**Appendix A - Declarations and Non-Disclosure Agreement**

Please find in the subsequent pages of this document the four (4) declarations and one (1) Non-Disclosure Agreement that you must sign using Docusign and submit via ProContract by the SQ Response Deadline.

1. SQ Self-Declaration;
2. Declaration on Legal and Financial Regulations;
3. Declaration of Consent;
4. Conflict of Interest Declaration; and
5. Non-Disclosure Agreement.

**Declaration 1**

**SQ Self-Declaration**

***[To be completed by an authorised signatory, in his / her own name, (electronically using Docusign and submit via ProContract) on behalf of:***

* ***the Bidder (where the Bidder is a Consortium, the SQ Self-Declaration must be signed by an authorised signatory from each member of the Consortium)***
* ***all Essential Sub-contractors; and***
* ***all Guarantors ]***

I certify that the information supplied in the SQ response is accurate to the best of my knowledge and belief and accords with the basic criteria of eligibility as set out in the SQ relating to the Tender for the Provision of the City Leap Energy Partnership Services and that we have not collaborated with other potential bidders in the completion of this questionnaire.

I also understand it is a criminal offence, punishable by imprisonment, to give or offer any gift or consideration whatsoever as an inducement or reward to any servant of a public body, therefore I hereby certify and undertake and bind and oblige ourselves and our connected persons (as defined below) that we and our connected persons have not canvassed or solicited nor will in the future canvass or solicit any officer or employee of Bristol City Council or any person acting as an adviser in connection with the selection of bidders and/or the selection of any submissions, proposals or bids in relation to this project and that our connected persons have not nor will so canvass or solicit.

For the purposes of this declaration "connected persons" means any person connected with us within the meaning given by Section 839 of the Income and Corporation Taxes Act 1988 and any of the respective directors, officers, employees, solicitors, accountants, bankers or other financial or professional advisers of us and/or of our connected persons. Other expressions used in this declaration shall, unless otherwise stated, have the meanings assigned to them in this SQ.

I agree that we shall be responsible for any failure on the part of connected persons to abide by such terms to the same extent as if such failure had been our own action or omission.

I hereby declare that I am authorised by the under mentioned potential bidder to supply the information given above and that, at the date of signing, the information given is a true and accurate record.

|  |  |
| --- | --- |
| Signed |  |
| Name |  |
| Position |  |
| Date |  |

**Declaration 2**

**Declaration on Legal and Financial Regulations**

***[To be completed by an authorised signatory, in his / her own name, (electronically using Docusign and submit via ProContract) on behalf of:-***

* ***the Bidder (where the Bidder is a Consortium, the Declaration on Legal and Financial Regulations must be signed by an authorised signatory from each member of the Consortium)***
* ***all Essential Sub-contractors; and***
* ***all Guarantors]***

Ineligibility Conditions Summary

Summary of criteria for the rejection of economic operators provided by Regulation 38 of the Concession Contracts Regulations 2016:

Regulation 38 of the Concession Contracts Regulations 2016 (“Regulation 38”) sets out the grounds on which an economic operator must normally be deemed ineligible to tender for, or be awarded a public contract. Rejection under Regulation 38 (8) is normally mandatory when an economic operator has been convicted of any of the following offences:

* 1. Conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of council Joint Action 98/733/JHA;
	2. Corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;
	3. The offence of bribery;
	4. Fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of:

The offence of cheating the Revenue;

The offence of conspiracy to defraud;

Fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978;

Fraudulent trading within the meaning of section 458 of the Companies Act 1985;

Defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;

Destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;

An offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or

* 1. Money laundering within the meaning of the Money Laundering Regulations 2003; or Any other offence within the meaning of Article 45(1) of Directive 2004/18/EC of the European Parliament and of the council of 31 March 2004 as defined by the national law of any relevant State.

For the purposes of this Procurement and on the basis of the grounds in Regulation 38(16) a potential Bidder may be deemed to be ineligible to tender where it:

1. where it can demonstrate by any appropriate means a violation of applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Concessions Directive as amended from time to time;
2. where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;
3. where the contracting authority or utility can demonstrate by any appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;
4. where a conflict of interest within the meaning of regulation [35](https://www.legislation.gov.uk/uksi/2016/273/regulation/38/made) cannot be effectively remedied by any other, less intrusive, measures;
5. where the contracting authority or utility has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
6. where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior concession contract or a prior contract with a contracting authority or a utility as defined under these Regulations or under the Public Contracts Regulations 2015([**32**](https://www.legislation.gov.uk/uksi/2016/273/regulation/38/made#f00058)) or the Utilities Contracts Regulations 2016([**33**](https://www.legislation.gov.uk/uksi/2016/273/regulation/38/made#f00059)) which led to early termination of that prior contract, damages or other comparable sanctions;
7. where the economic operator:
	* 1. has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria set out by the contracting authority or utility in accordance with paragraphs [(1)](https://www.legislation.gov.uk/uksi/2016/273/regulation/38/made#regulation-38-1) to [(3)](https://www.legislation.gov.uk/uksi/2016/273/regulation/38/made#regulation-38-3); or
		2. has withheld such information or is unable to submit the required documents supporting such information;
8. where the economic operator has:
	* 1. undertaken to:

