



Government
Legal Department

DEPARTMENT FOR WORK AND PENSIONS

and

HQI LTD

**NON DISCLOSURE AGREEMENT
(MUTUAL)**

THIS AGREEMENT is made on 26th February 2020 (the “**Agreement**”)

BETWEEN:

- (1) **DEPARTMENT FOR WORK AND PENSIONS**, [acting on behalf of the Crown] of REDACTED (“**Authority**”); and
- (2) **HQI LTD**, a company registered in England and Wales under registered number REDACTED whose registered office is at REDACTED (the “**Organisation**”)

together the “**Parties**”

BACKGROUND:

A Each Party wishes to receive Confidential Information from the other for the Provision of Consultancy to deliver a Strategic Business Plan for the DWP Commercial Directorate (the “**Permitted Purpose**”).

IT IS AGREED:

1 INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act provided by the Authority pursuant to or in anticipation of this Agreement and/or in connection with the Permitted Purpose that relates to:
 - (i) the Disclosing Party;
 - (ii) the Disclosing Party’s Group; or
 - (iii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party or the Disclosing Party’s Group;
- (b) other Information: (i) provided by the Disclosing Party or the Disclosing Party’s Group to the Receiving Party pursuant to or in anticipation of this Agreement and/or in connection with the Permitted Purpose (whether before or after the date of this Agreement) or (ii) that ought reasonably to be considered to be confidential which comes (or has come) to the Receiving Party’s attention or into the Receiving Party’s possession in connection with the Permitted Purpose;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or the Disclosing Party’s Group and/or any of its directors, officers, employees, consultants or professional advisers and the Receiving Party and/or any of their employees,

consultants and/or professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

- (d) Information or analysis derived from any of the above,

but not including any Information that:

- (i) was in the possession of the Receiving Party without obligation of confidentiality prior to its disclosure by the Disclosing Party or the Disclosing Party's Group;
- (ii) the Receiving Party obtained on a non-confidential basis from a third party who is not, to the Receiving Party's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or any member of the Disclosing Party's Group or otherwise prohibited from disclosing the information to the Receiving Party;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (iv) the Receiving Party evidences to the reasonable satisfaction of the Authority was independently developed without access to the Confidential Information;

“Data Protection Act”

means the Data Protection Act 2018 and the General Data Protection Regulations (EU) 2016/679 (together with any Act of Parliament which implements EU data protection legislation into domestic law) as amended, updated or replaced from time to time;

“Disclosing Party”

means a Party that directly or indirectly discloses or makes available Confidential Information;

“Disclosing Party's Group”

means, where the Disclosing Party's Group is:

- a) the Organisation, any of its affiliated companies; and
- b) the Authority, any Government Body and any affiliate of either.

Environmental Information Regulations

means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Government Body in relation to these Regulations;

Freedom of Information Act or FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Government Body in relation to this Act;
“Government Body”	means any department, office or agency of the Crown together with its arms length bodies;
“Information”	means all information of whatever nature, however conveyed and in whatever form, including (but not limited to) in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Information Return Notice”	has the meaning given to it in Clause 5.1;
“Permitted Purpose”	has the meaning given to it in the recital to this Agreement;
“Receiving Party”	means a Party to this Agreement which receives Confidential Information, directly or indirectly from the other Party;
“Representatives”	means employees, officers, agents, and/or advisers of the Authority or the Organisation;
“Specified Scope”	has the meaning given to it in Clause 5.1; and
“Working Day”	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

1.2 In this Agreement:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 the expressions "subsidiary", "holding company" and "subsidiary undertaking" shall have the meanings given to them in the Companies Act 2006;
- 1.2.6 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.7 references to Clauses are to clauses of this Agreement.

2 Confidentiality obligations

- 2.1 In consideration of the benefits to the Parties of the disclosure of the Confidential Information, each Party wishes to disclose Confidential Information to the other solely for the Permitted Purpose upon the mutual obligations of confidentiality and such other terms and stipulations, as are set out in this Agreement.
- 2.2 A Receiving Party shall:
 - 2.2.1 treat all Confidential Information as secret and confidential;
 - 2.2.2 have in place and maintain proper security measures and procedures which shall be at least as stringent as the measures and procedures it applies to its own confidential and proprietary information to protect the confidentiality of the Confidential Information (having regard to its form and nature);
 - 2.2.3 not disclose or permit the disclosure of, nor otherwise make available, any of the Confidential Information in whole or in part to any other person without obtaining prior written consent from the Disclosing Party (which the Disclosing Party shall have the express right to grant or deny) or except as expressly set out in this Agreement;
 - 2.2.4 not transfer any of the Confidential Information outside the United Kingdom;
 - 2.2.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
 - 2.2.6 not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Permitted Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Party);
 - 2.2.7 keep a written record of any document or other Confidential Information received from the other in tangible form, and of any copy made of the Confidential Information, and make the same available to the Disclosing Party promptly upon request; and
 - 2.2.8 immediately notify the Disclosing Party in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information.

