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|  |
| Companies House Mutual NDA  Between  Companies House and[Supplier Name] |
| [Insert date of publication or any other additional text] |

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# Mutual Confidentiality Agreement)

### This Agreement is dated 16th March 2023

### Between

(1) THE SECRETARY OF STATE for Business Energy & Industrial Strategy acting through the Registrar of Companies for of England, Scotland, Northern Ireland and Wales (the “Buyer”)

And

(2) [Supplier Name] registered in England, Scotland, Northern Ireland and Wales under registered number [Number here] whose registered office is at [address]

together the “**Parties**” and each a “**Party**”.

### Term

Each Party's obligations under this Agreement shall continue in full force and effect for a period of 3 years from 16th March 2023 until 15th March 2025.

In certain instances, and by mutual agreement, this specific arrangement may be superseded by any alternative constructs that are put in place between the two parties.

# Purpose of Agreement

The Parties are interested in participating in discussions regarding our Request for Information relating to Enforcement Services or Managed Enforcement Services or in connection with these discussions, the Parties agree to the terms in this Agreement in order to protect the Parties’ disclosure of Confidential Information.

### Definitions

“**Applicable Law**” means all laws, enactments, regulations, orders, ministerial directions, mandatory codes, standards and guidance, regulatory policies, regulatory permits and licences, instructions or requests of a regulator, and judicial decisions, in each case which are in force from time to time;

"**Confidential Information**" means all valuable or potentially valuable information in relation to the Opportunity specified in Schedule 2, whether communicated in oral, written, electronic or other form prior to or after execution of this Agreement, either furnished or made available by the Disclosing Party or its Agents (as defined in Section 7) to a Receiving Party or its Agents, in connection with the Opportunity, including, but not limited to, all information concerning the business, affairs, finances, clients or contracts of the Disclosing Party, and any and all other business information which is either clearly indicated as confidential at the time of disclosure or which by its nature should reasonably be treated as secret or confidential;

Confidential Information specifically includes (i) Confidential Information contained in all writings in other media prepared by Receiving Party, (ii) the Receiving Party's "knowledge" of Confidential Information, and (iii) the fact that Confidential Information has been made available or that Disclosing Party and Receiving Party are discussing the Opportunity.

"Confidential Information" does not include information which (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, (ii) was known by the Receiving Party at the time of disclosure of the information without breach by the Receiving Party of any obligation of confidentiality, (iii) was or becomes available from a source other than the Disclosing Party if the source was not legally bound to the Disclosing Party to maintain the confidentiality of the information, or (iv) the Receiving Party independently develops the information with­out use of or reference to the Confidential Information.

“**Disclosing Party**” means the Party who discloses Confidential Information to the other Party under this Agreement;

“**Receiving Party**” means a Party who receives Confidential Information from the other Party under this Agreement;

# Obligations of Confidentiality.

The Receiving Party shall keep the Confidential Information confidential and secure and shall use at least the same standard of care to protect the Confidential Information as the Receiving Party employs for the protection of its own proprietary information, but in no case less than a commercially reasonable standard of care. Receiving Party will not disclose the Confidential Information to any third party or appropriate the Confidential Information for its own or any other party’s use or benefit, except as specifically permitted by this Agreement. The Receiving Party may use the Confidential Information solely in, and to the extent necessary for the purpose of evaluating the Opportunity and may disclose the Confidential Information to Receiving Party’s Agents who are legally bound to confidentiality and who have a need to know the Confidential Information in connection with Receiving Party’s evaluation of the Opportunity.

## Mandatory Disclosure

If the Receiving Party becomes compelled by law or regulation to disclose any Confidential Information, the Receiving Party will, if permitted by Applicable Law, provide the Disclosing Party with prompt written notice so that the Disclosing Party may seek an appropriate protective order or other remedy. If a remedy acceptable to the Disclosing Party is not obtained by the date that the Receiving Party must comply with the request.,

## Relief

The Receiving Party acknowledges that damages may not be an adequate remedy for any breach of this Agreement by it and the Disclosing Party shall be entitled to seek the remedies of injunction, specific performance, and other equitable relief for any threatened or actual breach of this Agreement. The Receiving Party will indemnify and keep indemnified the Disclosing Party against any and all liabilities, claims, expenses, losses and damages suffered or incurred by the Disclosing Party as a result of any breach by the Receiving Party of its obligations under this Agreement. Each Party agree that under no circumstances shall it be liable to the other, or to any other person or entity, for any incidental, indirect, consequential, special or reliance damages of any kind or nature, based on any cause of action whatsoever relating to or arising out of this Agreement.

## Return of Materials

Upon (a) termination of this Agreement and formal request from Disclosing Party or (b) receipt of written notice from the Disclosing Party for return of the Confidential Information, Receiving Party will promptly (i) deliver to the Disclosing Party or (ii) destroy all information in the Receiving Party’s possession containing Confidential Information, whether such information is in written, electronic or other form save that the Receiving Party may keep a copy of such Confidential Information pursuant to its legal and regulatory obligations and such copies as may be generated pursuant to its back-up automated system. Upon the request of the Disclosing Party, an officer of Receiving Party will confirm in writing that all Confidential Information has been returned or destroyed.

