NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT** is made on [date].

**BETWEEN:**

(1) National Fire Chiefs Council Limited (NFCC) West Midlands Fire Service, 99 Vauxhall Road, Birmingham, England, B7 4HW (the "**Disclosing Party**"); and

1. **[Insert company name]** a company registered in England and Wales under company number [company number] whose registered address is at [Insert recipient address] (the **“Recipient”**),

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

**WHEREAS:**

1. The Disclosing Party intends to engage with the market in relation to a potential procurement (the “Project”).
2. The Disclosing Party has possession of certain information relating to its operations, current and potential requirements, and arrangements that, subject to the Recipient entering into this Agreement, it intends to make available to the Recipient for the purpose of the Recipient’s participation in the Project (the ”Purpose”).
3. The Recipient acknowledges that working with the Disclosing Party (or its agencies) may involve contact with Information, documents and other articles of a highly sensitive commercial nature and will therefore require that the highest standards of security and confidentiality be maintained.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. **Definitions and Interpretation**
	1. In this Agreement, unless the context otherwise requires:

**“Acknowledgement”** means a completed acknowledgement in the form set out in Annex A to this Agreement that may be varied from to time in accordance with the terms of this Agreement;

**“Agreement”** means this non-disclosure agreement and its Annexes;

“**Confidential Information**” means:

1. Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement and/or in connection with the Purpose which at the time of provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence;
2. in respect of Information that is imparted orally, any information that the Disclosing party or its representatives informed the Recipient at the time of disclosure was imparted in confidence;
3. in respect of Confidential Information imparted orally, any note or record of the disclosure;
4. any copy of any of the foregoing;
5. discussions, negotiations, and correspondence between the Disclosing Party and the Recipient and/or a Corporate Recipient in connection with the permitted Purpose and all matters arising therefrom; and
6. Information or analysis derived from any of the above.

“**Corporate Recipient**” means the subcontractors, shareholders, agents, consultants, suppliers, collaborators and professional advisers of the Recipient;

**“Information**” means all information provided directly or indirectly by the Disclosing Party to the Recipient of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“**Purpose**” means the purpose set out in recital B above.

* 1. In this Agreement:
		1. a reference to any gender includes a reference to other genders;
		2. the singular includes the plural and vice versa;
		3. the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
		4. references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any extant prior or subsequent subordinate legislation made under it;
		5. headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
		6. references to Clauses are to clauses of this Agreement.