3 Permitted Disclosures

- 3.1 The Receiving Party shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Receiving Party.
- 3.2 the Receiving Party may only disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know the Confidential Information for the Permitted Purpose, provided that:
 - 3.2.1 it informs these Representatives of the confidential nature of the Confidential Information before disclosure and obtains 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 agreement are upon the parties; and

- 3.2.2 at all times, it is responsible and liable for these Representatives' compliance with the obligations set out in this agreement.
- 3.3 Before making a disclosure pursuant to Clause 3.1 (or Clause 3.2 in the case of the Authority), the Receiving Party shall at the earliest opportunity and, to the extent that is legally permitted to do so:
 - 3.3.1 notify the Disclosing Party in writing of the proposed disclosure; and
 - 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.
- 3.4 Where notice of disclosure under 3:
 - 3.4.1 is legally permitted, the Receiving Party shall take into account the reasonable requests of the Disclosing Party in relation to the proposed disclosure; or
 - 3.4.2 is prohibited, the Receiving Party shall notify the Disclosing Party of the disclosure as soon as possible following the disclosure when it is legally able to do so.

4 Authority rights and obligations

- 4.1 The Organisation acknowledges and agrees that:
 - 4.1.1 the Authority may be subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2006 and shall assist and cooperate with the Authority to enable the Authority to comply with any Information disclosure obligations;
 - 4.1.2 the Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any Confidential Information or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
 - 4.1.3 in no event shall the Organisation respond directly to a Request for Information unless expressly authorised to do so by the Authority;
 - 4.1.4 The Organisation acknowledges that the Authority may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose the Confidential Information
 - (i) in certain circumstances without consulting the Organisation; or
 - (ii) following consultation with the Organisation and having taken its views into account;provided always that where this Clause 4.1.4 (Authority rights and obligations) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Organisation advance notice, or failing that, to draw the disclosure to the Organisation's attention after any such disclosure; and

- 4.1.5 the Authority may disclose any of the Confidential Information to another Government Body provided that the Authority informs the recipient Government Body of the confidential nature of the Confidential Information.

5 Return of Information and surviving obligations

- 5.1 The Disclosing Party may serve a notice (an “**Information Return Notice**”) on the Receiving Party at any time under this Clause 5.1. An Information Return Notice must specify whether it relates to (i) all Confidential Information provided by the Disclosing Party which is protected by this Agreement or (ii) only specified Information or categories of Confidential Information so protected (in either case, the “**Specified Scope**”). On receipt of an Information Return Notice, the Receiving Party shall:
- 5.1.1 at the Disclosing Party’s option, securely destroy or return and provide to the Disclosing Party documents and other tangible materials that contain any of the Confidential Information within the Specified Scope, including in any case all copies of the relevant documents and other materials made by the Receiving Party;
- 5.1.2 ensure, so far as reasonably practicable, that all Confidential Information within the Specified Scope that is held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device containing such Confidential Information; and
- 5.1.3 make no further use of any Confidential Information which falls within the Specified Scope.
- 5.2 Following any destruction or return of Confidential Information to the Disclosing Party pursuant to Clause 5.1, the Receiving Party’s remaining obligations under this Agreement (including in relation to any Confidential Information which falls outside the Specified Scope) shall otherwise continue in force until such time as the Confidential Information ceases to be confidential.

6 ASSIGNMENT AND NOVATION

- 6.1 Subject to Clause 6.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 6.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- 6.2.1 any Government Body; or
- 6.2.2 to a body other than a Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
- 6.2.3 the Organisation shall, at the Authority’s request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 6.
- 6.3 A change in the legal status of the Authority such that it ceases to be a Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

7 General

- 7.1 All Confidential Information shall remain the property of the Disclosing Party. Each Party reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of a Party's Confidential Information are granted to the other party and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement.
- 7.2 [The Organisation warrants that all the information it submits to the Authority in respect of this Agreement and/or otherwise pursuant to the Permitted Purpose:
- 7.2.1 is and shall remain at all relevant times true, accurate and not misleading;
 - 7.2.2 has been verified as being true, accurate and not misleading by the Organisation; and
 - 7.2.3 the Organisation acknowledges and further warrants that, in the event that the Authority awards a contract to the Organisation further to this [any ITT process connected to the Purpose] and/or otherwise pursuant to the Purpose, the Authority may rely upon such information submitted to it and on the warranties provided under Clause [7.2] in entering into such contract].
- 7.3 Each Disclosing Party warrants that it has the right to disclose its Confidential Information to the Receiving Party and to authorise the Receiving Party to use such Confidential Information for the Purpose.
- 7.4 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- 7.4.1 to grant the Receiving Party any licence or rights other than as may be expressly stated in this Agreement;
 - 7.4.2 to require the Authority to disclose, continue disclosing or update any Confidential Information; or
 - 7.4.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 7.5 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 7.6 Without prejudice to any other rights or remedies that either Party may have, each Party acknowledges and agrees that damages alone may not be an adequate remedy for any breach by a Receiving Party of the provisions of this Agreement. Accordingly, each Party acknowledges that the Authority shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 7.7 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

7.8 Each Party will be responsible for all costs incurred by it or on its behalf in connection with this Agreement.

8 ENTIRE AGREEMENT

8.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

8.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

8.3 Nothing in this Clause [8] shall exclude any liability in respect of misrepresentations made fraudulently].

9 THIRD PARTY RIGHTS

9.1 Save for Clauses 4.1 and 6.2 a person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

10 NOTICES

10.1 Any notices sent under this Agreement must be in writing.

10.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

	Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	
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10.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Organisation	Authority
Contact	REDACTED	REDACTED
Address	REDACTED	REDACTED
Email	REDACTED	REDACTED

10.4 This Clause 10 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

11 WAIVER AND CUMULATIVE REMEDIES

11.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.2 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.

12 GOVERNING LAW AND JURISDICTION

12.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

12.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Signed by the
Organisation

Name:

Signature:

Position in Organisation: