

## KBS Two Way NDA

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# TWO WAY NON-DISCLOSURE AGREEMENT

1. **KBS Maritime Ltd**

2. **.....**

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1. DATE 2025

2. Reference KBS-NDA-**XXX**

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**This Non-Disclosure Agreement** is made on **DATE** 2023

**Between**

1. KBS Maritime Limited, a company registered in England and Wales (Company registered number 13289372) whose registered office is at Victory Building (Pp72), Rm. 233 The Parade, HM Naval Base, Portsmouth, England PO1 3LS, UK (**KBS Maritime**)  
  
and
2. **Insert your company name** a company registered in England and Wales (Company registered number ..... ) whose registered office is at ..... (the **Company**).

**Background**

- a) KBS Maritime is the proprietor of or is in possession of information and details in relation to the requirements of projects within Portsmouth Naval Base.
- b) The Company is the proprietor of or is in possession of information and SQEP for the delivery of projects within Portsmouth Naval Base.
- c) The Parties wish, and are willing, to disclose to and receive from each other such Confidential Information for the Purpose, subject to the terms and conditions set out in this Agreement.

**It is agreed**

**1. DEFINITIONS AND TERMINATION**

**1.1 In this Agreement (including the Background):**

**Agreement** means this non-disclosure agreement;

**Confidential Information** means any and all confidential information, including without limitation any and all technical, financial, commercial or other information, (howsoever recorded, preserved or disclosed) disclosed directly or indirectly by the Disclosing Party to the Receiving Party and either identified by a suitable legend or other marking as being confidential (or similar designation) in a prominent position or described as being confidential at the time of disclosure or which would reasonably be considered to be confidential having regard to all the circumstances of the disclosure; any information obtained by examination, testing or analysis in any way from such confidential information; and any derivative of any such confidential information **provided that** Confidential Information shall not include any information which the Receiving Party can show through documentary evidence:

- a. is or becomes publicly available otherwise than as a result of a breach of this Agreement or the fault of the Receiving Party;
- b. has been lawfully received from a third party without restriction as to its use or disclosure;

- c. was already in its possession free of any such restriction as to its use or disclosure prior to receipt from the Disclosing Party;
- d. was independently developed by or for the Receiving Party without making use of any Confidential Information; or
- e. has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party,

and for the avoidance of doubt and without prejudice to the generality of the above, Confidential Information shall not be deemed to be publicly available merely because it may be derived from one or more items that are publicly available;

**Disclosing Party** means a Party that discloses any Confidential Information to the Receiving Party;

**Effective Date** means the date of this Agreement

**KBS Maritime Group** means KBS Maritime Limited and any of its wholly-owned subsidiaries from time to time within the meaning of Section 1159 of the Companies Act 2006;

**Party** means a party to this Agreement and **Parties** means both of them;

**Purpose** means sharing of confidential information for the purposes of delivering projects within Portsmouth Naval Base.

**Receiving Party** means a Party which receives any Confidential Information from the Disclosing Party.

- 1.2** Clause headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.3** Words in the singular shall include the plural and vice versa.
- 1.4** A reference to a statute, statutory provision or other legislation, whether of the UK or elsewhere, is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, or any laws substantially amending, replacing or superseding it following any exit by the UK from the EU, and includes any subordinate legislation for the time being in force made under it.

## **2. TERM AND TERMINATION**

- 2.1** This Agreement shall come into force and effect from the Effective Date and shall remain in effect until the second anniversary of the Effective Date (unless terminated before then by one Party giving written notice to the other Party at any time).

- 2.2** Notwithstanding the expiry or termination of this Agreement and subject to Clause 5, the provisions of Clause 3 shall survive for a period of five years following the expiry or termination of this Agreement.

### **3. DISCLOSURE OF CONFIDENTIAL INFORMATION**

#### **3.1 The Receiving Party undertakes to the Disclosing Party:**

- a.** only to use, or allow to be used, any Confidential Information as may be necessary for the Purpose and not to use any Confidential Information, or allow it to be used, for any other purpose except with the prior written consent of the Disclosing Party;
- b.** to keep any Confidential Information confidential and not copy or disclose it to any person or party except as permitted under this Agreement, save that the Receiving Party may disclose Confidential Information where required by law, court order or any government or regulatory body **provided that** the Receiving Party will, where possible without breaching any legal or regulatory requirements, give the Disclosing Party advance notice of the disclosure requirement and will co-operate with the Disclosing Party in seeking to oppose, minimise or obtain confidential treatment of the requested disclosure to the extent reasonably practicable;
- c.** only to disclose any Confidential Information to its directors, persons employed in or by its business, its professional advisers and/or, where the Receiving Party is KBS Maritime or any member of KBS Maritime Group in each case, which have a need-to-know such Confidential Information for the Purpose **provided that** the Receiving Party shall make each such person or party agree to observe terms no less stringent than those contained in this Agreement prior to any Confidential Information being disclosed to that person or party and the Receiving Party shall be responsible for such person or party's compliance;
- d.** not to disclose any Confidential Information to any third party (other than as permitted under this Agreement) except as required for the Purpose and with the prior written consent of the Disclosing Party **provided that** the Receiving Party procures such third party's written undertaking to the Disclosing Party to observe terms no less stringent than those contained in this Agreement prior to any Confidential Information being disclosed to that third party;
- e.** not to copy, reproduce or reduce to writing any Confidential Information, or any part thereof, or allow any person or party receiving such Confidential Information from the Receiving Party to do so, except as is reasonably necessary for the Purpose;
- f.** to establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised use, reproduction, disclosure or access (such measures being at least equivalent to those it applies for the protection of its own Confidential Information); and

- g.** to notify the Disclosing Party as soon as reasonably practicable if it becomes aware of, or reasonably suspects, any loss or actual compromise of any Confidential Information or the possession, use or knowledge of any Confidential Information by a third party other than in accordance with the terms of this Agreement.

