[Insert date]

Centrica plc

[Insert the full corporate name of the Supplier]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NON-DISCLOSURE AGREEMENT

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NON-DISCLOSURE AGREEMENT

DATED: [Insert date]

PARTIES:

(1) Centrica plc a company registered in England with number 03033654 whose registered office is at Millstream Maidenhead Road, Windsor, Berkshire, SL4 5GD (the "**Company**"); and

(2) [**xxx**] a company registered in [England] with number [xxx] whose registered office is at [xxx] (the "**Supplier**").

BACKGROUND:

(A) The Parties are in discussion in connection with the combined heat and power plant for the Imerys (the Purpose).

(B) In connection with the Purpose it will be necessary for certain Confidential Information (as defined in Clause 1 - Definitions) to be disclosed by one Party (the **Disclosing Party**) to the other Party (the **Recipient**).

(C) The objective of this Agreement is to protect any Confidential Information disclosed by the Disclosing Party in connection with the Purpose.

(D) The Parties agree that the following terms and conditions shall apply when the Disclosing Party discloses Confidential Information to the Recipient under this Agreement.

THE PARTIES AGREE:

1. **DEFINITIONS**

The following expressions have the following meanings unless otherwise specified:

**Affiliate** means at any time any holding company or subsidiary company of a Party or any company which is a subsidiary company of such holding company. The expressions “holding company” and “subsidiary” have the meanings given to them in Section 1159 of the Companies Act 2006

**Agreement** means this agreement and the Appendix attached to it (if any)

**Authorised Person** means in relation to either Party or its Affiliate any director, shareholder, officer, employee, agent or adviser (and/or sub-contractors and their respective employees) to whom it is necessary to disclose Confidential Information to fulfil the Purpose

**Confidential Information** means:

1. any information in whatever form which by its nature is confidential or which is marked "confidential" including customer information, documents, letters, plans, diagrams, sketches, drawings, photographs, processes, models, specifications, software, programs, data and any other material bearing or incorporating any information relating to the Disclosing Party and/or its know-how, intellectual property rights, business, affairs, customers, suppliers and/or assets disclosed whether in writing, orally or by inspection or observation of materials, media or demonstration or by any other means by the Disclosing Party or a third party acting on its behalf;
2. analyses, compilations, studies, notes and other documents prepared by the Receiving Party which contain or otherwise reflect or are generated from any such information as is specified in the paragraph above;
3. the Purpose; and
4. information of whatever nature obtained by observation during visits to premises

**Materials** means:

1. all materials, data, documents and papers containing the Confidential Information (or any part of it); and
2. any copies, extracts, parts of or materials based upon the Confidential Information (or any part of it) created by the Recipient.
	1. Any phrase introduced by the expression “include”, “including”, “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that expression.
	2. References to persons include bodies corporate, unincorporated associations and partnerships and the singular number is deemed to include the plural and vice versa.

CONFIDENTIALITY

In consideration of the disclosure of Confidential Information by the Disclosing Party to the Recipient, the Recipient shall:

* 1. treat the Confidential Information as confidential, regardless of when it is disclosed or obtained and the form in which it is disclosed or obtained, subject to the terms and conditions of this Agreement;
	2. not to use the Confidential Information (or any part of it) for any purpose other than strictly in accordance with the Purpose and not to use the Confidential Information in any way which could be harmful to the Disclosing Party (whether or not harm is in fact caused);
	3. not to copy, disclose or grant access to the Confidential Information except to the extent required for the Purpose;
	4. keep the Confidential Information clearly segregated from the Recipient’s own information, appropriately marked as confidential and identified as proprietary to the Disclosing Party;
	5. ensure that all Confidential Information, whether disclosed orally, in writing or on magnetic or other media including software, is kept secure and in such a way so as to prevent unauthorised access by any third party;
	6. exercise the same degree of care (but no less than a reasonable duty of care) to protect any Confidential Information that is disclosed to the Recipient as is exercised by the Recipient in relation to its own confidential or proprietary information of a similar nature;
	7. restrict access to such information to Authorised Persons;
	8. ensure that disclosure of or access to any Confidential Information is restricted to Authorised Persons on a need to know basis in connection with the Purpose and to procure that each such Authorised Person complies with confidentiality provisions no less onerous than those contained in this Agreement. Any breach of confidentiality by such persons (whether during or after their employment with the Recipient) shall be regarded as a breach by the Recipient; and
	9. the extent permitted by law, notify the Disclosing Party immediately if the Recipient becomes aware that any Confidential Information has been communicated or disclosed to any person who is not an Authorised Person.

