

Document 6 - NON-DISCLOSURE AGREEMENT (NDA)
TUPE AND GDPR – SUPPLY OF PERSONAL EMPLOYEE INFORMATION
PLEASE COMPLETE, AND RETURN TO TENDERS@VALUE-MATCH.CO.UK
ASAP

Tender Reference Number: TT000107

Further Competition Description: INVITATION TO TENDER FOR THE PROVISION OF Insurance Services

Discloser Name: Butterworth Spengler Insurance Brokers on behalf of The ACC Liverpool Group

Date: 21/01/2022

BACKGROUND

- (A) The Recipient has requested the disclosure of confidential information from the Discloser for the Purpose.
- (B) The parties have agreed to comply with this agreement in connection with the disclosure and use of Confidential Information.

Agreed terms

1. Interpretation

1.1 Definitions:

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

Confidential Information: has the meaning given in clause 2.

Discloser: as set out above at 'Discloser Name', being the party that discloses Confidential Information, directly or indirectly, to the Recipient.

Briefing Document: is the tender opportunity issued by Butterworth Spengler Insurance Brokers on behalf of The ACC Liverpool Group and otherwise identified at the beginning of this NDA.

Purpose: is the supply of Confidential Information to the Recipient for the sole purpose of submitting a full tender or bid for the tender referenced at the beginning of this NDA.

Recipient: is identified in the signature box at the end of this NDA and otherwise being the party that receives Confidential Information, directly or indirectly, from the Discloser.

Representative(s): in relation to each party:

- a) its officers and employees that need to know the Confidential Information for the Purpose;

- b) its professional advisers or consultants who are engaged to advise that party in connection with the Purpose;
- c) its contractors and sub-contractors engaged by that party in connection with the Purpose; and
- d) any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.

1.2 Interpretation

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.
- (d) A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (e) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. Confidential Information

2.1 Confidential Information means all confidential information relating to the Purpose which the Discloser or its Representatives directly or indirectly discloses, or makes available, to the Recipient or its Representatives This includes:

- (a) any 'personal data' which may be anonymised or otherwise, as defined by the Information Commissioner's Office at the date of this NDA;
- (b) all confidential or proprietary information relating to:
 - (i) the business, affairs or suppliers of the Discloser; and
 - (ii) the operations, processes, know-how, technical information, designs, trade secrets or software of the Discloser or its suppliers.
- (c) any information, findings, data or analysis derived from Confidential Information; and
- (d) any other information that is identified as being of a confidential or proprietary nature but excludes any information referred to in clause 2.2.

2.2 Information is not Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient or its Representatives in breach of this agreement (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
- (b) it was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;
- (c) it was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not under any confidentiality obligation in respect of that information;
- (d) it was lawfully in the possession of the Recipient before the information was disclosed by the Discloser; and
- (e) the parties agree in writing that the information is not confidential.

3. Confidentiality obligations

3.1 In return for the Discloser making Confidential Information available to the Recipient, the Recipient undertakes to the Discloser that it shall:

- (a) keep the Confidential Information secret and confidential;
- (b) not use or exploit the Confidential Information in any way except for the Purpose;
- (c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this agreement;
- (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be destroyed upon completion of the Purpose;
- (e) 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 outside its usual place of business;
- (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; and
- (g) keep a written record of:
 - (i) any document or Confidential Information received from the Discloser in tangible form; and
 - (ii) any copies made of the Confidential Information;

3.2 The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Discloser from time to time) to safeguard the Confidential Information from unauthorised access or use.

4. Permitted disclosure

4.1 The Recipient may disclose the Confidential Information to its Representatives on the basis that it:

- (a) informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; and
- (b) procures that those Representatives comply with the confidentiality obligations in clause 3.1 as if they were the Recipient; and
- (c) keeps a record of those persons.

4.2 The Recipient shall be wholly liable for the actions or omissions of the Representatives, in relation to the Confidential Information as if they were the actions or omissions of the Recipient.

5. Mandatory disclosure

5.1 Subject to the provisions of this clause 5, the Recipient may disclose Confidential Information to the minimum extent required by an order of any court of competent jurisdiction.

5.2 Before the Recipient discloses any Confidential Information pursuant to clause 5.1 it shall, to the extent permitted by law, give the Discloser as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with clause 5.2, the Recipient shall take into account the Discloser's requests in relation to the content of this disclosure.

5.3 If the Recipient is unable to inform the Discloser before Confidential Information is disclosed pursuant to clause 5.1 it shall, to the extent permitted by law, inform the Discloser of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

6. Return or destruction of Confidential Information

6.1 If so requested by the Discloser at any time by notice in writing to the Recipient, the Recipient shall promptly:

- (a) destroy or return to the Discloser all documents and materials (and any copies) containing, reflecting, incorporating or based on the Discloser's Confidential Information;

- (b) upon completion of the Purpose, erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and
- (c) to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
- (d) certify in writing to the Discloser that it has complied with the requirements of this clause 6.1.

6.2 Nothing in clause 6.1 shall require the Recipient to return or destroy any documents and materials containing or based on the Confidential Information that the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction, to which it is subject. The provisions of this agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to this clause 6.2.

7. Reservation of rights and acknowledgement

- 7.1 The Discloser reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Discloser to the Recipient does not give the Recipient or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement.
- 7.2 Except as expressly stated in this agreement, the Discloser makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.
- 7.3 The disclosure of Confidential Information by the Discloser shall not form any offer by, or representation or warranty on the part of, the Discloser to enter into any further agreement with the Recipient.

8. Indemnity

8.1 The Recipient shall indemnify the Discloser against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Discloser arising out of or in connection with any breach of this agreement by the Recipient or a Permitted Recipient.

8.2 If a payment due from the Recipient under clause 8.1 is subject to tax (whether by way of direct assessment or withholding at its source), the Discloser shall be entitled to receive from

the Recipient such amount as shall ensure that the net receipt, after tax, of the Discloser in respect of the payment is the same as it would have been were the payment not subject to tax.

9. Inadequacy of damages

Without prejudice to any other rights or remedies that the Discloser may have, the Recipient acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement. Accordingly, the Discloser shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this agreement by the Recipient.

10. No obligation to continue discussions

Nothing in this agreement shall impose an obligation on the Discloser to continue discussions in connection with the Purpose, or an obligation on the Discloser to disclose any information (whether Confidential Information or otherwise) to the Recipient.

11. Ending discussions and duration of confidentiality obligations

11.1 If the Discloser decides not to continue to be involved in the Purpose with the Recipient, it shall destroy the Confidential Information immediately and inform the Recipient of the completion of its obligation under this clause 11.1.

11.2 Notwithstanding the end of discussions between the parties in relation to the Purpose pursuant to clause 11.1, each party's obligations under this agreement shall continue in full force and effect for a period of seven years from the date of this agreement.

11.3 The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either party is entitled.

12. No partnership or agency

12.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

12.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

13. General

13.1 Assignment and other dealings. 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.

13.2 Entire agreement.

- (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

13.3 Variation. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 Severance

- (a) If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- (b) If any provision or part-provision of this agreement is deemed deleted under clause 13.5(a), the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.6 Notices

- (a) Any notice or other communication given to a party under or in connection with this agreement shall be sent by email to the Discloser's email address which shall be provided at the time this NDA is issued for a review by the intended Recipient and as provided by the Recipient for disclosure of the Confidential Information as set out below in this NDA.
- (b) Any notice or communication shall be deemed to have been received at the time of transmission or, if this time falls outside business hours in the place of receipt, when business hours resume.
- (c) 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.

13.7 Third party rights.

- (a) Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

13.8 Governing law. 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.

13.9 Jurisdiction. 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.

This agreement has been entered into on the date of execution by the Recipient as stated below.

Signed on behalf of Recipient:		Date:	
Name of Person Signing this form:		Position:	
Recipient Name and Address:			
Telephone No:		Email:	

Please return this signed NDA to tenders@value-match.co.uk