**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**THIS AGREEMENT** is made on 19th December 2023 **BETWEEN**:

1. **United Kingdom Research and Innovation** whose head offices are at Polaris House, North Star Avenue, Swindon SN2 1SZ, (“**UKRI**”); and

1. **XXXXXXX** a company whose principal office is at XXXXXXXXXXXXXXX (each a “**Party**” and together the “**Parties**”).

**BACKGROUND**

The Parties wish to disclose and receive from each other certain Confidential Information in relation to the Purpose and have agreed to comply with the terms of this Agreement.

**Agreed terms**

1.           **DEFINITIONS AND INTERPRETATION**

1.1.      In this Agreement the following expressions shall have the following meanings:

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| **“Affiliate”** | in relation to a Party, any subsidiary, subsidiary undertaking or holding company of the Party, and any subsidiary or subsidiary undertaking of any such holding company for the time being (**subsidiary** and **holding company** as defined in section 1159 of the Companies Act 2006).   |
| “**Confidential Information**” | all information (however recorded, preserved or disclosed) disclosed by one Party (the **Disclosing Party**) or its Affiliates or Representatives at any time directly or indirectly to the other Party (the **Recipient**) or its Affiliates or Representatives in connection with the Purpose that would be regarded as confidential by a reasonable business person, including without limitation: i) information relating to the business, affairs, customers, clients, suppliers, plans, intentions, market opportunities, operations, processes, product information, Intellectual Property Rights or software of the Disclosing Party or its Affiliates; ii) any information or analysis derived from such information; and iii) the fact and status of the discussions between the Parties concerning the Purpose.  |
| **“Effective Date”** | 19th December 2023.  |
| **“Purpose”** | The Science and Technology Facilities Council (STFC) Our Redesign and Implementation of our Network (ORION) Integrator project  |
| **“Representatives”** | employees, agents and other representatives of a Party.  |

1.2.      A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.

1.3.      Any obligation in this agreement on a Party not to do something includes an obligation not to agree or allow that thing to be done (including without limitation by the Party’s Representatives) and any obligation on a Party to do something includes an obligation to procure that such thing is done.

2.           **OBLIGATIONS OF CONFIDENTIALITY**

2.1.      In return for the Disclosing Party making Confidential Information available to the Recipient, the Recipient shall keep the Confidential Information confidential and shall:

2.1.1.   not use or exploit the Confidential Information in any way except for the Purpose;

2.1.2.   not directly or indirectly disclose or make available the Confidential Information in whole or in part to any person, except as expressly permitted by this Agreement;

2.1.3.   not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the Confidential Information of the Disclosing Party;

2.1.4.   take reasonable security measures to prevent the unauthorised disclosure of the Confidential Information to any third party (which measures shall in any event be no less than the precautions taken by the Recipient to preserve its own proprietary information);

2.1.5.   not file any patent application covering, referencing or claiming any of the Confidential Information or use the Confidential Information to challenge, oppose or otherwise seek to invalidate (whether directly or indirectly) any patent or patent application owned or controlled by the Disclosing Party or its Affiliates;

2.1.6.   inform the Disclosing Party as soon as reasonably practicable if it becomes aware of the use or knowledge of any of the Confidential Information by an unauthorised person, and provide such assistance as the Disclosing Party may reasonably require in relation to that unauthorised use or knowledge.

2.2.      The obligations in clause 2.1 shall not apply to Confidential Information which the Recipient can demonstrate:

2.2.1.   is, or becomes, generally available to the public other than as a result of the information being disclosed by the Recipient or its Representatives in breach of this Agreement;

2.2.2.   was available to or in the possession of the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party;

2.2.3.   was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not under any confidentiality obligation in respect of that information;

2.2.4.   is developed by or for the Recipient independently of the information disclosed by the Disclosing Party;

2.3.      The Recipient may only disclose the Disclosing Party's Confidential Information to those of its Representatives and/or Affiliates who need to know the Confidential Information for the Purpose, provided that:

2.3.1.   it informs such Representatives and/or Affiliates of the confidential nature of the Confidential Information before disclosure and has in place with them written obligations of confidentiality materially equivalent in effect to those set out in this Agreement; and

2.3.2.   at all times, it is responsible for its Representatives' and/or Affiliates compliance with the obligations set out in this Agreement.