DATA PROTECTION

* 1. References in this clause 3 to a Regulation are to regulation 2016/679/EC. References to an Article are to an article of the Regulation. Capitalised terms in this clause have the meaning defined by the Regulation.
	2. To the extent that any of the Confidential Information provided by Disclosing Party is Personal Data, the Recipient agrees that, in the performance of its obligations under this Agreement, it shall comply with the provisions of the Regulation.
	3. If, in respect of any Personal Data, the Disclosing Party is a Controller, and the Recipient Processes the Personal Data as the Disclosing Party 's Processor, the Recipient shall:
		1. process the Personal Data only for the Purpose or as otherwise instructed by the Disclosing Party;
		2. not transfer or process the Personal Data outside the European Economic Area without the Disclosing Party’s prior written authorisation;
		3. obtain the Disclosing Party’s prior written authorisation before engaging another Processor and shall respect the conditions referred to in paragraphs 2 and 4 of Article 28 for any such engagement;
		4. take all measures required pursuant to Article 32;
		5. taking into account the nature of the Processing, assist the Disclosing Party by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Disclosing Party's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the Regulation;
		6. provide reasonable assistance to the Disclosing Party on written request by the Disclosing Party in ensuring compliance with the Disclosing Party’s obligations pursuant to Articles 32 to 36, taking into account the nature of Processing and the information available to the Recipient;
		7. at Recipient’s cost and following written agreement as to the details:
1. make available to the Disclosing Party all information necessary to demonstrate compliance with the obligations laid down in Article 28; and
2. allow for and contribute to audits, including inspections, conducted by the Disclosing Party or another auditor mandated by the Disclosing Party;
	* 1. notify the Disclosing Party without undue delay if the Recipient becomes aware of a Personal Data Breach.
	1. **Not Used**

FREEDOM OF INFORMATION

**Not Used**

EXCEPTIONS

The obligations of confidentiality set out in this Agreement do not apply to information or Confidential Information to the extent that documentary evidence shows it:

* 1. is in or becomes part of the public domain (other than as a result of disclosure by the Recipient or any other person contrary to the terms of this Agreement);
	2. was already properly and lawfully in the possession of the Recipient prior to its disclosure by the Disclosing Party free of any obligation to keep such Confidential Information confidential;
	3. is lawfully received from an independent third party without breach of any obligation of confidentiality owed to any third party or the Disclosing Party;
	4. is independently developed by the Recipient without breach of any obligation owed under this Agreement;
	5. is required to be disclosed by law or by any governmental or other regulatory authority (including the rules and regulations of any applicable stock exchange) acting within the scope of its powers; or
	6. is approved in writing for disclosure by the Disclosing Party.

RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

* 1. Upon termination of this Agreement or within three business days of receipt of a written request from the Disclosing Party, the Recipient agrees to:
		1. promptly destroy or return any Materials received by or supplied to it by the Disclosing Party or its Affiliate;
		2. erase the Materials, including any stored on any computer, word processor or similar device, or which are stored in electronic form to the extent technically and legally practicable, erase all Materials stored in electronic form on systems and data storage services provided by third parties save that the Recipient make keep and copies that have been automatically backed-up on its systems (for the duration of such back-up) provided that the Recipient does not attempt to access such Materials ; and
		3. provide a certificate signed by a director of the Recipient confirming that the Recipient has complied with its obligations pursuant to this Clause 6.
	2. Nothing in [Clause 6.1](https://uk.practicallaw.thomsonreuters.com/5-384-0493?originationContext=knowHow&transitionType=KnowHowItem&contextData=(sc.RelatedInfo)&comp=pluk#co_anchor_a216382) shall require the Recipient to return, destroy or erase any Materials that the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of this agreement shall continue to apply to any Materials retained by the Recipient pursuant to this [Clause 6.2](https://uk.practicallaw.thomsonreuters.com/5-384-0493?originationContext=knowHow&transitionType=KnowHowItem&contextData=(sc.RelatedInfo)&comp=pluk#co_anchor_a454601).

AFFILIATES

* 1. Each Party acknowledges that the other Party has concluded this Agreement on its own behalf and for the benefit of its Affiliates and that:
		1. the obligations owed to a Party are also owed to the Affiliate of that Party from whom the Confidential Information is actually provided (on a need to know basis);
		2. the Affiliate of the Party who discloses Confidential Information under this Agreement may enforce the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999; and
	2. A Party may elect that the losses under this Agreement of its Affiliates shall be considered to be the losses of that Party. This means that a Party may recover the losses of its Affiliates as if they were losses suffered directly by that Party.

