

# NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on \_\_\_\_\_ 2019

## BETWEEN:

- (1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** at 2 Marsham Street, London, SW1P 4DF (the "**Home Office**"), of the one part; and
- (2) **[a company incorporated in England and Wales]** whose address is at (the "**Company**") of the other part.

## WHEREAS:

- (A) The Authority intends to make such information available to the Recipient for the purpose of supporting the quality assurance of a 'should cost' model and assistance with the financial model development.

## THE PARTIES HEREBY AGREE AS FOLLOWS:

### Definitions and Interpretation

#### 1.1. "**Confidential Information**" means:

- (a) in respect of Information provided in documentary form or by way of a model or in other tangible form, Information which at the time of provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence; and
- (b) in respect of Information that is imparted orally, any Information that the Disclosing Party or its representatives informed the Recipient at the time of disclosure was imparted in confidence; and
- (c) in respect of Information imparted orally, any note or record of the disclosure; and
- (d) any copy of any of the foregoing; and
- (e) the fact that discussions are taking place between the parties,

without limiting the generality of the foregoing:

- (f) the "**Home Office Confidential Information**" includes the information provided as part of the 'should cost' model assurance and supporting the development of the financial model by the Company or its associated persons which is undertaken by the Home Office or its partners; and
- (g) the "**Company Confidential Information**" includes Confidential Information about the 'should cost' model and financial model development which information is required by the Home Office to carry out the relevant assurance and development activities.

- 1.2. “**Information**” shall include information provided directly or indirectly by one party (the “**Disclosing Party**”) to the other party (the “**Recipient**”) in oral or documentary form or by way of models or other tangible form or by demonstrations and whether before, on or after the date of this Agreement.

### **Company Obligations of Confidentiality and Non-Use**

2. In consideration of the Home Office disclosing or making available to the Company the Home Office Confidential Information, the Company hereby undertakes:
- (a) to keep confidential and not disclose to any third party any part, or the whole, of any Home Office Confidential Information disclosed to it under this Agreement;
  - (b) not to copy Home Office Confidential Information disclosed to it under this Agreement;
  - (c) not without the prior written permission of the Home Office to use Home Office Confidential Information disclosed to it under this Agreement other than for the Development Purpose;
  - (d) to restrict access to the Home Office Confidential Information disclosed to it under the terms of this Agreement to those of its employees and officers who need to know the same for the Development Purpose. At the written request of the Home Office, the Company shall procure that those Company employees each sign a confidentiality undertaking in terms reasonably specified by the Home Office;
  - (e) to respect and observe all other relevant restrictions relating to the Home Office Confidential Information;
  - (f) to treat the Home Office Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Recipient uses to maintain its own confidential or proprietary information;
  - (g) without limiting the forgoing, not to use the Home Office Confidential Information for any marketing or publicity purposes nor refer to the Home Office, the UK Government or its agencies or partners without the prior written permission of the Home Office; and
  - (h) where the Home Office Confidential Information displays classified or other restrictive markings (or, in the case of oral Information where this information is presented as being classified or the subject of restrictions), the Company further undertakes to keep such Home Office Confidential Information secure in accordance with the instructions given by the Home Office (or, if no specific instructions are given, in accordance with HMG Security Policy Framework available at <http://www.cabinetoffice.gov.uk/spf>).

### **Home Office Obligations of Confidentiality and Non-Use**

3. In consideration of the Company disclosing or making available to the Home Office the Company Confidential Information, the Home Office hereby undertakes:
- (a) not without the prior written permission of the Company to use Company Confidential Information disclosed to it under this Agreement other than for the Evaluation Purpose;
  - (b) to keep confidential and not disclose to any third party any part, or the whole, of any Company Confidential Information disclosed to it under this Agreement other than to NCA and other Crown bodies and Contracting Authorities (as defined in the Public Contracts Regulation 2015) as required for the Evaluation Purpose;
  - (d) to restrict access to the Company Confidential Information disclosed to it under the terms of this Agreement to those of its employees and officers who need to know the same for the Evaluation Purpose;
  - (e) to exercise reasonable endeavours to ensure that Contracting Authorities to which Company Confidential Information is disclosed are under an obligation of confidentiality providing at least equivalent protection to the obligations contained in this Agreement; and
  - (f) to treat the Company Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Home Office uses to maintain its own commercially confidential information.

