

**SCHEDULE 15**

**RETENDER PROVISIONS**

**(Clause 11.5)**

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**SCHEDULE 15****RETENDER PROVISIONS****1. INTRODUCTION**

- 1.1 Following receipt of the notice by the CONTRACTOR that the AUTHORITY intends to retender the provision of the Services (the "**Retender Notice**"), the parties shall comply with the provision of this Schedule 15 during the Retender Period.
- 1.2 The Retender Period shall commence on the receipt of the Retender Notice by the CONTRACTOR and shall end on the Retender Award Date.
- 1.3 The "Retender Award Date" shall occur on one of the following:
- 1.3.1 the date the parties enter into the MSA Transition Agreement with a Replacement Contractor following the award of a Replacement Agreement to such Replacement Contractor; or
  - 1.3.2 the date of the award of a Replacement Agreement to the CONTRACTOR; or
  - 1.3.3 the date the AUTHORITY notifies the CONTRACTOR that no Replacement Agreement will be awarded and the AUTHORITY will provide the Services in-house.
- 1.4 Any disclosures made pursuant to this Schedule 15 to a Bidder shall be subject to the prior execution by the party to whom such disclosure is being made of a non-disclosure agreement in a form substantially the same as that set out in Appendix 4 to this Schedule 15.
- 1.5 The CONTRACTOR shall use all reasonable endeavours to ensure that information supplied to the AUTHORITY or the Replacement Contractor pursuant to this Schedule 15 is materially accurate and complete.

**2. PROVISION OF INFORMATION RELATING TO STAFF**

- 2.1 The CONTRACTOR shall comply (and shall procure that its Subcontractors comply) with its obligations under the Transfer Regulations and any then current applicable Government guidance (including but not limited to the Cabinet Office Guidance on Staff Transfers in the Public Sector – Statement of Practice (January 2000) as amended from time to time) in relation to any of the CONTRACTOR's (or its Subcontractors') staff whose employment may transfer pursuant to the Transfer Regulations either to the AUTHORITY or to a Replacement Contractor in connection with the assumption by either of them of responsibility for the provision of the Services or services substantially similar thereto.
- 2.2 The CONTRACTOR shall, within twenty (20) Working Days of being so requested by the AUTHORITY, supply to the AUTHORITY and/or, at the AUTHORITY's request, to the Bidders, the information listed in Appendix 1 in respect of all CONTRACTOR personnel (and all personnel of its Subcontractors) and all Fee Paid Doctors used in the performance of the Services at the time of such request and shall thereafter provide a monthly update of such information in respect of all CONTRACTOR personnel (and all personnel of its Subcontractors) and all Fee Paid Doctors used in the performance of the Services.
- 2.3 The CONTRACTOR shall:
- 2.3.1 inform each recipient of the information listed in Appendix 1 of any change to the same within fourteen (14) days of such change;

- 2.3.2 use all reasonable endeavours to clarify any matter on which clarification is reasonably requested by any recipient within fourteen (14) days of such request; and
- 2.3.3 use all reasonable endeavours to co-operate with any reasonable requests made by any recipient in respect of the information listed in Appendix 1 within fourteen (14) days of such request.
- 2.4 The CONTRACTOR shall within twenty (20) Working Days of being so requested by the AUTHORITY, supply to the AUTHORITY and/or, at the AUTHORITY's request, to the Bidders, the information relating to the pension schemes specified in Appendix 2 in respect of all CONTRACTOR personnel (and all personnel of its Subcontractors) used in the performance of the Services at the time of such request.

### **3. EMPLOYMENT OF STAFF**

- 3.1 The CONTRACTOR shall not and shall procure that the Sub-contractors shall not, without the prior written consent of the AUTHORITY (which shall not be unreasonably withheld or delayed) during the twelve (12) months prior to the termination or expiry of this Agreement or at any time between notice of termination given by the AUTHORITY and termination or expiry:
- 3.1.1 vary, purport or promise to vary the terms and conditions (as amended from time to time) of employment of any member of Staff (including a promise to make any additional payment or provide any additional benefit); or
- 3.1.2 reduce or vary the involvement of any member of Staff in the provision of the Services; or
- 3.1.3 give notice to terminate or terminate the employment of any member of Staff; or
- 3.1.4 recruit any employee to be employed in the performance of the CONTRACTOR's obligations under this Agreement; or
- 3.1.5 transfer a member of Staff to another site.

