**NON DISCLOSURE AGREEMENT PURPOSE**

**Attachment 13**

**Training Estate Services**

**RM6155**

Crown Commercial Service (the Authority) requires all Suppliers of the Training Estate Services (RM6155) framework to complete and return this Non-Disclosure Agreement (NDA) via the eSourcing Suite.

The purpose of this document is to create a single NDA that will apply to all current and future Further Competitions being run under RM6155. Therefore, by signing and returning this NDA, this will act as a blanket agreement that will apply to Further Competitions being run under RM6155. This blanket NDA will negate the need for standalone NDAs to be signed at the start of individual Further Competitions.

All capitalised words shall have the meaning given to them in Joint Schedule 1 (Definitions) of the Training Estate Services Framework Agreement.

Please note that this NDA shall also apply to Further Competitions being run outside of Crown Commercial Service, therefore where Buyers are running their own independent procurement process under RM6155.

**NON DISCLOSURE AGREEMENT**

This Agreementis made on [*insert date*] between:

 (1) the Minister for the Cabinet Office ("**Cabinet Office**"), acting on behalf of each Buyer under the Training Estate Services Framework Agreement (RM6155), as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP, (the "**Authority**"); and

(2) [*COMPANY NAME*] which is a company registered in [*insert*] under company number [*insert company no.*] and whose registered office is at [*insert address*] (the "**Supplier**").

(each a “**Party**” (including the Buyer and together referred to as the “**Parties**”).

1. **Background**
	1. The Supplier is named on the Training Estate Services Framework Agreement (RM6155);
	2. The Supplier can express an interest in any Further Competition to which they are invited, applicable to the Lot they are under on Training Estate Services Framework Agreement for the provision of Facilities Management Services. For the purpose of this Agreement, the provision of the Facilities Management Services under this Framework Agreement is referred to as the “**Service**”.

**Now it is hereby agreed** as follows:

1. **Confidential Information**

2.1 In consideration of certain confidential information (“**Confidential Information**”) relating to the Services to be provided (for all Contracts under the Training Estate Services Framework Agreement) being made available to the Supplier by the Authority and/or Buyers, the Supplier unconditionally and irrevocably agrees to keep Confidential Information confidential pursuant to the terms of this Agreement.

* 1. Such Confidential Information shall include, without limitation:
1. Any release of data and/or information in relation to the Buyer’s requirements (including any information provided before the Tender release date);
2. all staffing information detailed in any tender documentation (pre and post Tender release) and any information relating to location of the Buyer’s premises;
3. any other staffing information in relation to the Service in whatever form supplied (whether in oral, written, magnetic, electronic, digital or other form) which is directly or indirectly disclosed or made available to Potential Providers (pre and post Tender release); and
4. all copies, analyses, compilations, studies and other documents which contain or otherwise reflect or are generated from any such staffing information.
5. **Obligation of confidentiality**

3.1 Subject to paragraphs 4 and 6, the Supplier shall at all times keep secret and confidential the Confidential Information and the terms of this Agreement.

1. **Excluded information**
	1. The obligation to maintain the confidentiality of Confidential Information does not apply to Confidential Information which the Supplier can demonstrate:
2. is or becomes generally available in the public domain other than as a result of a breach by the Supplier or the Supplier’s Authorised Representatives (as defined in paragraph 6.1) of the undertakings contained in this Agreement (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information);
3. was lawfully in the possession of the Supplier before the information was disclosed to the Supplier as evidenced by written records; or
4. the Parties agree in writing is no longer confidential and may be disclosed.
	1. The Supplier may disclose Confidential Information only if the Supplier is required to disclose it by any applicable law or regulation of regulatory authority or by the order or ruling of a court or administrative body of competent jurisdiction provided that:
5. if disclosure of Confidential Information is required for the purpose set out in paragraph 4.2, prior to such disclosure the Supplier shall give the Authority and/or Buyer prompt written notice of the information the Supplier proposes to disclose (being the minimum amount of information consistent with satisfying your obligations) and shall take into account any reasonable comments the Authority and/or Buyers may have in relation to the content, timing and manner of despatch of the disclosure and take such steps as the Authority and/or Buyer may reasonably require to enable the Authority and/or Buyers to mitigate the extent of or avoid the requirement of any such disclosure;
6. if the Supplier is legally prohibited from informing the Authority and/ or Buyer before any such Confidential Information is disclosed, the Supplier shall (to the extent permitted by law) inform the Authority and/or Buyer of the full circumstances of the disclosure or announcement and the information that has been disclosed immediately after such disclosure or announcement is made.

1. **Permitted use**

5.1 The Supplier may use the Confidential Information solely for taking part in the Further Competition and any preparation necessary to do so or to consider whether to do so but for no other purpose.

