



Department
for Environment
Food & Rural Affairs

Non-Disclosure Agreement

Request for Proposals for the Big Nature Impact Fund Manager

Reference: ITT_9494

November 2021

THIS NON-DISCLOSURE AGREEMENT is made the [insert day] day of November 2021 (the "Commencement Date")

BETWEEN:

[Insert full name of contractor] of [insert full address but if registered company please insert the following - (registered in [England and Wales] under number [insert company number]) whose registered office is situated at [] (the "Manager");

and

The Secretary of State for Environment Food and Rural Affairs whose principal offices are at 2 Marsham Street London SW1P 4DF (the "Department").

(each a "Party" and together the "Parties").

WHEREAS:

(a) The Manager has expressed an interest in response to the Request for Proposals for the Big Nature Impact Fund Manager (the "Competition") to provide specified services to the Department.

(b) The Competition places an obligation of confidentiality on the Manager.

(c) The Department will communicate to the Manager certain Confidential Information which is diplomatically and project sensitive and must be held in confidence. Release of the diplomatically and project sensitive information could cause significant damage to UK foreign relations and the jeopardise success of the Competition.

(d) Any Confidential Information disclosed by the Department to the Manager during the Competition process, whether contained in original or copy documents, will at all times remain the property of the Department together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

Definition and Interpretation

1. In this Agreement:

a) "Confidential Information" means: any information which has been designated as confidential by the Department in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise **-in particular relevant to the Competition are the geographical locations and countries/jurisdictions involved in the project and the services to be delivered under the Competition** - and including (without limitation) information belonging to or in respect of the Department which relates to research, development, trade secrets, formulae,

processes, designs, specifications, the Department data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Manager owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Department and all personal data within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679), whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

b) “Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.

2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.

4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.

5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

CONFIDENTIALITY

6. The Manager undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Competition, without the prior written permission of the Department.

7. The Manager will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.

8. The Manager shall, with respect to any Confidential Information it receives directly from or on behalf of the Department, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Department from time to

time for the handling and storage of Confidential Information, generally or for specific items.

9. The Manager will only disclose Confidential Information to other third parties if it is required in order to respond to the Departments Competition, provided such third parties hold all such Confidential Information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out the services for the Manager. For example, in accordance with the above stipulation the Manager may share Confidential Information with their consortium members, external consultants and contractors who may be assisting the Manager on the Competition.

10. Breach of the obligations set out herein by the Manager shall entitle the Department to terminate the Manager's Competition immediately, and to seek any other legal remedies against the Manager.

11. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Department, upon request or upon completion of the task for the purposes of which such Confidential Information was released.

12. The Confidential Information will not be used by the Manager for any purpose or in any way other than under this Agreement.

13. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:

13.1 Disclosure of Confidential Information by the Manager when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;

13.2 Disclosure of Confidential Information by the Manager where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;

13.3 Disclosure of Confidential Information by the Manager where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;

13.4 Possession of Confidential Information by the Manager where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information; provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Department.

14. The Manager shall notify the Department promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.

15. The obligations contained in this Agreement shall continue until notified in writing by the Department or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).

16. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registrable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.

17. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.

18. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.

19. Without affecting any other rights or remedies that the other Parties may have, the Manager acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

GENERAL

20. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.

21. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Department.

22. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.

23. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Department. The Parties shall only with the prior written consent of the Department be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.

24. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.

25. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Manager:

SIGNED by the Department:
