

[Subject to contract]

Date: [●]

(1) The Home Office – The Disclosure and Barring Service

and

(2) [Insert name of Company]

Non-Disclosure and Ethical Behaviour Agreement

Contents

No	Heading	Page
Clauses		
1.	Interpretation	2
2.	Obligations on the Company	4
3.	Forced Disclosure	6
4.	Indemnity	7
5.	Audit Rights	7
6.	Whole Agreement and Conduct of Negotiations	8
7.	Assignment	9
8.	Third Party Rights	9
9.	Severance	10
10.	Variation and Waiver	10
11.	Governing Law and Jurisdiction	10
Schedules		
	Schedule 1 – Instructions on Handling Classified Information	12
	Schedule 2 – Agreed Form of Acknowledgement by Corporate Recipient	13
	Schedule 3 – Agreed Form of Acknowledgement by Individual Recipient	16

THIS AGREEMENT is made this [•] day of [•] 2017

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** whose principal place of business is at 2 Marsham Street, London SW1P 4DF (the “**Home Office**”); and
- (2) **[INSERT NAME OF COMPANY]** of [insert address] (Company registration number: [•]) (the “**Company**”).

WHEREAS:

- (A) The Home Office (or one of its agencies) has previously appointed the Company to provide certain services to it and now wishes to make available or has already made available to the Company certain Information (as defined below) concerning or relating to the business of the Home Office.
- (B) Working for the Home Office (or its agencies) may involve contact with information, documents and other articles:
 - (a) of a highly sensitive commercial nature; and/or
 - (b) protected by the Official Secrets Acts 1911-1989,and will therefore require that the highest standards of security and confidentiality be maintained. Breach of the Official Secrets Acts is a criminal offence.
- (C) The Company has agreed to ensure that its employees, agents and sub-contractors comply with the instructions provided by the Home Office in respect of the handling of the Information as specified in Schedules 2 and 3.

OPERATIVE TERMS

1. Interpretation

1. In this Agreement, the following definitions and rules of interpretation in this Clause 1 apply, unless the context otherwise requires:

“**Agreement**” means this agreement, any schedules and any annexes attached hereto;

“**BAU Team**” and “**Bid Team**” shall each have the respective meanings set out in Clause 6.3;

“Copies”

means copies of the Information including any document, electronic file, note, extract, analysis or any other way of representing or recording and recalling information which contains, reflects or is derived from the Information;

“Corporate Recipient”

means any of the following which are not individuals: subcontractors, shareholders, agents, consultants, suppliers, collaborators and professional advisers of the Company which may have access to the Information;

“Individual Recipient”

means any of the directors, employees, and seconded staff of the Company and its Corporate Recipients and any individuals who are subcontractors, shareholders, agents, consultants, suppliers, collaborators or professional advisers of the Company and its Corporate Recipients who may have access to the Information;

“Information”

means:

- (a) the terms of this Agreement; and
- (b) all information in whatever form (written, oral, visual and electronic) including all Copies thereof which belongs to or relates to the Home Office or Home Office business (including those of its agencies and any other Government department or agency with whom the Home Office or the Company, in pursuance of its duties to the Home Office, interact), organisation, programmes and projects (including the Programme), services, policies or products or other suppliers or potential suppliers to the Home Office or its agencies which comes (or has come) to the Company’s (or an Individual Recipient’s or a Corporate Recipient’s) attention or into the

Company's (or an Individual Recipient's or a Corporate Recipient's) possession and is not in the public domain or else been the subject of a subsequent written agreement with the Home Office; and

“Programme” means the Home Office's Identity Cards Programme and all related projects.

- 1.1 Clause and schedule headings do not affect the interpretation of this Agreement.
- 1.2 A reference to a law is a reference to such law as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made pursuant to it.
- 1.3 “Writing” or “written” includes faxes and e-mail.

