

# NDA5 - PRECEDENT ONE-WAY NON-DISCLOSURE CONTRACT NOT A DEED

## SECTION A

This Contract is dated

2018

### Parties

- (1) **UK Research and Innovation (UKRI), Polaris House, Swindon, SN2 1FL & Medical Research Council (MRC), Harwell Campus, Oxfordshire, OX11 0RD (The Contracting Authority) (Party 1).**
- (2) **[Enter the Legal name and registered office address of the Recipient] (Party 2).**



Individually a "Party" or together the "Parties"

### Background

The parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information (as defined below).

### Agreed terms

#### A1 Definitions

A1-1 The definitions in this clause apply in this Contract.

**Associated Bodies:** the person(s) or firm(s) specified in the list entitled "Associated Bodies" which is published on UK SBS's website (at <http://www.uksbs.co.uk/services/procure/contracts/Pages/default.aspx>), as updated from time to time.

**Authorised Entities:** the person(s) or firm(s) specified in the list entitled "Authorised Entities" which is published on UK SBS's website (at <http://www.uksbs.co.uk/services/procure/contracts/Pages/default.aspx>), as updated from time to time.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed or made available, directly or indirectly, by the Disclosing Party or its Representatives (as defined below) to the Recipient and /or its Representatives, whether before or after the date of this Contract, including (but not limited to) any information relating to

- (a) the fact that discussions and negotiations are taking place between the parties in relation to the Purpose and the status of those discussions and negotiations;
- (b) the existence and terms of this Contract;
- (c) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or its Representatives; and
  - (ii) the operations, processes, product information, know-how, designs,

trade secrets or other intellectual property of the Disclosing Party or its Representatives,

but not including any information that:

- (a) is already in, or enters, the public domain (other than as a result of its disclosure by the Recipient or its Representatives in breach of this Contract), (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
- (b) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party and / or its Representatives as evidenced by written records; or
- (c) the Disclosing Party agrees in writing is not confidential or may be disclosed.

**Contract:** this Legally binding document, that is formed and exists once signed between both Parties named within this document, who both willingly enter into this Contract voluntarily.

**Disclosing Party:** is The Contracting Authority and / or its Representatives who disclose Confidential Information to the Recipient.

**FOIA:** the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Purpose:** The Contracting Authority requires a Non-Disclosure agreement to allow the transfer of site specific security specifications and KPIs. These documents contain all information relating to the roles and responsibilities of security officers whilst on site.

**Recipient:** is the Party named in the Parties section **Party 2**, who receives the Confidential Information from the Disclosing Party, either prior to or post award of any associated Contract to provide Services / Supplies or Works or a mixture of any of these known outcomes to the Contracting Authority.

**Representatives:** in the case of each Party, the employees, agents and other representatives of that Party and, in the case of the Disclosing Party only, shall also include, without limitation, The Contracting Authority, Associated Bodies and Authorised Entities and their respective employees, agents and other representatives.

**Research Councils:** the Arts and Humanities Research Council, the Biotechnology and Biological Sciences Research Council, the Engineering and Physical Sciences Research Council, the Economic and Social Research Council, the Medical Research Council, the Natural Environment Research Council, the Science and Technology Facilities Council and any replacement or successor organisations to any of those bodies from time to time.

## **A2 Term and termination**

- A2-1 This Contract has full force and effect between the parties from the date on which it is signed by both parties and the obligations of each party shall, notwithstanding any earlier termination of negotiations or discussions between the parties, continue in force unless and until all of the Confidential Information ceases to be confidential, other than as a result of its disclosure by the Recipient or its Representatives in breach of this Contract or as a result of any other unlawful disclosure.

## **SECTION B**

### **B1 Obligations of the Recipient**

- B1-1 The Recipient shall, and shall use all reasonable endeavours to procure that its Representatives shall, keep confidential all Confidential Information and, except with the prior written consent of the Disclosing Party, shall not, and shall use all reasonable endeavours to procure that its Representatives shall not:
- B1-1-1 use or exploit the Confidential Information in any way except for the Purpose; or
  - B1-1-2 subject to clause C1-3, disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Contract; or
  - B1-1-3 copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose.
- B1-2 The Recipient may only disclose the Confidential Information to those of its Representatives who need to know this Confidential Information for the Purpose, provided that:
- B1-2-1 it informs those Representatives of the confidential nature of the Confidential Information before disclosure and shall obtain from its Representatives enforceable undertakings to keep the Confidential Information confidential in terms at least as extensive and binding upon the Representatives as the terms of this Contract are upon the Recipient; and
  - B1-2-2 at all times, it is responsible for those Representatives' compliance with the obligations set out in this Contract.
- B1-3 The Recipient may disclose Confidential Information only to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction, provided that, to the extent the Recipient is legally permitted to do so, it gives the Disclosing Party as much written notice of such disclosure as possible and it takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.