**3.2** Nothing in this Agreement constitutes an obligation on a Party to disclose its Confidential Information to, or enter into any contract with, the other Party and any Confidential Information disclosed is provided to the Receiving Party on an "as is" basis without any representation or warranty as to its validity, utility, accuracy, completeness, or the non-infringement of third party intellectual property rights.

**3.3 On expiry or termination of this Agreement:**

- a.** the Receiving Party shall on written demand by the Disclosing Party:
  - i. return to the Disclosing Party any Confidential Information (and any copies thereof) reduced to any permanent form disclosed by the Disclosing Party under this Agreement;
  - ii. use its reasonable endeavours to permanently delete all electronic copies of Confidential Information from any computer systems, save that the Receiving Party shall not be obliged to erase Confidential Information held in any archived computer system in accordance with its security and/or disaster recovery procedures;
  - iii. provide to the Disclosing Party a certificate, signed by an officer of the Receiving Party, confirming that the obligations in this Clause 3.3(a) have been complied with;
- b.** if the Disclosing Party has not made a demand under Clause 3.3(a) within three (3) calendar months of expiry or termination, the Receiving Party may destroy, erase or procure the destruction or erasure of, such Confidential Information (and any copies thereof) in accordance with its usual business practices; and
- c.** the Receiving Party shall make no further use of the Confidential Information, save that the Receiving Party may retain one (1) copy of any Confidential Information solely for the purpose of enabling it to comply with the provisions of this Agreement or for legal or regulatory purposes.

**4. REMEDIES**

The Receiving Party acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to seek the granting of

equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement from any court of competent jurisdiction.

## **5. GOVERNMENT SECURITY CLASSIFICATION**

Nothing in this Agreement shall be deemed to replace or prejudice any governmental security classification referenced on any part of the Confidential Information and the Receiving Party undertakes to respect and observe any such classification and to treat the same with such degree of care and security as is required by the relevant governmental authority in the country of the Disclosing Party.

## **6. INTELLECTUAL PROPERTY**

Save as expressly set out in this Agreement, no title, right or licence is conveyed or intended to be conveyed to either Party and this Agreement shall not be construed as granting expressly or impliedly any other rights or licence under patents, copyright or any other form of intellectual property or other rights belonging to the Disclosing Party in respect of Confidential Information, the ownership of which shall remain vested in the Disclosing Party at all times.

## **7. EXPORT CONTROL**

If Confidential Information is controlled by any export or import control laws or regulations, including without limitation, the US Department of State's International Traffic in Arms Regulations or the US Department of Commerce's Export Administration Regulations, the Disclosing Party shall not disclose such Confidential Information unless it has confirmed that the Receiving Party is authorised to receive it. The Receiving Party shall comply with all export or import control laws or regulations applicable to the Confidential Information and the Disclosing Party shall, on request, promptly provide the Receiving Party with such information as may be necessary for the purposes of such compliance.

## **8. NO AGENCY OR PARTNERSHIP**

This Agreement is intended to facilitate only the disclosure of Confidential Information and is not intended to be, and shall not be construed to create, a teaming agreement, joint venture, association, partnership, or other business organisation or agency arrangement and neither Party shall have the authority to bind the other without the other Party's prior written agreement.

## **9. NOTICES**

Any notice under this Agreement sent by one Party to the other shall be in writing and shall be sent by first class post using recorded delivery to the Head of Commercial at Victory Building, Portsmouth Naval Base, Portsmouth, Hampshire, United Kingdom, PO1 3NH for KBS Maritime and if sent to the registered address set out above for the Company or to such other address as may from time to time be notified by the one to the other as a replacement address for service and shall be deemed to be delivered two (2) business days after posting it from and to an address in the United Kingdom and seven (7) business days from the date of posting it from or to an address elsewhere. E-mails will not be an acceptable means of sending notices.

## **10. 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 preclude or restrict

the exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **11. SEVERABILITY**

If any of the provisions of this Agreement are found to be invalid, illegal or unenforceable this shall not affect the validity of the remaining provisions. In the event of such occurrence, the Parties shall, in so far as it is legally permitted, agree on the replacement of the relevant provision with a valid one achieving the same or a similar purpose.

## **12. AMENDMENT**

No amendment to this Agreement shall be effective unless in writing and signed by an authorised representative of each of the Parties.

## **13. ASSIGNMENT**

Neither Party may sub-contract, assign or transfer all or any of its rights and/or obligations under this Agreement without the prior written consent of the other Party.

## **14. ENTIRE AGREEMENT**

This Agreement is the only and entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes any prior discussions, oral or written agreement with respect to the subject matter of this Agreement. Each of the Parties acknowledges that, in entering into this Agreement, it has not relied on any oral or written representation, warranty or other assurance and waives all rights and remedies which might otherwise be available to it in respect thereof **provided always that** nothing in this clause limits or excludes any liability for fraud.

## **15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of that person which exists or is available apart from that Act.

## **16. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

## **17. LAW AND JURISDICTION**

**17.1** 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 Wales.

**17.2** Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, and any dispute relating to any non-contractual obligations arising out of or in connection with this Agreement, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The



number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London.  
The language to be used in the arbitration shall be English.

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

Duly authorised for and on behalf of .....	Duly authorised for and on behalf of: <b>KBS Maritime Limited</b>
Signed By:	Signed By:
Print Name:	Print Name:
Title:	Title: