**C24197 – Video Spectral Comparator**

Non-Disclosure Agreement

Between

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

And

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NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT** is made on this \_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*Year*]

**BETWEEN:**

(1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** acting through the United Kingdom Border Force Directorate with principal offices at 2 Marsham Street, London, SW1 4DF (the "**Disclosing Party**"), of the one part; and

1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** being an organisation whose registered office/principal place of business *(\* delete as appropriate)* is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the **“Recipient”**) of the other part.

**WHEREAS:**

1. The Disclosing Party (or one of its agencies) intends to make certain Confidential Information available to the Recipient for the purpose specified below.
2. Working for the Disclosing Party (or its agencies) may involve contact with Confidential Information, documents and other articles:

(i) of a highly sensitive commercial nature; and/or

(ii) protected by the Official Secrets Acts 1911-1989,

and will therefore require that the highest standards of security and confidentiality be maintained.

1. The project has now commenced the formal procurement and is planning to communicate a decision on award early 2023.

(D) The Disclosing Party is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement processes pursuant to the Public Contracts Regulations 2015 (as amended).

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. **Definitions and Interpretation**
   1. Definitions:
      1. “**Acknowledgement**” means a completed acknowledgement in the form set out in Annex A to this Agreement.
      2. “**Agreement**” means this non-disclosure agreement and its Annexes.
      3. “**Confidential Information**” shall include information provided directly or indirectly by the Disclosing Party to the Recipient in oral or documentary form or by way of models or other tangible form or by demonstrations and whether before, on or after the date of this Agreement.
      4. “**Corporate Recipient**” means:
         1. any agent or representative of the Recipient and an associate, holding company, subsidiary, “subsidiary undertaking and wholly owned subsidiary of the Recipient. (The terms "associate", "holding company", "subsidiary", "subsidiary undertaking" and "wholly owned subsidiary" have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words 'holds a majority of the voting rights' shall be changed to 'holds 30% or more of the voting rights', and other expressions shall be construed accordingly); or
         2. any subcontractors, consultants, suppliers, collaborators and professional advisers of the Recipient which may have access to the Confidential Information.
      5. “**Party**” means a party to this Agreement, and “Parties” shall be construed accordingly.
      6. “**Purpose**” means market engagement activity and any subsequent formal procurement under conditions of confidentiality.
   2. In this Agreement:
      1. Reference to the disclosure of information includes any communication or making available of information and includes both direct and indirect disclosure;
      2. Reference to persons includes legal and natural persons.
      3. Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
      4. Reference to clauses, recitals and Annexes is to clauses of, recitals and Annexes to this Agreement.
      5. Reference to any gender includes any other.
      6. Reference to writing includes email.
      7. The words “include” and “including” are to be construed without limitation;
      8. The singular includes the plural and vice versa.
   3. The headings contained in this Agreement shall not affect its construction or interpretation.
2. **Obligations of Confidentiality and Non-use** 
   1. In consideration of the Disclosing Party disclosing or making available to the Recipient the Confidential Information, the Recipient shall:
      1. keep confidential and not disclose to any third party any part, or the whole, of any Confidential Information disclosed to it under this Agreement;
      2. not transfer any of the Confidential Information outside the United Kingdom without obtaining prior written consent from the Authority;
      3. not to copy Confidential Information disclosed to it under this Agreement except to the extent strictly necessary for the Recipient to support the Purpose;
      4. not without the prior written permission of the Disclosing Party to use Confidential Information disclosed to it under this Agreement other than for the Purpose;
      5. to restrict access to the Confidential Information disclosed to it under the terms of this Agreement to those of its employees and officers who need to know the same for the Purpose;
      6. to respect and observe all regulations and restrictions relating to the Confidential Information;
      7. to treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Recipient uses to maintain its own confidential or proprietary information;
      8. ensure that the Confidential Information is only disclosed to a Corporate Recipient who needs to have access thereto necessarily and exclusively for the Purpose;
      9. ensure that every person under its control to whom Information is disclosed shall individually keep the Information confidential and procure that any Corporate Recipient to whom the Recipient discloses the Confidential Information enters into and complies with the relevant agreed form document as specified in Annex A, as such may be varied from to time in accordance with the terms of this Agreement;
      10. undertake to enforce all agreements entered into in accordance with the agreed form document specified in Annex A and for which it is legally responsible;
      11. inform the Disclosing Party immediately upon becoming aware or suspecting that:
          1. there has been a breach of this Agreement or of an Acknowledgement by a Corporate Recipient; and/or
          2. an unauthorised person has become aware of the Confidential Information, and in each case, provide all assistance and information and take all steps as the Disclosing Party may reasonably require in order to trace any Confidential Information or take any legal action against such unauthorised person, mitigate the effects of the breach and to prevent a recurrence of the breach; and
          3. comply with and procure that all Corporate Recipients shall comply with the instructions of the Disclosing Party regarding the Confidential Information.
   2. The Recipient shall, within seven (7) days of signature of the relevant agreed form document in Annex A, supply the Disclosing Party with the name and address of each Corporate Recipient to whom the Confidential Information has been disclosed and a copy of the Acknowledgement that has been entered into between the Recipient and the Corporate Recipient.
   3. A director or senior employee of the Recipient must, immediately upon the written request of the Disclosing Party, confirm in writing that the Recipient or any of its Corporate Recipients has destroyed or permanently erased the Information and all copies other than copies:
      1. that contain insignificant extracts from, or references to the Confidential Information; or
      2. that the Recipient or a Corporate Recipient is required to keep by law.
3. **Exceptions**
   1. The obligations of confidentiality set out in this Agreement shall not apply to any Confidential Information which the Recipient can show by written records:
      1. was known to the Recipient before the Confidential Information was imparted by the Disclosing Party, or
      2. is, in or subsequently comes into, the public domain through no fault on the Recipient’s part; or
      3. is received by the Recipient without restriction on disclosure or use from a third party lawfully entitled to make the disclosure to the Recipient without such restrictions; or
      4. is developed by any of the Recipient’s employees who have not had any direct or indirect access to, or use or knowledge of, the Information imparted by the Disclosing Party; or
      5. the Recipient is required to disclose pursuant to any statute, law, regulation or code or pursuant to any order of any court of competent jurisdiction PROVIDED THAT the Recipient shall advise the Disclosing Party of the request for disclosure in sufficient time to allow the Disclosing Party to apply for such legal protection as may be available.
4. **Crown Property**
   1. Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to the Confidential Information, the Recipient acknowledges that any Confidential Information obtained from or relating to the Crown, its servants or agents, is the property of the Crown.
5. **No grant of Rights**
   1. Nothing contained in this Agreement shall be construed, expressly or impliedly, as:
      1. granting the Recipient any licence or other rights except as expressly stated in this Agreement; or
      2. constituting a warranty as to the accuracy of the Confidential Information, or the suitability thereof for any purpose whatsoever.
6. **Return of Confidential Information**
   1. All Confidential Information disclosed hereunder, and any copies thereof made by the Recipient and or Corporate Recipient, shall be and shall remain the Disclosing Party’s property and the Recipient shall and shall procure that Corporate Recipients shall, promptly deliver up to the Disclosing Party the Confidential Information on receipt of the Disclosing Party’s written request.
7. **Indemnity** 
   1. The Recipient will indemnify the Disclosing Party from and against all claims, demands, proceedings, liabilities, damage, charges, costs, losses or expenses (including legal expenses) resulting from any breach or non-performance by the Recipient of any of its obligations under this Agreement and by the Corporate Recipients of any of their obligations under an Acknowledgement without prejudice to any other available rights or remedies including, without limitation, injunctive or other equitable relief.
   2. The Recipient shall not be responsible for and shall not indemnify the Disclosing Party for losses to the extent that such losses are caused by the negligence of the Disclosing Party, its employees or agents who are not within the control of the Recipient.
8. **Audit Rights**
   1. In the event that the Recipient or any of its Corporate Recipients fails to comply with the requirements under this Agreement or any Acknowledgement or at the sole discretion of the Disclosing Party, the Recipient and each of its Corporate Recipients shall permit entry and access to its premises and any and all records, computers and other property of the Recipient and to such personnel or agents as the Disclosing Party shall at its sole discretion determine for the purposes of ensuring that the Information and all associated copies are secure in accordance with the terms of this Agreement or such Acknowledgements or have been destroyed permanently or removed from the Recipient’s possession.
9. **Duration**
   1. This Agreement shall be for the period of *[two (2) years]* from the date first before written. The obligations and restrictions relating to the disclosure and use of Confidential Information shall survive the termination of this Agreement for a period of six (6) years.
10. **Entire Agreement**
    1. This Agreement constitutes the entire Agreement between the Parties concerning the exchange of Confidential Information for the Purpose. The Agreement shall not be amended except by written agreement signed by authorised representatives of both Parties.
11. **Variation and Waiver**
    1. A variation of this Agreement must be in writing and signed by or on behalf of all Parties.
    2. If a Party does not enforce a right available to it under this Agreement in any particular instance, then this will not prevent it from enforcing that right in future, or in any other instance.
12. **Reservation of Rights**
    1. The Disclosing Party reserves all its rights against the Recipient including the right:
       1. to claim damages and/or injunctive relief; and
       2. to exclude the Recipient (and any prime contractor with which the Recipient may tender) from further participating in the Purpose or any other procurement project or programme of the Disclosing Party.
13. **Severability**
    1. If any provision of this Agreement is held to be invalid or unenforceable by a judgement or decision of any court, the same shall be severed from the remainder of this Agreement, which shall remain valid and enforceable to the fullest extent permitted by law.
14. **Contracts (Rights of Third Parties) Act 1999**
    1. A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
15. **Assignment**
    1. The Recipient shall not, without the express consent in writing of the Disclosing Party, assign or in any manner transfer its interests in, or obligations under, this Agreement, or any part thereof.
16. **Law and Jurisdiction**
    1. This Agreement shall be construed and governed in accordance with the laws of England and Wales and each Party hereby submits to the exclusive jurisdiction of the English Courts.

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| --- | --- | --- | --- | --- |
| Signed for and on behalf of **the Secretary of State for the Home Department** | |  | Signed for and on behalf of **the Recipient** | |
| Signature: |  |  | Signature: |  |
| Name: |  |  | Name: |  |
| Position |  |  | Position |  |

Annex A

Agreed Form of Acknowledgement by Corporate Recipient

**THIS ACKNOWLEDGEMENT** is made on this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*Year*]

**BETWEEN:**

1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** being an organisation whose registered office/principal place of business *(\* delete as appropriate)* is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the **“Recipient”**); and
2. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** being an organisation whose registered office/principal place of business *(\* delete as appropriate)* is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the **“Corporate Recipient”**).

WHEREAS:

(A) The Recipient has signed a non-disclosure agreement (a **“Non-Disclosure Agreement”**) with the Secretary of State for the Home Department whose principle place of business is at 2 Marsham Street, London, SW1P 4DF (the “**Home Office**”) and wishes to make some such information available to the Corporate Recipient.

(B) Working for the Home Office or its agencies may involve contact with Confidential Information, documents and other articles:

(i) of a highly sensitive commercial nature; and/or

(ii) protected by the Official Secrets Acts 1911-1989,

and will therefore require that the highest standards of security and confidentiality to be maintained.

(C) The Corporate Recipient is a subcontractor, shareholder, agent, consultant, supplier, collaborators or professional advisers of the Recipient whose participation in the business of the Home Office has been subject to prior approval by the Home Office.

(D) The Corporate Recipient has agreed to comply with the instructions on handling the Confidential Information provided by the Recipient.

(E) A copy of the Non-Disclosure Agreement is attached to this Acknowledgement.

**OPERATIVE TERMS**

1. **Interpretation**
   1. Save for those terms defined within this Acknowledgement, all definitions and rules of interpretation which are contained in or referred to in Clause 1 of the Non Disclosure Agreement shall apply to this Acknowledgement.
2. **Acknowledgement and undertaking**
   1. The Corporate Recipient acknowledges that it has read the Non Disclosure Agreement and undertakes:
      1. to the Recipient; and
      2. to the Home Office,

that it will comply with all the terms of the Non Disclosure Agreement as if all references to the Recipient in that document were references to the Corporate Recipient, noting that a breach of this Acknowledgement will have the effect of:

* + 1. putting the Recipient in breach of the Non Disclosure Agreement; and
    2. creating a liability for itself to the Home Office as a consequence of the Home Office’s ability to enforce the benefit of this Acknowledgement as referred to in Clause 3 below.
  1. This Acknowledgement is given as further consideration for the Recipient providing work to the Corporate Recipient and involving it in matters relating to the Home Office and its projects.

1. **Third Party Rights**
   1. Save for the Home Office, a person who is not party to this Acknowledgement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Acknowledgement and the Corporate Recipient may only be released from the obligations of this Acknowledgement with the written consent of the Home Office.
2. **Variation and Waiver**
   1. A variation of this Acknowledgement must be in writing and signed by or on behalf of the Home Office, the Recipient and the Corporate Recipient. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given. A person that waives a right in relation to one person or who takes or fails to take any action against that person does not affect its rights against any other person.
3. **Governing Law and Jurisdiction**
   1. This Acknowledgement and all disputes and claims arising out of its subject matter are to be governed by and construed in accordance with English Law. The parties irrevocably agree that the English Courts shall have the non-exclusive jurisdiction to settle any dispute that arises out of or in connection with this Agreement.

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **SIGNED** for and on behalf of the **Recipient** | |  | Signed for and on behalf of **the Corporate Recipient** | |
| Signature: |  |  | Signature: |  |
| Name: |  |  | Name: |  |
| Position |  |  | Position |  |