**HEB Market Sounding Questionnaire: MUTUAL NON-DISCLOSURE AGREEMENT**

**Dated [ ] July 2021**

LONDON COUNCILS

and

[PARTICIPANT]

MUTUAL NON-DISCLOSURE AGREEMENT

Contents

[1. Definitions 2](#_Toc75957857)

[2. Confidentiality Obligations 3](#_Toc75957858)

[3. Exclusions 4](#_Toc75957859)

[4. Return of Confidential Information 5](#_Toc75957860)

[5. Disclaimer 5](#_Toc75957861)

[6. Use for purpose 5](#_Toc75957862)

[7. Period 5](#_Toc75957863)

[8. Employee confidentiality undertakings 5](#_Toc75957864)

[9. No representation 5](#_Toc75957865)

[10. Assignment 6](#_Toc75957866)

[11. Notices 6](#_Toc75957867)

[12. Entire Agreement 6](#_Toc75957868)

[13. Variation 6](#_Toc75957869)

[14. Third Party Rights 6](#_Toc75957870)

[15. Governing law and dispute 6](#_Toc75957871)

**This Agreement** is made on 2021

**Between**

**LONDON COUNCILS** (The “Authority”); of 59 ½ Southwark Street, London SE1 0AL a joint committee of the London Boroughs and the Court of Common Council established under sections 101 and 102 of the Local Government Act 1972 and

***[Participant] [ Participant to insert here name of legal entity of company/partnership and where appropriate*** *company registered number]* *) of [address-* ***Participant to insert here company registered office address or principal place of business]*** *(“****Participant****”)*

**Whereas**

The Authority is conducting early market engagement through the use of this Market Sounding Questionnaire to inform the procurement specification and strategy for possible procurement in relation to the health emergency badge (The Project). The information provided in this document will be used solely for pre-procurement market engagement purposes and (depending on the information received from potential suppliers and/or manufacturers) may not reflect the information ultimately presented in any future calls to tender. Aggregate and anonymised information derived from the totality of responses may be used by Authority in written submissions to the London Councils Transport and Environment Committee and its employees.

The Authority and the Participant will disclose Confidential Information (as defined below) to the other for the purposes of the Project.

In consideration of such disclosure the parties agree to use such Confidential Information in accordance with the terms of this Agreement.

**It is agreed**

# 1. Definitions

In this Agreement the following words and expressions whether appearing in the singular or the plural shall have the meaning set out against them:

**1.1 Confidential Information** means any technical and non-technical information, material, presentation or data relating to the Project or to the Authority’s or Participant's business or affairs, including but not limited to, data, documents, papers, drawings, diagrams, discs, tapes, ideas, processes, programs, know-how, improvements, discoveries, developments, budgets, unpublished financial statements, licenses, prices and costs, (whether in physical form, oral or otherwise) disclosed by the Discloser to the Recipient and/or its Representatives under this Agreement including (without limitation):

information obtained by the Recipient and/or its Representatives from the Discloser as a result of being present at any premises of the Discloser;

information which is designated by the Discloser as confidential;

information obtained by the Recipient and/or its Representatives from the Discloser as a result of the current discussions between the parties, this Agreement and the provisions of this Agreement; and

any information relating to any member of any partnership or consortia to which the Participant belongs.

**1.2 Discloser** means the party disclosing Confidential Information under this Agreement

**1.3 Permitted Purpose** means any information, discussions or correspondence between the parties internally by either party concerning any, or any potential, relationship between the parties relating to the Project

***1.4 Project*** means the Market Sounding Questionnaire for the Health Emergency Badge Scheme and associated early market engagement activity.

**1.5 Recipient** means the party receiving the Confidential Information under this Agreement.

**1.6 Representative** means in respect of either party, its directors, officers, employees, advisers, partners or potential partners, agents (collectively or individually), sub-contractors and consortium members.

# 2. Confidentiality Obligations

2.1 Each party shall treat and safeguard all Confidential Information disclosed to it by the other or the other's Representatives as strictly private and confidential and take all steps and precautions necessary to preserve such confidentiality.

2.2 Without prejudice to sub-clauses 2.3 and 2.5 of this Agreement, the Recipient shall not at any time without the prior written consent of the Discloser:

(i) use, copy, reproduce, distribute or exploit any of the Confidential Information at any time otherwise than for the Permitted Purpose (provided that a reasonable number of copies may be made for the Permitted Purpose and all such copies shall be regarded as Confidential Information); nor

(ii) disclose any of the Confidential Information to any third party (save to the extent that the Authority is required to disclose Confidential Information to third parties pursuant to the *Freedom of Information Act 2000* ( and to other public access to information legislation).

2.3 The Participant may disclose, distribute or pass Confidential Information to third parties (including, but not limited to, its Representatives) if either:

(i) this is done for the sole purpose of enabling the Participant to take part early market engagement activities relating to the Market Sounding Questionnaire for the Health Emergency Badge and the person receiving the Confidential Information undertakes in writing to keep the Confidential Information confidential on the same terms as set out in this Agreement; or

(ii) the Participant obtains the prior written consent of the Authority in relation to such disclosure, distribution or passing of the Confidential Information.

2.4 The Participant shall procure that any third party to which Confidential Information is disclosed pursuant to sub-clause 2.3 of this Agreement is made aware of, and complies with, the provisions of this clause 2 as if they were the Participant.

2.5 The Authority may disclose Confidential Information relating to the Participant's Market Sounding Questionnaire to its Representatives. The Authority shall ensure that any of its Representatives to which Confidential Information is disclosed pursuant to this sub-clause is made aware of, and complies with, the provisions of this clause 2.

2.6 Each party agrees that the duty of confidentiality imposed by this Agreement extends to any Confidential Information which has been, or may have been, supplied to it before the date of this Agreement in connection with the Permitted Purpose, despite the absence of a prior written agreement, and that this Agreement records in writing the oral confidentiality obligations under which the Recipient received the Confidential Information.

2.7 Neither party shall make any commercial or other use of Confidential Information except to the extent that this is necessary for the Permitted Purpose.

2.8 Each party shall be responsible to the other for the performance of sub-clauses 2.1 to 2.7 (inclusive) on the part of its Representatives and any other third parties to whom it discloses Confidential Information.

# 3. Exclusions

This Agreement shall not apply to Confidential Information which:

3.1 is already or becomes common knowledge in any way without breach of this Agreement or any other obligation of confidentiality;

3.2 the Recipient (or any of its Representatives) can show was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the Discloser for the purposes of the early market engagement activity and was not previously received by the Recipient (or any of its Representatives) from the Discloser under an obligation of confidence or to have been developed by or for the Recipient (or any of its Representatives) at any time independently of the information disclosed to it by the Discloser;

3.3 becomes known by the Recipient (or any of its Representatives) from a third party without breach of this Agreement or any other obligation of confidentiality;

3.4 is required to be disclosed by law, regulation or order of a court provided that when required to make any disclosure in accordance with this sub-clause 3.4 the Recipient shall give the Discloser not less than two (2) business days' notice of each disclosure and shall consult with the Discloser prior to such disclosure with a view to avoiding such disclosure if reasonably practicable and legally possible;

3.5 is disclosed by the Recipient (or any of its Representatives) with the prior written approval of the Authority.

# 4. Return of Confidential Information

Both parties (and any of their Representatives) shall upon request from the other party immediately return all Confidential Information (together with all copies whether authorised or not).

# 5. Disclaimer

Save as may be subsequently agreed between the parties:

All rights in the Confidential Information are reserved by the party to whom the Confidential Information belongs and no licence or rights for the other party (or any of its Representatives) to use the Confidential Information (except for the Permitted Purpose) are granted under or are to be implied from this Agreement.

In particular but without limiting effect no licenses are hereby granted or to be implied by either party to the other or any of the other party's Representatives (except for the Permitted Purpose) under any patent, copyright, trade mark or other intellectual property right now or in the future with reference to the Confidential Information.

# 6. Use for purpose

Both parties confirm that the other party and its Representatives shall have the right to use the Confidential Information only for the Permitted Purpose.

# 7. Period

This Agreement shall come into force on the date hereof and shall continue for a period of six (6) years following receipt unless otherwise agreed between the parties.

# 8. Employee confidentiality undertakings

8.1 Each party agrees to (and to procure that each of its Representatives shall) keep the existence and nature of this Agreement confidential and not use the same or the name of the other parties in any publicity, advertisements or other disclosure with regard to the Project without the prior written consent of the other party.

8.2 The Participant shall not undertake (or permit to be undertaken) at any time, whether during the Project or thereafter, any publicity activity with any section of the media (to include, without limitation, radio, television, newspapers, trade and specialist press, the internet or email accessible by members of the public and the representatives of such media) in relation to the Project other than with the prior written agreement of the Authority.

# 9. No representation

This Agreement is not intended to create, nor shall it be construed as creating, expressly or by implication, any partnership, joint venture or agency relationship whatsoever between the parties and neither party shall have, nor shall it represent itself to have any authority or power to act for or to undertake any obligation or responsibility on behalf of the other party.

# 10. Assignment

This Agreement is personal to the parties and shall not be assigned, subcontracted, sub-let, pledged or otherwise dealt with in whole or in part

# 11. Notices

Any notices to be given under this Agreement by either party to the other must be in writing and delivered by hand or first class letter to the address at the beginning of this Agreement (or such other address as may from time to time be designated in writing by the relevant party for this purpose) and in the case of post will be deemed to be given two (2) working days after the date of posting and in the case of other notices will be deemed to be given on delivery.

# 12. Entire Agreement

This Agreement constitutes the entire agreement and understanding between the parties in respect of Confidential Information and supersedes all previous agreements, understandings and undertakings in such respect.

# 13. Variation

This Agreement cannot be changed except by written agreement between the parties.

# 14. Third Party Rights

Unless this Agreement expressly states otherwise a person who is not a party to this Agreement has no right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and if a person who is not a party to this Agreement is stated to have the right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999, the parties may rescind or vary this Agreement (and any documents entered into in accordance with it or in connection with it) without the consent of that person.

# 15. Governing law and dispute

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

**IN WITNESS WHEREOF,** each of the Parties hereto have caused this Agreement to be duly executed by a duly authorised representative of such Party as of the date first above written.

**Signed** by the parties or their duly authorised representatives on the date of this Agreement.

Signed by )

duly authorised for and on behalf of )

)

**The Authority**

Signed by **[Participant to insert here** )

**name of authorised signatory].** )

duly authorised for and on behalf of ) ……………………………………………………

**[Participant –Participant to insert**

**here the name of the legal entity of**

**the Participant]**