

**Private and confidential**

From: ContourGlobal plc (“**Chi**”)  
Office 7.08  
7<sup>th</sup> Floor, Park House  
116 Park Street  
London W1K 6SS

To: Kohlberg Kravis Roberts & Co. Partners LLP (“**Kappa**”)  
18 Hanover Square  
London W1S 1JY

**BY EMAIL**

10 March 2022

Dear Sir/Madam

**Project Chi**

One or more newly formed entities that are affiliates of the affiliated infrastructure investment funds and separately managed accounts advised and/or managed by you and your affiliates (the “**Kappa Funds**”) have expressed an interest in making an offer (to be implemented by way of a scheme of arrangement or a takeover offer) to acquire Chi (the “**Transaction**”). We are prepared to make certain confidential information relating to Chi and its group available to you in connection with the Transaction on the terms of this letter.

In consideration of our disclosing certain Confidential Information to you, you agree and undertake to us in the terms of this letter. The undertakings in this letter are given in our favour and in favour of each of our subsidiaries.

**1. Definitions**

In this letter:

“**acting in concert**” shall be construed in accordance with the Takeover Code, and “**act in concert**” shall be construed accordingly;

“**CJA**” means the Criminal Justice Act 1993;

“**Compelled Disclosure**” has the meaning given to it in paragraph 3.2;

“**Confidential Information**” means:

- (i) all information (in whatever form) supplied by or on behalf of us or any of our Connected Persons to you or any of your Connected Persons, on or after 11 February 2022, in connection with the Transaction which relates to Chi or any of its group

undertakings, together with any analyses, reports or documents which contain or reflect, or are derived or generated from, any such information;

- (ii) the fact of your interest in acquiring Chi, the existence, status or progress of any discussions relating to the Transaction and the existence and contents of this letter; and
- (iii) Disclosed Personal Data;

**“Connected Person”**

means, in relation to any party:

- (i) each of its group undertakings and, in the case of Kappa, any affiliated funds and/or investors advised by Kappa and its affiliates and any persons having control over, controlled by or under common control with such persons or Kappa;
- (ii) its and each of its group undertakings’ and/or affiliates’ directors, officers, employees, advisers, agents and representatives (and any directors, officers, employees and partners of any such advisers, agents and representatives);
- (iii) any persons that are: (a) proposing to provide debt and/or equity finance to you or your affiliates for the purpose of financing the Transaction; and/or (b) to be engaged as hedging counterparties in connection with the Transaction (each such person, a **“Permitted Finance Provider”**), subject to the requirements of paragraph 3.1(D); and
- (iv) any director, officer, employee, adviser, agent or representative of any person referred to in (iii) above (and any directors, officers, employees or partners of any such advisor, agent or representative);

**“Connected Recipient”**

means each Connected Person of Kappa that receives Confidential Information hereunder (including, for the avoidance of doubt, (i) any Connected Person to whom Confidential Information has been shared in accordance with paragraph 3.1, and (ii) any Connected Person of Kappa that receives Confidential Information in breach of the terms of this letter);

<b>“Controller”</b>	has the meaning given to it in Data Protection Laws;
<b>“Data Protection Laws”</b>	means, to the extent applicable, the UK Data Protection Act 2018 and the General Data Protection Regulation 2016/679, as implemented and/or amended locally;
<b>“Disclosed Personal Data”</b>	means any personal data (as defined in Data Protection Laws) supplied by us or any of our Connected Persons, whenever and in whatever form, to you or any of your Connected Recipients in connection with the Transaction;
<b>“group undertaking”</b>	shall be construed in accordance with section 1161 of the Companies Act 2006;
<b>“interest”</b>	in shares or securities shall be construed in accordance with the Takeover Code;
<b>“parties”</b>	means Kappa and Chi, and <b>“party”</b> shall be construed as any one of these;
<b>“Permitted Finance Provider”</b>	has the meaning given to it in paragraph (iii) of the definition of <b>“Connected Person”</b> ;
<b>“Restricted Person”</b>	has the meaning given to it in <u>paragraph 8.1</u> ;
<b>“Takeover Code”</b>	means the City Code on Takeovers and Mergers;
<b>“Takeover Panel”</b>	means the Panel on Takeovers and Mergers; and
<b>“UK MAR”</b>	means the Market Abuse Regulation (EU) 596/2014, as it forms part of UK domestic law by virtue of the European Union (Withdrawal) Act 2018.

## 2. Duty of confidentiality

- 2.1 Unless we give our express consent in writing, you will, and will direct that each of your Connected Recipients will:
- (A) hold the Confidential Information in strict confidence;
  - (B) use the Confidential Information only for the purpose of evaluating, negotiating, advising upon or implementing the Transaction (or such other purpose as Chi may confirm to Kappa in writing);
  - (C) not disclose, copy, reproduce or distribute (or allow any other person to do the same) any of the Confidential Information, except as permitted by the terms of this letter; and

- (D) not make any announcement in relation to the Transaction, other than as required by applicable law or regulation, any order of a court of competent jurisdiction or any competent governmental, judicial or regulatory authority or body (including the Takeover Panel and any relevant stock exchange on which such person's securities are admitted to trading).

2.2 The undertakings in paragraph 2.1 will not apply to information which:

- (A) at the time of supply is in the public domain;
- (B) subsequently comes into the public domain otherwise than as a result of a breach of this letter;
- (C) you can establish to our reasonable satisfaction is already in your lawful possession or that of any of your Connected Persons and free from any obligation of secrecy or confidence to Chi or any of its group undertakings; or
- (D) you can establish to our reasonable satisfaction subsequently comes lawfully into your possession or that of any of your Connected Persons from a source other than Chi or any of its Connected Persons and which source does not, to your knowledge, owe Chi or any of its Connected Persons any obligation of confidentiality in relation to it.

### **3. Permitted disclosure**

3.1 You, or any of your Connected Recipients, may disclose Confidential Information to any of your Connected Persons to the extent that such Connected Person strictly needs access to that Confidential Information for the purpose of evaluating, negotiating, advising upon or implementing the Transaction, provided that:

- (A) you inform (or the relevant Connected Recipient making the disclosure informs) the Connected Person concerned that the Confidential Information is confidential and of the existence and terms of this letter;
- (B) you direct that the Connected Person concerned will comply with the terms of this letter as if it were a party to it;
- (C) you maintain a list (or will ensure that a list is maintained) of the names of all Connected Recipients on an entity-level basis (and you will promptly upon written request in writing from us supply a copy of such list to us); and
- (D) in the case of disclosure of Confidential Information to Permitted Finance Providers, to the extent such disclosure is proposed to take place in advance of any announcement of a firm offer under Rule 2.7 of the Takeover Code in connection with the Transaction,:
  - (i) you inform (or the relevant Connected Recipient informs) Chi of the identity (at the entity level) of the Permitted Finance Provider in writing in

advance of making any disclosure of Confidential Information to any Permitted Finance Provider under this paragraph 3.1; and

- (ii) you and your Connected Recipients may disclose Confidential Information to up to a maximum of six Permitted Finance Providers in connection with the Transaction without Chi's prior written consent, but neither you nor any of your Connected Recipients may disclose Confidential Information to more than six Permitted Finance Providers without Chi's prior written consent (not to be unreasonably withheld).

For the avoidance of doubt, once Confidential Information has been shared with a Connected Person in accordance with this paragraph 3.1, such person shall be deemed to be a Connected Recipient.

3.2 You, or any of your Connected Recipients, may further disclose Confidential Information to the extent such person is required to do so by applicable law or regulation, any order of a court of competent jurisdiction or any competent governmental, judicial or regulatory authority or body (including the Takeover Panel and any relevant stock exchange on which such person's securities are admitted to trading) (a "**Compelled Disclosure**"), provided that before disclosing any such information, you or the relevant Connected Recipient will (to the extent permitted by law or applicable regulation) use reasonable endeavours to:

- (A) inform us of the basis on which the Compelled Disclosure is required;
- (B) take such steps as we may reasonably require to resist or minimise such Compelled Disclosure (except where such steps would result in significant adverse consequences for you or the Connected Recipient concerned); and
- (C) consult in good faith with us with a view to agreeing with us the form, content and timing of the Compelled Disclosure,

provided further that, in the case of a Compelled Disclosure arising from a regulatory request that does not specifically target Chi, Kappa shall not be required to notify Chi of the Compelled Disclosure.

3.3 Subject to paragraph 3.4, without the prior consent of the other party hereto, except as required by law or regulation or by legal or judicial or administrative process, each party will not (and will direct its Connected Persons (or, in the case of Kappa, its Connected Recipients) not to) disclose to any other person the fact that an evaluation of a possible Transaction is occurring or has occurred, that Confidential Information is or has been made available to Kappa or its Connected Persons, or that discussions or negotiations are occurring or have occurred concerning a Transaction with the parties, or any of the terms, conditions or other facts with respect to any such Transaction including the status thereof.

3.4 Nothing in this letter will prevent Chi either from making a public announcement in relation to any of the matters referred to in paragraph (ii) of the definition of Confidential

Information or from making any public announcement as referred to in Rule 2.3(d) of the Takeover Code.

#### **4. Obligation to procure compliance**

- 4.1 You will direct that each Connected Recipient is aware of the terms of this letter and complies with the confidentiality and non-use provisions herein as if it were a party to it.
- 4.2 You shall be responsible for any breach of the confidentiality and non-use terms of this letter by any of your Connected Recipients, other than where a Connected Recipient has entered into a direct confidentiality undertaking with us in connection with the Transaction.

#### **5. Data protection**

- 5.1 The parties shall each be separate, independent Controllers in respect of any Disclosed Personal Data.
- 5.2 You will, and will direct that each of your Connected Recipients will, comply with all the obligations imposed on a Controller under Data Protection Laws in relation to the Disclosed Personal Data.

#### **6. Return or destruction of Confidential Information**

- 6.1 If we so request you in writing at any time before completion of your acquisition of us, you will, and will direct each of your Connected Recipients to, promptly return to us or (at your election) destroy all Confidential Information (including any analyses, reports or documents which contain or reflect, or are derived or generated from, any such information), provided that:

- (A) you may retain any Confidential Information contained in any board papers or minutes;
- (B) you and your Connected Recipients shall only be required to take all reasonable steps to expunge or erase Confidential Information from any computer or other electronic device; and
- (C) you and any Connected Recipient will be permitted to retain copies of any Confidential Information which is required to be retained by law, regulation, judicial process, or bona fide internal compliance policy, or to satisfy the rules or regulations of any regulatory body or stock exchange or which it is customary or required to retain in accordance with the rules or recommendations of any relevant professional body,

(provided, in each case, that the provisions of this letter shall continue to apply to any Confidential Information retained in accordance with this paragraph 6.1).

- 6.2 You will, if we so request in writing, confirm in writing to us that paragraph 6.1 has been complied with.

## 7. No representation or warranty

7.1 You will be responsible for making your own decision on the Confidential Information. You understand that the Confidential Information does not purport to be all inclusive and that, other than as agreed in definitive documentation entered into in connection with the Transaction, no representation or warranty is made by or on behalf of us or any of our Connected Persons (or shall be implied) as to the accuracy, reliability, completeness or reasonableness of the Confidential Information.

7.2 Accordingly, you agree with us on your own behalf and on behalf of each of your Connected Persons that, other than as agreed in definitive documentation entered into in connection with the Transaction, neither we nor any of our Connected Persons will:

(A) have any liability to you or any other person resulting from the use of Confidential Information by you or them or any other person; or

(B) be under any obligation to provide further information, to update the Confidential Information or to correct any inaccuracies, or to enter into or continue discussions or negotiations in respect of the Transaction.