### **4. ACCESS TO CONTRACTOR STAFF**

- 4.1 The CONTRACTOR shall if requested by the AUTHORITY during the Retender Period, co-operate (and procure co-operation from its contractors, Subcontractors and agents) with the AUTHORITY and use all reasonable endeavours to provide reasonable access to enable the AUTHORITY or any Bidders to communicate with any employees of the CONTRACTOR used in the performance of the Services to assist in the orderly conduct of the retender process to the extent reasonably requested and co-ordinated by the AUTHORITY, including without limitation discussions on general personnel issues with Bidders during the Retender Period.
- 4.2 The CONTRACTOR shall, if requested by the AUTHORITY during the Retender Period, co-operate (and procure co-operation from its contractors, Subcontractors and agents) with the AUTHORITY and use all reasonable endeavours to provide reasonable access to enable the AUTHORITY or any Bidders to communicate with any Fee Paid Doctors whose services were engaged by the CONTRACTOR at any time during the twelve (12) months preceding regarding the possibility of their continuing to perform similar services for the AUTHORITY or any Replacement Contractor (as the case may be) after the Retender Period.

### **5. PROVISION OF INFORMATION RELATING TO THE SERVICES**

- 5.1 The CONTRACTOR shall provide the AUTHORITY with information relating to the performance of the Services within five (5) Working Days of any request by the AUTHORITY for such information. Such request may include, but shall not be limited to, the information listed in Appendix 3 and such other available items relating to the CONTRACTOR's costs in providing the Services as the AUTHORITY may reasonably require.

- 5.2 Subject to Paragraph 5.3, the CONTRACTOR shall permit the information referred to in Paragraph 5.1 to be examined and copied by the AUTHORITY or its representatives and disclosed to Bidders.
- 5.3 The AUTHORITY will not disclose to the Bidders commercially confidential information relating to the following:
- 5.3.1 the CONTRACTOR's profit margin; or
  - 5.3.2 the Charges.
6. **PROVISION OF INFORMATION RELATING TO PROPERTIES, ASSETS AND SOFTWARE**
- 6.1 The CONTRACTOR shall provide the AUTHORITY with updated copies of:
- 6.1.1 Schedule 6; and
  - 6.1.2 Schedule 10,
- within fifteen (15) Working Days of the date of receipt of the Retender Notice and shall thereafter provide updated versions of such schedules within fifteen (15) Working Days of a request by the AUTHORITY.
- 6.2 The CONTRACTOR shall permit the information referred to in Paragraph 5.1 to be examined and copied by the AUTHORITY or its representatives and disclosed to Bidders.
7. **ACCESS TO PROPERTIES AND ASSETS**
- 7.1 The CONTRACTOR shall provide to the AUTHORITY and each Bidder all reasonable access to all properties and assets used by the CONTRACTOR in the provision of the Services. All such access by Bidders shall be co-ordinated by the AUTHORITY and shall be conditional on the Bidders abiding by the CONTRACTOR's applicable security and health and safety policies when on the CONTRACTOR's premises.
8. **ACCESS TO SOFTWARE**
- 8.1 The CONTRACTOR shall provide the AUTHORITY with copies of all licence and maintenance agreements relating to the Software within five (5) Working Days of any request by the AUTHORITY for such information.
- 8.2 The CONTRACTOR shall permit the information referred to in Paragraph 8.1 to be examined and copied by the AUTHORITY or its representatives and disclosed to Bidders.
- 8.3 The CONTRACTOR shall provide the AUTHORITY with a complete and current set of the Source Code and Object Code relating to the AUTHORITY Software, Specially Written Software and the Essential CONTRACTOR Software within ten (10) Working Days of the date of receipt of the Retender Notice.
- 8.4 The CONTRACTOR shall provide the Bidders with access to the Source Code and Object Code of any AUTHORITY Software, Specially Written Software and Essential CONTRACTOR Software required for the purposes of testing.

