THIS AGREEMENT **is made on [***DATE***] of [***MONTH***] [***YEAR***]**

**BETWEEN:**

1. **National Energy System Operator Limited** (registered company no. 11014226) whose registered office is at: St Catherine’s Lodge, Bearwood Road, Sindlesham, Wokingham RG41 5BN (“**NESO**”); and
2. [***INSERT NAME***]*DRAFTING OPTION A\** (registered company no. [***XXXXX***]) whose registered office is at: [***INSERT ADDRESS***] *OR DRAFTING OPTION B\** of [***INSERT ADDRESS***](“**Project Counterparty**”).

**WHEREAS:**

1. NESO may have previously disclosed, and may wish further to disclose, to the Project Counterparty Confidential Information (as defined below) in connection with Legal Services Framework Tender (the **“Proposed Project**”).
2. The Project Counterparty has agreed to comply with this Agreement in connection with the use of the Confidential Information.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

# DEFINITIONS

## In this Agreement, the following words and expressions shall have the following meanings:

* 1. “**Agreement**”means this written confidentiality agreement;
	2. “**Affiliate**” means:
		1. in relation to a Person (including NESO), each other Person which directly or indirectly Controls, is directly or indirectly Controlled by, or is under direct or indirect common Control with, that Person from time to time; and
		2. in relation to NESO only, any governmental department, regulator, public body, or similar;
	3. “**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
	4. “**Confidential Information**” means any and all information or data disclosed or made available (whether in writing, orally, by demonstration or by any other means) to, or obtained by (whether directly or indirectly) the Project Counterparty or any third party acting on the Project Counterparty’s behalf, from NESO, any NESO Affiliate or its or their respective employees, officers, agents, or professional advisers, and whether before, on or after the date of this Agreement, which:
		1. relates (whether directly or indirectly) to the Proposed Project or to any discussions or negotiations relating to it; or
		2. is disclosed or obtained in the course of or in connection with any discussions or negotiations relating to the Proposed Project or otherwise in connection with the Proposed Project,
	5. and without prejudice to the generality of the foregoing definition, Confidential Information shall include the existence and terms of this Agreement and the existence and details of the Proposed Project, and any information or data relating to NESO’s (or any NESO Affiliates) operations, processes, plans, intentions, financial performance, investment requirements, product information, know-how, marketing campaigns, branding and trade names, designs and trade marks (whether registered or pending registration), copyright works, trade secrets, market opportunities, customers, competitors and/or business affairs;
	6. “**Control**” means:
		1. in relation to a company, the power of a Person to directly or indirectly secure:
			1. by means of the holding of shares or the possession of voting power in or in relation to that company or any other body corporate; or
			2. by virtue of any powers conferred by the articles of association or other document regulating that company or any other body corporate,

that the affairs of the company are conducted in accordance with the wishes or directions of that other Person; and

* + 1. in relation to NESO, the nearest equivalent meaning to that set out in paragraph (a) of this definition to the extent paragraph (a) is not applicable to NESO.
	1. “**EIR**”means the Environmental Information Regulations2004 together with any guidance and/or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such regulations;
	2. “**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time together with any guidance and/or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such legislation;
	3. “**Information**” has the meaning given under section 84 of the FOIA;
	4. “**Party**” means a party to this Agreement and “**Parties**” shall be construed accordingly;
	5. “**Permitted Purpose**” means the use of the Confidential Information by the Project Counterparty for the purposes of its consideration of, and discussions and negotiations with NESO in relation to the Proposed Project, but not for the purpose of discussing or developing opportunities with any other Person or for any other purpose whatsoever;
	6. “**Person**” includes individuals, partnerships, unincorporated associations, incorporated companies, limited liability partnerships, public bodies, joint ventures, trusts, and any other bodies of persons, legal or commercial entities (whether incorporated or unincorporated and whether resident or established in the UK or otherwise);
	7. “**Personal Data**” means any information relating to an identified or identifiable natural person; and
	8. “**Request**” shall have the meaning given to such term in the EIR, or the term “request for information” in the FOIA, as appropriate.

## In this Agreement:

### unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative provision:

* + - 1. is a reference to it as amended, extended or re-enacted from time to time; and
			2. includes all subordinate legislation made from time to time under that legislation or legislative provision,
		1. a reference to a **day** or **days** shall be construed as a reference to calendar days unless specified otherwise;
		2. any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms; and
		3. unless expressly provided otherwise, a reference to **writing** or **written** includes email.

# HANDLING OF CONFIDENTIAL INFORMATION

## In consideration of NESO disclosing to the Project Counterparty Confidential Information, the Project Counterparty undertakes to NESO:

### subject to the remainder of this clause 2.1, to keep the Confidential Information secret and confidential;

### to use the Confidential Information only for the Permitted Purpose and for no other purpose whatsoever and in particular, but without prejudice to the generality of the foregoing:

#### not to make any commercial use of it; and

#### not to use it for the benefit of itself, or any third party, other than pursuant to this Agreement or any further written agreement(s), that has or have been fully executed by authorised signatories of both Parties, that the Project Counterparty may enter into with NESO relating to the Proposed Project;

### not to copy, reproduce or reduce to writing any part of the Confidential Information except as may be reasonably necessary for the Permitted Purpose and for the avoidance of doubt, any copies, reproductions or reductions to writing so made shall be the property of NESO;

### not to incorporate any of the Confidential Information into any of its own documentation or records except as may be necessary for the Permitted Purpose;

### not to disclose the Confidential Information to any other Person except:

#### to such of its affiliates, employees, officers, agents, and professional advisers in so far as they have a reasonable need to know or see the same for the Permitted Purposes; or

#### with the prior written consent of NESO,

provided that, in each case, the Project Counterparty shall procure that such Persons are bound by confidentiality obligations to the Project Counterparty at least as protective of the Confidential Information as those set out in this Agreement and shall enforce such obligations (at the Project Counterparty’s cost) for NESO’s benefit;

### to apply to the Confidential Information no lesser security measures and degree of care than those which the Project Counterparty applies to its own confidential or proprietary information (and in any event shall treat the Confidential Information with a reasonable degree of care and maintain reasonable security measures against theft, and unauthorised access or use of the Confidential Information even if it applies a lower standard to its own confidential information). For these purposes the Project Counterparty undertakes not to use, transfer or store any part of the Confidential Information in an externally accessible computer or electronic information retrieval system or to transmit the Confidential Information outside the Project Counterparty’s usual place of business, however this shall not prevent the use of secure remote access to its systems that contain Confidential Information;

### to respect and observe all regulations and restrictions relating to any security classification marked on the Confidential Information, both during the term of, and following expiry of, this Agreement. Nothing in this Agreement shall replace or prejudice any security classification marked on any of the Confidential Information;

### to comply with all applicable laws, guidelines and industry standards relating to the processing of Personal Data which are applicable to any Confidential Information comprising Personal Data which is made available to the Project Counterparty; and

### in relation to the compliance with clauses 2.1(a) – 2.1(h) above (inclusive), to be liable to NESO for the acts and omissions of any Persons to whom Confidential Information is disclosed pursuant to clause 2.1(e) which are in breach of this Agreement, as if the acts and omissions of such Persons were the acts and omissions of the Project Counterparty.

## Nothing in this Agreement shall be construed as obliging NESO to disclose any Confidential Information to the Project Counterparty, or to enter into any further agreement with the Project Counterparty.

# EXEMPTIONS

## The obligations of confidentiality under this Agreement shall not apply to any information, data or material which the Project Counterparty can prove, to NESO’s reasonable satisfaction:

### is in or becomes part of the public domain or is or otherwise becomes public knowledge by any means other than by breach by the Project Counterparty of this Agreement, or of any other obligation of confidence owed to NESO by the Project Counterparty, or by any Person for whom the Project Counterparty is liable in accordance with the terms of this Agreement (information, data or material shall not be considered to be in the public domain by reason only of it having been disclosed pursuant to a Request under FOIA, EIR, or Environmental Information (Scotland) Regulations 2004); or

### was previously or is at any time hereafter disclosed to the Project Counterparty on a non-confidential basis by any third party (other than a NESO Affiliate or otherwise by a third party on behalf of NESO or any of its Affiliates) having the right to disclose the same provided that such third party is not known by the Project Counterparty to be party to a confidentiality agreement with NESO or otherwise under an obligation of secrecy or confidence to NESO in respect of the relevant information, data, or material; or

### is released from the provisions of this Agreement by specific, prior written consent given by NESO.

# RETURN OF CONFIDENTIAL INFORMATION

## The Project Counterparty:

### within seven days after receipt of a written request from NESO; and

### within one month of completion of the Permitted Purpose,

* 1. shall:

### return to NESO or, at NESO’s option, destroy or permanently erase, any or all (as requested by NESO) documents and materials containing Confidential Information (and all copies of such documents and materials) and procure that any Person to whom Confidential Information has been disclosed as permitted by this Agreement does likewise;

### where any Confidential Information is held electronically and/or has been incorporated into any other document or record, irrevocably expunge all and any of NESO’s Confidential Information from that system, document or record unless the Project Counterparty is not able to do so either by reason of applicable law, its own reasonable, in the opinion of NESO, internal record keeping regulations, or because such Confidential Information forms part of automatically archived computer back-up records, in which case the Project Counterparty may retain such Confidential Information but always upon and subject to the terms and conditions of this Agreement; and

### certify in writing to NESO, by a duly authorised officer, that it has complied with the requirements of this clause 4.

# NON-DISCRETIONARY PUBLICATION

## Notwithstanding any of the foregoing provisions, the Project Counterparty shall be entitled to make such disclosure, announcement, statement or communication in connection with any Confidential Information which is required by applicable law (other than pursuant to any contract) or by any governmental or other regulatory authority provided that it first gives to NESO advance notice of such disclosure, announcement, statement or communication as is reasonably practicable in all the circumstances and provided that it uses all reasonable endeavours to:

### comply with all reasonable directions of NESO regarding:

#### the manner of such disclosure, announcement, statement or communication; and

#### any action which NESO may wish to be taken to challenge legally the validity of such requirement; and

### minimise the extent and effect of such disclosure, announcement, statement or communication.

## The Project Counterparty acknowledges that NESO is subject to FOIA and EIR. Accordingly, if a Request is made to NESO for or concerning Confidential Information, the Project Counterparty shall provide NESO with such assistance as it reasonably requires to enable NESO to comply with its obligations. Without limiting the generality of the foregoing, the Project Counterparty shall:

### transfer to NESO all such Requests that it receives in respect of the Confidential Information as soon as practicable and in any event within three days of receiving such a Request; and

### provide NESO with a copy of all Confidential Information belonging to NESO within the scope of the Request which is within the Project Counterparty’s possession or control in the form that NESO requires within five days (or such other period as NESO may reasonably specify) of NESO’s request for such Confidential Information; and

### not respond directly to such a Request without NESO’s prior written approval.

## The Project Counterparty further acknowledges that NESO may be required under FOIA and/or EIR to disclose information (including Information and commercially sensitive information) concerning the Project Counterparty without consulting or obtaining consent from the Project Counterparty. NESO shall take reasonable steps to notify the Project Counterparty of such a Request (in accordance with the Cabinet Office’s Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so, but (notwithstanding any other provision in this Agreement) NESO shall be responsible for determining in its absolute discretion what information (including Information and commercially sensitive information) is disclosable and/or whether any information (including Information and commercially sensitive information) is exempt from disclosure in accordance with FOIA or EIR.

