

**Confidentiality agreement**

This agreement is dated ……………………………………………..

**PARTIES**

**(1)** **HM Land Registry** whose head office is at Trafalgar House, 1 Bedford Park, Croydon CR0 2AQ **(HMLR)**

**(2)[INSERT PARTY DETAILS]** incorporated and registered in England and Wales with company number[NUMBER] whose head office is at [INSERT ADDRESS]

**BACKGROUND**

**(A)**   The parties intend to enter into discussions relating to the Purpose which will involve the disclosure of confidential information from HMLR to [INSERT PARTY DETAILS].

**(B)**   The parties have agreed to comply with this agreement in connection with the disclosure and use of Confidential Information.

**AGREED TERMS**

**1.**  **INTERPRETATION**

**1.1**  **Definitions:**

**Business Day:**  a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Confidential Information:**  has the meaning given in [*Clause 2*](#co_anchor_a397587_1).

**Discloser:**  HMLR, being the party that discloses its Confidential Information, directly or indirectly, to the Recipient.

**EIRs:** means the Environmental Information Regulations 2004.

**FOIA:** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance or codes of practice issued by the Information Commissioner or the Secretary of State for Constitutional Affairs in relation to such legislation.

**Intellectual Property Rights/ IPR** means:

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction.

**Purpose:**  The sharing by HMLR of technical details and plans relating to HMLR critical infrastructure during a competitive tender for works.

**Recipient:**  [INSERT PARTY DETAILS], being the party that receives Confidential Information, directly or indirectly, from the Discloser.

**Representative(s):**  in relation to each party:

1. its officers and employees that need to know the Confidential Information for the Purpose;
2. its professional advisers or consultants who are engaged to advise that party in connection with the Purpose;
3. its contractors and sub-contractors engaged by that party in connection with the Purpose; and
4. any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.

**Request for Information:** shall have the meaning set out in the Freedom of Information Act (FOIA) and includes any apparent Request for Information under the FOIA and any request or apparent Request for Information under the Environmental Information Regulations 2004.

**1.2**  **Interpretation**

**(a)**  A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

**(b)**  Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

**(c)**  A reference to **writing** or **written** includes email.

**(d)**  Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

**2.**  **CONFIDENTIAL INFORMATION**

**2.1**  **Confidential Information** means all confidential information relating to the Purpose which the Discloser or its Representatives directly or indirectly discloses, or makes available, to the Recipient or its Representatives before, on or after the date of this agreement. This includes:

**(a)**  the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;

**(b)**  all confidential or proprietary information relating to:

**(i)**  the business, affairs, customers, clients, suppliers, **OR** plans, intentions, or market opportunities of the Discloser; and

**(ii)**  the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Discloser;

**(d)**  any information, findings, data or analysis derived from Confidential Information; and

**(e)**  any other information that is identified as being of a confidential or proprietary nature

but excludes any information referred to in [*Clause 2.2*](#co_anchor_a643700_1).

**2.2**  Information is not Confidential Information if:

**(a)**  it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient or its Representatives in breach of this agreement (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);

**(b)**  it was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;

**(c)**  it was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient’s knowledge, is not under any confidentiality obligation in respect of that information;

**(d)**  it was lawfully in the possession of the Recipient before the information was disclosed by the Discloser;

**(e)**  it is developed by or for the Recipient independently of the information disclosed by the Discloser; or

**(f)**  the parties agree in writing that the information is not confidential.

**3.**  **CONFIDENTIALITY OBLIGATIONS**

**3.1**  In return for the Discloser making Confidential Information available to the Recipient, the Recipient undertakes to the Discloser that it shall:

**(a)**  keep the Confidential Information secret and confidential;

**(b)**  not use or exploit the Confidential Information in any way except for the Purpose; and

**(c)**  not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this agreement.

**3.2**  The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Discloser from time to time) to safeguard the Confidential Information from unauthorised access or use.

**4.**  **PERMITTED DISCLOSURE**

**4.1**  The Recipient may disclose the Confidential Information to its Representatives on the basis that it:

**(a)**  informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; and

**(b)**  procures that those Representatives comply with the confidentiality obligations in [*Clause 3.1*](#co_anchor_a540626_1) as if they were the Recipient

**4.2**  The Recipient shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the Recipient.

**5.**  **MANDATORY DISCLOSURE**

**5.1**  Subject to the provisions of this [*Clause 5*](#co_anchor_a281113_1), the Recipient may disclose Confidential Information to the minimum extent required by:

**(a)**  an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;

**(b)**  the laws or regulations of any country to which its affairs are subject.

**5.2**  Before the Recipient discloses any Confidential Information pursuant to [*Clause 5.1*](#co_anchor_a207481_1) it shall, to the extent permitted by law, give the Discloser as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with [*Clause 5.2*](#co_anchor_a408067_1), the Recipient shall take into account the Discloser’s requests in relation to the content of this disclosure.