### **B2 Return of information**

- B2-1 At the request of the Disclosing Party, the Recipient shall promptly:
- B2-1-1 return to the Disclosing Party or its Representatives all documents and materials (and any copies), whether in hard copy or soft copy format, containing, reflecting, incorporating, or based on the Confidential Information;
  - B2-1-2 irrevocably erase all the Confidential Information from its computer systems; and use best endeavours to erase all confidential information from its computer backup systems
  - B2-1-3 certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Confidential Information to the extent required by law, or any applicable governmental or regulatory authority, and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this Contract. The provisions of this clause shall continue to apply to any such documents and materials retained by the Recipient, subject to clause A2.

- B2-2 If the Recipient develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Confidential Information, the Recipient shall, at the written request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Confidential Information has not been used or disclosed in order to develop or use that product or process.

### **B3 Reservation of rights and acknowledgement**

- B3-1 The Disclosing Party and / or its Representatives reserves all rights in its Confidential Information and this Contract does not:
- B3-1-1 grant the Recipient any rights in respect of the Confidential information other than as expressly set out in clause B1 of this Contract; nor
- B3-1-2 require the Disclosing Party to disclose any Confidential Information to the Recipient.
- B3-2 Except as expressly stated in this Contract, the Disclosing Party does not make any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.
- B3-3 The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further Contract or Agreement with the Recipient.
- B3-4 The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Contract. Without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Contract.
- B3-5 The Recipient shall be liable to the Disclosing Party for the actions or omissions of the Recipient's Representatives under this Contract, as if they were the actions or omissions of the Recipient.

### **B4 Indemnity**

- B4-1 The Recipient shall indemnify, and keep fully indemnified, the Disclosing Party 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 costs and expenses suffered or incurred by the Disclosing Party arising from any breach of this Contract by the Recipient and from the actions or omissions of any Representative of the Recipient.

## **SECTION C**

### **C1 Transparency**

- C1-1 The Recipient acknowledges that the United Kingdom Government's transparency agenda requires that Contracts, and any sourcing document, such as the invitation to sourcing, are published on a designated, publicly searchable web site.
- C1-2 The Recipient acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not Confidential Information. The Contracting Authority and / or its Representatives shall be responsible for determining in their absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA.

- C1-3 Notwithstanding any other term of this Contract, the Recipient hereby consents to The Contracting Authority and / or its Representatives publishing this Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to this Contract , to the general public.

## **C2 General provisions**

### **C2-1 Entire Agreement.**

C2-1-1 This Contract constitutes the entire Agreement between the Disclosing Party and Recipient in relation to the subject matter hereof.

### **C2-2 Further assurance.**

C2-2-1 Each party shall promptly, at the other party's request, do (or procure to be done) all such further acts and things, including the execution of all such other documents, as the other party may from time to time require for the purpose of giving full effect to and securing for the other party the full benefit of this Contract.

### **C2-3 Publicity**

C2-3-1 The Recipient shall not make any press announcements or publicise this Contract in any way without The Contracting Authority and / or its Representatives' prior written consent.

C2-3-2 The Contracting Authority and / or its Representatives shall be entitled to publicise this Contract in accordance with any legal obligation upon The Contracting Authority and / or its Representatives, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

C2-3-3 The Recipient shall not do anything or cause anything to be done, which may damage the reputation of The Contracting Authority and / or its Representatives, or bring The Contracting Authority and / or its Representatives into disrepute.

### **C2-4 Notices.**

C2-4-1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to:

C2-4-1-a in the case of **Party 2 - Recipient:** **[Enter the Legal name and registered office address of the Recipient]**



or any other address which that party may have specified to the other party in writing in accordance with this clause C2-4, and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, or commercial courier..

C2-4-2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause C2-4-1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed..

C2-4-3 The provisions of this clause C2-4 shall not apply to the service of any proceedings or other documents in any legal action.

C2-4-4 Party 2 irrevocably appoints and authorises [NAME] of [ADDRESS] (or such other person, being a firm of [solicitors] resident in England, as Party 2 may by notice substitute) to accept service on behalf of Party 2 of all legal process and service on [NAME] (or any such substitute) shall be deemed to be service on Party 2.



**C2-5 Severance.**

C2-5-1 If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.

