**NON-DISCLOSURE AGREEMENT**

[THIS NDA MUST BE COMPLETED BEFORE THE SUPPLIER IS GRANTED ACCESS TO THE PROCUREMENT DOCUMENTS FOR THIS TENDER]

**This Agreement is dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Between**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company incorporated and registered in England and Wales with company number whose registered office is at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Company number \_\_\_\_\_\_\_\_\_\_\_\_\_) (“**Supplier**”)

**And**

**The Mayor and Commonalty and Citizens of the City of London**, the City of London Corporation PO Box 20, Guildhall, London EC2P 2EJ (“**CoLC**”)

**Agreed Terms**

# Definitions and Interpretation

## The following definitions and rules of interpretation in this clause apply in this Agreement:

Agreement: means these terms and conditions relating to the disclosure of Classified Information and/or Confidential Information as set out in this agreement.

Business Day**:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Classified Information: any information, document, material or knowledge that can be communicated in any form to which a security classification has been applied and which has been marked accordingly under all applicable English laws and regulations.

Confidential Information**:** any and all confidential information and knowhow of COLC (however recorded, preserved or disclosed) disclosed by COLC to the Supplier or to the Supplier’s Representatives including but not limited to:

### the Procurement documents;

### the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;

### the existence and terms of this Agreement;

### any information that would be regarded as confidential by a reasonable business person relating to:

#### the plans, strategy or intentions of COLC; and

#### the operations, processes, specification and application (both actual and potential), financial documents, process information or data samples, know-how, drawings or designs, trade secrets or software of COLC;

### any information or analysis derived from Confidential Information;

### any Classified Information;

but not including any information that:

### is or becomes generally available to the public other than as a result of its disclosure by the Supplier or its Representatives in breach of this Agreement or of any other undertaking of confidentiality given by the Supplier (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or

### was lawfully in the possession of the Supplier without any obligation of confidentiality before the information was disclosed to it by COLC;

### COLC has agreed in writing is not confidential or may be disclosed; or

### COLC provides express notice to the Supplier that such Confidential Information is no longer to be treated as confidential under this Agreement.

Intellectual Property Rights: all copyright, database rights, topography rights, design rights, trade marks, trade names, utility models, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) and shall include any and all background and foreground intellectual property of any nature whatsoever.

Party/Parties: either or both of the parties to this Agreement and, as the context requires or permits, including their respective Representatives.

Procured Services: the Fraud and Cyber Crime Reporting & Analysis Service competitive tendering project procured via the Competitive with Negotiation procedure (as defined in the Public Contract Regulations 2015) for and on behalf of the City of London Police.

Procurement Documents: Any of the documentation or written information in relation to the Procured Services disclosed by COLC (or any contractor, or agency of COLC) to the Supplier, including any information disclosed via any [e-procurement portal](https://uk.eu-supply.com/login.asp?B=UK), attachments, appendices, schedules or ancillary documents relating to the Purpose.

Purpose**:** to enable the Supplier to review the tender documentation in relation to the Procured Services, participate in discussions and negotiations, and submit a bid.

Representative**:** employees, agents, officers, advisers and other representatives of a Party.

## Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

## 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.

## References to clauses are to the clauses of this Agreement.

# Obligations of Confidentiality

## The Supplier undertakes to respect and preserve the confidentiality of COLC’s Confidential Information.

## The Supplier shall not without the prior written consent of COLC:

### use or exploit the Confidential Information in any way except for the Purpose;

### disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement;

### copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of COLC).

### 2.3 The Supplier shall apply the same security measures and degree of care to the Confidential Information as COLC applies to its own confidential information.

## 2.4 The Supplier may disclose COLC’s Confidential Information to those of its Representatives who need to know this Confidential Information for the Purpose, provided that:

### it informs its Representatives of the confidential nature of the Confidential Information before disclosure;

### it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with this agreement as if they were the Supplier;

and it shall at all times be liable for the failure of any Representative to comply with the terms of this Agreement.

## The Supplier may disclose Confidential Information to the extent such Confidential Information is required to be disclosed to comply with a statutory, judicial or parliamentary obligation or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, and it gives COLC as much prior notice of this disclosure as possible.

## The Supplier shall establish and maintain adequate security and cyber security measures to safeguard the Confidential Information from unauthorised access or use.

## The Supplier shall not make, or permit any person to make, any public announcement concerning this Agreement, the Purpose or its prospective interest in the Purpose without the prior written consent of COLC 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.

## Classified Information which is disclosed by COLC shall be identified as Classified Information at the time of disclosure and the disclosure, protection, use and handling of such information by the Supplier shall be in accordance with the security procedures, laws and regulations determined by the Government of the United Kingdom.

# Return of COLC’s Information

## At the request of COLC , the Supplier shall:

### destroy or return to COLC all documents and materials (and any copies) containing, reflecting, incorporating, or based on COLC’s Confidential Information;

### erase all of COLC’s Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and

### certify in writing to COLC that it has complied with the requirements of this clause 3.1, provided that the Supplier may retain documents and materials containing, reflecting, incorporating, or based on COLC’s Confidential Information to the extent required by law or any applicable governmental or regulatory authority (save and excepting for this purpose ) and to the extent reasonable to permit the Supplier to keep evidence that it has performed its obligations under this Agreement. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Supplier.

# Reservation of Rights and Acknowledgement

## All Confidential Information shall remain the property of COLC. No rights, including, but not limited to, Intellectual Property Rights, in respect of Confidential Information are granted to the Supplier. This Agreement shall neither prejudice nor limit the rights of COLC in respect of any Intellectual Property Rights in its Confidential Information.

## Except as expressly stated in this Agreement, COLC make no express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of such Confidential Information.

## The disclosure of Confidential Information by COLC shall not form any offer by, or representation or warranty on the part of, COLC 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.

## The Supplier acknowledge that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, COLC 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.

# Warranty and Indemnity

## The Supplier shall indemnify and keep fully indemnified COLC 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 reasonable costs and expenses suffered or incurred by that other arising from any breach of this Agreement by the Supplier and from the actions or omissions of any Representative of the Supplier.

# Term and Termination

## If COLC ceases the Purpose for any reason or requires the Supplier to not be involved in the Purpose it shall notify the Supplier in writing, giving 10 days prior Working Days notice. The obligations of the Supplier shall, notwithstanding any earlier termination in accordance with this clause 6.1, continue indefinitely.

## Termination of this Agreement shall not affect any accrued rights or remedies to which COLC is entitled.

# Entire Agreement and Variation

## This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

## Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

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

# No Waiver

## Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

## No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

## If any individual provisions of this Agreement should be legally ineffective or for legal reasons unfeasible, the validity of the remaining Agreement shall not be affected thereby. In such case the Parties shall by mutual agreement substitute the stipulation concerned by another stipulation considered to be largely equivalent in economic and contractual terms.

# Assignment

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.

## **10. Notices**

## 10.1 Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each Party required to receive the notice or communication at its address as set out below:

**COLC:**

### The Comptroller & City Solicitor

### City of London

### PO Box 270

### Guildhall

### London EC2V 7HH

### **The Supplier:**

For the attention of: [add name, role & telephone number]

or as otherwise specified by the relevant Party by notice in writing to each other Party.

## 10.2 Any notice shall be deemed to have been duly received:

### if delivered personally, when left at the address and for the contact referred to in this clause; or

### if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

### if delivered by commercial courier, on the next Business Day that the courier's delivery receipt is signed.

## 10.3 A notice required to be given under this Agreement shall not be validly given if sent by e-mail.

## **11.** **No Partnership**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another party, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

## **12. Third Party Rights**

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

## **13. Governing Law and Jurisdiction**

## 13.1 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 English law.

## 13.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims)

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

|  |  |
| --- | --- |
| Signed by  for and on behalf of  **COLC** | …………………………………….. |
| Signed by  for and on behalf of  **The Supplier** | ....................................... |
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