



Official Sensitive

Home Office

# **Modern Slavery Innovation Fund And Child Trafficking Protection Fund**

## **Non-Disclosure Agreement**

# NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made the XX day of XXXX 2016.

## BETWEEN

- (1) The Secretary Of State For The Home Department (the “Authority”); and
- (2) XXX [a company incorporated in England and Wales] whose registered office is situated in XXX (the “Recipient”).

## WHEREAS:

- (A) The Authority has possession of certain information relating to its operations under the Immigration Act and specifically to the Modern Slavery Innovation Fund (MSIF) and the Child Trafficking Protection Fund (CTPF).
- (B) The Authority intends to make such information available to the Recipient for the purpose of supporting the delivery of the MSIF/CTPF from its commencement until 31 March 2019.

## 1. Interpretation

- 1.1 “Agreement” means Clauses 1-19 of this Non-disclosure Agreement.
- 1.2 “Information” shall include information provided, in respect of the MSIF/CTPF, directly or indirectly by the Authority to 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.
- 1.3 “Confidential Information” means:
  - 1.3.1 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
  - 1.3.2 in respect of Information that is imparted orally, any information that the Authority or its representatives informed the Recipient at the time of disclosure was imparted in confidence; and
  - 1.3.3 in respect of Information imparted orally, any note or record of the disclosure; and
  - 1.3.4 any copy of any of the foregoing; and
  - 1.3.5 the fact that discussions are taking place between the Parties.
- 1.4 “Party” means a party to this Agreement, and “Parties” shall be construed accordingly.
- 1.5 “Purpose” means information for use in delivery of the MSIF/CTPF.

## 2. Disclosure

- 2.1 The Authority shall after the signing of this Non-disclosure Agreement, disclose the Confidential Information to the Recipient.

## 3. Undertakings of Recipient

- 3.1 In consideration of the Authority disclosing the Confidential Information to the Recipient, the Recipient hereby undertakes:
- 3.1.1 To use the Confidential Information solely and exclusively for the Purpose, and not to use the Confidential Information for any other purpose whatsoever;
  - 3.1.2 To maintain the confidentiality of the Confidential Information and not to disclose it directly or indirectly to any other company, organisation, individual or third party, save as permitted by Clause 4 (*Permitted Disclosures*); and
  - 3.1.3 At the request of the Authority, to return, delete or destroy all copies of the Confidential Information, in whatever form it is held, provided that the Recipient may retain one copy of the Confidential Information for the sole purpose of determining its obligations under this Non-disclosure Agreement but may make no further use of such Confidential Information whatsoever.
- 3.2 The Recipient agrees that all data, information and know-how acquired or otherwise derived or generated by it as a result of its evaluation of the Confidential Information shall belong to and shall be promptly furnished to the Authority, on request, and the provisions of Clause 3.1 and Clause 7 (*Confidentiality Measures*) shall apply to such data, information and know-how, except where the Authority agrees that information generated and held by the Recipient is commercially sensitive and likely prejudice the interests of the Recipient.

#### **4. Permitted Disclosures**

- 4.1 Notwithstanding Clause 3.1, the Recipient may disclose Confidential Information to its directors and employees and professional advisers including insurance advisors who need to know the Confidential Information in order to fulfil the Purpose, provided that the Recipient shall procure that prior to such disclosure each of those directors, employees, potential sub-contractors and professional advisers to whom Confidential Information is to be disclosed is made aware of the obligations of confidentiality and non-use herein contained and undertakes, in a manner legally enforceable by the Authority, to adhere to such terms of this Non-disclosure Agreement as if he or she were a party to it.
- 4.2 Nothing in Clause 3 (*Undertakings of the Recipient*) shall preclude disclosure of any Confidential Information required by any government or regulatory authority or parliamentary member or authority or court entitled by law to disclosure of the same, or which is required by law to be disclosed, provided that the Recipient promptly notifies the Authority when such requirement to disclose has arisen, to enable the Authority to seek an appropriate protective order and to make known to the said governmental or regulatory authority or court the proprietary nature of the Confidential Information and to make any applicable claim of confidentiality in respect thereof. The Recipient agrees to co-operate in any appropriate action which the Authority may decide to take. If the Recipient is advised to make a disclosure in accordance with this Clause 4 it shall only make a disclosure to the extent to which it is obliged.