2. Obligations on the Company

- 2.1 In consideration of the Home Office giving the Company the Information, the Company shall:
 - (a) keep the Information confidential and secure and effect and maintain all security measures necessary so as to safeguard the Information in accordance with good industry practice. Where the Information contains classified material or restrictive markings, the Company further undertakes to keep such Information secure in accordance with instructions on handling classified material as specified in Schedule 1;
 - (b) use the Information only for the authorised purposes of the Home Office and any agreed work commissioned by the Home Office and for no other purpose;
 - (c) ensure that the Information is only disclosed to a Corporate Recipient or an Individual Recipient who needs to have access thereto necessarily and exclusively for the purposes of the Programme or for the purposes of furthering the business of the Home Office;
 - (d) with effect from the date of this agreement, ensure that every person under its control to whom Information is disclosed shall individually keep the Information confidential and procure that any Corporate Recipient and Individual Recipient to whom the Company discloses the Information enters into and complies with the relevant agreed form document as specified in

Schedules 2 and 3, as such may be varied from to time in accordance with the terms of this Agreement;

- (e) undertake to enforce all agreements entered into in accordance with the agreed form documents specified in Schedules 2 and 3 and for which it is legally responsible;
- (f) inform the Home Office immediately upon becoming aware or suspecting that:
 - (i) there has been a breach of this Agreement or of an Acknowledgement by a Corporate Recipient or a Deed of Confidentiality in respect of an Individual Recipient; and/or
 - (ii) an unauthorised person has become aware of the Information ,

and, in each case, provide all assistance and information and take all steps as the Home Office may reasonably require in order to trace any 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

- (g) comply with and procure that all Corporate Recipients and Individual Recipients shall comply with the instructions of the Home Office regarding the Information.

2.2 The Company may disclose Information only to the limited extent permitted by Clause 3.

2.3 The Company and its Corporate Recipients and Individual Recipients may only make such Copies as are strictly necessary for the purposes of furthering the business of the Home Office and must:

- (a) clearly mark all Copies in accordance with the appropriate security classification marking; and
- (b) ensure that Copies supplied to it or made by it can be separately identified from its own information.

2.4 The Company shall, within 7 (seven) days of signature of the relevant agreed form document as specified in Schedules 2 and 3, supply the Home Office with the name and address of each Corporate Recipient and Individual Recipient to whom the Information has been disclosed and a copy of the agreement that has been entered into between the Company and the Corporate Recipient and the Individual Recipient.

- 2.5 A director or senior employee of the Company must, immediately upon the written request of the Home Office, confirm in writing that the Company or any of its Corporate Recipients and Individual Recipients has destroyed or permanently erased the Information and all Copies other than Copies:
- (a) that contain insignificant extracts from, or references to the Information; or
 - (b) that the Company or a Corporate Recipient or Individual Recipient is required to keep by law; or
 - (c) that contain no Information other than information disclosed under Clause 3.
- 2.6 The Company acknowledges and agrees that the copyright in the Information disclosed to it by the Home Office, including any documents, files and any other items containing any Information, belong to the Home Office and, to the extent the same are created by employees of the Company, are hereby assigned to the Home Office with full title guarantee.
- 2.7 This Agreement shall neither prejudice nor limit the rights of the Home Office in respect of any intellectual property rights in the Information. Except as provided for herein, the Company may not assign or transfer any rights or obligations hereunder without the prior written consent of the Home Office, such consent being exercised entirely within the discretion of the Home Office.
- 2.8 This Agreement shall not be construed to:
- (a) grant the Company any licence or rights other than as expressly set out herein in respect of the Information; nor
 - (b) require the Home Office to disclose any Information to the Company.

3. Forced Disclosure

- 3.1 The Company may only disclose Information to the minimum extent required by any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body.
- 3.2 Before the Company discloses any Information under this Clause 3, it must (to the extent permitted by law):
- (a) inform the Home Office of the full circumstances of the disclosure and the Information that will be disclosed;

- (b) give the Home Office a copy of a legal opinion indicating that disclosure is necessary;
 - (c) consult with the Home Office as to possible steps to avoid or limit disclosure and take those steps where they would not result in significant adverse consequences to the Company;
 - (d) gain assurances as to confidentiality from the body to whom the Information is to be disclosed in similar terms to this Agreement; and
 - (e) where the disclosure is by way of stock exchange announcement, agree the wording with the Home Office in advance.
- 3.3 The parties must co-operate with each other in bringing any legal or other proceedings to challenge the validity of the requirement to disclose.

4. Indemnity

- 4.1 The Company will indemnify the Home Office 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 Company of any of its obligations under this Agreement and by the Corporate Recipients and Individual Recipients of any of their obligations under the agreed form documents specified in Schedules 2 and 3, without prejudice to any other available rights or remedies including, without limitation, injunctive or other equitable relief.
- 4.2 The Company shall not be responsible for and shall not indemnify the Home Office for losses to the extent that such losses are caused by the negligence of the Home Office, its employees or agents who are not within the control of the Company.

5. Audit Rights

- 5.1 In the event that the Company or any of its Corporate Recipients or Individual Recipients fails to comply with the requirements under this Agreement or any Acknowledgement in agreed form as contained in Schedules 2 and 3 or at the sole discretion of the Home Office, the Company and each of its Corporate Recipients and Individual Recipients shall permit entry and access to its premises and any and all records, computers and other property of the Company and to such personnel or agents as the Home Office 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 Company's possession.

6. Conflicts of Interest and Ethical Behaviour

- 6.1 As part of its role to provide services to the Home Office (or its agencies) as referred to in Recital (A) above, the Company acknowledges that it (and its employees, agents and subcontractors) may acquire substantial information concerning the Home Office's procurement projects and programmes of the Home Office (including the Programme) which could provide the Company with an advantage and render unfair an otherwise genuine and open competitive procurement exercise.
- 6.2 In the event of a competitive procurement for goods and/or services, subject to its compliance with the terms of this Agreement, the Company shall (subject also to any requirements set out in the relevant Home Office's tender documents being satisfied) not be discounted from participating in any procurement exercise merely by virtue of its provision of other services to the Home Office or its agencies PROVIDED THAT:
- 6.2.1 the Company can demonstrate that it has fully and properly complied with its obligations as set out in this Agreement; and
- 6.2.2 the Company can demonstrate that it has maintained "ethical walls" as referred to in Clause 6.3 below.
- 6.3 In the event that the Company (or a Corporate Recipient) wishes to submit a tender for the provision of goods and/or services relating to the Programme or any other procurement project or programme of the Home Office, it shall demonstrate to the Home Office and otherwise ensure at all times that:
- 6.3.1 such tender is not made with the benefit of the Information;
- 6.3.2 those persons who receive the Information pursuant to this Agreement (the "**BAU Team**") are not involved (and have not been involved) in the tender process in any way and do not directly or indirectly provide the Information to persons involved in the tender (the "**Bid Team**");
- 6.3.3 that any Information is not available to the Bid Team (or other employees of the Company (or a Corporate Recipient) who are not acting on behalf of the Home Office) on the Company's (or the Corporate Recipient's) computer networks and that the Bid Team and the BAU Team are, so far as practicable, located in different offices of the Company (or, as the case may be, the Corporate Recipient); and
- 6.3.4 that the Bid Team and the BAU Team have separate reporting and management lines.

- 6.4 In the event that the Company (or a Corporate Recipient) becomes aware that the Bid Team has received any Information which is not provided by the Home Office pursuant to the procurement process and is not otherwise in the public domain, the Company (or the Corporate Recipient) shall forthwith inform the Home Office of this fact and carry out an urgent review the purpose of which will be to identify the reasons for the disclosure, the extent of the disclosure and to ensure that such information is not again disclosed. Thereafter it shall as soon as practicable share with the Home Office the results of such review and, in the event that the Home Office believes that the continued participation of the Company (or the Corporate Recipient) is not otherwise prejudiced, implement any proposals arising from such review or any reasonable recommendations of the Home Office.

7. Whole Agreement and Conduct of Negotiations

- 7.1 This Agreement is the entire agreement between the parties in connection with the confidentiality and security of Information and supersedes any oral or written arrangements, representations, understandings or previous agreements between them relating to the subject matter covered by the Agreement.
- 7.2 Nothing in this Clause 7 operates to limit or exclude any liability for fraud or fraudulent misrepresentation.
- 7.3 The Home Office gives no warranty, representation or undertaking in relation to the Information and in particular (but without limiting the foregoing) no warranty or representation, express or implied, is given by the Home Office as to the accuracy, efficacy, completeness, capabilities or safety of any materials or information provided under this Agreement or as part of any procurement. The Home Office is not liable to the Company or to anyone to whom the Company discloses the Information if it is relied upon.