## Agents

“**Agents**” mean each of the Parties’ advisors, directors, officers, employees, contractors, affiliated entities (i.e., an entity controlling, controlled by, or under common control with a Party), or other agents. If and to the extent any Agents of the Receiving Party receive Confidential Information, such Receiving Party shall be responsible for such Agents’ full compliance with the terms and conditions of this Agreement and shall be liable for any such Agents’ non-compliance.

## Disclaimer

The Receiving Party acknowledges that any Confidential Information or other information which is disclosed to it is for preliminary evaluation purposes at this stage and the Disclosing Party makes no express or implied representation or warranty regarding the accuracy or completeness of such information, which is provided on an “as is” basis. No right or licence to the Confidential Information or intellectual property of the Disclosing Party is granted or implied by this Agreement.

## Termination

This Agreement will terminate on the earlier to occur of: (a) the execution of an agreement regarding the Opportunity which includes confidentiality provisions substantially similar to those contained in this Agreement (a “Definitive Agreement”); (b) written notice given by any Party terminating evaluation of the Opportunity; or (c) the date that is 1 year from the date of this Agreement. The rights and obligations of the Parties: will survive the termination of this Agreement until the earlier of: (i) such Confidential Information falling under one of the exceptions envisaged under the definition of Confidential Information under section 2 above; or (ii) the date falling 5 years after termination of this Agreement. The obligations of Section 6 will remain in effect until satisfied.

## No Commitment

This Agreement does not obligate the Parties to enter into an agreement regarding the Opportunity or to proceed with any other relationship or transaction, and nothing herein prevents any Party from entering into a similar transaction with any other party. Subject only to its confidentiality obligations in this Agreement and applicable law: (a) each Party's right to develop, use, and market products and services similar to or competitive with the Confidential Information of the other Parties shall remain unimpaired; and (b) each Party acknowledges that the other Parties may already possess or have developed products or services similar to or competitive with those of the other Parties disclosed in the Confidential Information.

## Data Protection Act 2018.

Each Party shall comply with the Data Protection Act 2018, GDPR and any other applicable legislation or laws that apply in relation to any personal data processed in connection with the Opportunity and shall use any data supplied to it under this Agreement solely for the purpose of evaluating the Opportunity. The Parties shall indemnify each other and keep each other indemnified against all claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements) losses and damages arising from or incurred by reason of any breach of their obligations under this Clause 11. Details of personal data and the handling of by both Parties shall be restricted to the purpose itemised in Schedule 1 of this Agreement.

## Data Accuracy

Save for as set out above, the liability of each Party in respect of any cause of action arising out of or in connection with the Opportunity (whether for breach of contract, in negligence or any other tort, under statute or otherwise at all) shall be limited, to the extent that where the cause of action relates to either Party's supply of any data, to the re-supply of such data, except where any information or data provided by the Disclosing Party breaches the intellectual property of a third party, in which event Disclosing Party agrees to indemnify the Receiving Party against any third party claims in this regard.

## Miscellaneous.

Each Party shall comply with all Applicable Law in the transmission, storage and use of Confidential Information and its activities in respect of the Opportunity. This Agreement shall be governed by the laws of England and Wales. Each Party submits to the exclusive jurisdiction of the Courts of London, England. This Agreement contains the final, complete, and exclusive agreement of the Parties with respect to the subject matter and supersedes all prior and contemporaneous agreements and understandings whether written or oral.

This Agreement may only be varied by a written document executed by all the Parties. Each person signing below represents and warrants that he or she has the necessary authority to bind the principal as set out below. This Agreement may not be assigned without the prior express written consent of the other Parties. Notwithstanding any other provision in this Agreement a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any right or remedy of a third party which exists or is available other than as a result of that Act.

Failure of any Party to insist upon or enforce strict performance of any provision of this Agreement or to exercise any right, power or remedy under this Agreement shall not operate as a waiver of that provision, right, power or remedy or preclude its exercise later.

In the event any provision of this Agreement is found by an authorised authority to be unenforceable, the remaining provisions of the Agreement shall survive and remain in full force and effect, and any unenforceable provision shall to the extent legally permitted be replaced by an enforceable provision that comes closest to the Parties’ intent underlying the unenforceable provision.

## Governing Law And Jurisdiction

This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England, Scotland, Northern Ireland and Wales.

The Parties agree that the courts of England, Scotland, Northern Ireland and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

### Signatures

|  |  |  |
| --- | --- | --- |
|  | **Supplier** | **Buyer** |
| Name |  |  |
| Role |  |  |
| Organisation |  |  |
| Email |  |  |
| Signature |  |  |
| Date |  |  |

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