**NON-DISCLOSURE AGREEMENT**

**THIS NON-DISCLOSURE AGREEMENT** is made on this **th day of July, 2023 BETWEEN the ASSOCIATION OF CARIBBEAN STATES** located at 5-7 Sweet Briar Road, St. Clair, Trinidad and Tobago, represented by its Secretary General, Rodolfo Sabonge (hereinafter referred to as “**the Contracting Authority”**) **AND** **[insert consultant name]** situated at [insert consultant address], represented by **[insert representative name and title]** hereinafter referred to as “**the Respondent”**) each referred to individually as “the Party” and both collectively referred to hereafter as **“the Parties”**:

**WHEREAS,** the Contracting Authority issued to the Respondent, the material disclosed in fulfilment of the consultancy service contract between the Parties for the delivery of consultancy services **Ref: RFP.OSG.CONSULT.1.digitisationP1.2023** in relation to the digital transformation process at the Contracting Authority’s Secretariat;

**WHEREAS**, as part of the material disclosed, the Contracting Authority has shared Confidential Information with the Respondent;

**NOW THEREFORE**, in consideration of the foregoing the Parties agree as follows:

1. **Definitions**

**Confidential Information.** “Confidential Information” shall mean all information, regardless of the form in which it is communicated or maintained (whether oral, written, electronic, or visual) and whether prepared by the Contracting Authority or otherwise, which is disclosed to the Respondent, regardless of whether such information is disclosed intentionally or inadvertently, before or after the execution of this Agreement, and including all records, reports, analyses, notes, memoranda, documents, knowledge, data, specifications, diagrams, systems, or software, manuals, operational information or practices, processes, stakeholder information, supplier information, the discussions between the Parties concerning the material disclosed, or other information that is based on, contain or reflect any such Confidential information. All information received by the Respondent from the Contracting Authority shall be considered Confidential Information, unless it is specifically designated as non-proprietary and non-confidential. Additionally all reports prepared by the Respondent in providing the Response shall constitute Confidential Information.

**Exceptions.** Confidential Information shall not include:

1. Information which is or becomes publicly available other than as a result of a violation of this Agreement;
2. Information which the Contracting Authority agrees in writing is free from such restrictions;
3. Information which the Respondent can demonstrate was legally in its possession prior to disclosure by the Respondent;
4. Information which is developed by or for the Respondent independently of the Contracting Authority’s Confidential Information.
5. **Non-disclosure and Use of Confidential Information.** Confidential Information shall not be used for any purpose other than to carry out the actions for which the disclosure was permitted. Confidential Information shall be held in strict confidence by the Respondent and shall not be disclosed without prior written consent of the Contracting Authority. The Respondent shall ensure that all recipients of the Confidential Information are bound by the terms of this Agreement, by the Respondent and its agents. The Respondent shall use the same degree of care to protect the Confidential Information that the Respondent employs to protect its own information of like importance.
6. **Required Disclosure**. In the event that the Respondent is requested or required by legal or regulatory authority to disclose any Confidential Information, the Respondent shall promptly notify the Contracting Authority of such request or requirement prior to its disclosure, if permitted by law, so that the Contracting Authority may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, the Respondent agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand and to exercise reasonable efforts to obtain assurance that confidential treatment will be afforded to such Confidential Information. The Respondent will provide reasonable cooperation to the Contracting Authority and its legal counsel with respect to performance of the covenants undertaken pursuant to this section.
7. **Onus.** The Respondent shall have the burden of proving that any disclosure or use inconsistent with the terms and conditions set out herein fall within any of the foregoing exceptions.
8. **Remedies.** The Respondent agrees that pecuniary damages will not be a sufficient remedy for any breach of this Agreement and that the Contracting Authority shall be entitled to injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available by law or in equity. Moreover the Contracting Authority shall be entitled to recover all costs of litigation including attorney’s fees which it may incur in connection with defending its interests and enforcement of contractual rights arising due to a breach of this Agreement by the Respondent.
9. **Notice.** Any notice given to a Party shall be deemed properly delivered if specifically acknowledged by the other Party in writing or when delivered by mail to the addresses set forth on the first page of this Agreement.
10. **No License.** It is accepted that nothing contained in this Agreement shall be construed as granting or conferring rights by license or otherwise in any Confidential Information disclosed to the Respondent or its agents.
11. **Amendment.** Any amendment to this Agreement must be in writing and signed by an authorized representative of each Party.
12. **Survival.** Both Parties agree that all their obligations undertaken herein with respect to the non-disclosure of Confidential Information received pursuant to this Agreement shall survive until perpetuity even after expiration or termination of this Agreement.
13. **No assignment.** The Respondent may not assign this Agreement unless prior consent is obtained by the Contracting Authority.
14. **Non-waiver.** No waiver of any provision of this Agreement shall be deemed to be nor shall constitute a waiver of any other provision whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.
15. **Governing Law**. This Agreement shall be governed by, and construed in accordance with the laws of the Republic of Trinidad and Tobago. In the event of a dispute arising between the Parties in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement, the Parties shall attempt to resolve the dispute in good faith by senior level negotiations. In the event that any such dispute is not amicably resolved within 45 days of such referral for negotiations, it shall be resolved through mediation.
16. **Commencement.** This Agreement shall come into force on the date of its signing by both Parties.
17. **Entire Agreement.** This Agreement constitutes the treatment of Confidential Information between the Parties in relation to the material disclosed.
18. **Authorisation and Binding Obligations**. Each Party represents to the other Party that the execution, delivery and performance of this Agreement have been duly authorized and this Agreement has been duly executed and delivered by the signatory so authorized and the obligations contained herein constitute the valid and binding obligations of such Party.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the **[insert day] day of July,** **2023**.

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| **FOR AND ON BEHALF OF**  **Association of Caribbean States** |  | **FOR AND ON BEHALF OF**  **[INSERT CONSULTANT NAME]** |
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| **Rodolfo Sabonge**  **Secretary General** |  | **[CONSULTANT SIGNATURE]** |