

SERCO GEOGRAFIX LIMITED (1)

and

(Insert company name) (2)

Mutual Non-Disclosure Agreement

MUTUAL NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made the (xx) the day of (enter month) 2014

Between Serco Geografix Limited, of Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9UY ("Serco") and

Insert name and address of ("Supplier")

RECITALS

- (A) Serco and the Supplier wishes to disclose to the other certain of its proprietary information which may include operations, processes, plans, customer details, trade secrets, business affairs, formulae, software programs, know-how, test results, design rights, drawings, models, photographs, sketches and specifications and which is considered proprietary by the Disclosing Party; and
- (B) Serco and the Supplier wish to exchange each other's aforementioned proprietary information solely for the Purpose; and
- (C) Serco and the Supplier wish to protect the disclosure of the Confidential Information on the terms and conditions of this Agreement.

The parties agree as follows:

1. INTERPRETATIONS AND DEFINITIONS

1.1 In this Agreement, the defined terms shall have the following meanings:-

- 1.1.1 "Confidential Information" means the terms and conditions of this Agreement, the existence of the discussions between the parties, and any other information concerning the Purpose, including but not limited to, information regarding each party's product plans, product designs, product costs, product prices, finances, marketing plans, business opportunities, personnel research and development activities, know-how and pre-release products. Information disclosed orally or printed shall be considered Confidential Information by both "Disclosing Party" and "Receiving Party" unless otherwise stated at the time of disclosure. Confidential Information disclosed to the Receiving Party by any affiliate or agent of the Disclosing Party will be treated as being subject to the terms of this Agreement. Information disclosed by a party relating to the activities or operations of a Group Company shall also be Confidential Information.
- 1.1.2 "Disclosing Party" means a party to this Agreement that discloses Confidential Information.
- 1.1.3 "Group Company" means the ultimate parent company of a party together with all subsidiary companies of that ultimate parent company. For the purposes of this definition, "Parent Company" and "Subsidiary Company" shall have the meaning ascribed to them by the Companies Act 1985.

1.1.4 "Purpose" means the Parties are considering a business relationship in connection with the supply or receipt of electronic monitoring equipment.

1.1.5 "Receiving Party" means a party to this Agreement that receives Confidential Information.

2. DISCLOSURE

2.1 In consideration of the mutual exchange and disclosure of Confidential Information pursuant to the Purpose the Receiving Party agrees with the Disclosing Party that for a period of three (3) years from the date of this Agreement, it shall take all reasonable steps to prevent disclosure of such Confidential Information it receives from the Disclosing Party to any third parties except as expressly agreed in writing by the Disclosing Party and only to those of the Receiving Party's employees who have an absolute need to know in connection with the Purpose, provided that in relation to the disclosure of Confidential Information to agreed third parties or employees of the Receiving Party only:

- (a) any such Confidential Information is clearly marked Confidential or Proprietary, or designated as Confidential or Proprietary by appropriate statements, markings or notices;
- (b) use of such Confidential Information is restricted to the Purpose;
- (c) such employees shall be party to a non-disclosure agreement or non-disclosure covenants with the Receiving Party.

3. STANDARD OF CARE

3.1 The Receiving Party shall use at least the same degree of care to avoid disclosure of the Confidential Information as it employs with respect to its own confidential/proprietary information.

4. EXCEPTIONS TO CONFIDENTIAL INFORMATION

4.1 The Disclosing Party agrees that the Receiving Party shall have no obligation with respect to any such Confidential Information which:

- 4.1.1 is known at the date of disclosure or becomes publicly known through no wrongful act or breach of this Agreement by the Receiving Party; or
- 4.1.2 is rightfully received from a third party without similar restriction and without breach of this Agreement; or
- 4.1.3 is independently developed by the Receiving Party without breach of this Agreement and such development can be shown by documentary evidence; or

4.1.4 is furnished to a third party by the Disclosing Party without a similar restriction on the third party's rights; or

4.1.5 is disclosed where necessary to do so by law or request of a governmental agency (in such instance, the Receiving Party shall first give the Disclosing Party notice of such request and the opportunity to oppose such disclosure or obtain a protective order at its own cost); or

4.1.6 relates to general concepts of computer hardware and software technology.

5. THIRD PARTY RIGHTS

5.1 Each of Serco and the Customer agree and recognise that Confidential Information may include information in which the proprietary interest is held by a Group Company. The Contracts (Rights of Third Parties) Act 1999 shall apply to this Agreement so that a Group Company may enforce all rights of a Disclosing Party as if it were a party to this Agreement, in relation to the disclosure and use of proprietary Confidential Information of that Group Company.

6. NO LICENCES

6.1 Each party shall retain all right, title and interest to that party's Confidential Information. Nothing contained in this Agreement shall be construed as granting or conferring any rights by licence or otherwise, expressly, impliedly, or otherwise in relation to the Confidential Information.

7. RETURN OF CONFIDENTIAL INFORMATION

7.1 Either party may request in writing at any time that any Confidential Information disclosed by it hereunder and any copies thereof be returned with a written statement to the effect that upon such return it has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the Receiving Party shall comply with such request within seven (7) days of receipt of such request.

7.2 All tangible forms of the Confidential Information, such as written documentation, delivered pursuant to this Agreement shall be and remain the property of the Disclosing Party and all such tangible Confidential Information shall be promptly returned upon written request, or destroyed at the Disclosing Party's option.

8. GENERAL

8.1 This Agreement expresses the entire agreement and understanding of the parties with respect to the Receiving Party's obligations hereunder and supersedes all prior agreements and understandings.

8.2 Each party acknowledges that monetary remedies may be inadequate to protect Confidential Information and that injunctive relief may be appropriate to protect such Confidential Information.

- 8.3 The Receiving Party shall not reverse-engineer, decompile, disassemble, modify or copy (except for back-up copy) any software disclosed to it under this Agreement and shall not remove, overprint or deface any notice of confidentiality, copyright, trademark, logo, legend or other notices of ownership or confidentiality from any originals or copies of Confidential Information it obtains from the Disclosing Party.
- 8.4 Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable except to enable a Group Company to enforce its rights as envisaged by clause 5.
- 8.5 If any term of this Agreement shall be held to be illegal or unenforceable by a court of competent jurisdiction, the remaining terms shall remain in full force and effect.
- 8.6 No failure, delay or indulgence on the part of either party in exercising any power or right hereunder shall operate as a waiver of such power or right and no single or partial exercise of such right shall preclude any other or further exercise thereof or the exercise of any other such power or right.
- 8.7 Any notice required or authorised to be given hereunder and any request for consent or approval pursuant hereto may be served personally or by pre-paid registered or recorded delivery letter addressed to the Company Secretary of either party at such address in the United Kingdom as may have been notified to the other party in writing or failing such notification to its registered office from time to time. Any notice so given by letter shall be deemed to have been served three business days after the same shall have been posted. In proving such service, it shall be sufficient to prove that the letter was properly addressed and, as the case may be handed in at a Post Office as pre-paid registered or recorded delivery letter.
- 8.8 This Agreement shall be construed as being subject in all respects to the Laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts in the event of any dispute.
- [8.9 The parties acknowledge and agree that the provisions of this Agreement shall apply and supersede all other arrangements between the parties and shall override any other obligations or commitments of a party including but not limited to those under the Freedom of Information Act 2000].¹

¹ For use with public sector customers only.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective duly authorised representatives.

Signed for and on
behalf of:

Serco Geografix Limited

Signed:
.....

Title:
.....

Name:
.....

Date:
.....

Signed for and on
behalf of:

(enter company name)

Signed:
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Title:
.....

Name:
.....

Date:
.....