

Attachment 11 – Non-Disclosure Agreement

RM6135 Communication Performance Audit & Analysis



**cROWN COMMERCIAL SERVICE (the authority)**

and

**[the receiving party]**

**THIS AGREEMENT** is made on [date]

**BETWEEN:**

1. **THE MINISTER FOR THE CABINET OFFICE ACTING THROUGH CROWN COMMERCIAL SERVICE** (the **“Authority”**)and
2. **[NAME]**, an individual, of [ADDRESS AND POSTCODE] (the “**Receiving Party**”).

- together, the **“Parties”**.

**WHEREAS:**

The Receiving Party wishes to receive Confidential Information from the Authority for the purpose of providing Deliverables (e.g. Goods and/or Services) to the Authority and/or Contracting Authorities (the “Buyers”) under the RM6135 Communication Performance, Audit & Analysis Framework Agreement and Call-Off Contracts(the “**Permitted Purpose**”).

**IT IS AGREED as follows:**

1. **Interpretation**
	1. In this Agreement, unless the context otherwise requires:

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| **“Authority’s Group”** | means the Authority and any Crown Body with which the Authority interacts in connection with the Permitted Purpose and any Subsidiary of the Authority  |
| **“Confidential Information”** | means: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 Authority;(ii) the Authority’s Group; or(iii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Authority or the Authority's Group;other Information: (i) provided by the Authority or the Authority’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; discussions, negotiations, and correspondence between the Authority or the Authority’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; andInformation or analysis derived from any of the above,but not including any Information that:was in the possession of the Receiving Party without obligation of confidentiality prior to its disclosure by the Authority or the Authority’s Group; 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 Authority or any member of the Authority’s Group or otherwise prohibited from disclosing the information to the Receiving Party;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; orthe Receiving Party evidences to the reasonable satisfaction of the Authority was independently developed without access to the Confidential Information; |
| **“Crown Body”** | means any department, office or agency of the Crown; |
| **“Information”** | means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); |
| **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; |
| **“Information Return Notice”** | has the meaning given to it in Clause 4.1; |
| **“Permitted Purpose”** | has the meaning given to it in the recital to this Agreement; |
| **“Specified Scope”** | has the meaning given to it in Clause 4.1. |

* 1. In this Agreement:
		1. a reference to any gender includes a reference to other genders;
		2. the singular includes the plural and vice versa;
		3. the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
		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;
		5. the expressions "subsidiary", "holding company" and "subsidiary undertaking" shall have the meanings given to them in the Companies Act 2006;
		6. headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
		7. references to Clauses are to clauses of this Agreement.
1. **Confidentiality obligations**
	1. In consideration of the Authority providing Confidential Information, at its discretion, to the Receiving Party, the Receiving Party shall:
		1. treat all Confidential Information as secret and confidential;
		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);
		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 Authority (which the Authority shall have the express right to grant or deny) or except as expressly set out in this Agreement;
		4. not transfer any of the Confidential Information outside the United Kingdom;
		5. not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
		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;
		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 Authority promptly upon request; and
		8. immediately notify the Authority 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.
2. **Permitted Disclosures**
	1. The Receiving Party shall be entitled to disclose Confidential Information to the extent that they are required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Receiving Party.
	2. Before making a disclosure pursuant to Clause 3.1, the Receiving Party shall at the earliest opportunity and, to the extent that is legally permitted to do so:
		1. notify the Authority in writing of the proposed disclosure ); and
		2. ask the court or other public body to treat the Confidential Information as confidential.
	3. Where notice of disclosure under 3.2:
		1. is legally permitted, the Receiving Party shall take into account the reasonable requests of the Authority in relation to the proposed disclosure; or
		2. is prohibited, the Receiving Party shall notify the Authority of the disclosure as soon as possible following the disclosure when it is legally able to do so.
3. **Return of Information and surviving obligations**
	1. The Authority may serve a notice (an “**Information Return Notice**”) on the Receiving Party at any time under this Clause 4.1. An Information Return Notice must specify whether it relates to (i) all Confidential Information provided by the Authority 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:
		1. at the Authority’s option, securely destroy or return and provide to the Authority 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;
		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
		3. make no further use of any Confidential Information which falls within the Specified Scope.
	2. Following any destruction or return of Confidential Information to the Authority pursuant to Clause 4.1, 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.
4. **Genera**
	1. The Receiving Party acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Authority shall remain with and be vested in the Authority or the relevant member of Authority Group.
	2. This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
		1. to grant the Receiving Party any licence or rights other than as may be expressly stated in this Agreement;
		2. to require the Authority to disclose, continue disclosing or update any Confidential Information; or
		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.
	3. 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.
	4. 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.
	5. This Agreement confers enforceable rights under the Contracts (Rights of Third Parties) Act 1999 on members of the Authority’s Group, and any member of the Authority’s Group may enforce the terms of this Agreement. Except as expressly provided in this clause 5.5, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
	6. 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. Each Party will be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
	8. This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.
5. **Notices**
	1. Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand or by post and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 7.2.
	2. Any Notice:
		1. if to be given to the Authority shall be sent to:

Rosebery Court, St Andrews Business Park, Norwich, NR7 0HS.

Attention: Marketing Communications & Research Commercial Agreement Manager.

* + 1. if to be given to the Receiving Party shall be sent to:

The appropriate address for the Receiving Party as set out at the start of this Agreement.

**Governing law**

* 1. This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
	2. Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

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| **Executed by the Receiving Party:**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date:Position: | **Executed for an on behalf of the Authority**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date:Position: |