# INTELLECTUAL PROPERTY

1. NESO reserves all rights in the Confidential Information. No rights, obligations or licences other than those expressly contained in this Agreement are granted by or to be implied from this Agreement or disclosure of the Confidential Information.

# ACKNOWLEDGEMENT

1. The Project Counterparty acknowledges and agrees that:

## any Confidential Information made available to it under this Agreement shall not have been independently verified, and may refer to matters which are under development or not yet complete; and

## NESO makes no express or implied warranty or representation concerning the Confidential Information, including the accuracy or completeness of the Confidential Information.

# TERMINATION

## This Agreement shall start on the date of this Agreement and continue in force (subject to earlier termination in accordance with clause 8.2) for two years from the date of this Agreement.

## Either Party may terminate this Agreement at any time by giving the other party not less than seven days’ prior written notice.

## Notwithstanding the expiry or termination of this Agreement (for whatever reason), the terms of this Agreement (including the confidentiality obligations in it) shall continue to apply in respect of any Confidential Information disclosed or obtained prior to such expiry or termination.

# GENERAL

## If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any paragraph, or any part of one or more of these clauses or paragraphs) is held to be or becomes void or otherwise unenforceable for any reason under applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

## The rights and remedies of any Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such Party nor by any failure of, or delay by the said Party in ascertaining or exercising any such rights or remedies. Any waiver of any breach of this Agreement shall be in writing. The waiver by any Party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

## The Counterparty acknowledges and agrees that damages alone may not be an adequate remedy for any breach or threatened breach of its obligations in this Agreement and that NESO shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to the maximum extent available under applicable law.

## No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the Parties.

## This Agreement represents the entire agreement between the Parties relating to the Confidential Information and supersedes all prior agreements, arrangements and understandings between the Parties relating to the Confidential Information and each Party agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of the other Party prior to signing this Agreement which such Party relied upon in entering into this Agreement whether such statement was made orally or in writing. However, nothing in this Agreement shall operate to exclude or limit any liability in respect of fraudulent misrepresentations.

# ASSIGNMENT

1. This Agreement is personal to the Project Counterparty. The Project Counterparty shall not assign, novate, delegate or otherwise transfer or hold on trust the rights and responsibilities under this Agreement to any other Person without the prior written consent of NESO.

# NOTICES

## Any notice sent under this Agreement must be in writing and may be served:

### on personal delivery; [or]

### by sending the notice by registered post to the address given above or to such other address as the relevant Party may give for the purpose of service of notices under this Agreement; [or

### by email to the following addresses (or an address substituted in writing by the party to be served):

#### NESO: **box.NESOIndirectsTenders@neso.energy**

## Every such notice shall be deemed to have been served:

### if delivered by hand, upon delivery; [or]

### two Business Days after posting of the same if delivered by registered post; [or

### if sent by email, at the time of transmission, or, if this time falls outside NESO’s standard business hours in the place of receipt, when NESO’s standard business hours resume.]

## This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

# THIRD PARTY RIGHTS

## This Agreement is intended to be for the benefit of each NESO Affiliate. Any Affiliate of NESO may, with the written consent of NESO, enforce the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999 as if reference to NESOincluded a reference to them.

## No consent is necessary from any third party to vary (including, any release or compromises in whole or in part of any liability) or terminate this Agreement.

## Except as otherwise provided in sub-clause 12.1, this Agreement does not create any right enforceable by any Person who is not a Party under the Contracts (Rights of Third Parties) Act 1999.

# GOVERNING LAW AND JURISDICTION

1. This Agreement and any non-contractual obligations arising in connection with it shall be subject to the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales in respect of all disputes or differences arising out of or in connection with it (including non-contractual disputes).

This Agreement has been entered into on the date stated at the beginning of it.

**SIGNED for and on behalf of National Energy System Operator Limited**

Signature: …………………….

**SIGNED for and on behalf of the Project Counterparty**

Signature: …………………….