C2-5-2 If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**C2-6 Waiver.** A waiver of any right or remedy under this Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**C2-7 Third party rights.** A person who is not a party to this Contract shall not have any rights under or in connection with it, except that The Contracting Authority and any member of The Contracting Authority, Associated Bodies or Authorised Entities that derives benefit under this Contract may directly enforce or rely on any terms of this Contract .

**C2-8 Variation.** Any variation to this Contract shall only be binding when agreed in writing by or on behalf of both parties.

**C2-9 Counterparts.** This Contract may be signed in counterparts, each of which, when signed and witnessed, shall be an original and both of which together evidence the same existence of the Contract.

**C2-10 Governing law and jurisdiction.**

C2-10-1 Subject to clause C2-10-2, this Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

C2-10-2 The Disclosing Party shall be free to enforce its intellectual property rights in any jurisdiction.

This Contract has been entered into on the date stated at the beginning of it.

Signed for and on behalf of The Contracting Authority (Disclosing Party) (Party 1)

Name (Print).....

<p>Signature.....</p> <p>Witnessed by</p> <p>Name (Print).....</p> <p>Signature.....</p>
<p>Signed for and on behalf of the Recipient (Party 2)</p> <p>Name (Print).....</p> <p>Signature.....</p> <p>Witnessed by</p> <p>Name (Print).....</p> <p>Signature.....</p>

**THIS IS THE LAST PAGE OF THESE TERMS & CONDITIONS**

← **Place cursor here.** When deleting before publishing, select all text from beginning of this paragraph to end of document Shift + ctrl + end and then press delete

**SECTION D ( NOTE : Delete this section before sending this is for UKSBS internal use and guidance only )**

Clause	Note
Introduction	This document is not drafted as a Deed. If The Contracting Authority is not being provided any benefit or suffering any detriment in return for the services, you should consider execution as a Deed. A deed requires that certain important formalities are met, including signature (see the signature clause).
Confidential Information Definition	A Recipient may attempt to reduce the scope of Confidential Information by requiring that anything to be covered by the Contract be marked 'confidential'. This should not be agreed due to the potential to inadvertently fail to mark a document confidential.
Disclosing Party Definition	This has been drafted as a one-way confidentiality Contract and should not be used if intended to be reciprocal
Recipient Definition	This has been drafted as a one-way confidentiality Contract and should not be used if intended to be reciprocal
A2-4	A Recipient may attempt to incorporate a notice period for termination and / or a



time limit on the obligations of confidentiality after termination. This should be resisted unless the time period after termination is sufficiently long to protect the information. This is particularly important when very sensitive information, such as patents or research, is being disclosed

- B1-1 This clause is an absolute obligation meaning that it 'must in all circumstances perform the obligation'. A Recipient may ask for a less strict form of words where the Recipient agrees to take "all reasonable endeavours" to ensure non-disclosure but this should be resisted.
- B2-1-2 Where it is imperative that the information is so sensitive that it will also need to be removed from backup systems replace B2-1-2 with "irrevocably erase all the Confidential Information from its computer systems"
- B3-5 A Recipient may seek to remove this clause but it should be resisted in order to make enforcement easier.
- B4-1 The other side may attempt to limit their liability under the indemnity. This should be resisted as the potential liability is unknown and could be extensive.
- C2-2-1 The parties may prefer to make this clause subject to an element of reasonableness. This effectively limits the requirement to what an objective person would reasonably do.
- C2-4-1-a In each case, please complete relevant contact details.
- C2-4-4 If a party is located outside of the England, it may be appropriate to appoint an agent for service within England.
- C2-7 A Recipient may attempt to exclude third party rights. This should be resisted as the right of each member of The Contracting Authority to enforce the Contract is vital to the protection of information. A Recipient may attempt to add their own third parties to the clause. This should also be resisted.
- C2-10-2 Clause C2-10-2 is included to cover the possible scenario where the Recipient uses The Contracting Authority's or Associated Bodies' or Authorised Entities' IPR outside the UK and we wish to take action in relation to such unauthorised use (as IP rights are territorial, and action to enforce them will in all likelihood need to be taken in the country in which infringement occurs) .
- If the Recipient objects to this clause and you consider that the risk of needing to enforce IPR overseas is low, you may be happy to delete it. If you delete C2-10-2, you will also need to delete the introductory wording "subject to clause C2-10-2" at the start of C2-10-1.
- Signature Clause The authority of the individuals intending to sign the Contract should always be verified. The other party should be required to provide proof that the individuals are Directors and this may take the form of an annual return filed by the

company.