**SCHEDULE 15****APPENDIX 1****PRELIMINARY EMPLOYEE AND FEE-PAID DOCTOR PARTICULARS**

1. For all employees and other persons engaged by the CONTRACTOR and any of its Subcontractors in the provision of the Services: their date of birth, gender, commencement date, hours worked, annual leave and flexible working hours allowance, percentage of time dedicated to the Services, location, function and job title including without limitation, numbers of full-time and part-time employees.
2. Copies of sample contracts of employment for employees of the CONTRACTOR.
3. Number, age, gender and geographical location by MSC of all Fee-Paid Doctors engaged in the provision of the Services.
4. For each employee engaged by the CONTRACTOR and any of its Subcontractors in the provision of the Services: the costs of employment including annual salaries, allowance and bonus details over the preceding 12 months, overtime payments made, any other payments made to employees (including, without limitation, severance/redundancy payments) and the value of any non-cash benefits offered to employees (including, without limitation, company car and healthcare benefits).
5. All information necessary for the AUTHORITY to calculate the pension entitlement for all of the Transferring Employees (including, without limitation, length of service, date of joining pension scheme, employee contributions, employer contributions, and other such information listed in Appendix 2 of this Schedule 15).
6. Current rates for all Fee Per Case output types.
7. Details of all partnership, workforce or collective agreements governing the terms of employment or engagement or working conditions of personnel assigned to perform the Services or which otherwise set out rights and obligations owed by the CONTRACTOR (or its Subcontractors) to any trade union, elected representatives of staff or an employee standing body.
8. Details of proposals to terminate the employment or engagement of staff and the proposed timetable for such terminations and costs associated with such proposals.

**SCHEDULE 15****APPENDIX 2****INFORMATION RELATING TO PENSIONS SCHEMES**

1. True and complete copies of the following documents referable to the Pension Scheme:
  - 1.1 all deeds, rules and other governing documents;
  - 1.2 all announcements, booklets and the like of current effect;
  - 1.3 the latest completed actuarial valuation report;
  - 1.4 the latest completed audited accounts;
  - 1.5 an accurate list of the employer contributions being paid or payable for or in respect of the employees; and
  - 1.6 the Inland Revenue letter approval, if applicable, and the contracting-out certificate, if applicable.
2. Details of all amendments (if any) to the Pension Scheme which have been announced or are proposed but which have not yet been formally made.
3. Details of all and any augmentations or special terms applicable to any employee.
4. Details of all discretionary increases (if any) to pensions in payment or in deferment under the Pension Scheme which have been granted in the preceding five years or which are under consideration.
5. Details of all discretionary practices (if any) which may have led any person to expect additional benefits in a given set of circumstances (by way of example, but without limitation, on retirement at the behest of his employer or in the event of redundancy).
6. Such membership data as an actuary may reasonably require in order to determine the accrued liabilities for pension, retirement and death benefits.
7. Details of any disputes (actual or threatened) in connection with access to or the benefits under the Pension Scheme or to the extent know of any facts which may give rise to any such disputes.

**SCHEDULE 15****APPENDIX 3****INFORMATION RELATING TO THE SERVICES**

1. All management information whether tangible or electronic in relation to the Services in a format acceptable to the AUTHORITY.
2. All information pertaining to complaints regarding the provision of the Services including data held on CMS.
3. All data regarding training, PDPs, approval, revocation of approval, audit and feedback etc. held on doctor's files and MSD.
4. All relevant data, information, plans, and other documentation whether tangible or electronic relating to pilots or projects being carried out by the CONTRACTOR e.g. Evidence Based Medicine, DLA MECS, IB Pathways etc.
5. All technical drawings in relation to the data and electrical cabling of premises for EBM.
6. All relevant documentation, data, drawings etc provided to the CONTRACTOR by the AUTHORITY for the CONTRACTOR's use in the provision of the Services.
7. All relevant data provided in connection with provision of evidence for NAO & briefings for hearings by Select Committees or any other statutory or legislative body.

This list is not exhaustive.

**SCHEDULE 15****APPENDIX 4****PRO-FORMA NON-DISCLOSURE AGREEMENT**

**THIS AGREEMENT IS MADE ON [insert date]**

**PARTIES**

- (1) [ ] a company incorporated in [England and Wales], under registration number [ ], whose registered office is at [ ] (**Discloser**); and
- (2) [ ] a company incorporated in [England and Wales], under registration number [ ], whose registered office is at [ ] (**Recipient**).

**BACKGROUND**

- (A) The Discloser has received a request from the Recipient for the disclosure of certain Confidential Information belonging to the Discloser relating to the performance of the services by the Discloser under the Medical Services Agreement dated [ ] entered into between the Discloser and the Department for Work and Pensions (the "MSA Agreement"). The Discloser and the Recipient are referred to in this Agreement as "the parties".
- (B) The Discloser is willing to disclose such Confidential Information to the Recipient subject to the terms and conditions set out below.

**AGREED TERMS****1. DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions and rules of interpretation set out in this clause apply:

**Authorised Persons** means directors, officers, employees, and professional advisers of either party;

**Authorised Purposes** means the preparation of a bid for the retender of the services being provided under the MSA Agreement and/or the performance of any services replacing all or any of the services being provided under the MSA Agreement;

**Recipient's Group** means the Recipient, its Subsidiaries, and the Recipient's Holding Company and its Subsidiaries, from time to time, during the period when this Agreement remains in force;

**Confidential Information** has the same meaning as in the MSA Agreement and, without limitation to the foregoing, includes the information specified in the list contained in the Schedule.

**Copies** means all reproductions (hard copy or electronic), extracts, summaries or analyses of Confidential Information in any medium or format made by or on behalf of the Recipient under this Agreement;

**Discloser's Group** means the Discloser, its Subsidiaries, and the Discloser's Holding Company and its Subsidiaries, from time to time, during the period when this Agreement remains in force;

**Effective Date** means the date upon which the Discloser first disclosed Confidential Information to the Recipient;

**Group** means either the Recipient's Group or the Discloser's Group, depending on the context;

**Holding Company** has the meaning given in sections 736 and 736A of the Companies Act 1985;

**Subsidiary** has the meaning given in sections 736 and 736A of the Companies Act 1985.

1.2 The Clause headings are for convenience only and shall not affect the interpretation of this Agreement.

1.3 References to the singular include the plural and vice versa.

1.4 Except as otherwise defined herein, any terms used herein which are defined in the MSA Agreement shall have the same meanings herein as defined therein.

## 2. **CONFIDENTIALITY UNDERTAKINGS**

2.1 In return for the disclosure by the Discloser of Confidential Information to the Recipient, the Recipient undertakes that:-

2.1.1 it shall keep all Confidential Information confidential;

2.1.2 it shall only use Confidential Information for the Authorised Purposes, unless otherwise agreed in advance in writing by the Discloser;

2.1.3 it shall only make Copies where strictly necessary in connection with the Authorised Purposes;

2.1.4 it shall use all reasonable endeavours to ensure that Confidential Information within its control is kept securely protected against theft or unauthorised access, and in any event shall maintain its security, integrity and confidentiality to at least the same standard as it applies to its own confidential information; and

2.1.5 it shall not reverse engineer, or attempt to reverse engineer, any software comprised within the Confidential Information.

## 3. **DISCLOSURE TO AUTHORISED PERSONS**

3.1 The Recipient may disclose Confidential Information to any Authorised Persons on a "need-to-know" basis solely for the Authorised Purposes, provided that the Recipient:-

3.1.1 informs all such Authorised Persons that the Confidential Information is confidential; and

3.1.2 ensures that all Authorised Persons (other than those already under a professional duty of confidence to that party) enter into written confidentiality agreements with it on equivalent terms to this Agreement, and provides copies of such agreements to the Discloser upon the Discloser's reasonable advance request.

3.2 The Recipient shall be responsible for all acts and omissions of Authorised Persons as though they were its own acts or omissions under this Agreement.

3.3 The Recipient shall immediately notify the Discloser if it becomes aware of any unauthorised use or disclosure by any Authorised Person or other third party of any Confidential Information. The Recipient shall provide the Discloser with all reasonable assistance in preventing such activities.

## 4. **MANDATORY DISCLOSURE**

4.1 The Recipient shall immediately notify the Discloser in writing (provided that it is practical and lawful to do so) if it is required by law, regulation, or similar authority, to disclose any Confidential Information to any regulator, law enforcement agency or other third party which has the power to require such disclosure.