(1) unduly influence the decision-making process of the contracting authority or utility, or

(2) obtain confidential information that may confer upon it undue advantages in the concession contract award procedure; or

* + 1. negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award;
1. in the case of a concession contract in the fields of defence and security as referred to in Directive [2009/81/EC](https://www.legislation.gov.uk/european/directive/2009/0081) of the European Parliament and of the council ([**34**](https://www.legislation.gov.uk/uksi/2016/273/regulation/38/made#f00060)), where the economic operator has been found, on the basis of any means of evidence, including protected data sources, not to possess the reliability necessary to exclude risks to the security of the United Kingdom.

Please confirm that none of the grounds set out above for rejecting a potential are applicable to your Relevant Organisation.

|  |  |
| --- | --- |
| Signed |  |
| Name |  |
| Position |  |
| Date |  |

**Declaration 3**

**Declaration of Consent**

***[To be completed by an authorised signatory, in his / her own name, (electronically using Docusign and submit via ProContract) on behalf of the Bidder (where the Bidder is a Consortium, the Declaration on Legal and Financial Regulations must be signed by an authorised signatory from each member of the Consortium).]***

I certify that [*insert name of Bidder completing declaration*] is a [sole bidder] [a member of *insert consortium details*] (*delete as applicable*)] and that [*insert name of Bidder completing declaration*] has the necessary consents, powers and authority to bid for, and provide, the services being procured by Bristol City Council and to submit this SQ response.

|  |  |
| --- | --- |
| Signed |  |
| Name |  |
| Position |  |
| Date |  |

**Declaration 4**

**Conflict of Interest Declaration**

***[To be completed by an authorised signatory, in his / her own name, (electronically using Docusign and submit via ProContract) on behalf of:-***

* ***the Bidder (where the Bidder is a Consortium, the Declaration on Legal and Financial Regulations must be signed by an authorised signatory from each member of the Consortium)***
* ***all Essential Sub-contractors; and***
* ***all Guarantors ]***

Potential bidder name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of authorised representative

Position

Date

Please identify any actual or potential conflicts of interest that could arise if the potential bidder were to be short-listed to proceed to the subsequent stages of this tender (taking into account all Relevant Organisations), and how these will be dealt with.

Examples of circumstances in which conflicts could arise include (but are not limited to) where:

* A Relevant Organisation or any person employed or engaged by or otherwise connected with a Relevant Organisation has carried or is carrying out any work for Bristol City Council (whether in relation to City Leap or otherwise) in the last twelve months;
* A Relevant Organisation is providing services for more than one potential bidder in respect of this tender.

A conflict of interest shall not be deemed to arise solely by virtue of a person's employment or engagement by Bristol City Council. However, Bidders must disclose such relationships in response to this declaration to enable Bristol City Council to consider its position and ask for further information from the Bidder if appropriate.

Bristol City Council reserves the right to exclude a potential bidder from further participation in the procurement process where Bristol City Council:

(a) perceives an actual or potential conflict of interest arises at any stage of this procurement; or

(b) discovers that an actual or potential conflict of interest has arisen and not been disclosed,

and the bidder is unable to satisfy the council that such a conflict can be appropriately managed.

**If no potential conflict of interest is identified, please state this in the response.**

|  |
| --- |
| **Response** |
|  |
|

|  |  |
| --- | --- |
| Signed |  |
| Name |  |
| Position |  |
| Date |  |

**Non-Disclosure Agreement**

***[Note to Bidders/Consortium Members/Essential Sub-Contractors/Guarantors:***

***The following parties must each sign a copy of NDA (Pro Forma A) (electronically using Docusign and submit via ProContract) and return it to the Authority as part of the SQ Response:***

* ***Single Bidders***
* ***Consortium Members***
* ***Essential Sub-Contractors; and***
* ***Guarantors.***

***Subject to any alternative arrangements agreed in order to manage actual or potential Conflicts of Interest, if at any point during the Procurement, a Bidder intends to share the Authority’s confidential information with any other party (including any party which may become a Consortium Member/Essential Sub-Contractor/Guarantor, the Bidder must ensure prior to sharing any of the Authority’s confidential information with any such party that:***

* ***the Bidder obtains the Authority’s permission in writing to share the Authority’s confidential information with such party***
* ***the Bidder enters into NDA (Pro Forma B) with the other party;***
* ***the Authority is provided with a copy of the signed and dated NDA in advance of any of the Authority’s confidential information being shared with the other party.]***

**NDA – Pro Forma A** (for use between the Authority and Bidders/Consortium Members/Essential Sub-Contractors/Guarantors

**[NOTE TO BIDDERS: *To be completed and signed by an authorised signatory, in his / her own name, on behalf of the Bidder/ Consortium Member/Essential Sub-contractor/Guarantor electronically using Docusign and submit via ProContract).]***

**Non-Disclosure Agreement**

**THIS AGREEMENT** is made \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2020

Between:

1. The City Council of Bristol of City Hall College Green Bristol BS1 5TR (the “council”); and
2. [*insert Bidder/Consortium Member/Essential Sub-contractor/Guarantor name*] (company number: [*insert registered number or equivalent*]) ([the “Bidder”/“Consortium Member”/“Essential Subcontractor”/”Guarantor]) registered in [*insert jurisdiction* of incorporation] whose [registered office/principal place of business – *delete as appropriate*] is at [*insert registered office address or principal place of business if no registered office*]

WHEREAS:

The council desires to disclose to and discuss certain Confidential Information (as defined below) relating to its business and the proposed City Leap programme with the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] as a recipient party for the Purpose (as defined below) on a confidential basis.

IT IS AGREED AS FOLLOWS:

1. **Definitions and Interpretation**

 For the purposes of this Agreement:

“**Advisors**” means attorneys, accountants and other professional advisors of the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*].

“**Affiliate**” means a company or corporation which is the ultimate holding company of a party or a subsidiary of such ultimate holding company and for the purposes of such definition 'holding company' and 'subsidiary' shall have the meanings assigned to them in Section 1159 of the Companies Act 2006.

“**associated company**” means in the case of either party, any subsidiary, any holding company and its parent undertaking and any subsidiary of such holding company and its parent undertaking (as such terms are defined in Section 1159 of the Companies Act 2006 as may be amended or replaced from time to time).

"**Confidential Information**" means all commercial, financial, marketing, technical, personnel or other knowledge, information and materials in whatever form and however disclosed (whether discussed orally, in writing, electronically or by any other means) before or after the date of this Agreement relating directly or indirectly to the Purpose and/or the council together with any reproductions of such information in whatever form or medium and shall include (but not be limited to):

(i) the terms, conditions and contents of the discussions and negotiations that have taken place or will take place between the parties with each other regarding the Purpose (ii) information obtained by the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] from the council's directors, employees, agents or Advisers through duly authorised inspection of the council's property, information which relates to the council's trade secrets and business affairs (or those of any parents, subsidiary or associated company of the council), including its products, designs, business plans, business opportunities, finances, research, development, know-how, personnel or third party confidential information disclosed to the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] by the council;

(iii) the existence and/or terms and conditions of this Confidentiality Agreement and the existence of the discussions between the council and the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] regarding the Purpose save as expressly permitted by the terms of this Agreement;

(iv) any other information that is identified as being of a confidential or proprietary nature; and

(v) any notes, summaries, analyses or other writings relating to the Confidential Information which are or have been prepared by or on behalf of the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*]. No formal identification of written information as "Confidential Information" shall be required.

**“Financiers”** means potential lenders, co-investors or other potential finance providers to the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*]

**“Permitted Disclosee”** means the directors, officers, employees, consultants and Advisors of the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*].

**“Purpose”** means the purposes of the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] participating in the City Leap procurement exercise.

1. In consideration of the council disclosing or procuring disclosure of Confidential Information to the [Bidder/Bidder/Consortium Member/Essential Subcontractor/Guarantor/Guarantor – *delete as appropriate*], the [Bidder/Bidder/Consortium Member/Essential Subcontractor/Guarantor /Guarantor – *delete as appropriate*] hereby agrees with and acknowledges to the council in the terms set out below.
2. For the avoidance of doubt
	1. the provisions of this agreement shall apply to the party identified under this agreement as the Essential Sub-Contractor for the duration of the term of this agreement, regardless of whether that party is or is not an Essential Sub-Contractor at any particular point during the term of this agreement and whether that party becomes or does not become an Essential Sub-Contractor
	2. The provisions of this agreement shall apply to the party identified under this agreement as the Consortium Member for the duration of the term of this agreement, regardless of whether that party is or is not a Consortium Member at any particular point during the term of this Agreement and whether that party becomes or does not become a Consortium Member
	3. Any potential Consortium Member that becomes a Consortium Member will fall under the definition of Bidder, and all provisions of this NDA applicable to Bidders will apply to such party from duration of this Agreement during which that party is a Bidder.
3. **Non-Disclosure**
	1. The [Consortium Member/Essential Subcontractor – *delete as appropriate*] represents and warrants that:

(i) it shall not use the Confidential Information for any purpose other than the Purpose;

(ii) it shall keep the Confidential Information private and confidential and shall not communicate or disclose any Confidential Information to any person other than as expressly permitted by the terms of this Agreement;

(iii) it shall keep the Confidential Information and all information generated by it based on such Confidential Information separate from all documents and other records of the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*];

(iv) it shall not, without the prior written consent of the council, disclose, divulge, publish or circulate Confidential Information in whole or in part to any person save to Permitted Disclosees and then only on a strict need to know basis for the Purpose;

(v) it shall not copy, reproduce, adapt, confirm or deny (or authorise or permit anyone else to do any of the same) any of the Confidential Information except as is strictly necessary for the Purpose without the express prior written consent of the council;

(vi) it shall securely store the Confidential Information with the same degree of care, and apply no lesser security measures than it affords to its own confidential information;

(vii) it agrees to use the same care and discretion to avoid disclosure, publication or dissemination of Confidential Information, as it employs with similar information of its own which it does not desire to publish, disclose or disseminate (being at least a reasonable level of care and discretion); and

(viii) it will ensure each copy of Confidential Information is marked ‘Confidential’ and it will inform any Permitted Disclosees of the confidentiality provisions of this Agreement and procure that they comply with its terms.

The [Potential Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] shall be responsible for any breach of the confidentiality provisions of this Agreement by any Permitted Disclosee or other person to whom Confidential Information may be disclosed by the [Consortium Member/Essential Subcontractor – *delete as appropriate*] pursuant to the provisions of this Clause 3 or otherwise.

* 1. the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] may only share Confidential Information with external Advisors, its Affiliates, its Affiliates’ Advisors, and Financiers who need to know such information for the purposes of considering or advising in relation to the Purpose and who are aware of the confidentiality provisions of this Agreement and who, unless otherwise bound by professional duties of confidentiality, enter into a confidentiality agreement with equivalent protection to this Agreement.
	2. the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] undertakes to give written notice to the council immediately if it becomes aware of or suspects that the Confidential Information has been disclosed to any unauthorised third party.
	3. For the avoidance of doubt, this Agreement shall not prohibit the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] from sharing Confidential Information [with other Consortium Members with which it is bidding/the relevant Bidder under which the Essential Subcontractor may be engaged – *delete as appropriate*] provided that such entities have also entered into an NDA [with the council/the Bidder – *delete as appropriate, first option for Consortium Members and second option for Essential Sub-contractors*] (and provided also, in respect of any Essential Subcontractor who is engaged by more than one Bidder, that such Essential Subcontractor shall only share Confidential Information provided to that Essential Subcontractor in respect of a particular bid with the relevant Bidder and not to any other Bidder by whom that Essential Subcontractor is at any time engaged).

**5. Limitations**

5.1 Notwithstanding any other provision in this Agreement, it is agreed that the following shall not constitute Confidential Information for the purposes of this Agreement:

(i) information that was properly and lawfully in the possession of the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] prior to the disclosure thereof by the council (as evidenced by the written records of the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*]);

(ii) information that properly comes into the [Consortium Member’s//Essential Subcontractor’s – *delete as appropriate*] possession from a third person who is not under any obligation to maintain the confidentiality of such Confidential Information;

(iii) information that has become part of the public domain other than through any breach of this Agreement by the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*]; and/or

(iv) information the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] can demonstrate was independently developed by it without use of or reference to the Confidential Information.

5.2 It shall not be a breach of this Agreement where the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] discloses Confidential Information which is required to be disclosed by it by applicable law regulation or court order (other than under FOIA (defined below), which shall be subject to clause 9 below) and in which event the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] shall to the extent legally permissible:

1. as soon as reasonably practicable notify the council in writing of the information proposed to be disclosed prior to making such disclosure and where practicable provide an opinion from its Advisors that such disclosure is required;
2. consult with the council as to possible steps to avoid or limit such disclosure and take those steps where they would not result in significant adverse consequences to the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*]; and
3. obtain appropriate confidentiality undertakings from the third party, and the parties shall co-operate to prevent or otherwise restrict to the minimum amount (whilst complying with such obligation) such disclosure of Confidential Information.

**6. Ownership of Confidential Information**

6.1 All copies of Confidential Information supplied to or otherwise obtained or generated by the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] shall remain the property of the council and no licence or other rights to Confidential Information and/or any patents, copyrights trade names or trademarks (other than as specified herein) is granted or implied hereby.

**7. No Warranties and Representations**

7.1 The council makes no representation or warranty to the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] as to the accuracy or completeness of the Confidential Information supplied by it (or its representatives) or as to the sufficiency of the same for the Purpose. The council shall not have any liability to the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] under this Agreement for the accuracy or completeness of Confidential Information made available by reason of this Agreement or otherwise and shall be under no obligation to update the Confidential Information supplied.

**8. No Further Obligation**

8.1 No party shall be under any obligation of any kind whatsoever to proceed with any transaction or enter into any further agreement with any other party by reason of this Agreement.

**9. Term**

9.1 This Agreement shall be effective immediately and shall continue for the period of five (5) years from the date hereof provided that the obligations set out in Clause 3 and Clause 4.2 of this Agreement shall in all cases survive termination of this Agreement for a period of two (2) years from the date of termination of this Agreement whatever the cause of termination of this Agreement. Accordingly, for the avoidance of any doubt, the obligations set out in Clause 3 and Clause 4.2 of this Agreement shall be binding upon each party for a period of two (2) years after any termination of this Agreement as the case may be

**10. FOIA and other Compulsory Disclosure**

10.1 Each party to this Agreement recognises that, if the Freedom of Information Act 2000 ("**FOIA**") is applicable to any of the other parties that party may be required to release information under FOIA whether the information is held by that party or one of the other parties on its behalf. If any party receives a FOIA request for information held by another party (or any of its agents or sub-contractors) on its behalf and requires assistance in obtaining such information, the party holding the information shall ensure (and procure that any of its agents and sub-contractors so ensure) that the request for assistance is responded to promptly and in any event within 10 days of receipt. In addition the party receiving the request shall:

(i) Promptly notify the other parties of any FOIA request which it receives which relates to its (or its associated companies) Confidential Information held by the party receiving the request and consult with it as to whether there are grounds for withholding such information. In this regard, the parties specifically acknowledge that the exemptions set out in sections 41 (confidential information) and 43 (commercial interests) of FOIA are likely to apply to such information.

10.2 In the event that any party receives a FOIA request for information held by them (or any of its agents or sub-contractors) on behalf of any other party the party receiving the request shall promptly notify the other parties of such request. The party receiving the request shall consult with the other parties in good faith, as far as is lawful, as to whether there are grounds for withholding such information in order to prevent or limit any such disclosure (including by applying any exemptions that may exist under FOIA) and/or take into account their views on the timing, manner and content of any such disclosure.

**11. Return of Confidential Information**

11.1 Save to the extent that the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] is required by law, bona fide internal audit purposes or the rules of any regulatory body to whose rules it is subject to retain any Confidential Information, at the earlier of termination of discussions between the parties or upon the written request of the council, the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] shall as soon as reasonably practicable and in any event within five (5) working days:

(a) return forthwith to the council all documents, papers or records whether in writing, electronic form or capable of being reduced to writing ("**Records**") containing Confidential Information, or derived from Confidential Information; or,

(b) if so agreed in writing by the council, destroy or permanently erase the Records containing Confidential Information or derived from Confidential Information and certify in writing to the council that such destruction has occurred.

11.2 Upon such return or destruction, the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] shall undertake to the council not to retain any copies of Confidential Information of the council other than as required by law or for internal audit purposes.

**12. Entire Agreement**

12.1 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, discussions and understandings of the parties, whether written or oral between the parties. Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court or tribunal of competent jurisdiction, such determination shall not affect the remaining provisions hereof which shall remain in full force and effect. No waiver or modification of any of the provisions of this Agreement shall be valid unless in writing and signed by both of the parties.

**13. Equitable Relief**

13.1 The [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] hereby acknowledges that unauthorised disclosure or use of the Confidential Information will cause irreparable harm and significant injury to the council that may be difficult to ascertain. Accordingly, the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] agrees that the council will have the right to seek and obtain immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have.

**14. No Assignment**

14.1 No party may assign this Agreement nor any of its rights or obligations hereunder.

**15. Assistance by [Bidder/Consortium Member/Essential Subcontractor/Guarantor** – *delete as appropriate*]

15.1 The [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*] shall give all such assistance required by the council to enable the council to prevent any improper use of any Confidential Information by any Permitted Disclosee, Advisor or Affiliate of the [Bidder/Consortium Member/Essential Subcontractor/Guarantor – *delete as appropriate*].

**16. Governing Law**

16.1 The parties agree this Agreement shall be governed by and construed in accordance with the laws of England. The parties agree and consent that the jurisdiction and venue of all matters relating to this Agreement shall be vested exclusively in the courts of England.

**17. Third Party Rights**

17.1 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.

**18. Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all counterparts together shall constitute one document.

In Witness whereof, the parties have executed this Agreement as of the date first written above.

Signed: ……………………………………………

Name: ……………………………………………

Date: ……………………………………………

**duly authorised for and on behalf of**

**The City Council of Bristol**

Signed: ……………………………………………

Name: ……………………………………………

Date: ……………………………………………

**duly authorised for and on behalf of**

**[*insert name of Consortium Member/Essential Sub-Contractor*]**

**NDA Pro Forma B** (for use between Bidders and parties that are not Consortium Members/Essential Sub-Contractors or Guarantors)

[NOTE TO BIDDERS: *To be completed and signed the authorised signatories of each party, in his / her own name, on behalf of each contracting party. The Authority expects the NDA to be executed without amendment (save where the Parties are required to insert the details requested in square brackets below). An electronic copy of the signed and dated NDA, using Docusign, should be submitted via ProContract.]*

**Non-Disclosure Agreement**

**THIS AGREEMENT** is made \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2020

Between:

1. [*insert name*] (company number: [*insert registered number or equivalent*]) ([the “Bidder”]) registered in [*insert jurisdiction* of incorporation] whose [registered office/principal place of business – *delete as appropriate*] is at [*insert registered office address or principal place of business if no registered office*]
2. [*insert name*] (company number: [*insert registered number or equivalent*]) ([the “Recipient”]) registered in [*insert jurisdiction* of incorporation] whose [registered office/principal place of business – *delete as appropriate*] is at [*insert registered office address or principal place of business if no registered office*]

WHEREAS:

The Recipient is a [*insert description of Recipient’s role*] to the Bidder in relation to the City Leap Energy Partnership procurement being run by Bristol City Council (“**the council**”).

The Bidder desires to disclose to and discuss certain Confidential Information (as defined below) relating to the council’s business and the proposed City Leap programme with the Recipient a recipient party for the Purpose (as defined below) on a confidential basis.

IT IS AGREED AS FOLLOWS:

1. **Definitions and Interpretation**

 For the purposes of this Agreement:

“**Advisors**” means attorneys of the Recipient.

**“Affiliate”** means a company or corporation which is the ultimate holding company of a party or a subsidiary of such ultimate holding company and for the purposes of such definition 'holding company' and 'subsidiary' shall have the meanings assigned to them in Section 1159 of the Companies Act 2006.

“**associated company**” means in the case of either party, any subsidiary, any holding company and its parent undertaking and any subsidiary of such holding company and its parent undertaking (as such terms are defined in Section 1159 of the Companies Act 2006 as may be amended or replaced from time to time).

"**Confidential Information**" means all commercial, financial, marketing, technical, personnel or other knowledge, information and materials in whatever form and however disclosed (whether discussed orally, in writing, electronically or by any other means) before or after the date of this Agreement relating directly or indirectly to the Purpose and/or the council together with any reproductions of such information in whatever form or medium and shall include (but not be limited to):

(i) the terms, conditions and contents of the discussions and negotiations that have taken place or will take place between the parties and the Bidder regarding the Purpose (ii) information obtained by the Recipient from the Bidder and/or from the council's directors, employees, agents or Advisers through duly authorised inspection of the council's property, information which relates to the council's trade secrets and business affairs (or those of any parents, subsidiary or associated company of the council), including its products, designs, business plans, business opportunities, finances, research, development, know-how, personnel or third party confidential information disclosed to the Recipient by the council and/or the Bidder;

(iii) the existence and/or terms and conditions of this Confidentiality Agreement and the existence of the discussions between the council and the Recipient and/or the Bidder regarding the Purpose save as expressly permitted by the terms of this Agreement;

(iv) any other information that is identified as being of a confidential or proprietary nature; and

(v) any notes, summaries, analyses or other writings relating to the Confidential Information which are or have been prepared by or on behalf of the Recipient. No formal identification of written information as "Confidential Information" shall be required.

**“Permitted Disclosee”** means the directors, officers, employees, consultants and Advisors of the Recipient.

**“Purpose”** means the purposes of the Recipient participating in the City Leap procurement exercise.

1. In consideration of the Bidder disclosing or procuring disclosure of Confidential Information to the Recipient, the Recipient hereby agrees with and acknowledges to the Bidder in the terms set out below.
2. **Non-Disclosure**
	1. The Recipient represents and warrants that:

(i) it shall not use the Confidential Information for any purpose other than the Purpose;

(ii) it shall keep the Confidential Information private and confidential and shall not communicate or disclose any Confidential Information to any person other than as expressly permitted by the terms of this Agreement;

(iii) it shall keep the Confidential Information and all information generated by it based on such Confidential Information separate from all documents and other records of the Recipient;

(iv) it shall not, without the prior written consent of the Bidder disclose, divulge, publish or circulate Confidential Information in whole or in part to any person save to Permitted Disclosees and then only on a strict need to know basis for the Purpose;

(v) it shall not copy, reproduce, adapt, confirm or deny (or authorise or permit anyone else to do any of the same) any of the Confidential Information except as is strictly necessary for the Purpose without the express prior written consent of the Bidder;

(vi) it shall securely store the Confidential Information with the same degree of care, and apply no lesser security measures than it affords to its own confidential information (being at least a reasonable level of care);

(vii) it agrees to use the same care and discretion to avoid disclosure, publication or dissemination of Confidential Information, as it employs with similar information of its own which it does not desire to publish, disclose or disseminate (being at least a reasonable level of care and discretion); and

(viii) it will ensure each copy of Confidential Information is marked ‘Confidential’ and it will inform any Permitted Disclosees of the confidentiality provisions of this Agreement and procure that they comply with its terms.

The Recipient shall be responsible for any breach of the confidentiality provisions of this Agreement by any Permitted Disclosee or other person to whom Confidential Information may be disclosed by the Recipient pursuant to the provisions of this Clause 3 or otherwise.

* 1. the Recipient may only share Confidential Information with external Advisors, its Affiliates, its Affiliates’ Advisors who need to know such information for the purposes of considering or advising in relation to the Purpose and who are aware of the confidentiality provisions of this Agreement and who, unless otherwise bound by professional duties of confidentiality, enter into a confidentiality agreement with equivalent protection to this Agreement.
	2. the Recipient undertakes to give written notice to the Bidder immediately if it becomes aware of or suspects that the Confidential Information has been disclosed to any unauthorised third party.
	3. In respect of any Recipient who is participating in the Procurement with more than one Bidder, such Recipient undertakes that it shall only share Confidential Information provided to that Recipient in respect of a particular bid with the relevant Bidder and not to any other Bidder with whom that Recipient is at any time participating.

**4. Limitations**

4.1 Notwithstanding any other provision in this Agreement, it is agreed that the following shall not constitute Confidential Information for the purposes of this Agreement:

(i) information that was properly and lawfully in the possession of the Recipient prior to the disclosure thereof by the Bidder (as evidenced by the written records of the Recipient);

(ii) information that properly comes into the Recipient’s possession from a third person who is not under any obligation to maintain the confidentiality of such Confidential Information;

(iii) Information that has become part of the public domain other than through any breach of this Agreement by the Recipient and/or the Bidder; and/or

(iv) Information the Recipient can demonstrate was independently developed by it without use of or reference to the Confidential Information.

4.2 It shall not be a breach of this Agreement where the Recipient discloses Confidential Information which is required to be disclosed by it by applicable law regulation or court order (other than under FOIA (defined below), which shall be subject to clause 9 below) and in which event the Recipient shall to the extent legally permissible:

1. as soon as reasonably practicable notify the Bidder in writing of the information proposed to be disclosed prior to making such disclosure and where practicable provide an opinion from its Advisors that such disclosure is required;
2. consult with the Bidder as to possible steps to avoid or limit such disclosure and take those steps where they would not result in significant adverse consequences to the Recipient; and
3. obtain appropriate confidentiality undertakings from the third party, and the parties shall co-operate to prevent or otherwise restrict to the minimum amount (whilst complying with such obligation) such disclosure of Confidential Information.

**5. Ownership of Confidential Information**

5.1 All copies of Confidential Information supplied to or otherwise obtained or generated by the Recipient shall remain the property of the Bidder and/or council and no licence or other rights to Confidential Information and/or any patents, copyrights trade names or trademarks (other than as specified herein) is granted or implied hereby.

**6. No Warranties and Representations**

6.1 The Bidder makes no representation or warranty to the Recipient as to the accuracy or completeness of the Confidential Information supplied by it (or its representatives) or as to the sufficiency of the same for the Purpose. The Bidder shall not have any liability to the Recipient under this Agreement for the accuracy or completeness of Confidential Information made available by reason of this Agreement or otherwise and shall be under no obligation to update the Confidential Information supplied.