1. **Permitted disclosure**

6.1 The Supplier may disclose Confidential Information during Further Competitions only to those of its directors, officers, employees, professional advisers and where appropriate any proposed sub-contractors (together the “**Representatives**” and each a “**Representative**”) who are directly and necessarily concerned with the Supplier’s participation in a Further Competition and whose knowledge of the Confidential Information is essential for that purpose, provided that, if the Authority and/or Buyer requests in writing, any professional advisers to whom the Supplier proposes to disclose (or has disclosed) Confidential Information enter into a confidentiality agreement with the Authority and/or Buyer substantially on the same terms as this Agreement prior to the disclosure of any Confidential Information to them.

6.2 The Supplier shall procure that each Representative to whom any disclosure of Confidential Information is made is made aware, and adheres to the terms of the undertakings contained in this Agreement as if he, she or it were a party to them. The Supplier shall, in any event, be responsible for any breach by its Representatives of the undertakings contained in this Agreement.

6.3 The Supplier shall notify the Authority and/or Buyer immediately in writing of the details of each Representative to whom any Confidential Information is proposed to be disclosed by the Supplier or on the Supplier’s behalf.

6.4 The Supplier shall also notify the Authority and/or Buyer immediately upon becoming aware that any of the Confidential Information has been disclosed to, or obtained by, a third party otherwise than as permitted by this Agreement, together with details of such unauthorised disclosure.

1. **Announcements**

7.1 No announcement, communication or disclosure of the Supplier’s interest in the Further Competition or the fact of the Parties discussions shall be made or indicated by the Supplier or on its behalf without the Authority and/or Buyer’s prior written consent, unless such announcement or disclosure is required by law or by the rules of any relevant stock exchange or by any supervisory, governmental or regulatory body or court of competent jurisdiction or other authority with relevant powers to whose rules the Supplier is subject.

1. **Further obligations**

8.1 The Supplier and its Representatives shall keep the Confidential Information safe in a secure place and properly protected against theft, damage, loss and unauthorised access (including, but not limited to, access by electronic means) and, without prejudice to the foregoing, the Supplier shall take all reasonable steps and exercise reasonable skill and care to keep the same confidential and exercise in relation to Confidential Information no lesser security measures and degree of care as the Supplier applies to its own confidential information and all documents and other material reproducing or incorporating any of the Confidential Information shall be kept separate from the Supplier’s own confidential information.

* 1. The Supplier shall mark as confidential any documents, disks or other media containing or reflecting, or which are generated from, any Confidential Information.
1. **Return of Confidential Information**

9.1 Subject to paragraph 9.2 below, the Supplier and its Representatives shall immediately on the earlier of the Supplier receiving written demand from the Authority and/or Buyer to do so and a Further Competition or the Supplier’s involvement in it ceasing for any reason:

1. return to the Authority and/or Buyer all Confidential Information other than as mentioned in paragraph 9.1(c) (and all copies, reproductions or extracts thereof or any part thereof);
2. expunge all Confidential Information from any computer systems, other similar device or virtual facility owned or used by the Supplier or any of its Representatives;
3. destroy all notes, analyses, compilations, studies, memoranda and other documents containing or reflecting or generated from any Confidential Information prepared by the Supplier or any of its Representatives; and
4. procure that one of its directors certifies to the Authority and/or Buyer in writing that to the best of his or her knowledge, information and belief, having made all proper enquiries, the matters set out in paragraphs 9.1(a) to (c) have been done.

9.2 The Supplier and its Representatives shall not have to destroy or permanently erase copies which the Supplier is required by law to retain.

1. **Accuracy of Confidential Information**

10.1 The Supplier acknowledges and agrees that, except as may be otherwise agreed in writing in any contract or deed that the Authority and/or Buyer subsequently enters into in connection with the Service, the Authority and/or Buyer accepts no responsibility for nor make any representation or warranty, express or implied, with respect to the accuracy, reliability or completeness or otherwise of the Confidential Information, and the Authority and/or Buyer has no obligation to update or correct any inaccuracies in any Confidential Information provided. Furthermore, the Supplier hereby irrevocably and unconditionally waives any claims, rights or remedies which the Supplier may otherwise have in relation to the accuracy, reliability or completeness of the Confidential Information.

10.2 Nothing in this Agreement shall exclude any liability for, or remedy in respect of, any representation made or given fraudulently.

1. **Authorised contact**

11.1 All requests to the Authority and/or Buyer for Confidential Information or general enquiries relating to the Service should be made via the eSourcing Suite or whatever electronic platform that is being used during a Further Competition or to any persons as the Buyer may nominate from time to time and to no other person.