4.2 The Recipient shall use all reasonable endeavours to consult with the Discloser with a view to agreeing the timing, manner and extent of third party disclosure. The Recipient shall, in the event that Confidential Information is disclosed to third parties, use all reasonable endeavours to obtain written confidentiality undertakings in its favour from the third party.

4.3 If the Recipient is unable to inform the Discloser before Confidential Information is disclosed, it shall (provided that it is lawful to do so) fully inform the Discloser immediately afterwards in writing of the circumstances of the disclosure and the Confidential Information which has been disclosed.

## 5. DURATION AND EXCEPTIONS TO CONFIDENTIALITY

5.1 The obligations of the Recipient under this Agreement shall apply with effect from the Effective Date and shall continue in force without limit in time, subject to the remainder of this clause.

5.2 The obligations of the parties shall cease to apply to Confidential Information which the Recipient can demonstrate in writing:

5.2.1 was in the public domain before it was received from the Discloser or fell into the public domain without breach of this Agreement by the Recipient; or

5.2.2 was received by the Recipient from a third party which was not under any obligation of confidence in relation to that information; or

5.2.3 was developed or created independently by or on behalf of the Recipient or any member of the Recipient's Group.

## 6. INTELLECTUAL PROPERTY RIGHTS

6.1 The Recipient acknowledges that all intellectual property rights in the Confidential Information remain owned by the Discloser or any relevant third party licensors of the Discloser.

## 7. WARRANTIES AND REPRESENTATIONS

7.1 The Discloser does not give any warranties or representations (express or implied) (either on its own behalf or that of its directors, officers, employees, agents or advisers) with regard to the accuracy, quality, timeliness, reliability or completeness of any Confidential Information which it provides to the Recipient, or otherwise in relation to the Confidential Information. All Confidential Information is supplied on an "as is" basis, and the Recipient shall be responsible for making its own evaluation of the Confidential Information.

## 8. NO COMMITMENT

8.1 The parties agree that disclosure of Confidential Information under this Agreement shall not commit the Discloser to supplying any further items of Confidential Information to the Recipient.

## 9. ASSIGNMENT

9.1 This Agreement is personal to the Recipient. The Recipient may not assign any rights or obligations under this Agreement without the prior written consent of the Discloser.

## 10. REMEDIES

10.1 The Recipient acknowledges that damages alone would not be an adequate remedy in the event of breach by them of the provisions of this Agreement. Accordingly, it is agreed that the Discloser shall be entitled, without proof of special damages, to seek an injunction or other

interim remedy for any threatened or actual breach of this Agreement, without prejudice to any other rights and remedies which the Discloser may have.

**11. RETURN / DESTRUCTION OF CONFIDENTIAL INFORMATION**

11.1 Once the Confidential Information disclosed to the Recipient pursuant to this Agreement is no longer required by it for the Authorised Purposes, or at any time thereafter upon the Discloser's request, the Recipient shall return to the Discloser or destroy such Confidential Information, and one of its authorised officers will promptly provide written confirmation to the Discloser that the return or destruction has been fulfilled.

**12. ENTIRE AGREEMENT**

12.1 This Agreement is the entire agreement between the parties in relation to its subject matter and supersedes any arrangements, understandings or previous agreements between them relating to that subject matter.

12.2 Nothing in this Agreement shall operate to limit or exclude either party's liability for fraud.

**13. GENERAL PROVISIONS**

13.1 No variation of this Agreement shall be effective unless made in writing and signed by or on behalf of a duly authorised representative of each of the parties.

13.2 The parties agree that:-

13.2.1 the failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy; and

13.2.2 if a party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

13.3 The rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers and remedies provided by the law, or otherwise.

13.4 Nothing in this Agreement shall be deemed to constitute a partnership, or create a relationship of principal and agent for any purpose, between the parties.

**14. GOVERNING LAW AND JURISDICTION**

14.1 This Agreement shall be governed by and construed in accordance with English law. The parties agree that the English courts shall have non-exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement.

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

Signed by [Director or Officer] .....

State position: .....

By and on behalf of the Discloser

Signed by [Director or Officer] .....

State position: .....

By and on behalf of the Recipient

**SCHEDULE 15**

**List of items of the Discloser's Confidential Information**

[Discloser should insert its list here]