Annex 3b Non-disclosure agreement

IUC reference: 202604115

The undersigned:

1. The State of the Netherlands, whose seat is established in The Hague,
legally represented in this matter by the Minister of Economic Affairs and Climate Policy,
on whose behalf,
Ellen Jacobs, director Innovation and Entrepreneurship, of the Netherlands Enterprise Agency,
hereinafter referred to as: the Contracting Authority,

and

2. [full name and legal form of contractor],
having its [registered] office in …,
legally represented in this matter by
… *(and …)* [name of signatory]
hereinafter referred to as: the Contractor,

WHEREAS:

- The Contracting Authority intends to award the Contract with reference 202604115 for the design, preparation, delivery, reporting and evaluation of the Netherlands–UK Quantum Technology End-User Engagement Programme under the TechBridge programme (the "Programme");

- The information disclosed or made available in connection with the Programme may be highly sensitive, including technical, commercial, scientific and other confidential information relating to the Contracting Authority, Participating Organisations and other stakeholders. The Contracting Authority therefore requires the Contractor to enter into this Non-Disclosure Agreement;

- The purpose of this Agreement is to ensure that Confidential Information disclosed or made available to the Contractor in connection with the Programme is handled securely, kept confidential and used solely for the purposes of performing the Contract;

- This Agreement applies in addition to the confidentiality, information security and data protection obligations set out in the Contract. In the event of any inconsistency, the Parties shall apply the provisions of the Contract and this Agreement in accordance with the applicable order of precedence established in the Contract.

THE PARTIES AGREE AS FOLLOWS:

Article 1. Confidentiality

1.1. The Contractor shall treat all Confidential Information as strictly confidential and shall comply with the obligations set out in this Agreement in respect of all Confidential Information received, obtained or accessed in connection with the Programme.

1.2 The Contractor shall store and handle Confidential Information securely and implement appropriate technical and organisational measures to prevent unauthorised access, loss, alteration, use or disclosure, whether the information is stored physically or electronically.

1.3 The Contractor shall:
- use Confidential Information solely for the performance of the Contract and the delivery of the Programme;
- not disclose Confidential Information to any third party except as permitted under this Agreement;
- protect Confidential Information against unauthorised access, loss, alteration, use or disclosure;

- limit access to Confidential Information to persons authorised under Article 3 who require access for the performance of the Contract and the Programme; and
- notify the Contracting Authority without undue delay upon becoming aware of any actual or reasonably suspected unauthorised access, use, loss or disclosure of Confidential Information, provide relevant information about the incident and reasonably cooperate in containing and mitigating its effects.

Article 2. Definition and scope of Confidential Information

2.1 The Contractor acknowledges that, in connection with the Programme, it may receive, obtain or access Confidential Information belonging to or relating to the Contracting Authority, Participating Organisations, research organisations, quantum technology providers, end-users and other stakeholders involved in the Programme.

2.2 "Confidential Information" means any non-public information disclosed or made available, directly or indirectly, to the Contractor, or accessed by the Contractor, in connection with the Programme, whether before, on or after the date of this Agreement and whether in written, oral, electronic, visual or any other form.

2.3 Confidential Information includes, without limitation:
- information concerning participating organisations, quantum technology providers, end-users, research organisations and other stakeholders;
- technical information, research results, inventions, designs, algorithms, software, source code, prototypes, experimental results, test data and technical documentation;
- business plans, commercial strategies, pricing information, financial information, intellectual property, trade secrets and commercially sensitive information;
- potential applications of quantum technology, use cases, feasibility assessments, project proposals and business opportunities;
- information relating to research infrastructure, test facilities, access arrangements and technical capabilities;
- personal data and other protected information, to the extent disclosed in connection with the Programme; and
- notes, analyses, reports, summaries and other materials derived from or reflecting such information.

2.4 Information shall be treated as Confidential Information where its confidential nature is apparent from its content, the circumstances of disclosure or the context in which it is made available. Information need not be marked or otherwise identified as confidential.

2.5 Confidential Information may belong to or relate to the Contracting Authority, Participating Organisations, third parties or other stakeholders involved in the Programme.

Article 3. Authorised access and personnel

3.1 The Contractor shall limit access to Confidential Information to its employees, subcontractors, consultants and professional advisers who have a legitimate need to access such information for the performance of the Contract and the Programme.

3.2. Before granting access, the Contractor shall ensure that such persons are bound by confidentiality obligations under contract, law or professional rules that provide a level of protection at least equivalent to that required under this Agreement.

