

## CONFIDENTIALITY AGREEMENT

This Agreement is made between IPSA Group PLC (the "Company") and (the "Discloser"), incorporated and existing under the laws of England with company registration number 05496202, registered at the following address: 17<sup>th</sup> Floor Millbank Tower, 21-24 Millbank, London, SW1P 4QP and Encor Power PLC, a company incorporated and registered in England under the laws of England and Wales, with company registration number 10050579], registered at the following address: c/o Brave Partners LLP, Sunderland House, Lloyd's Avenue, London, EC3N 3DS ("Encor") (the "Recipient").

### **Background**

The Discloser and the Recipient are in discussion, in connection with a potential merger of business interests.

In connection with the above discussions ("the Purpose") it will be necessary for certain confidential information to be disclosed by the parties to each other.

The Recipient and the Discloser agree that the following terms and conditions shall apply when Confidential Information is disclosed and/or made available pursuant to this Agreement.

### **1 Definitions**

In this Agreement the following terms shall have the following meanings:

"Affiliate" means any entity which from time to time controls, is controlled by or is under common control with the relevant party, where control means having the ability (including without limitation by means of a majority of voting rights or the right to appoint or remove a majority of the board of directors) to control the management and policies of an entity.

"Confidential Information" means any information relating to the Company, its Affiliates, and the Purpose including without limitation the information and data provided to the recipient via the Information Memorandum (the "IM"), via email, and by other methods, and any legal advice and/or reports which are addressed to and/or received by the Company or its Affiliates and/or any of its directors or employees. The Confidential Information shall include all information supplied by either party, their Affiliates or by their respective directors, members, employees, partners, auditors, professional advisors or agents at any time during its proposed evaluation of the Purpose. In addition, the Confidential Information shall include any subsequent discussions and references to the Confidential Information and shall include records or copies of all or any part of the Confidential Information, in whatever medium and all reports or analyses of the Confidential Information or all reports or analyses based on or derived from it.

### **2 Supply and Use of Information**

2.1 In consideration of the provision of information under this agreement, each party agrees with the other, that save as otherwise expressly permitted by this Agreement, each such party shall:

2.1.1 keep the Confidential Information confidential;

2.1.2 not use the Confidential Information except in connection with the Purpose; and

2.1.3 not disclose the Confidential Information to any third party.

2.2 Neither party gives any warranty or representations and shall have no liability regarding the completeness or accuracy of any Confidential Information.

### **3 Confidentiality**

3.1 Confidential Information shall be protected through the exercise

of the precautions set out in this Agreement and with no less protection and care than the receiving party customarily uses in preserving and safeguarding its own confidential information.

3.2 The parties agree to keep the Purpose and the existence of this Agreement confidential in accordance with the terms of this Agreement subject to the exceptions in clause 3.3 below, and the permitted disclosures in clause 3.4 below.

3.3 This Agreement shall not apply to Confidential Information which:

3.3.1 is in or enters the public domain other than as a result of a breach of an obligation under this Agreement; or

3.3.2 is or has been acquired from a third party who owes no obligation of confidence in respect of the information; or

3.3.3 is or has been independently developed by the receiving party.

3.4 Notwithstanding clause 2.1 above, Confidential Information may be disclosed in the following circumstances:

3.4.1 on a need-to-know basis to partners, directors and employees, and professional advisers subject to clause 3.5 below

3.4.2 to insurers or legal advisers in relation to any actual, potential or threatened dispute in connection with this Agreement, subject to clause 3.5 below; or

3.4.3 to the extent such disclosure is required by any court of competent jurisdiction, or by a governmental or regulatory authority, or where there is a legal right, duty, requirement or professional obligation to disclose

3.5 Any person to whom Confidential Information is disclosed pursuant to clauses 3.4.2 above (i) shall be advised of the proprietary and confidential nature of the Confidential Information, together with the restrictions on use and disclosure; and (ii) shall be advised that the information is subject to appropriate obligations of confidence.

### **4. Financial Services and Markets Act 2000**

The parties acknowledge that certain of the Confidential Information may potentially relate to a transaction or potential transaction that falls within Article 62 of the (UK) Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

### **5. No Licence**

No licence (express or implied, by estoppel or otherwise) under any trade secret, trade mark, patent, copyright or other intellectual property right or any application for the same is granted by either party to the other in relation to the Confidential Information except as expressly set out in this Agreement.

### **6 Remedy**

The parties agree that damages might not be an adequate remedy for any breach of the provisions of this agreement and accordingly (without prejudice to any other rights or remedies) the offended party may be entitled without proof of special damage to the remedies of injunction and other equitable relief for any threatened or actual breach of the provisions.

**7 Term**

7.1 This Agreement shall come into effect on the date of signature by both parties and shall continue for a period of two (2) years, subject to any subsequent agreement entered into between the parties in relation to the Purpose which includes obligations relating to the protection of Confidential Information.

**8. General**

- 8.1. Neither party may transfer its rights or obligations under this Agreement without the prior written consent of the other party.
- 8.2. No delay by either party in enforcing any of the terms or conditions of this Agreement shall affect or restrict that party's rights and powers arising under this Agreement. No waiver or amendment of any term or condition of this Agreement shall be effective unless made in writing and signed by both parties.
- 8.3. This Agreement forms the entire agreement between the parties relating to Confidential Information disclosed in connection with the Purpose. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral.
- 8.4. If any provision of this Agreement is determined to be invalid in whole or in part, the remaining provisions shall continue in full force and effect as if this Agreement had been executed without the invalid provision.

**9. Rights of Third Parties**

A person or entity which is not a party to this Agreement has no rights under the (UK) Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. For the avoidance of doubt, this Agreement may, by agreement between the parties, be rescinded or varied without the consent of any third party.

**10. Governing law and jurisdiction**

This Agreement is governed by and shall be construed in accordance with the laws of England and Wales.

SIGNED for and on behalf of Encor Power PLC

By: Julian Lloyd Vine

Title: DIRECTOR

Date:

5/9/2016  


SIGNED for and on behalf of IPSA Group PLC

By: PETER EARL

Title: DIRECTOR

Date: 05.09.2016

