

DATED 2021

(1) NEW HOLLAND EXTRACTION LIMITED

and

(2) [NAME OF PARTY 2]

CONFIDENTIAL DISCLOSURE AGREEMENT

THIS AGREEMENT is made on

2021

BETWEEN:-

- (1) **NEW HOLLAND EXTRACTION LIMITED** (a company incorporated and registered in England with company number 4850511) whose registered office is at Morgan Way, New Holland, North Lincolnshire, DN19 7PZ (**NHE**); and
- (2) **[NAME OF PARTY 2]** a company incorporated and registered in England with company number **[REGISTERED NUMBER OF PARTY 2]** whose registered office is at **[REGISTERED OFFICE OF PARTY 2]** (**Party 2**).

BACKGROUND

- (A) Each party wishes to disclose to the other party Confidential Information in relation to the Purpose, and wishes to ensure that the other party maintains the confidentiality of its Confidential Information.
- (B) In consideration of the benefits to the parties of the disclosure of the Confidential Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause apply in this Agreement:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Confidential Information: all confidential information (however recorded, preserved or disclosed) disclosed by a party or its employees, officers, representatives or advisers (together, its Representatives) to the other party and that party's Representatives before, on or after the date of this Agreement (or obtained by means of any visit to the Disclosing Party's premises) including but not limited to:

- (a) the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
- (b) the terms of this Agreement;
- (c) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, commercial relationships, plans, intentions, strategy and market opportunities of the Disclosing Party or of the Disclosing Party's Group; and
 - (ii) the operations, proprietary technology, equipment and facilities, processes,

product information, know-how, designs, trade secrets, software, specifications, plans, drawings, schematics, operating data, formulae, methods, strategy and other proprietary information of the Disclosing Party or of the Disclosing Party's Group; and

(iii) any other matter whatsoever provided directly or indirectly by the Disclosing Party or of the Disclosing Party's Group orally or in documentary form by way or models or other tangible form or by demonstrations; and

(d) any information or analysis derived from Confidential Information;

but not including any information that the Disclosing Party can reasonably demonstrate:

(e) is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this Agreement or of any other undertaking of confidentiality addressed to the party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or

(f) was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party; or

(g) was, is or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient; or

(h) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party; or

(i) the parties agree in writing is not confidential or may be disclosed;

(j) is developed by or for the Recipient independently of the information disclosed by the Disclosing Party; or

(k) is trivial, obvious or useless.

Disclosing Party:

a party to this Agreement which discloses or makes available directly or indirectly Confidential Information.

Group: in relation to a company, that company, each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company.

Holding company and subsidiary: mean a “holding company” and “subsidiary” as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Purpose: [the evaluation or establishment of a collaborative business relationship between the parties to this Agreement in relation to toll extraction services to be undertaken by NHE relating to **[INSERT DETAILS]]**.

Recipient: a party to this Agreement which receives or obtains directly or indirectly Confidential Information of the Disclosing Party.

Representative: employees, agents and other representatives of the Recipient.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.7 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.8 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.

2 OBLIGATIONS OF THE RECIPIENT

- 2.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall, and shall procure that its Representatives shall:
- (a) not use or exploit the Confidential Information in any way except for the Purpose;
 - (b) not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement;
 - (c) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Party);
 - (d) not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;
 - (e) keep separate the Confidential Information from all documents and other records of the Recipient;
 - (f) apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use;
 - (g) keep a written record of any document or other Confidential Information received from the other in tangible form; any copy made of the Confidential Information; and
 - (h) ensure that any document or other records containing Confidential Information shall be kept at its usual business premises and shall not remove or allow to be removed such document or records from those premises.
- 2.2 The Recipient may only disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know this Confidential Information for the Purpose, provided that:

- (a) it informs these Representatives of the confidential nature of the Confidential Information before disclosure and obtains from its Representatives enforceable undertakings to keep the Confidential Information confidential in terms at least as extensive and binding upon the Representatives as the terms of this Agreement are upon the parties; and
 - (b) at all times, it is responsible for these Representatives' compliance with the obligations set out in this Agreement.
- 2.3 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 2.3, it takes into account the reasonable requests of the other party in relation to the content of this disclosure.
- 2.4 The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Disclosing Party from time to time) to safeguard the Confidential Information from unauthorised access or use.
- 2.5 No party shall make, or permit any person to make, any public announcement concerning this Agreement, the Purpose or its prospective interest in the Purpose without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or by any court or other authority of competent jurisdiction. No party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.
- 2.6 The Recipient acknowledges and agrees that the terms of this Agreement shall apply both to it and any of its Group companies (and their respective employees, agents and other representatives) who have access to the Disclosing Party's Confidential Information, and the Recipient shall at all times procure compliance with the terms of this Agreement by its Group companies (and their respective employees, agents and other representatives) as if they were party to this Agreement in place of the Recipient. The Recipient warrants to the Disclosing Party that it has full power and authority to enable it to comply with the provisions of this clause 2.6.

3 RETURN OF INFORMATION

- 3.1 At the request of the Disclosing Party, the Recipient shall:
 - (a) destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;
 - (b) erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and
 - (c) certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this Agreement. The provisions of this clause 3 shall continue to apply to any such documents and materials retained by the Recipient, subject to clause 6.1.
- 3.2 If the Recipient or any member of its Group develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the

Disclosing Party's Confidential Information, the Recipient shall, at the request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Disclosing Party's Confidential Information has not been used or disclosed.

4 RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT

- 4.1 All Confidential Information shall remain the property of the Disclosing Party. Each party reserves all rights (including, but not limited to, Intellectual Property Rights) in its Confidential Information.
- 4.2 No licence or rights, including, but not limited to, Intellectual Property Rights, in respect of a party's Confidential Information are granted or licensed to the other party and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement.
- 4.3 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information, or as to the efficacy, capability or safety of any materials or information provided under this Agreement.
- 4.4 The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further agreement in relation to the Purpose, (such as in respect of the licensing of any Intellectual Property Rights or for the development or supply of any product or service to which the Confidential Information relates).
- 4.5 Nothing in this Agreement shall be construed as requiring the Disclosing Party to disclose any Confidential information to the Recipient.
- 4.6 The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.
- 4.7 The Recipient shall be liable to the Disclosing Party for the actions or omissions of the Recipient's Representatives under this Agreement, as if they were the actions or omissions of the Recipient.

5 WARRANTY AND INDEMNITY

- 5.1 Each Disclosing Party warrants that it has the right to disclose its Confidential Information to the Recipient and to authorise the Recipient to use such Confidential Information for the Purpose.
- 5.2 Each Recipient shall indemnify and keep fully indemnified the Disclosing Party and its Group 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 other costs and expenses suffered or incurred by the Disclosing Party and/or its Group) arising from any breach of this Agreement by the Recipient and from the actions or omissions of any Representative of the Recipient.

6 TERM AND TERMINATION

- 6.1 If either party decides not to become, or continue to be involved in the Purpose with the other party it shall promptly notify the other party in writing. The obligations of each party shall, notwithstanding any earlier termination of negotiations or discussions between the parties in relation to the Purpose, continue for an indefinite period after termination of this Agreement.
- 6.2 Termination of this Agreement shall not affect any accrued rights or remedies to which either party is entitled.

7 ENTIRE AGREEMENT AND VARIATION

- 7.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
- 7.2 No variation of this Agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

8 NO WAIVER

- 8.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 8.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.
- 8.3 A party that waives a right or remedy provided under this Agreement or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

9 ASSIGNMENT

Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

10 NOTICES

- 10.1 Any notice given to a party under or in connection with this Agreement shall be in writing and in the English language and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 10.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 10.3 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.
- 10.4 A notice given under this Agreement is not valid if sent by fax or email.

11 NO PARTNERSHIP

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

12 THIRD PARTY RIGHTS

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

13 GOVERNING LAW AND JURISDICTION

- 13.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 13.2 Subject to clause 13.3, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation, and agree that (subject to clause 13.4), in respect of proceedings in England and Wales and in any other jurisdiction, process may be served on either of them in the manner specified for notices in clause 10.
- 13.3 Nothing in this clause 13 shall limit the right of NHE to take proceedings against Party 2 in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude NHE from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 13.4 The rights set out in this clause 13 are in addition to any other manner of service permitted by law at the time when service is made.

14 COUNTERPARTS

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

15 COSTS

Unless otherwise provided in this Agreement, all costs in connection with the negotiation, preparation, execution and performance of this Agreement (and any documents referred to in it), and the consideration or evaluation of the Confidential Information, shall be borne by the party that incurred the costs.

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

Signed Mark Smith for and on behalf of **NEW HOLLAND EXTRACTION LIMITED**
General Manager
Date.....

Signed by [NAME OF PERSON]
for and on behalf of [NAME OF PARTY 2]
Sign.....
Position
Date.....