1. **Duration**
	1. This Agreement shall apply to each and every Further Competition run under the Training Estate Services Framework Agreement (RM6155)
	2. This Agreement shall cover all stages of a Further Competition process including any pre-Tender activities to the award of any Call-Off Contract.
	3. Once a Call-Off Contract has been awarded between a Supplier and a Buyer in respect of the Deliverables, the terms of the Call-Off Contract will take precedence and thus the terms of this Agreement for that individual Call-Off Contract shall terminate. (For all future and on-going Further Competitions, the terms of this Agreement shall still apply)
	4. Subject to paragraph 12.6 below, if the Parties do not enter into a contractual agreement in respect of the Service, this Agreement shall last for a period of five years from the date of this Agreement, unless it is terminated earlier for breach of either Party or by agreement between the Parties.
	5. Termination of this Agreement shall not affect any accrued rights or remedies to which the Buyer is entitled.
	6. In respect of any Confidential Information in relation to staffing information the Supplier’s obligations under this Agreement shall continue in force without limit of time.
2. **General**
	1. The Supplier confirms that the Supplier is acting as principal and not as a representative or broker for any other person, and confirms that the Supplier shall be responsible for any and all costs incurred by the Supplier or on its behalf in connection with this Agreement.
	2. No right or licence is granted to the Supplier or any of its Representatives in relation to any Confidential Information, except as expressly set out in this Agreement and the Confidential Information shall at all times remain the Buyer’s property.
	3. Access to the Confidential Information is granted to the Supplier and its Representatives without waiver by the Authority and/or Buyer of confidentiality and/or legal professional privilege and/or common interest privilege which attaches to any of the Confidential Information. The Supplier acknowledges and agrees that neither the Supplier nor its Representatives shall, at any time, waive, assign or compromise privilege or confidentiality in relation to the Confidential Information in any way.
	4. The Supplier shall indemnify the Buyer and keep it fully indemnified as per the duration stated in 12.4 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 it arising from any breach of this Agreement by the Supplier and from the actions or omissions of any of its Representatives.
	5. The Supplier agrees and acknowledges that because of the valuable nature of the Confidential Information, damages would not be an adequate remedy for a breach of any term of this Agreement and the Supplier, therefore, agrees that the Buyer is entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of any term of this Agreement by the Supplier or any of its Representatives without proof of special damage.
	6. The failure to exercise or delay in exercising a right or remedy provided by this Agreement, by law or in equity does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement, by law or in equity, prevents further exercise of the right or remedy or the exercise of another right or remedy available to the Buyer, whether contractual, equitable, proprietary or otherwise.
	7. Each of the terms of this Agreement are several and distinct, and to the extent any such provision shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect any other part of that provision or the other provisions of this Agreement which shall remain in full force and effect, and the said provisions (to the extent possible) shall be given effect to in its reduced form as may be decided by any court of competent jurisdiction.
	8. Subject to paragraph 13.9, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
	9. The Parties agree that Buyers may enforce any part of this Agreement as against a Supplier.
3. **Assignment**

14.1 This Agreement is personal to the Supplier and may not be assigned or transferred to any third party without the Authority and/or Buyer’s prior written consent for each Further Competition.

1. **Entire agreement and variation**

15.1 This Agreement constitutes the entire agreement and understanding of the Parties in respect of the subject matter of this Agreement and supersedes all prior oral and written agreements, understandings and arrangements between the Parties relating to the subject matter of this Agreement.

15.2 No variation of this Agreement by the Authority and/or Buyer shall be permitted.

1. **Jurisdiction and governing law**

16.1 The terms of this Agreement are governed by, and shall be construed in accordance with, English law.

16.2 The courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to determine any claim, dispute or difference which may arise out of or in connection with this Agreement, and, for those purposes, each Party irrevocably submits to the jurisdiction of the courts of England.

1. **Arbitration**
	1. Any dispute arising out of or in connection with this Agreement, including a dispute as to the validity or existence of this Agreement and/or this Clause 17, shall be resolved by arbitration in London conducted in English and in accordance with the rules of the LCIA by a single arbitrator who shall be appointed by the LCIA.
	2. The arbitrator shall be and remain independent and impartial of the Supplier and the Buyer.
	3. An award rendered in connection with arbitration pursuant to this Clause 17 shall be final and binding upon the Potential Provider and the Buyer, and any judgment upon such an award may be entered and enforced in any court of competent jurisdiction.
2. **Counterparts**
	1. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all counterparts taken together shall constitute one and the same Agreement. This Agreement may be executed by facsimile signature or other electronic transmission.

Award will be subject to a signed non-disclosure agreement.

**In witness** whereof this Agreement has been duly executed.

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| SIGNED for and on behalf of the Supplier |  |
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| by: |  |
| **WITNESS:****Signature ............................................................****Name ..................................................................****Address ................................................................****................................................................................****Occupation .........................................................** |  |