

NON-DISCLOSURE AGREEMENT
HOB MARKET ENGAGEMENT ACTIVITIES

THIS AGREEMENT is made on _____

BETWEEN:

(1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** with principal offices at 2 MARSHAM STREET LONDON SW1 4DF (the "**Disclosing Party**"), of the one part; and

(2) [_____]

whose address is at:

[_____]

[_____]

[_____]

[_____] (the "**Recipient**") of the other part.

WHEREAS:

- (A) The Disclosing Party wishes to develop further the procurement strategy for a programme called the Home Office Biometrics ("HOB") during 2015/16 in preparation for one or more potential procurements.
- (B) The Recipient appears to have extensive experience in providing solutions and services which are relevant to the proposed scope of HOB's needs. The Disclosing Party wishes to engage with the Recipient during the Market Engagement Phase to better understand their products and services.
- (C) The Disclosing Party intends to make certain information about HOB available to the Recipient during 2015/16 for the Purpose.

THE PARTIES HEREBY AGREE AS FOLLOWS:

Definitions and Interpretation

1.1. "Agreement" means this non-disclosure agreement.

- 1.2. "Information" means any and all information of a technical, commercial, financial or sensitive nature (including without limitation data, know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, programmes, materials, records, business plans, consumer research, analysis or experience) in whatever medium relating to the HOB which is disclosed by or on behalf of the Disclosing Party to the Recipient (or to any person on behalf of the Recipient) orally, pictorially, electronically, in writing, by demonstration, by viewing in machine readable form, or by any other means during or in connection with the Pre-Market Engagement Phase and:
- (a) in respect of information imparted orally, includes any note or record of the disclosure; and
 - (b) includes this Agreement and any reference to the work being carried out under this Agreement.
- 1.3 "Market Engagement Phase" means the period of discussions from the agreement of this Agreement to the period where any subsequent formal procurement activities are commenced, as evidenced through the publication of an OJEU notice and/or an Invitation to Tender (or equivalent document) whichever is the earlier.
- 1.4 "Party" means a party to this Agreement, and "Parties" shall be construed accordingly.
- 1.5 "Purpose" means to permit the Market Engagement Phase to take place at which the Disclosing Party will be able to benefit from the expertise of the Recipient for the purposes of elaborating plans for the HOB Programme.
- 1.6 In this Agreement, references to Clauses are to the clauses of this Agreement.

Obligations of Confidentiality and non-use

- 2 In consideration of the Disclosing Party disclosing or making available to the Recipient the Information, the Recipient shall:
- (a) keep the Information completely and strictly confidential and shall not disclose, reproduce, publish or distribute the whole or any part of the Information to any third party unless previously authorised in writing by the Disclosing Party and subject to the provisions of this clause 2;
 - (b) not copy Information disclosed to it under this Agreement;
 - (c) not without the prior written permission of the Disclosing Party use Information disclosed to it under this Agreement other than for the Purpose;

- (d) restrict access to the Information disclosed to it under the terms of this Agreement to those of its employees and officers and the officers and employees of the persons listed in Schedule 1 to this Agreement who need to know the same for the Purpose;
- (e) respect and observe all regulations and restrictions relating to the Information; and
- (f) treat the 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.

Exceptions

- 3. The obligations of confidentiality set out in this Agreement shall not apply to any Information which the Recipient can show by written records:
 - (a) was known to the Recipient before the Information was imparted by the Disclosing Party, or
 - (b) is, in or subsequently comes into, the public domain through no fault on the Recipient's part; or
 - (c) 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
 - (d) 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
 - (e) 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.

No grant of Rights

- 4. Nothing contained in this Agreement shall be construed, expressly or impliedly, as:
 - (a) granting the Recipient any licence or other rights except as expressly stated in this Agreement; or
 - (b) constituting a warranty as to the accuracy of the Information, or the suitability thereof for any purpose whatsoever.

Return of Information

5. All Information disclosed hereunder, and any copies thereof made by the Recipient, shall be and shall remain the Disclosing Party's property and shall be delivered up promptly by the Recipient to the Disclosing Party on receipt of the Disclosing Party's written request for the Information.

Duration

6. This Agreement shall be for the period of 3 years from the date first before written.

Entire Agreement

7. This Agreement constitutes the entire existing Agreement between the Parties concerning the exchange of Information for the Purpose. The Agreement shall not be amended except by written agreement signed by authorised representatives of both Parties.

Assignment

8. 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.

Waiver

9. 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.

Severability

10. 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.

Contracts (Rights of Third Parties) Act 1999

11. 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.

Law and Jurisdiction

12. 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**

By:

Name:

Title:

Signed for and on behalf of **the Recipient**

By:

Name:

Title: