

Confidentiality Agreement

THIS AGREEMENT is made on [DATE]

BETWEEN

1. **Dublin Port Company**, of Port Centre, Alexandra Road, Dublin 1, Ireland (the **"Client"**); and
2. **[CANDIDATE LEGAL NAME]**, a [company / other legal entity] incorporated or established under the laws of [JURISDICTION] with registration number [NUMBER] and registered office at [ADDRESS] (the **"Candidate"**).

Background

The Client is conducting a procurement for the civil works framework described in the invitation to tender identified by the Project reference above (the "Procurement"). The Client may disclose Confidential Information to the Candidate, and the Candidate may disclose Confidential Information to the Client, solely so that the Candidate can assess, prepare for and participate in the Procurement (the "Purpose").

IT IS AGREED as follows:

- 1 **Definitions.** "Confidential Information" means all information disclosed or made available by either party to the other in connection with the Purpose, in any form, including the invitation to tender and procurement documents, drawings, specifications, data, site, operational, commercial, financial, security and technical information, analyses and notes derived from them. It includes information marked confidential and information which a reasonable person would understand to be confidential from its nature or the circumstances of disclosure. "Representatives" means a party's directors, officers, employees, professional advisers, insurers, financiers and, in the case of the Candidate, proposed subcontractors, in each case who have a genuine need to know for the Purpose.
- 2 **Confidentiality and permitted use.** Each party shall keep the other party's Confidential Information confidential, use it only for the Purpose, and protect it using at least reasonable care and no less than the care it uses for its own confidential information of a similar nature. Neither party shall disclose the other's Confidential Information except as permitted by this Agreement.
- 3 **Permitted disclosure.** A party may disclose the other party's Confidential Information only to Representatives who need it for the Purpose, are informed of its confidential nature and are bound by written confidentiality obligations no less protective than those in this Agreement. Each party is responsible for its Representatives' compliance as if the Representative were that party.
- 4 **Exclusions.** The obligations in clauses 2 and 3 do not apply to information which the recipient party can demonstrate by written evidence: (i) was lawfully known to it before disclosure by the other party; (ii) is or becomes public other than through a breach of this Agreement; (iii) is lawfully received from a third party without a duty of confidence; or (iv) is independently developed without use of the other party's Confidential Information.
- 5 **Compelled disclosure and protected disclosures.** A party may disclose the other party's Confidential Information to the extent required by applicable law, a court order or a regulator, provided that, where lawful and reasonably practicable, it gives the other party prior written notice and reasonably cooperates with that party to seek confidential treatment. Nothing in this Agreement prevents a person from making a protected disclosure or exercising any other right that cannot lawfully be restricted.

- 6 **Information security and incidents.** Each party shall maintain appropriate technical and organisational measures to prevent unauthorised access to, use of, alteration of, loss of or disclosure of the other party's Confidential Information. It shall notify the other party without undue delay after becoming aware of any actual or suspected unauthorised disclosure, loss or access, and shall promptly take reasonable steps to contain, investigate and remedy it.
- 7 **Copying, reverse engineering and return.** A party shall make copies of the other party's Confidential Information only as necessary for the Purpose. The Candidate shall not reverse engineer, disassemble, analyse or test any material, sample, prototype, software or other item supplied by the Client, except to the extent expressly authorised in writing by the Client. On a disclosing party's written request or on conclusion of the Procurement, the recipient party shall promptly return or securely destroy that party's Confidential Information and certify destruction if requested. It may retain routine back up copies and copies required by law, provided that they remain protected under this Agreement and are not restored except for legitimate disaster recovery or legal compliance.
- 8 **Ownership, no licence and no reliance.** All Confidential Information remains the property of the party that disclosed it. No licence or other right is granted by disclosure, except the limited right to use the other party's Confidential Information for the Purpose. Each party gives no representation or warranty as to the accuracy, completeness or fitness for purpose of the Confidential Information it discloses and shall have no liability for the other party's reliance on it, except as may be expressly stated in the final tender documents or a contract awarded following the Procurement.
- 9 **Data protection.** Where Confidential Information contains personal data, each party shall comply with applicable data protection law, including the General Data Protection Regulation and the Data Protection Act 2018. The Candidate shall not process personal data beyond what is necessary for the Purpose and shall ensure its Representatives do the same. This Agreement does not appoint either party as a processor for the other; if processor terms are required, the parties shall enter into them separately.
- 10 **Publicity.** The Candidate shall not make any public announcement or use the Client's name, logo or the existence or outcome of the Procurement in publicity or marketing without the Client's prior written consent, except where disclosure is required by law.
- 11 **Duration.** This Agreement takes effect on the date above. The obligations in this Agreement continue for ten years from the later of: (i) the date on which a party last receives Confidential Information from the other; and (ii) where the Candidate is awarded a framework agreement or call off contract arising from the Procurement, the expiry or termination of that framework agreement or call off contract. In respect of information which remains a trade secret, the confidentiality obligations continue for so long as it remains a trade secret under applicable law.
- 12 **Statutory access and procurement obligations.** The Candidate acknowledges that, as at the date of this Agreement, the Client is an exempt agency under Part 2 of Schedule 1 to the Freedom of Information Act 2014. The Client may nevertheless receive requests or be subject to disclosure obligations under applicable law, including the European Communities (Access to Information on the Environment) Regulations 2007 (as amended), procurement law, court order or regulatory requirement. The Candidate shall identify information in its tender which it considers commercially sensitive and provide reasons on request. The Client may, where reasonably practicable and permitted by law, consult the Candidate before disclosure, but is not bound by any confidentiality marking or representation made by the Candidate. Where the European Union (Award of Contracts by Utility Undertakings) Regulations 2016 apply to the Procurement, this Agreement is intended to be a confidentiality requirement for the purposes of Regulation 38(3), without limiting the Client's other rights or obligations.
- 13 **No obligation to award.** Nothing in this Agreement obliges either party to enter into any further agreement, disclose further information, continue the Procurement or award any

contract. The Client may amend, suspend or discontinue the Procurement in accordance with the tender documents and applicable law.

- 14 **Remedies.** Each party acknowledges that unauthorised use or disclosure of the other party's Confidential Information may cause harm for which damages may not be an adequate remedy. The injured party may seek injunctive relief or other equitable relief, in addition to any other rights and remedies available at law.
- 15 **General.** This Agreement is the entire agreement between the parties about its subject matter and supersedes earlier understandings about that subject matter. Any amendment must be in writing and signed by both parties. If any provision is invalid or unenforceable, it shall be treated as modified to the minimum extent necessary and the remaining provisions shall continue in force. A person who is not a party to this Agreement has no right to enforce it.
- 16 **Governing law and jurisdiction.** This Agreement and any non-contractual obligations arising from or in connection with it are governed by Irish law. The courts of Ireland have exclusive jurisdiction to settle any dispute arising from or in connection with this Agreement.

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Signed for and on behalf of the Candidate	Date
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Name

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Title

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Signed for and on behalf of the Client (Dublin Port Company)	Date

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Name

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Title

