

SCHEDULE 16**RETENDER PROVISIONS****1. INTRODUCTION**

- 1.1 This Schedule sets out the arrangements on retender of the Services for:
- 1.1.1 the provision of information relating to Staff;
 - 1.1.2 the provision of information relating to the Services; and
 - 1.1.3 the provision of information relating to properties, assets and software used by the Contractor in the delivery of the Services;
- 1.2 Following receipt of notice by the Contractor that the Authority intends to retender the provision of the Services, the parties shall comply with the provisions of this Schedule 16 during the Retender Period.
- 1.3 The Retender Period shall commence on the receipt of notice by the Contractor and shall end on the Retender Award Date.
- 1.4 The “Retender Award Date” shall occur on one of the following:
- 1.4.1 the date the Authority enters into an Office Service Agreement with a replacement contractor following the award of a Replacement Agreement to such replacement contractor; or
 - 1.4.2 the date of the award of a Replacement Agreement to the Contractor; or
 - 1.4.3 the date the Authority notifies the Contractor that no Replacement Agreement will be awarded and the Authority will provide the Services in-house.
- 1.5 Any disclosures made pursuant to this Schedule 16 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 16.
- 1.6 The Contractor shall use all reasonable endeavours to ensure that information supplied to the Authority or the replacement contractor pursuant to this Schedule 16 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 of Undertakings (Protection of Employment) Regulations 1981 as amended, and any subsequent relevant legislation and any then current applicable Government guidance, including but not limited to:
- 2.1.1 Cabinet Office Guidance – Staff Transfers in the Public Sector – Statement of Practice (January 2000) as amended from time to time; and
 - 2.1.2 Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues issued by HM Treasury in June 2004),

in relation to any Staff whose employment may transfer pursuant to the Transfer of Undertakings (Protection of Employment) 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 to this Schedule in respect of all Staff at the time of such request and shall thereafter provide monthly updates of such information in respect of all Staff ("Monthly Updates").

2.3 The Monthly Updates shall:

2.3.1 inform the Authority of any changes to the information listed at Appendix 1;

2.3.2 use all reasonable endeavours to clarify any matter on which clarification is reasonably requested by any recipient; 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.

2.4 The Contractor shall within twenty (20) Working Days or such other period as is agreed between the Parties 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 to this Schedule in respect of all Staff at the time of such request.

3. EMPLOYMENT OF STAFF

3.1 The Contractor shall not and shall procure that the Subcontractors shall not, without the prior written consent of the Authority (which shall not be unreasonably withheld or delayed) during the three (3) 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 except in the case of gross misconduct; or

3.1.4 recruit any person to be employed or engaged in the performance of the Services; 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 Staff 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.

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 ten (10) 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 to this Schedule 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 the Asset Register and the list of premises used for the provision of the Services in Schedule 10 within twenty (20) 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 Subject to Paragraph 5.3, the Contractor shall permit the information referred to in Paragraph 6.1 to be examined and copied by the Authority or its representatives and Bidders. The Authority shall use all reasonable endeavours to liaise with the Contractor prior to the examination and or copying of the information described in this Paragraph 6.

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 ten (10) Working Days of any request by the Authority for such information.
- 8.2 The Contractor shall permit the information referred to in Paragraphs 5 and 6 to be examined and copied by the Authority or its representatives and disclosed to Bidders.

Appendix 1

- 1 For all Staff:
 - 1.1 the number of Staff but with no obligation on the Contractor or its Subcontractor to specify names;
 - 1.2 in respect of each of those members of Staff, their age, gender, salary, commencement date, length of service, hours of work, overtime hours worked (for the preceding 12 months) and rates, shifts, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment; and
 - 1.3 the general terms and conditions of employment or engagement applicable to those members of Staff including probationary periods, retirement age, periods of notice, current pay agreements, working hours (including shift patterns, unsocial hours and or other premium rates of pay), entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes and relevant collective agreements, facility time arrangements and additional employment benefits (healthcare schemes etc).
- 2 For each member of Staff: the costs of employment or engagement including annual salaries, fees, allowance and bonus details over the preceding 12 months, overtime payments made, any other payments made to Staff (including, without limitation, severance/redundancy payments) and the value of any non-cash benefits offered to Staff (including, without limitation, company car and healthcare benefits).
- 3 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 16).
- 4 Details of any proposals to terminate the employment or engagement of Staff and the proposed timetable for such terminations and costs associated with such proposals.

Appendix 2

- 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 known facts, which may give rise to any such disputes.

Appendix 3

- 1 All management information whether paper based or electronic in relation to the delivery and performance of the Services in a format acceptable to the Authority.
- 2 A full list of Authority assets used for the delivery of the Services. Information to be provided includes (but is not limited to):
 - 2.1 Description of assets (including make);
 - 2.2 Location of asset;
 - 2.3 Serial numbers;
 - 2.4 Maintenance arrangements;
 - 2.5 Maintenance record for the preceding 12 months.
- 3 Volume (monthly, over the preceding 12 months) data in respect of all of the services delivered by the Contractor.
- 4 All relevant documentation, data, drawings etc provided to the Contractor by the Authority for the Contractor's use in the provision of the Services. For example floor plans should the Contractor occupy the Authority's premises for the delivery of the Services.
- 5 Additional services that are delivered on a "grace and favour" basis.

This list is not exhaustive.

Appendix 4

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 Office Services Agreement dated [] entered into between the Discloser and the Secretary of State for Work and Pensions. 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 Office Services Agreement and/or the performance of any services replacing all or any of the services being provided under the Office Services 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 Office Services Agreement and, without limitation to the foregoing, includes the information specified in the list contained in this Agreement.
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;
Effective Date	means the date upon which the Discloser first disclosed Confidential Information to the Recipient;
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 Office Services 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 law, regulation, or similar authority requires disclosure of 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. In the event that Confidential Information is disclosed to third parties the Recipient shall 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 with respect to which the Recipient can demonstrate in writing that such Confidential Information:
 - 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 it 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 (and all copies of Confidential Information that have been made) that is 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 exclusive jurisdiction to settle any dispute, which arises out of or in connection with this Agreement.

14.2. 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	

List of items of the Discloser's Confidential Information
[Discloser should insert its list here]