8. Assignment

Except as provided otherwise, the Company may not assign or novate any of its rights under this Agreement or any document referred to in it. The Home Office may assign or novate its rights to any department, office or agency of the Crown which will be entitled to enforce this Agreement as if it were the Home Office.

9. Third Party Rights

A person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement. The parties may terminate, rescind or vary this Agreement without the consent of any person who is not a party to this Agreement.

10. Severance

If any court or administrative body of competent jurisdiction finds any provision of this Agreement to be invalid, unenforceable or illegal, the other provisions of this Agreement will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to make it valid, enforceable or legal.

11. Variation and Waiver

- 11.1 A variation of this Agreement must be in writing and signed by or on behalf of all parties. 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.
- 11.2 Rights arising under this Agreement are cumulative and do not exclude rights provided by law.

12. Reservation of Rights

- 12.1 The Home Office reserves all its rights against the Company including the right:
- 12.1.1 to terminate with immediate effect any agreement the Company has in place to provide services to the Home Office (or its agencies) on the basis that there has been a material default of such agreement by the Company. The Parties agree that such agreement shall be deemed to have been amended to provide for a right of termination to the Home Office in these circumstances;
 - 12.1.2 to claim damages and/or injunctive relief; and
 - 12.1.3 to exclude the Company (and any prime contractor with which the Company may tender) from further participating in the Programme or any other procurement project or programme of the Home Office,
- if the Company or any Corporate Recipient or Individual Recipient fails to comply with the terms of this Agreement or the relevant Acknowledgement, as the case may be.

13. Governing Law and Jurisdiction

13.1 This Agreement and all disputes and claims arising out of its subject matter are to be governed by and construed in accordance with English Law.

13.2 The parties agree that the English Courts shall have 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 by **THE SECRETARY**)
OF STATE FOR THE HOME)
DEPARTMENT)
)

.....
SIGNED by [INSERT NAME OF)
INDIVIDUAL] for and on)
behalf of [INSERT NAME OF)
THE COMPANY])
)

.....

Schedule 1 – Instructions on Handling Classified Information

The applicable instructions in relation to the Information shall be the Manual of Protective Security and those instructions which the Company has at the date of this Agreement in relation to all government information from or concerning the Crown which is subject to any security level above Unclassified, as the same may be superseded from time to time by any other instructions issued in respect of such government information or by any instructions which may be issued by the Home Office in respect of the Information or particular categories of Information.

Schedule 2 – Agreed Form of Acknowledgement by Corporate Recipient

THIS ACKNOWLEDGEMENT is made this [•] day of [•] 2017

BETWEEN:

- (1) **[INSERT NAME OF COMPANY]** whose principal place of business is at [insert address] (the “**Company**”); and
- (2) **[INSERT NAME OF COMPANY]** whose principal place of business is at [insert address] (the “**Corporate Recipient**”).

WHEREAS:

- (A) The Company has signed a non disclosure agreement with the Home Office (a “**Non Disclosure Agreement**”) 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 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. Breach of the Official Secrets Acts is a criminal offence.
- (C) The Corporate Recipient is a subcontractor of the Company 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 Information provided by the Company.
- (D) A copy of the Non Disclosure Agreement is attached to this Acknowledgement.

OPERATIVE TERMS

1. Interpretation

In 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 in the same way.

2. Acknowledgement and undertaking

2.1 The Corporate Recipient acknowledges that it has read the Non Disclosure Agreement and undertakes:

- (a) to the Company; and
- (b) to the Home Office,

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

- (c) putting the Company in breach of the Non Disclosure Agreement; and
 - (d) 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.
- 2.2 This Acknowledgement is given as further consideration for the Company providing work to the Corporate Recipient and involving it in matters relating to the Home Office and its projects.

3. Third Party Rights

Save for the Home Office, a person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement and the Corporate Recipient may only be released from the obligations of this Acknowledgement with the written consent of the Home Office.

4. Variation and Waiver

A variation of this Acknowledgement must be in writing and signed by or on behalf of all parties. 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.

5. **Governing Law and Jurisdiction**

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 by [INSERT NAME OF)
INDIVIDUAL] for and on behalf of)
[**THE COMPANY**])

.....

SIGNED by [INSERT NAME OF)
INDIVIDUAL] for and on behalf of)
[**THE CORPORATE**)
RECIPIENT])

.....

Schedule 3 – Agreed Form of Deed by Individual Recipient

To:

[INSERT NAME AND ADDRESS OF COMPANY] (the “Company”)

DEED OF CONFIDENTIALITY

WHEREAS:

- (a) the Company referred to above has entered into a Non Disclosure and Ethical Behaviour Agreement with the Home Office (the “**Corporate NDA**”) (or else an Acknowledgement by a Corporate Recipient pursuant to the terms of a Corporate NDA) with regard to the provision of services to the Home Office; and
- (b) I (the “**Individual Recipient**”) am an employee or subcontractor of the Company and will be engaged in the provision of services to the Home Office.

OPERATIVE TERMS:

I acknowledge and understand that the Home Office and the Company shall enforce strict confidentiality requirements for all individuals engaged in the provision of services to the Home Office and that pursuant to this Deed of Confidentiality, I shall have legal obligations to:

- (a) the Company; and
- (b) the Home Office.

I acknowledge that it is my responsibility to ensure that I understand the contents of this Deed of confidentiality and that I comply with its terms.

I understand the importance attached by the Home Office to confidentiality and secrecy and to the protection of its proprietary information and information relating to its business (including those of its agencies and the other Government departments and agencies with whom it interacts) or information relating to other suppliers (or potential suppliers) to the Home Office and that divulgence of such confidential material could bring irreparable damage to the Home Office, the Crown and, because any breach by me may also constitute a breach by the Company, the Company.

I undertake to keep confidential and not divulge to any third party (including, without limitation, my colleagues who are not directly engaged on Home Office business and any new or future employer) any and all data, information or materials which have been or will be supplied to me or to which I have had or will gain access and which belong to or relate to:

- (a) the Home Office or Home Office business (including those of its agencies and any other Government departments and agencies with whom the Home Office or I, in pursuance of my duties to the Home Office, interact), organisation, programmes and projects, services, policies or products; or
- (b) other suppliers (or potential suppliers) to the Home Office or its agencies,

(together, “**Information**”) and to use such Information solely and exclusively for the purposes of the Home Office. I understand that this obligation means that, amongst other things, I should not use any Information I receive for the purposes of forwarding my current or any future employer’s business interests.

I further confirm that I have read the Non-Disclosure and Ethical Behaviour Agreement entered into by the Company and undertake that no act or omission by me shall put the Company in breach of any provision of that document.

The provisions of this Deed of Confidentiality will not apply to any Information which:

- (a) is in or enters the public domain other than by breach of the provisions of this undertaking; or

- (b) is obtained from a third party which is lawfully authorised to disclose such information without restriction as to confidentiality; or
- (c) is authorised for release by the prior written consent of an appropriate officer within the Home Office authorised to do so; or
- (d) is required to be disclosed by me by judicial, regulatory or administrative process in connection with any action, suit, proceeding or claim or otherwise by applicable law.

On termination of my engagement on Home Office matters, I agree to return to the Home Office (or the relevant Home Office agency) all Information in my possession or control and to delete any Information from any personal computer or other electronic media used to carry out my work or which otherwise retains copies of any Information. I acknowledge and agree that neither the return nor deletion of Information releases me from my obligations set out in this undertaking which shall continue without limitation as to duration for as long as the relevant Information remains confidential.

I appreciate that Home Office documents contain restrictive and protective markings and I undertake to store and otherwise deal with those documents in accordance with any direction to me, published guidance issued from time to time or, in the absence of such direction or guidance, the Manual of Protective Security as updated from time to time.

The Home Office and the Company reserves the right to take any legal action it considers necessary against me to protect its name and reputation and to protect against the disclosure (or further disclosure) of Information.

Save for the Home Office, a person who is not a party to this Deed of Confidentiality has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed of Confidentiality and the Individual Recipient may only be released from the obligations of this Deed of Confidentiality with the written consent of the Home Office.

Signed as a Deed by the Individual Recipient in the presence of:

Witness' Signature:.....
 Name:..... (Individual Recipient's Signature)
 Occupation:..... (Print Name)
 Date:.....