1. **Obligations of Confidentiality and non-use**
	1. In consideration of the Disclosing Party disclosing or making available to the Recipient the Confidential Information, the Recipient hereby undertakes:
		1. to keep confidential and not disclose to any third party any part, or the whole, of any Confidential Information disclosed to it under this Agreement;
		2. not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies), reductions to writing and records shall be the property of the Disclosing Party;
		3. not without the prior written permission of the Disclosing Party to use Confidential Information disclosed to it under this Agreement other than strictly for the Purpose;
		4. to restrict access to the Confidential Information disclosed to it under the terms of this Agreement to those of its directors, employees and seconded staff who need to know the same for the Purpose;
		5. to respect and observe all regulations and restrictions relating to the Confidential Information;
		6. to treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Recipient uses to maintain its own confidential or proprietary information;
		7. have in place and maintain proper security measures and procedures which shall be at least as stringent as the measures and procedures it applies to its own confidential and proprietary information to protect the confidentiality of the Confidential Information (having regard to its form and nature)
		8. subject to Clause 2.1.9 below, to ensure that the Confidential Information is only disclosed to a Corporate Recipient who needs to have access thereto necessarily and exclusively for the Purpose, and where prior written consent to the disclosure has been received from the Disclosing Party (such consent to be granted or withheld at the Disclosing Party’s absolute discretion);
			1. Prior to disclosing Confidential Information to the Corporate Recipient, the Recipient shall supply the Disclosing Party with the name and address of each Corporate Recipient to whom the Confidential Information is intended to be disclosed to, and a copy of the Acknowledgement that is to be been entered into between the Recipient and the Corporate Recipient.
			2. The Disclosing Party shall provide or withhold consent within 7 (seven) days for the Corporate Recipient to be granted access to the Confidential Information.
		9. to procure that prior to disclosure of Confidential Information to a Corporate Recipient that such Corporate Recipient enters into the relevant agreed form document as specified in Annex A, as such may be varied from to time in accordance with the terms of this Agreement;
		10. with effect from the date of this Agreement, ensure that every person under its control to whom Confidential Information is disclosed shall individually keep the Confidential Information confidential and comply with the terms of this Agreement;
		11. with effect from the date of this Agreement, enforce and seek compliance of Corporate Recipients with the terms of Acknowledgements entered into by them;
		12. to inform the Disclosing Party immediately upon becoming aware or suspecting that:
			1. there has been a breach of this Agreement or of an Acknowledgement by a Corporate Recipient; and/or
			2. an unauthorised person has become aware of the Confidential Information, and in each case, provide all assistance and information and take all steps as the Disclosing Party may reasonably require in order for the Disclosing Party to trace any Confidential Information or take any legal action against such unauthorised person, mitigate the effects of the breach and to prevent a recurrence of the breach; and
		13. comply with and procure that all Corporate Recipients shall comply with the instructions of the Disclosing Party contained within this document, regarding the handling of Confidential Information.
	2. The Recipient may disclose Confidential Information only to the limited extent permitted by Clauses 2.1.4, 2.1.8 and 3.
2. **Exceptions**
	1. The obligations of confidentiality set out in this Agreement shall not apply to any Information which the Recipient can show by written records:
		1. was known to the Recipient before the Information was imparted by the Disclosing Party,
		2. is, in or subsequently comes into, the public domain through no fault on the Recipient’s part;
		3. is received by the Recipient without restriction on disclosure or use from a third party lawfully entitled to make the disclosure to the Recipient without such restrictions;
		4. is developed by any of the Recipient’s employees who have not had any direct or indirect access to, or use or knowledge of, the Information imparted by the Disclosing Party.
	2. The Receiving Party shall be entitled to disclose Confidential Information to the extent that they are required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Receiving Party.
	3. Before making a disclosure pursuant to Clause 3.2, the Receiving Party shall at the earliest opportunity and, to the extent that is legally permitted to do so:
		1. notify the Disclosing Party in writing of the proposed disclosure; and
		2. ask the court or other public body to treat the Confidential Information as confidential.
	4. Where notice of disclosure under 3.3:
		1. is legally permitted, the Receiving Party shall take into account the reasonable requests of the Disclosing Party in relation to the proposed disclosure; or
		2. is prohibited, the Receiving Party shall notify the Disclosing Party of the disclosure as soon as possible following the disclosure when it is legally able to do so.
3. **Return or Destruction of Confidential Information**
	1. The Recipient acknowledges that all Confidential Information disclosed hereunder, and any copies thereof made by the Recipient and or Corporate Recipient, shall be and shall remain the Disclosing Party’s property.
	2. The Recipient shall and shall procure that Corporate Recipients shall, promptly on written request by the Disclosing Party either destroy, permanently erase or deliver up to the Disclosing Party the Confidential Information.
	3. Upon receipt of a written request from the Disclosing Party in accordance with Clause 4.2 above, a director or senior employee of the Recipient must confirm in writing within 10 working days that the Recipient and/or any of its Corporate Recipients have either destroyed, permanently erased or delivered up to the Disclosing Party the Confidential Information and all copies other than copies:
		1. that contain insignificant extracts from, or references to the Information; and
		2. that the Recipient or a Corporate Recipient is required to keep by law.
4. **General**
	1. The Receiving Party acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Disclosing Party shall remain with and be vested in the Disclosing Party.
	2. This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
		1. to grant the Receiving Party any licence or rights other than as may be expressly stated in this Agreement;
		2. to require the Disclosing Party to disclose, continue disclosing or update any Confidential Information; or
		3. as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
	3. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
	4. Without prejudice to any other rights or remedies that either Party may have, each Party acknowledges and agrees that damages alone may not be an adequate remedy for any breach by a Receiving Party of the provisions of this Agreement. Accordingly, each Party acknowledges that the Disclosing Party shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
	5. Each Party will be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
5. **Indemnity**
	1. The Recipient will indemnify the Disclosing Party from and against all claims, demands, proceedings, liabilities, damage, charges, costs, losses or expenses (including legal expenses) resulting from any breach or non-performance by the Recipient of any of its obligations under this Agreement and by the Corporate Recipients of any of their obligations that arise as a result of entering into an Acknowledgement, without prejudice to any other available rights or remedies including, without limitation, injunctive or other equitable relief.
	2. The Recipient shall not be responsible for and shall not indemnify the Disclosing Party for losses to the extent that such losses are caused by the negligence of the Disclosing Party, its employees or agents who are not within the control of the Recipient.
6. **Duration**
	1. This Agreement shall be for the period of one year from the date first before written. The obligations and restrictions relating to the disclosure and use of Confidential Information shall survive the termination of this Agreement for a period of six (6) years.
7. **Entire Agreement**
	1. This Agreement constitutes the entire existing Agreement between the Parties concerning the exchange of Confidential Information for the Purpose. The Agreement shall not be amended except by written agreement signed by authorised representatives of both Parties.
	2. This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.
8. **Assignment**
	1. The Recipient shall not, without the express consent in writing of the Disclosing Party, assign or in any manner transfer its interests in, or obligations under, this Agreement, or any part thereof.
9. **Waiver**
	1. If a Party does not enforce a right available to it under this Agreement in any particular instance, then this will not prevent it from enforcing that right in future, or in any other instance.
10. **Severability**
	1. If any provision of this Agreement is held to be invalid or unenforceable by a judgement or decision of any court, the same shall be severed from the remainder of this Agreement, which shall remain valid and enforceable to the fullest extent permitted by law.
11. **Contracts (Rights of Third Parties) Act 1999**
	1. A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
	2. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
12. **Notices**
	1. Any notice to be given under this Agreement (each a “Notice”) shall be given in writing and shall be delivered by hand or by post and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 13.2.
	2. Any Notice:
		1. if to be given to the Disclosing Party shall be sent to:

NFCC c/o Chief Fire Officers Association FAO: Procurement Lead

Email: procurement@nationalfirechiefs.org.uk cc: Finance@nationalfirechiefs.org.uk

* + 1. if to be given to the Receiving Party shall be sent to:

 The appropriate address for the Receiving Party as set out at the start of this Agreement.

1. **Law and Jurisdiction**
	1. This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
	2. Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

Signed for and on behalf of **NFCC (the Disclosing Party)**

Signature:

Date:

Position:

Title:

Signed for and on behalf of **the Recipient**

Signature:

Date:

Position:

Title: