

- 14.1 This Agreement is personal to the Bidder and may not be assigned or transferred to any third party without the Authority's prior written consent.

15. Entire agreement and variation

- 15.1 This Agreement constitutes the entire agreement and understanding of the Parties in respect of the subject matter of this Agreement and supersedes all prior oral and written agreements, understandings and arrangements between the Parties relating to the subject matter of this Agreement.
- 15.2 No variation of this Agreement shall be effective unless it is in writing and signed by each of the Parties (or their authorised representatives).

16. Jurisdiction and governing law

- 16.1 The terms of this Agreement are governed by, and shall be construed in accordance with, English law.
- 16.2 The courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to determine any claim, dispute or difference which may arise out of or in connection with this Agreement, and, for those purposes, each Party irrevocably submits to the jurisdiction of the courts of England.

17. Arbitration

- 17.1 Any dispute arising out of or in connection with this Agreement, including a dispute as to the validity or existence of this Agreement and/or this Clause 17, shall be resolved by arbitration in London conducted in English and in accordance with the rules of the London Court of International Arbitration (LCIA) by a single arbitrator who shall be appointed by the LCIA.
- 17.2 The arbitrator shall be and remain independent and impartial of the Bidder and the Authority.
- 17.3 An award rendered in connection with arbitration pursuant to this Clause 17 shall be final and binding upon the Bidder and the Authority, and any judgment upon such an award may be entered and enforced in any court of competent jurisdiction.

18. Counterparts

- 18.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all counterparts taken together shall constitute one and the same Agreement. This Agreement may be executed by facsimile signature or other electronic transmission.

In witness whereof this Agreement has been duly executed.

SIGNED for and on behalf of the

[the Bidder]

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by:

WITNESS:

Signature

Name

Address

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Occupation