#### **5. Exceptions**

- 5.1 The provisions of Clause 2 (*Undertakings of the Recipient*) shall not apply to any Confidential Information which the Recipient can demonstrate to the reasonable satisfaction of the Authority:
- 5.1.1 Was already in the possession of the Recipient and at the Recipient's free use and disposal or in the public domain (through, in each case, no fault of the Recipient or no breach of this Non-disclosure Agreement by the Recipient) prior to its disclosure by the Authority hereunder; or
  - 5.1.2 Comes into the public domain, otherwise than through the fault of the Recipient.

#### **6. Termination/Continuation in Effect**

- 6.1 The obligations set out in Clauses 3,4,5,7 and 8 of this Non-disclosure Agreement shall survive for a period of five years from the date upon which the disclosure of Confidential Information was made to the Recipient.

## **7. Confidentiality Measures**

- 7.1 To secure the confidentiality attaching to the Confidential Information, the Recipient agrees:
- 7.1.1 To keep separate all Confidential Information and all information which the Recipient generates based thereon from all other documents and records held by the Recipient; and
  - 7.1.2 To keep all documents and any other material bearing or incorporating any of the Confidential Information at the Recipient's own office(s); and
  - 7.1.3 Not to use, reproduce, transform or store any of the Confidential Information in any externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of the Recipient's usual place of business; and
  - 7.1.4 To make copies of the Confidential Information only to the extent that the same are strictly required for the Purpose; and
  - 7.1.5 To notify the Authority promptly of the date of, and the circumstances involved in, the loss or unauthorised disclosure, if any, of any documents, drawings, descriptions, writings or formulae comprised in, containing or relating to the Confidential Information.

## **8. Non-disclosure of discussions**

- 8.1 The Recipient shall not disclose to any third party either the fact that the disclosures contemplated in this Non-disclosure Agreement are taking place or have taken place or any of the terms, conditions or the status thereof at any time or any other facts in respect of a possible transaction between the Parties.

## **9. No grant of rights**

- 9.1 Nothing in this Non-disclosure Agreement shall be interpreted expressly or impliedly as granting the Recipient any licence or other rights, except as expressly set out in this Non-disclosure Agreement.

## **10. Partnership or Joint Venture excluded**

- 10.1 Nothing in this Non-disclosure Agreement and no action taken by the Parties pursuant to this Non-disclosure Agreement shall constitute a partnership or joint venture of any kind between the Parties.

## **11. Entire Agreement**

- 11.1 Each Party acknowledges that in entering into this Non-disclosure Agreement it places no reliance on any representation or warranty relating to the subject matter of this Non-disclosure Agreement.
- 11.2 This Non-disclosure Agreement represents the entire agreement between the Parties in relation to the subject matter of this Non-disclosure Agreement and supersedes any previous agreement whether written or oral between the Parties in relation to the subject matter. Accordingly, all other conditions, representations and warranties which would otherwise be implied (by law or otherwise) shall not form part of this Non-disclosure Agreement.

## **12. Damages**

- 12.1 The Recipient agrees that damages may not be an adequate remedy for breach of this Non-disclosure Agreement and accordingly the Authority shall be entitled to injunctive or other

equitable relief and no proof of special damages shall be necessary for the enforcement of this Non-disclosure Agreement.

**13. Variation and/or Amendments**

13.1 This Non-disclosure Agreement may only be varied or amended by agreement in writing signed by or on behalf of the Parties.

**14. Non-Assignment**

14.1 This Non-disclosure Agreement shall not be assigned nor any of the obligations hereunder transferred (nor the performance of any obligations hereunder sub-contracted) by the Recipient except with the prior written consent of the Authority.

**15. Waiver**

15.1 If a Party does not enforce a right available to it under this Non-disclosure Agreement in any particular instance, then this will not prevent it from enforcing that right in future, or in any other instance.

**16. Severability**

16.1 If any provision of this Non-disclosure 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 Non-disclosure Agreement, which shall remain valid and enforceable to the fullest extent permitted by law.

**17. Contracts (Rights of Third Parties) Act 1999**

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

**18. Law and Jurisdiction**

18.1 This Non-disclosure Agreement shall be governed by and construed in accordance with English Law. Each party hereby submits to the exclusive jurisdiction of the English Courts.

**19. Crown Property**

19.1 Without prejudice to the application of the Official Secret Acts 1911 to 1989 to the Confidential Information, the Recipient acknowledges that any Confidential Information obtained from or relating to the Crown, its servants or agents, is the property of Crown.

In witness whereof this Non-disclosure Agreement has been entered into the day and year first above written.

Signed for and on behalf of The Authority:

Signed for and on behalf of the Recipient:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_