2.4.      The Recipient may disclose Confidential Information to the minimum extent required by:

2.4.1.   any law or regulation (provided, in the case of a disclosure required under the Freedom of Information Act 2000 or Environmental Information Regulations 2004, none of the exceptions within such Act or Regulations applies to the information disclosed), any governmental or other regulatory authority, or a court or other authority of competent jurisdiction; or

2.4.2.   any funding bodies, to the extent the Recipient has identified the likely need to disclose Confidential Information to such funding body prior to entering into this Agreement;

provided that it informs the party to whom such disclosure is made of the confidential nature of the information disclosed and, to the extent it is legally permitted to do so, it gives the other Party as much notice of this disclosure as possible and, where notice of disclosure is possible, it takes into account the reasonable requests of the other Party in relation to the content of this disclosure.

2.5.      A Party shall not make any public announcement concerning this Agreement, the Purpose or its prospective interest in the Purpose without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or by any court or other authority of competent jurisdiction. A Party shall not make use of the other Party's name or any information acquired through its dealings with the other Party for publicity or marketing purposes without the other Party’s prior written consent.

3.           **RETURN OF INFORMATION**

3.1.      At the written request of the Disclosing Party, the Recipient shall:

3.1.1.   destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Confidential Information;

3.1.2.   erase all the Confidential Information from its computer and communication systems and devices used by it, or which is stored in electronic form (to the extent possible); and

3.1.3.   certify in writing to the Disclosing Party that it has complied with the requirements of this clause 3.1,

provided that the Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's 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 agreement. The Recipient will not be obliged to retrieve and delete Confidential Information from any form of archive which will in any event be automatically overwritten within a reasonable period of time.

3.2.      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 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.

4.           **RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT**

4.1.      All Confidential Information shall remain the property of the Disclosing Party, which reserves all rights (including intellectual property rights) in its Confidential Information. No licences in respect of a Party's Confidential Information are granted to the other Party except as expressly stated in this agreement.

4.2.      Except as expressly stated in this agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.

4.3.      The disclosure of Confidential Information by the Disclosing Party shall not form any offer by the Disclosing Party to enter into any further agreement in relation to the Purpose or the development or supply of any product or service to which the Confidential Information relates.

4.4.      The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this agreement. Accordingly, without limiting its other rights and remedies, 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 agreement.

5.           **TERM AND TERMINATION**

5.1.      This Agreement shall come into force on the Effective Date and shall continue until the earlier of:

5.1.1.   the date on which a Party terminates this Agreement by no less than thirty (30) days’ written notice to the other of termination;

5.1.2.   the date on which the Parties mutually agree in writing to cease discussions regarding the Purpose; or

5.1.3.   if the Parties agree to collaborate and pursue the Purpose, the date on which such collaboration is complete.

5.2.      The obligations of confidentiality and non-disclosure of each Party set out in clause 2 shall continue after the termination of this Agreement for 10 years.

5.3.      Termination of this Agreement shall not affect any accrued rights or remedies to which a Party is entitled

 5.4.      The Parties acknowledge that this Agreement is entered into in anticipation of their entering into an agreement in relation to the Purpose which will contain its own confidentiality provisions in relation to the Confidential Information and which will, once agreed, supersede this Agreement.

6.           **GENERAL**

6.1.      This Agreement constitutes the whole agreement between the Parties and supersedes and extinguishes all previous agreements, representations and understandings between the Parties relating to its subject matter.

6.2.      Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

6.3.      No variation of this Agreement shall be effective unless it is in writing and signed by each of the Parties (or their authorised representatives).

6.4.      A waiver of any right or remedy in connection with this Agreement is only effective if in writing and shall not affect any other right or remedy.

6.5.      Except as otherwise provided in this agreement, no Party may assign, sub-contract or deal in any way with, any of its rights or obligations under this agreement or any document referred to in it.

6.6.      If any part of the Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement will not be affected.

6.7.      Nothing in this Agreement creates any partnership or joint venture between the Parties or relationship between them of principal and agent.

6.8.      A person who is not a party to this Agreement shall not have any rights under or in connection with it.

6.9.      This Agreement 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 the law of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales, except that a Party may bring proceedings for an injunction in any jurisdiction.

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| **SIGNED for and on behalf of United Kingdom Research and Innovation**   Name: Position: Signature: |
| **SIGNED** **for and on behalf of:**   Name: Position: Signature: |