**7. No Further Obligation**

7.1 No party shall be under any obligation of any kind whatsoever to proceed with any transaction or enter into any further agreement with any other party by reason of this Agreement.

**8. Term**

8.1 This Agreement shall be effective immediately and shall continue for the period of five (5) years from the date hereof provided that the obligations set out in Clause 3 and Clause 4.2 of this Agreement shall in all cases survive termination of this Agreement for a period of two (2) years from the date of termination of this Agreement whatever the cause of termination of this Agreement. Accordingly, for the avoidance of any doubt, the obligations set out in Clause 3 and Clause 4.2 of this Agreement shall be binding upon each party for a period of two (2) years after any termination of this Agreement as the case may be.

**9. FOIA and other Compulsory Disclosure**

9.1 Each party to this Agreement recognises that, if the Freedom of Information Act 2000 ("**FOIA**") is applicable to any of the other parties that party may be required to release information under FOIA whether the information is held by that party or one of the other parties on its behalf. If any party receives a FOIA request for information held by another party (or any of its agents or sub-contractors) on its behalf and requires assistance in obtaining such information, the party holding the information shall ensure (and procure that any of its agents and sub-contractors so ensure) that the request for assistance is responded to promptly and in any event within 10 days of receipt. In addition the party receiving the request shall:

(i) promptly notify the other party of any FOIA request which it receives which relates to its (or its associated companies) Confidential Information held by the party receiving the request and consult with it as to whether there are grounds for withholding such information. In this regard, the parties specifically acknowledge that the exemptions set out in sections 41 (confidential information) and 43 (commercial interests) of FOIA are likely to apply to such information.

9.2 In the event that any party receives a FOIA request for information held by them (or any of its agents or sub-contractors) on behalf of any other party the party receiving the request shall promptly notify the other party of such request. The party receiving the request shall consult with the other party in good faith, as far as is lawful, as to whether there are grounds for withholding such information in order to prevent or limit any such disclosure (including by applying any exemptions that may exist under FOIA) and/or take into account their views on the timing, manner and content of any such disclosure.

**10. Return of Confidential Information**

10.1 Save to the extent that the Recipient is required by law, bona fide internal audit purposes or the rules of any regulatory body to whose rules it is subject to retain any Confidential Information, at the earlier of termination of discussions between the parties or upon the written request of the Bidder, the Recipient shall as soon as reasonably practicable and in any event within five (5) working days:

(a) return forthwith to the Bidder all documents, papers or records whether in writing, electronic form or capable of being reduced to writing ("**Records**") containing Confidential Information, or derived from Confidential Information; or,

(b) if so agreed in writing by the Bidder, destroy or permanently erase the Records containing Confidential Information or derived from Confidential Information and certify in writing to the Bidder that such destruction has occurred.

10.2 Upon such return or destruction, the Recipient shall undertake to the Bidder not to retain any copies of Confidential Information of the Bidder other than as required by law or for internal audit purposes.

**11. Entire Agreement**

11.1 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, discussions and understandings of the parties, whether written or oral between the parties. Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court or tribunal of competent jurisdiction, such determination shall not affect the remaining provisions hereof which shall remain in full force and effect. No waiver or modification of any of the provisions of this Agreement shall be valid unless in writing and signed by both of the parties.

**12. Equitable Relief**

12.1 The Recipient hereby acknowledges that unauthorised disclosure or use of the Confidential Information will cause irreparable harm and significant injury to the Bidder that may be difficult to ascertain. Accordingly, the Recipient agrees that the Bidder will have the right to seek and obtain immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have.

**13. No Assignment**

13.1 No party may assign this Agreement nor any of its rights or obligations hereunder.

**14. Assistance by Recipient**

14.1 The Recipient shall give all such assistance required by the Bidder to enable the Bidder to prevent any improper use of any Confidential Information by any Permitted Disclosee, Advisor or Affiliate of the Recipient.

**15. Governing Law**

15.1 The parties agree this Agreement shall be governed by and construed in accordance with the laws of England. The parties agree and consent that the jurisdiction and venue of all matters relating to this Agreement shall be vested exclusively in the courts of England.

**16. Third Party Rights**

16.1 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.

**17. Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all counterparts together shall constitute one document.

In Witness whereof, the parties have executed this Agreement as of the date first written above.

Signed: ……………………………………………

Name: ……………………………………………

Date: ……………………………………………

**duly authorised for and on behalf of**

***[insert name of Bidder]***

Signed: ……………………………………………

Name: ……………………………………………

Date: ……………………………………………

**duly authorised for and on behalf of**

**[*insert name of Recipient*]**