NO WARRANTY/FUTURE COMMITMENTS

* 1. Neither this Agreement nor any Confidential Information made available to the Recipient by the Disclosing Party shall impose or be deemed to impose on either Party an obligation to disclose Confidential Information or to enter any agreement or transaction of any kind pursuant to the Purpose.
	2. The Disclosing Party makes no representation or warranty as to the accuracy or completeness of any of the Confidential Information supplied in connection with the Purpose. The Recipient acknowledges that any reliance on such Confidential Information is entirely at its own risk.

NO ASSIGNMENT

Neither Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party.

SEVERABILITY

If any provision of this Agreement is determined to be invalid or unenforceable (in whole or in part) for any reason, the remaining provisions shall continue in full force and effect as if this Agreement had been executed without the invalid or unenforceable provision.

WAIVER & VARIATION

* 1. Failure or delay by either Party in exercising any right, power, privilege or remedy (Right) under this Agreement will not in any circumstances constitute a waiver of any Right, nor will any single or partial exercise of any Right in any circumstances preclude any other or further exercise of any it or the exercise of any other right, power, privilege or remedy.
	2. No waiver or amendment of any term of this Agreement shall be effective unless made in writing and signed by both Parties.

REMEDIES & ADEQUACY OF DAMAGES

Without prejudice to any other rights and remedies that the Parties may have, monetary damages may not be an adequate remedy if a Party is in breach of this Agreement. Accordingly, both Parties agree that the Disclosing Party will be entitled without proof of special damage to seek any legal or equitable relief for any actual or anticipated breach by the Recipient.

INFORMATION SECURITY

The Recipient undertakes to comply with all reasonable information security requirements of the Disclosing Party. Any information security requirements shall be agreed by both Parties before the transfer of any Confidential Information.

TERM

* 1. This Agreement shall come into force on the date of signature by both Parties and shall remain in force until terminated by the earlier of the following events occurring:
		1. the expiry of the period of five years from the date of this Agreement; or
		2. the Parties terminating this Agreement by an agreement in writing.
	2. In the event that this Agreement is terminated by a party pursuant to clause 14.1.2, the obligation to keep any information confidential shall continue for a period of five years from the date of this Agreement.
	3. The termination of this Agreement pursuant to clause 14.1 shall not affect any accrued rights or remedies to which either Party is entitled.

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the Parties with respect to its subject matter and, except in the case of any fraudulent misrepresentation, shall supersede all prior agreements, proposals, representations and negotiations relating to it (whether oral or in writing).

RELATIONSHIP

Nothing in this Agreement creates any partnership, association, joint venture, agency or any relationship of employer/employee between the Parties.

RIGHTS OF THIRD PARTIES

Other than any rights of an Affiliate of a Party to enforce the terms of this Agreement relating to its Confidential Information, any person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999.

COUNTERPARTS

* 1. This Agreement may be executed in any number of counterparts and by different Parties on separate counterparts, each of which when executed and delivered shall be an original and all of which together shall constitute a single agreement. This Agreement shall not be effective until each Party has executed and delivered at least one counterpart. Any signed counterpart transmitted by facsimile transmission or email shall constitute an original and shall be deemed to be binding when delivered.
	2. This Agreement shall be executed by each Party by being signed by or on behalf of such Party. For these purposes this Agreement is signed (or is to be deemed to have been signed) by a Party where either:
		1. this Agreement is signed by or on behalf of that Party; or
		2. a signature page in or substantially in the form of the signature page of this Agreement is signed by or on behalf of that Party and such signature page (or a copy of it) is attached to this Agreement.

GOVERNING LAW

* 1. This Agreement and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with its subject matter or formation or the consequences of its termination is governed by and construed in accordance with the laws of England and Wales.
	2. The Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to hear and determine any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Agreement and to enforce any judgement against their respective assets.

**SIGNED BY** the duly authorised representatives of the Parties

**Signed by**

**for and on behalf of**

|  |  |
| --- | --- |
| **The Company (Centrica plc):** |  |
| **Print Name:** |  |
| **Date:** |  |

**Signed by**

**for and on behalf of**

|  |  |
| --- | --- |
| **The Company (Supplier):** |  |
| **Print Name:** |  |
| **Date:** |  |

APPENDIX

CONFIDENTIAL INFORMATION