**Carbon and Energy Fund – Non-disclosure Agreement**

**THIS AGREEMENT** is dated the day of 20

(the “**Agreement Date**”)[[1]](#footnote-1)

Between

1. **THE CARBON AND ENERGY FUND LIMITED** (a company registered under the laws of England and Wales with registered number 07362486) whose registered office is c/o Devereux Accountants Limited, Oswaldtwistle Mills Business Centre, Clifton Mill, Pickup Street, Accrington, Lancashire BB5 0EY (“**CEF**”), which shall include its successors in title and permitted assignees; and
2. **[INSERT BIDDER NAME]** [(a company registered under the laws of [England and Wales] with registered number **◆**) whose registered office is][of] [ ] (the“**Bidder**”), which shall include its successors in title and permitted assignees,

each individually a “**Party**” and collectively the“**Parties**”.

WHEREAS

1. The Bidder is preparing to submit a tender response to the Countess of Chester NHS Foundation Trust and CEF in relation to their tender for the provision of carbon and energy infrastructure upgrade services for the public sector in The UK (following Find a tender Contract Notice reference [insert ref])(the “**Tender**”).
2. In order to respond to the Tender (the “**Permitted Purpose**”) the Bidder wishes to have access to CEF’s Information (as defined in clause 1 below).
3. The Parties agree that any disclosure of the Information (as defined in clause 1 below) shall be subject to the terms set out in this agreement (the “**Agreement**”).

IT IS HEREBY AGREED AS FOLLOWS:

1. In this Agreement:

“**Information**” means any and all information, documents, confidential documents, data records, source codes and opinions (whether in written, electronic, pictorial or oral form) disclosed by CEF as a result of or in connection with the Tender or any dialogue with the Bidder, including without limitation the specimen CEF standard form contract, commercial, financial or proprietary material, technical information, pricing information, cash-flow projections, operating methods and procedures, customer details, databases, formulae, processes, designs, photographs, drawings, specifications, software, computer programs and samples, know-how and any other intellectual or industrial property whatsoever, and any other information whether in written, pictorial, visual or oral form or disclosed pursuant to discussions with any of the officers employees agents advisors or consultants of CEF irrespective of whether or not the information is marked as confidential.

1. All Information, howsoever acquired or received by the Bidder shall not be used for any purpose other than the Permitted Purpose. The Information shall be held strictly confidential and shall not be divulged to any third party without the prior written consent of CEF. All disclosed Information shall remain the property of CEF.
   1. The Bidder shall ensure that Information shall not be distributed or disclosed in any way or form except to any of the Bidder’s employees, consultants, agents, advisers or subcontractors with regard to the Permitted Purpose who reasonably need to know such Information for the Permitted Purpose and who are bound to confidentiality either by their employment agreement or otherwise in writing to an extent not less stringent than the obligations imposed on the Bidder under this Agreement. The Bidder shall be liable for all acts or omissions of its employees, consultants, agents, advisers or subcontractors with respect to the confidentiality requirements regarding the Information as if such acts or omissions had been its acts or omissions.
   2. The undertakings contained in clauses 2 and 3 above shall not apply to the extent that any Information:
   3. is at the time of being obtained by the Bidder within the public domain; or
   4. after being obtained by the Bidder comes within the public domain other than by reason of a breach by the Bidder or the breach of the corresponding obligations by any of its advisers of the undertakings contained in this Agreement; or
   5. is properly obtained by the Bidder from a third party who is rightfully in possession of such Information and who is not bound by any obligation of confidence or secrecy to CEF; or
   6. has been developed by the Bidder independently of any Information, or under the exceptions as set out in clauses 4.1, or 4.2, or 4.3; or
   7. is required to be disclosed by the Bidder by mandatory law or by a ruling of any court, tribunal, governmental or regulatory authority, stock exchange or other legal body of competent jurisdiction, provided that such notice of such ruling or obligation is given without undue delay to CEF (to the fullest extent permitted by the ruling or obligation) so as to give CEF an opportunity to intervene and provided further that the Bidder uses reasonable efforts to obtain assurance that the Information will be treated confidentially. Information which is disclosed in such way must be marked “Confidential”.

The Bidder shall bear the burden of proving the existence of any such exception as described in this clause 4.

1. Whilst all Information is provided by CEF in good faith, the Bidder agrees that any Information is made available “as is” and no warranties are given or liabilities of any kind are assumed with respect to the quality of such information, including, but not limited to, its fitness for the Permitted Purpose, or its correctness.
2. **Date and term**
   1. This Agreement shall become effective on the Agreement Date and shall remain in full force until the cessation of the Permitted Purpose.
   2. The Bidder’s obligations under this Agreement shall survive expiry or termination of this Agreement and remain in force for four years following such expiry or termination.
3. **Following termination**
   1. (Subject to clause 7.2) following expiry or termination of this Agreement CEF may (at its discretion) request in writing from the Bidder that the Bidder either returns or destroys all Information received from CEF and stored electronically and/or on recording-bearing media as well as any copies thereof. The Bidder shall confirm in writing such destruction or return of the Information as well as any copies thereof to CEF within 14 days after receipt of the CEF request.
   2. The provisions of clause 7.1 shall not apply to copies of electronically exchanged Information made as a matter of routine information technology backup and to Information or copies thereof which must be stored by the Bidder according to provisions of mandatory law or which the Bidder is required to keep for regulatory or compliance purposes, provided that such Information or copies thereof shall be subject to the confidentiality obligations according to the terms and conditions set forth herein.
4. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter thereof and supersedes any and all prior communications, understandings and agreements between the Parties with regard to the information, whether written, oral, express or implied relating thereto. No amendment or modification to this Agreement shall be valid unless in writing and signed by a duly authorised representative of CEF.
5. To the extent that any provision of this Agreement or any clause, term, sentence, phrase, clause, or word of this Agreement shall be found to be illegal or unenforceable for any reason, such clause, term, sentence, phrase, clause, or word shall be deemed modified or deleted in such a manner as to make the Agreement, as so modified, legal and enforceable under applicable laws. The remainder of this Agreement shall remain in full force and effect.
6. This Agreement may not be assigned by either Party without the prior written consent of the other Party. This Agreement may not be modified or amended except by written amendments duly executed by the Parties. This requirement of written form can only be waived in writing.
7. 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 or condition of this Agreement, but this does not affect any right or remedy of a third party which is available apart from pursuant to such Act nor any right of enforcement which is expressly granted in this Agreement.
8. All disputes arising out of or in connection with this Agreement, including any question regarding its construction, performance, validity or termination, shall, unless amicably settled between the Parties, be finally settled by the courts of England.
9. This Agreement shall be governed under the laws of England.

THUS this agreement has been executed by the Parties’ duly authorised representatives as follows:

|  |  |
| --- | --- |
| *Signature:* | *Signature:* |
| Clive Nattrass  Chief Executive  For and on behalf of the Carbon and Energy Fund Ltd | Print name:  Print position:  For and on behalf of [ ] |

1. To be completed in manuscript when countersigned by the second Party or when signed copies are exchanged by the Parties. [↑](#footnote-ref-1)