The terms of this paragraph 7.2 may only be varied or terminated by Chi and Kappa with the prior written consent of Chi's Connected Persons. This paragraph 7.2 does not exclude or limit any liability for, or remedy in respect of, fraudulent misrepresentation.

7.3 You acknowledge and agree that neither we nor any of our Connected Persons owes any duty of care to you, your Connected Persons or any other person, and that no person has any authority to make or give any statement, warranty, representation or undertaking on behalf of us or any of our Connected Persons in connection with the Transaction.

## 8. Authorised contact

8.1 All communications with us in relation to the Transaction should be addressed to Craig Huff or such other person(s) as we specify in writing. In particular, neither you nor any of your Connected Recipients (acting on your behalf) shall contact or communicate with any other of our Connected Persons, shareholders, customers or suppliers ("**Restricted Persons**") in connection with the Transaction without our prior written consent.

8.2 Nothing in paragraph 8.1 shall prevent you or your Connected Persons from:

(A) contacting any Restricted Persons of the Company in the ordinary course of your or their business for purposes unrelated to the Transaction; or

(B) conducting market diligence on an aggregated industry-wide basis, which may include contact with the aforementioned persons, to the extent you or your Connected Persons do not disclose that Kappa is pursuing a transaction.

## **9. Non-solicitation of employees**

You will not, and will direct that none of your affiliates that receive Confidential Information hereunder will, directly or indirectly, for a period of twelve (12) months from the date of this letter, without our prior written consent, employ or offer to employ, or solicit for employment or endeavour to entice away, any individual who is at any time during that twelve (12) month period an officer of, or an employee holding an executive or management position with, us or any of our subsidiary undertakings with whom you have had contact in connection with the Transaction, provided that none of:

- (A) the placing of an advertisement of a post available to members of the public generally, and the employment of any person pursuant to any such advertisement;
- (B) the approach by a person to you or your group undertakings on an unsolicited basis, and the subsequent employment of such person; or
- (C) the employment of any person following the cessation of such person's employment with us or our subsidiary undertakings, without any solicitation or encouragement by you or your group undertakings,

shall constitute a breach of this paragraph 9.

## **10. Restrictions on share dealings**

You recognise and accept, and will notify your Connected Recipients, that the Confidential Information is given and any negotiations are taking place in confidence, and that the proposed Transaction and some or all of the Confidential Information may constitute inside information for the purposes of the CJA and/or UK MAR and neither you nor any of your Connected Recipients should:

- (A) deal in securities that are price-affected securities (as defined in the CJA) in relation to any inside information, encourage another person to deal in price-affected securities or disclose any inside information except as permitted by the CJA before the inside information is made public;
- (B) engage or attempt to engage in insider dealing (as defined in UK MAR), recommend that another person engage in insider dealing or induce another person to engage in insider dealing on the basis of any inside information;
- (C) unlawfully disclose any inside information (as defined in UK MAR); or
- (D) engage or attempt to engage in behaviour based on any inside information which would amount to market manipulation (as defined in UK MAR).