**5.3**  If the Recipient is unable to inform the Discloser before Confidential Information is disclosed pursuant to [*Clause 5.1*](#co_anchor_a207481_1) it shall, to the extent permitted by law, inform the Discloser of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

**6.**  **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

**6.1**  If so requested by the Discloser at any time by notice in writing to the Recipient, the Recipient shall promptly:

**(a)**  destroy or return to the Discloser all documents and materials (and any copies) containing, reflecting, incorporating or based on the Discloser’s Confidential Information;

**(b)**  erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form

**(c)**  certify in writing to the Discloser that it has complied with the requirements of this [*Clause 6.1*](#co_anchor_a216382_1).

**6.2**  Nothing in [*Clause 6.1*](#co_anchor_a216382_1) shall require the Recipient to return or destroy any documents and materials containing or based on the Confidential Information that the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction, to which it is subject. The provisions of this agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to this [*Clause 6.2*](#co_anchor_a454601_1).

**6.3** The obligation in 6.1(a) or (b) to return or destroy Confidential Information shall not cover information that is maintained on tapes, discs or other storage devices solely or substantially for routine back-up purposes in the ordinary course of business provided that such backed-up information (a) is not used, disclosed or otherwise recovered from such storage devices and (b) remains at all times subject to the terms of this agreement.

**7.**  **RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT**

**7.1**  The Discloser reserves all rights in its Confidential Information (including but not limited to IPR). The disclosure of Confidential Information by the Discloser to the Recipient does not give the Recipient or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement. The Recipient shall not acquire any intellectual property rights or other rights under this agreement in respect of the Confidential Information.

**7.2**  Except as expressly stated in this agreement, the Discloser makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

**7.3**  The disclosure of Confidential Information by the Discloser shall not form any offer by, or representation or warranty on the part of, the Discloser to enter into any further agreement with the Recipient.

**8.**  **INADEQUACY OF DAMAGES**

    Without prejudice to any other rights or remedies that the Discloser may have, the Recipient acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement. Accordingly, the Discloser shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this agreement by the Recipient without proof of special damages.

**9.**  **NO OBLIGATION TO CONTINUE DISCUSSIONS**

    Nothing in this agreement shall impose an obligation on the Discloser to continue discussions or negotiations in connection with the Purpose, or an obligation on the Discloser to disclose any information (whether Confidential Information or otherwise) to the Recipient.

**10.**  **ENDING DISCUSSIONS AND DURATION OF CONFIDENTIALITY OBLIGATIONS**

**10.1**  If the Discloser decides not to continue to be involved in the Purpose with the Recipient, it shall notify the Recipient in writing immediately.

**10.2**  Notwithstanding the end of discussions between the parties in relation to the Purpose pursuant to [*Clause 10.1*](#co_anchor_a259915_1), each party’s obligations under this agreement shall continue in full force and effect in perpetuity from the date of this agreement.

**10.3**  The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either party is entitled.

**11.**  **NO PARTNERSHIP OR AGENCY**

**11.1**  Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

**11.2**  Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**12.**  **GENERAL**

**12.1**  **Freedom Of Information Act and Environmental Information Regulations.**

(a) [INSERT PARTY DETAILS] acknowledges that HMLR is subject to the requirements of the FOIA and the EIRs and shall provide reasonable assistance and cooperation to HMLR to enable it to comply with those information disclosure requirements.

(b) [INSERT PARTY DETAILS] acknowledges that HMLR shall be responsible for determining at its absolute discretion whether the Confidential Information or any other information:

(i) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; or

(ii) is to be disclosed in response to a Request for Information.

(c) The Company acknowledges that HMLR may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under the FOIA or the EIRs to disclose information:

(i) without consulting with the [INSERT PARTY DETAILS], or

(ii) following consultation with [INSERT PARTY DETAILS] and having taken its views into account.

(d) Subject to Clauses 12.1(b) and 12.1(c), HMLR shall use reasonable endeavours to consult with the [INSERT PARTY DETAILS] before responding to any Request for Information affecting the Confidential Information or failing that, to draw the disclosure of any Confidential Information to the [INSERT PARTY DETAILS] attention promptly after any such disclosure.

**12.2 Assignment and other dealings.** Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

**12.3**  **Entire agreement.**

**(a)**  This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**(b)**  Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**12.4**  **Variation.** No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**12.5**  **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**12.6**  **Severance.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

**12.7**  **Notices.**

**(a)**  Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its head office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.

**(b)**  A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in [*Clause 12.7(a)*](#co_anchor_a440732_1); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier’s delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

**(c)**  The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**12.8**  **Third party rights.**

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**12.9**  **Governing law.** This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**12.10**  **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

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| **Signed by ………………………………………………………. for and on behalf of HM LAND REGISTRY** |  | **....................**  **Signature** |
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|  |  |  |
| **Signed by ……………………………………………………….. for and on behalf of [INSERT PARTY DETAILS]** |  | **....................**  **Signature** |
|  |  |  |
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