### **Exceptions**

4. The obligations of confidentiality set out in this Agreement shall not apply to any Information which the Recipient can show by written records:
- (a) was known to the Recipient before the Information was imparted by the Disclosing Party, or
  - (b) is in or subsequently comes into, the public domain through no fault on the Recipient's part; or
  - (c) is received by the Recipient without restriction on disclosure or use from a third party lawfully entitled to make the disclosure to the Recipient without such restrictions; or
  - (d) is developed by any of the Recipient's employees who have not had any direct or indirect access to, or use or knowledge of, the Information imparted by the Disclosing Party; or
  - (e) the Recipient is required to disclose pursuant to any statute, law, regulation or code or pursuant to any order of any court of competent jurisdiction, provided that the Recipient shall advise the Disclosing Party

of the request for disclosure in sufficient time to allow the Disclosing Party to apply for such legal protection as may be available; or

- (f) without limiting clause 4(e), where the Recipient is the Home Office, any requirements for disclosure under the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time or the Environmental Information Regulations 2004.

#### **Official Secrets Act and the Finance Act**

- 5. Without prejudice to the other provisions of this Agreement, the Company acknowledges that working with the Home Office and/or its agencies may involve contact with information, documents and other articles:
  - (a) of a highly sensitive commercial nature;
  - (b) protected by the Official Secrets Acts 1911-1989; and/or
  - (c) protected by section 182 of the Finance Act 1989.**

and agrees that this will therefore require the highest standards of security and confidentiality to be maintained. Breach of the Official Secrets Acts and section 182 of the Finance Act 1989 is a criminal offence.

#### **No grant of Rights**

- 6. Nothing contained in this Agreement shall be construed, expressly or impliedly, as granting the Recipient any licence or other rights except as expressly stated in this Agreement.
- 7. Nothing contained in this Agreement shall be construed, expressly or impliedly, as constituting a warranty as to the accuracy of the Home Office Confidential Information, or the suitability thereof for any purpose whatsoever.
- 8. Nothing contained in this Agreement shall be construed, expressly or impliedly, as constituting any commitment on the part of the Home Office to undertake any development, evaluation or testing activities or to provide any Information to the Company (whether in relation to such development, evaluation or testing activities or otherwise).

#### **Return of Confidential Information**

- 9. All Home Office Confidential Information disclosed hereunder, and any copies thereof made by the Company, shall be and shall remain the property of the Home Office and shall be delivered up promptly by the Recipient to the Home Office on receipt of a written request therefor.

#### **Crown Property**

- 10. Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to the Confidential Information, the Company acknowledges that any Confidential Information obtained from or relating to the Crown, its servants or agents, is the property of the Crown.

## **Duration**

11. This Agreement shall be for the period of one (1) year from the date first before written. The obligations and restrictions relating to the disclosure and use of Confidential Information shall survive the termination of this Agreement for a period of ten (10) years.

## **Entire Agreement**

12. This Agreement constitutes the entire existing Agreement between the parties concerning the provision of the Home Office Confidential Information for the Development Purpose and the provision of the Company Confidential Information for the Evaluation Purpose. The Agreement shall not be amended except by written agreement signed by authorised representatives of both parties.

## **Assignment**

13. The Company shall not, without the express consent in writing of the Home Office, assign or in any manner transfer its interests in, or obligations under, this Agreement, or any part thereof.

## **Waiver**

14. If a party does not enforce a right available to it under this Agreement in any particular instance, then this will not prevent it from enforcing that right in future, or in any other instance.

## **Severability**

15. If any provision of this Agreement is held to be invalid or unenforceable by a judgement or decision of any court, the same shall be severed from the remainder of this Agreement, which shall remain valid and enforceable to the fullest extent permitted by law.

## **Contracts (Rights of Third Parties) Act 1999**

16. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

## **Law and Jurisdiction**

17. This Agreement shall be construed and governed in accordance with the laws of England and each party hereby submits to the exclusive jurisdiction of the English Courts.
18. Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

Signed for and on behalf of **the Secretary of State for the Home Department**

Signature: .....

Name: .....

Title: .....

Date: .....

Signed for and on behalf of **the Company**

Signature: .....

Name: .....

Title: .....

Date: .....