## **11. Kappa business activities**

- 11.1 Chi acknowledges and agrees that Kappa and certain of its affiliates are authorised and regulated by certain regulatory authorities, such as the United States Securities and Exchange Commission, the United States Financial Industry Regulatory Authority, the Central Bank of Ireland and the Financial Conduct Authority in the United Kingdom, and are subject to the supervision of such regulatory bodies. Notwithstanding anything to the contrary provided elsewhere herein, none of the provisions of this letter shall restrict the ability of Kappa or its affiliates to comply with and satisfy regulatory requests from a regulatory authority or otherwise prevent Kappa or its affiliates from discharging their regulatory obligations as regulated entities.
- 11.2 Notwithstanding anything to the contrary provided elsewhere herein, none of the provisions of this letter shall in any way limit the activities of any personnel, who have not received Confidential Information and are not engaged in connection with the Transaction, of Kappa, any Connected Person or any of their respective affiliates (including, without limitation, brokerage, investment, financial, merger or other advisory, financing, asset management, trading, market making, arbitrage, and investment activities conducted in the ordinary course of business), provided that such activities are conducted in compliance with standard practices and procedures (including those known as 'ethical screens') restricting the flow of information between: (i) the personnel of Kappa, its Connected Recipients and their respective affiliates who are engaged in connection with the Transaction or who have access to Confidential Information; and (ii) other personnel of Kappa, its Connected Persons and their respective affiliates.
- 11.3 In the event of any conflict between the terms of this letter and the terms of any use, click-through or other similar agreement with respect to any electronic, online or web-based data room established by or for us in connection with the Transaction, the terms of this letter shall prevail.

## **12. Termination of Non-Disclosure Agreement dated 11 February 2022**

The parties agree that the non-disclosure agreement entered into between them dated 11 February 2022 (the "**Original NDA**") shall terminate with immediate effect (without the requirement for any party to give any other form of notice to the other (in writing or otherwise)). Such termination shall not affect either party's accrued rights (including the right to claim any remedy for breach or non-performance), obligations and liabilities under or in relation to the Original NDA as at the date of this agreement.

## **13. General**

- 13.1 Without affecting any other rights or remedies that we may have, you and we acknowledge that a person with rights under this letter may be irreparably harmed by any breach of its terms and that damages alone may not necessarily be an adequate remedy. Accordingly, a person bringing a claim under this letter will be entitled to seek the remedies of injunction, specific performance and other equitable relief, or any combination of these remedies, for any threatened or actual breach of its terms.

- 13.2 No failure or delay by either party in exercising any right or remedy under this letter shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy shall prevent any further exercise of it or the exercise of any other remedy. The rights and remedies of the parties under this letter are cumulative and not exclusive of any rights or remedies provided by law.
- 13.3 This letter and all rights and obligations hereunder shall expire and cease to have any force or effect on the earlier of: (i) the second (2<sup>nd</sup>) anniversary of the date hereof; and (ii) the date of completion of the Transaction, save where expressly provided otherwise in this letter.
- 13.4 If any provision of this letter is held to be invalid or unenforceable, that provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this letter, but without invalidating any of the remaining provisions.
- 13.5 Each of our group undertakings shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce the terms of this letter (as amended from time to time), subject to and in accordance with:
- (A) paragraph 13.8; and
  - (B) save as provided in paragraph 7.2, the ability of the parties to terminate or rescind or vary this letter in any way without the consent of any of our Connected Persons.
- 13.6 Save as provided in paragraph 13.5, a person who is not a party to this letter shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 13.7 This letter may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.
- 13.8 This letter and any non-contractual obligations arising out of or in connection with this letter, the relationship between the parties and the conduct of any negotiations for the acquisition of Chi shall be governed by, and construed in accordance with, English law. The English courts shall have exclusive jurisdiction in relation to all disputes (including claims for set-off and counterclaims) arising out of or in connection with this letter including, without limitation disputes arising out of or in connection with:
- (A) the creation, validity, effect, interpretation, performance or non-performance of, termination or the legal relationships established by, this letter; and
  - (B) any non-contractual obligations arising out of or in connection with this letter.

For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction. Each party also irrevocably waives any objection to the recognition or enforcement in the courts of any other country of a judgment delivered by an English court exercising jurisdiction pursuant to this clause.

Please confirm your agreement by signing and returning to us a copy of this letter.

Yours faithfully,



for and on behalf of **ContourGlobal plc**

Agreed and accepted:



for and on behalf of **Kohlberg Kravis Roberts & Co. Partners LLP**

Dated 10/3/2022 2022