3.3 The Contractor shall remain responsible for ensuring compliance with this Agreement by persons to whom it discloses Confidential Information or grants access to it, to the extent permitted by applicable law.

Article 4. Confidentiality Obligations and Duration

4.1 The Contractor shall keep all Confidential Information strictly confidential and shall not disclose, communicate, make available or otherwise provide such information to any third party, except where:
- the Contractor has obtained the prior written consent of the Contracting Authority or, where the Confidential Information belongs to or relates to a Participating Organisation

or other stakeholder, the prior written consent of that organisation or stakeholder, provided that the person or entity giving such consent is duly authorised to do so in respect of the relevant Confidential Information;
- disclosure is required by applicable law or a binding order of a competent court or authority, provided that, to the extent legally permitted, the Contractor gives the Contracting Authority prior written notice of such disclosure and limits the disclosure to the information strictly required to be disclosed; or
- the Contractor can demonstrate that the relevant Confidential Information was lawfully in the public domain before it was received, obtained or accessed by the Contractor, or subsequently enters the public domain through no act or omission of the Contractor or any person for whose conduct the Contractor is responsible under this Agreement.

4.2 The confidentiality obligations set out in this Article shall survive the expiry or termination of the Contract and this Agreement and shall continue indefinitely, unless otherwise agreed in writing by the Parties or to the extent that an exception under Article 4.1 applies.

Article 5. Permitted use of Confidential Information

5.1 The Contractor shall use Confidential Information solely to perform the Contract and deliver the Programme. The Contractor shall not exploit, commercially use or otherwise use Confidential Information for its own benefit or for the benefit of any third party, except with the prior written consent of the Contracting Authority and, where the information belongs to or relates to a Participating Organisation or other stakeholder, the prior written consent of the person or entity duly authorised to approve such use.

5.2 Nothing in this Agreement shall be interpreted as granting the Contractor any ownership rights, licence or other intellectual property rights in or to the Confidential Information, except for the limited right to use such information to the extent necessary to perform the Contract and deliver the Programme.

Article 6. Return and Destruction of Confidential Information

6.1 Upon request by the Contracting Authority, or upon expiry or termination of the Contract or this Agreement, the Contractor shall promptly return or securely destroy all Confidential Information in its possession or control, including copies and materials derived from such information, unless retention is required by applicable law.

6.2 Upon request, the Contractor shall confirm in writing that it has complied with this obligation. Any Confidential Information retained pursuant to a legal obligation shall remain subject to the confidentiality obligations set out in this Agreement and shall not be used for any other purpose.

6.3 Confidential Information contained in routine backup systems need not be immediately deleted where deletion is not reasonably practicable, provided that such information is not accessed or restored except where necessary for disaster recovery, system integrity or compliance with applicable law, remains subject to the confidentiality obligations under this Agreement and is securely deleted in accordance with the Contractor's ordinary backup retention cycle.

Article 7. Contractual penalty and compensation

7.1 In the event of any breach of this Agreement attributable to the Contractor, the Contractor shall be liable to pay the Contracting Authority a contractual penalty of € 25,000 per breach, with a maximum of the contract value, without the need for the Contracting Authority to prove actual damage.

7.2 In determining the number of breaches, the nature of the relevant acts or omissions and the circumstances of the incident shall be taken into account. Multiple disclosures arising from the same underlying incident shall not automatically constitute separate breaches.

7.3 The Contracting Authority may, at its discretion and taking into account the nature, severity and consequences of the breach, as well as any remedial action taken by the Contractor, agree in writing to impose a reduced penalty, a conditional penalty or another appropriate remedial arrangement.

7.4 Any decision by the Contracting Authority under Article 7.3 shall be made on a case-by-case basis and shall not constitute a waiver of its rights in respect of any other breach or future breach of this Agreement.

7.5 Payment of a contractual penalty shall not release the Contractor from its obligations under this Agreement or prevent the Contracting Authority from seeking appropriate measures to stop, contain or remedy the breach.

7.6 To the extent permitted by applicable law, the Contracting Authority may claim compensation for damage exceeding the amount of the contractual penalty. Any contractual penalty paid in respect of the same damage shall be taken into account when determining the remaining compensation payable.

Article 8. Applicable law
This agreement shall be governed by and construed in accordance with Dutch law.

Agreed upon and signed in duplicate,

The Hague,	[Town/city],
Date:	Date:
The Minister of Economic Affairs and Climate Policy, on whose behalf, Ellen Jacobs, director Innovation and Entrepreneurship of the Netherlands Enterprise Agency,	[name Client]
E. Zandt Team Manager Procurement Office	[position and name of signatory]