Attachment 11a - Confirmation of Non-Disclosure of Confidential Information and Data Protection Compliance

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[Company Address - Company to Complete]

Date:

Dear [Company to Complete]

**1. INTRODUCTION**

[Company] whose registered office is at [address] (“You”) have expressed an interest in the procurement for the provision of [Print Marketplace Service – please insert correct designation]. For the purpose of this letter, this is referred to as the “Service” and your evaluation of the prospective application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended (“TUPE”) to any staff members of the incumbent contractor [and its subcontractors] if the contract for the delivery of the Service were to be awarded to You is referred to as the “Purpose”.

**2. CONFIDENTIAL INFORMATION and PERSONAL DATA**

2.1. In consideration of certain confidential information relating to the Service (“Confidential Information”) being made available to you by the Crown Commercial Service (“Us”), you unconditionally and irrevocably agree to the undertakings contained in this letter.

2.2. Such Confidential Information shall include, without limitation:

1. Any and all information supplied or to be supplied by Us to You for or in connection with the Purpose, whether or not expressly designated as such, and including in particular (but without limitation) all data and information relating in any way to or concerning any staff members of the incumbent contractor [or its subcontractors] or any staff members of any person, company, firm, organisation or entity connected with or related to the incumbent contractor [or its subcontractors] (whether or not such staff members would be in scope or potentially in scope to transfer to You under TUPE) and any and all updates of such data or information;
2. Any other information relating to any of the Confidential Information referred to in paragraph 2.2 a) above and which other information relates to the Purpose or the Service, in whatever form supplied, and which is directly or indirectly disclosed or made available to You before, on or after the date of this letter;
3. Any information which contains or reflects or has been generated from any such Confidential Information as is referred to in paragraphs 2.2 a) and 2.2 b) above, including any information, findings, data or analysis derived from any such Confidential Information; and
4. Any information comprising or part of information falling within paragraphs 2.2 a), b) or c) above that relates to any identified or identifiable living individual (“Personal Data”).

**3. OBLIGATIONS of CONFIDENTIALITY and DATA PROTECTION COMPLIANCE**

3.1. Subject to paragraphs 4 and 6 below, you shall at all times keep secret and confidential the Confidential Information and the terms of this letter and shall process any Personal Data only if permitted by and in compliance with the provisions of this letter and any applicable data protection and privacy legislation in force from time to time in the UK, including the UK GDPR, the Data Protection Act 2018 and regulations made thereunder and the Privacy and Electronic Communications Regulations 2003 as amended, and any applicable guidance and codes of practice issued by the Information Commissioner or any other relevant regulatory authority (“Data Protection Legislation”).

3.2 Without prejudice to the generality of paragraph 3.1 above and the other provisions of this letter, You agree that You will comply, and will procure that any and all Representatives (for the purpose of all references to the same in this letter, as defined in paragraph 6.1 below) comply, with all the obligations imposed on a controller under the Data Protection Legislation, including the following:

1. To ensure that You have all necessary notices, consents and lawful bases in place to enable lawful transfer of any Personal Data to any Representative for the Purpose;
2. To process any Personal Data lawfully and only to the extent necessary for the Purpose;
3. Not to disclose or allow access to any Personal Data to anyone other than the Representatives;
4. To ensure that You and any Representatives have in place appropriate technical and organisational measures, to be reviewed and approved by Us where practicable if we so require, to protect against unauthorised or unlawful processing of any Personal Data and against accidental loss or destruction of, or damage to, any Personal Data;
5. Not to transfer any Personal Data outside the UK unless You or the relevant Representative (as the case may be) ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate and adequate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) You or the relevant Representative (as the case may be) otherwise complies with all applicable obligations under the Data Protection Legislation in respect of such transfer by providing an adequate level of protection for any Personal Data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer;
6. To ensure compliance with any and all applicable obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner and any other relevant regulators;
7. To notify Us without delay on becoming aware of any breach of any obligation under the Data Protection Legislation in relation to any Personal Data;
8. To use compatible technology for the processing of any Personal Data to ensure that there is no lack of accuracy resulting from data transfers; and
9. To maintain complete and accurate records and information to demonstrate your compliance with this paragraph 3.2 and paragraph 3.1 above and allow for audits by us or our designated auditor where we so require.

**4. EXCLUDED INFORMATION**

4.1. The obligation to maintain the confidentiality of Confidential Information does not apply to Confidential Information which you can demonstrate:

1. Is generally available (or becomes available) in the public domain other than as a result of a breach by you or your Representatives of any of the undertakings contained in this letter (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
2. Was lawfully in your possession before the information was disclosed to you as evidenced by written records; or
3. Both parties agree in writing that it is no longer confidential and may be disclosed,

but this paragraph 4.1 does not apply to any Personal Data the confidentiality of which must be maintained in order to comply with any applicable Data Protection Legislation.

4.2. You may disclose Confidential Information only if you are required to disclose it by any applicable law, regulation or regulatory authority, or by the order or ruling of a court or administrative body of competent jurisdiction, provided that:

1. If disclosure of Confidential Information is required for the purpose set out in paragraph 4.2, prior to such disclosure you shall give us prompt written notice of the information you propose to disclose (being the minimum amount of information consistent with satisfying your obligations) and shall take into account any reasonable comments we may have in relation to the content, timing and manner of despatch of the disclosure and take such steps as we may reasonably require to enable us to mitigate the extent of, or avoid the requirement of, any such disclosure.
2. If you are legally prohibited from informing us before any such Confidential Information is disclosed, you shall (to the extent permitted by law) inform us of the full circumstances of the disclosure or announcement and the information that has been disclosed immediately after such disclosure or announcement is made.

**5. PERMITTED USE**

5.1. You may use the Confidential Information solely for the Purpose and for taking part in the Service and any preparation necessary to do so. You agree that You will not use, nor will You suffer, permit or allow any Representative or any other third party to use, any of the Confidential Information for any other purpose.

**6. PERMITTED DISCLOSURE**

6.1. You may disclose Confidential Information only to those of your employees and professional advisers who are directly and necessarily concerned with the carrying out of the Purpose or your prospective or actual participation in the Service and whose knowledge of the Confidential Information is essential for those purposes (together the “Representatives”), provided that, if we so request in writing, any Representatives who are professional advisers to whom you propose to disclose (or have disclosed) Confidential Information enter into a confidentiality and data protection compliance agreement with us substantially on the same terms as this letter in relation to the disclosure of any Confidential Information to them, and further provided that, in relation to any Personal Data, such disclosure and any related processing is permitted by and compliant with any applicable Data Protection Legislation.

6.2. You shall procure that each Representative to whom any disclosure of Confidential Information is made is made aware of and adheres to the terms of the undertakings contained in this letter as if they were a party to them. You shall, in any event, be responsible for any breach by your Representatives of the undertakings contained in this letter.

6.3. You shall notify Us immediately in writing of the details of each Representative to whom any Confidential Information is proposed to be disclosed by you or on your behalf.

6.4. You shall also notify Us immediately upon becoming aware that any of the Confidential Information has been disclosed to, or obtained by, a third party otherwise than as permitted by this letter, together with details of such unauthorised disclosure.

**7. ANNOUNCEMENTS**

7.1. No announcement, communication or disclosure of your interest in the Service or the fact of our discussions shall be made or indicated by you or on your behalf without our prior written consent, unless such announcement or disclosure is required by law or by the rules of any relevant stock exchange or by any supervisory, governmental or regulatory body or court of competent jurisdiction or other authority with relevant powers to whose rules you are subject.

**8. FURTHER OBLIGATIONS**

8.1. You and your Representatives shall keep the Confidential Information safe in a secure place and properly protected against theft, damage, loss and unauthorised access (including, but not limited to, access by electronic means) and, without prejudice to the foregoing, you shall take all reasonable steps and exercise reasonable skill and care to keep the same confidential and exercise in relation to Confidential Information no lesser security measures and degree of care as you apply to your own confidential information, and all documents and other material reproducing or incorporating any of the Confidential Information shall be kept separate from your own confidential information.

8.2. Paragraph 8.1 above is subject and without prejudice to your obligations under paragraphs 3.1 and 3.2 above in relation to the processing of any Personal Data, including in particular but without limitation in relation to the security of, and maintenance of privacy for, any Personal Data.

8.2. You shall mark as confidential any document, disks or other media containing, reflecting or which are generated from any Confidential Information.

**9. RETURN of CONFIDENTIAL INFORMATION**

9.1. Subject to paragraph 9.2 below, you and your Representatives shall immediately on the earlier of (i) You receiving written demand from us to do so, (ii) the completion or cessation of the Purpose, and (iii) the Service or your involvement in it ceasing for any reason:

1. Return to us all Confidential Information (other than as mentioned in paragraph 9.1 c) below) including all copies, reproductions or extracts thereof or of any part thereof;
2. Remove all Confidential Information from any computer systems, other similar devices or virtual facility owned or used by you or by any of your Representatives;
3. Destroy all notes, analyses, compilations, studies, memoranda and other documents containing or reflecting or generated from any Confidential Information prepared by you or any of your Representatives; and
4. Request that one of your directors confirms to us in writing that to the best of their knowledge, information and belief, having made all proper enquiries, the matters set out in paragraphs 9.1 a) to c) above have been done.

9.2. You and your Representatives shall not have to destroy or permanently erase copies which you are required by law to retain but must do so immediately upon any such requirement ceasing to apply.

**10. ACCURACY of CONFIDENTIAL INFORMATION**

10.1. You acknowledge and agree that, except as may be otherwise agreed in writing in any contract or deed that we subsequently enter into in connection with the Service, we accept no responsibility or liability for, nor make any representation or give any warranty, express or implied, with respect to, the accuracy, reliability or completeness of the Confidential Information, and we have no obligation to update or correct any inaccuracies in any Confidential Information provided. Furthermore, you hereby irrevocably and unconditionally waive any claims, rights or remedies which you may otherwise have in relation to the accuracy, reliability or completeness of the Confidential Information.

10.2. Nothing in this letter shall exclude any liability for, or remedy in respect of, any representation made or given fraudulently.

**11. AUTHORISED CONTACT**

11.1 All requests to Us for Confidential Information or general enquiries relating to the Purpose or the Service should be made to [name] at [email address] (or to such other persons as we may nominate in writing from time to time).

**12. DURATION**

12.1 The agreement in this letter shall terminate upon the entry into force of a contractual agreement between You and Us in respect of the Service including express provisions covering the same matters.

12.2 If the parties do not enter into a contractual agreement in respect of the Service, the agreement in this letter shall last for a period of 1 year from the date of this letter, unless it is terminated earlier for breach by either party or by agreement in writing between the parties.

12.3 Termination of the agreement in this letter shall not affect any accrued rights or remedies to which we are entitled.

**13. GENERAL**

13.1. You confirm that You are acting as principal and not as a representative or broker for any other person, and confirm that You shall be responsible for any and all costs incurred by You or on your behalf in connection with this letter.

13.2. No right or licence is granted to You or any of your Representatives in relation to any Confidential Information except as expressly set out in this letter and the Confidential Information and all rights in it shall at all times remain the property of Us or any third party who provided it to Us (as the case may be).

13.3. Access to the Confidential Information is granted to You and your Representatives without waiver by Us of confidentiality or any other rights in, or of any legal professional privilege or common interest privilege which attaches to, any of the Confidential Information. You agree that neither You nor your Representatives shall, at any time, waive, assign or compromise any privilege, confidentiality or any other rights in relation to the Confidential Information in any way.

13.4. You shall indemnify Us and keep Us fully indemnified at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and any other costs or expenses suffered or incurred by Us arising from any breach of the agreement in this letter by You or from the actions or omissions of any Representatives.

13.5. You agree and acknowledge that because of the sensitive nature of the Confidential Information, damages would not be an adequate remedy for a breach of any term of this letter and You, therefore, agree that we are entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of any term of this letter by You or any of your Representatives, without proof of special damage.

13.6. The failure to exercise or delay in exercising a right or remedy provided by this letter, by law or in equity to Us does not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. No single or partial exercise of a right or remedy provided by this letter, by law or in equity to Us prevents further exercise of the right or remedy or the exercise of any other right or remedy available to Us, whether contractual, equitable, proprietary or otherwise.

13.7. Each of the provisions of this letter are several and distinct, and to the extent that any such provision shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect any other part of that provision or any of the other provisions of this letter, which shall remain in full force and effect and shall be given effect to the fullest extent possible in such manner as may be decided by any court or administrative body of competent jurisdiction.

13.8. No term of this letter is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the agreement set out in this letter.

**14. ASSIGNMENT**

14.1. This letter is personal to You and may not be assigned or transferred to any third party without our prior written consent.

**15. ENTIRE AGREEMENT and VARIATION**

15.1. This letter constitutes the entire agreement and understanding of the parties in respect of the subject matter of this letter and supersedes all prior oral and written agreements, understandings and arrangements between the parties relating to the subject matter of this letter.

15.2. No variation of the agreement in this letter shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

**16. JURISDICTION and GOVERNING LAW**

16.1. The terms of this letter are governed by, and shall be construed in accordance with, English law.

16.2. The courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings and to determine any claim, dispute or difference which may arise out of or in connection with this letter and, for those purposes, each party irrevocably submits to the jurisdiction of the courts of England and Wales.

**17. COUNTERPARTS**

17.1. This letter may be executed in two or more counterparts, each of which shall be deemed an original, but all counterparts taken together shall constitute one and the same letter. This letter may be executed by facsimile signature or other electronic transmission.

Please confirm your agreement to the terms of this letter by signing and dating the attached copy.

Yours sincerely

[Name]

for and on behalf of Crown Commercial Service

We, the undersigned, hereby acknowledge receipt of the letter of which this is a copy and agree to its terms.

Signed

|  |
| --- |
|  |

[Name], duly authorised for and on behalf of [Company]

Date: