**IMPORTANT NOTICES FOR BIDDERS**

1.1 general

**BY SIGNING THE BID, THE BIDDER WARRANTS THAT, SAVE AS DISCLOSED IN WRITING TO THE CONTRACTING AUTHORITY WITH THE BID, ANY INFORMATION SUPPLIED BY IT REMAINS TRUE AND THAT IT HAS:**

Not passed a resolution, nor is it the subject of an order by the court, for the company’s winding-up otherwise than for the purposes of bona fide reconstruction or amalgamation, nor has it had a receiver, manager or administrator on behalf of a creditor appointed in respect of its business or any part thereof, nor is it the subject of proceedings for any of the above procedures, nor is it the subject of similar procedures under the law of any other states;

Not been convicted of a criminal offence relating to the conduct of its business or profession;

Not committed an act of grave misconduct in the course of its business or profession;

Fulfilled its obligations relating to the payment of social security contributions under the laws of England and Wales or the country in which it is established;

Fulfilled its obligations relating to the payment of taxes under the laws of England and Wales or the country in which it is established;

Not made any material misrepresentation in providing any of the information required in relation to the above; and

Not disclosed, copied, reproduced or distributed and will not disclose, copy, reproduce or distribute any information contained in this document or supplied by any representative of the Contracting Authority on behalf of the Contracting Authority to any third party at any time except for the purpose of enabling a response to the ITQ to be prepared.

1.2 freedom of information

In accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 (the “FOIA”), all information submitted may be disclosed in response to a request made pursuant to the FOIA.

In respect of any information submitted by a Bidder that it considers to be commercially sensitive the Bidder should:

* Clearly identify such information as commercially sensitive;
* Explain the potential implications of disclosure of such information; and
* Provide an estimate of the period of time during which the Bidder believes that such information will remain commercially sensitive.

Where a Bidder identifies information as commercially sensitive, the Contracting Authority will endeavour to maintain confidentiality. Bidders should note, however, that, even where information is identified as commercially sensitive, the Contracting Authority may be required to disclose such information in accordance with the FOIA or Environmental information Request (EIR). In particular, the Contracting Authority is required to form an independent judgement concerning whether the information is exempt from disclosure under the FOIA or the EIR and whether the public interest favours disclosure or not. Accordingly, the Contracting Authority cannot guarantee that any information marked ‘confidential’ or ‘commercially sensitive’ will not be disclosed.

1.3 canvassing

The Contracting Authority reserves the right to disqualify (without prejudice to any other civil remedies available to the Contracting Authority and without prejudice to any criminal liability which such conduct by a Bidder or any of their Bidder Members may attract) any Bidder or Bidder Member who, in connection with this ITQ:

* Offers any inducement, fee or reward to any representatives or advisors of any representative of the Contracting Authority or of the Contracting Authority or of any ICB on whose behalf this exercise is being undertaken;
* Does anything which would constitute a breach of the Bribery Act 2010;
* Contacts any of the persons referred to above prior to conclusion of the Contract with the Recommended Bidder about any aspect of the ITQ in a manner not permitted by this ITQ (including without limitation contact for the purposes of discussing the possible transfer to the employment of the Bidder of such person).

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1.4 accuracy of ITQ information and liability

Whilst the information in this ITQ and supporting information has been prepared by the Contracting Authority in good faith, it does not purport to be comprehensive or to have been independently verified.

Neither the Contracting Authority, nor any representative of the Contracting Authority, nor any of their respective directors, officers, members, partners, employees, advisors, other staff or agents:

* Makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITQ; or
* Accepts any responsibility for the information contained or for the fairness, accuracy or completeness of that information nor shall any of them be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.

Bidders must obtain for themselves, at their own responsibility and expense, all information necessary for the preparation and submission of Bids throughout the ITQ process. Bidders are solely responsible for all costs and expenses incurred in connection with the preparation and submission of their Bid and all other stages of the ITQ process. Under no circumstances will the Contracting Authority, or any ICB on whose behalf this exercise is being undertaken, any representative of the Contracting Authority or any of their advisors or representatives, be liable for any costs or expenses borne by Bidders and/or any of their Bidder Members in this process.

The Contracting Authority relies on Bidders’ own analysis and review of information provided. Consequently, Bidders are solely responsible for obtaining the information which they consider necessary and to undertake any investigations they consider are required in order to verify any information provided to them during the Procurement (“Due Diligence”).

Bidders must form their own opinions, making such investigations and taking such advice (including professional advice) as is appropriate, regarding the processand their Bid, without reliance upon any opinion or other information provided by the Contracting Authority, any representative of the Contracting Authority or any of their advisors and representatives. Bidders should notify the Contracting Authority promptly of any perceived ambiguity, inconsistency or omission in this ITQ, any of its associated documents and/or any other information issued to them during the Procurement.

Any persons considering making a decision to enter into a contractual relationship with the Contracting Authority should make their own investigations and their own independent assessment of the Authority and its requirements for the service and should seek their own professional financial and legal advice. For the avoidance of doubt the provision of clarification or further information in relation to the ITQ or any other associated documents is only authorised to be provided following a clarification query.

The Contract concluded as a result of this ITQ shall be governed by English law and shall be subject to the exclusive jurisdiction of the English Courts.

All Bidders, Bidder Members, sub-contractors, funders and any of their respective advisers shall be responsible for all costs incurred by them in connection with all stages of this procurement.

Under no circumstances will the Contracting Authority, the ICBs or any representative of the Contracting Authority or any of their respective advisers be liable for any costs or expenses incurred by a Bidder, its Bidder Members, sub-contractors, funders and/or their respective advisers arising directly or indirectly from the procurement process or termination thereof, including, without limitation, any changes or adjustments made to the procurement process or documentation, or disqualification of a Bidder.

1.5 non collusion

The Contracting Authority reserves the right to disqualify (without prejudice to any other civil remedies available to them and without prejudice to any criminal liability which such conduct by a Bidder may attract) any Bidder or Bidder Member who, in connection with this ITQ:

* Fixes or adjusts the amount of their Bid by or in accordance with any agreement or arrangement with any other Bidder or Bidder Member of another Bidder (other than a Bidder’s own Bidder Members); or
* Enters into any agreement or arrangement with any other Bidder or Bidder Member of another Bidder to the effect that they shall refrain from submitting a Bid or as to the amount of any Bid to be submitted; or
* Offers or agrees to pay or give or does pay any sum or sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to any other Bid or proposed Bid, any act of omission (without prejudice to any other civil remedies available to the Contracting Authority and without prejudice to any criminal liability which such conduct by a Bidder or Bidder Member may attract) relating to any other Bid or proposed Bid for the Insert Procurement Title; or
* Causes or induces any person to enter such agreement or to inform the Bidder or Bidder Member of the amount or approximate amount of any rival Bid; or
* Canvasses any of the persons referred to in Section 1.5 (Canvassing) in connection with this ITQ.

1.6 no inducement or incentive

This ITQ is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a Bidder or Bidder Member to submit a Bid or enter into any contractual agreement.

1.7 bidder changes

Bidders are subject to an on-going obligation to notify the Contracting Authority of any material changes in their financial or other circumstances. This includes, but is not limited to, changes to the identity of Bidder Members, sub-contractors or the ownership or financial or other circumstances thereof and solvency of the Bidder. The Contracting Authority should be notified of any material change as soon as it becomes apparent.

Bidders are reminded that any future changes in relation to their Bidder Members must be notified to the Contracting Authority. Failure to notify the Contracting Authority of any material changes or to comply with any of these provisions may lead to a Bidder being liable for disqualification.

The Contracting Authority reserves the right to refuse to allow such a change and to disqualify any Bidder from further participation in the ITQ process in the event that such a change is made. In exercising their absolute discretion to either refuse or allow such a change, the Contracting Authority may take into account whether such change is material to the delivery of the ITQ process**.**

In the event that the Contracting Authority is prepared to consider such a change, further evaluation of the Bidder, including its Bidder Members, is likely to be required and may result in the Contracting Authority refusing to allow the change.

1.8 bidder’s authorised representative

All correspondence relating to this ITQ process will be addressed to the Bidder’s Authorised Representative as detailed in the Bidder Response Questionnaire. The Authorised Representative must have full authority to represent the Bidder and attend any meetings on the Bidder’s behalf.

1.9 KEEPING INFORMATION UP-TO-DATE

It is the Bidder’s responsibility to notify the Contracting Authority of any change to the Authorised Representative’s name or other contact details; however the Contracting Authority accepts no liability for this and will consider all information sent to the Authorised Representative to have been received by the Bidder. Bidders must ensure all contact details are kept up-to-date on EU-Supply to avoid any delays within the ITQ process.

All material issued in connection with this ITQ shall remain the property of the Contracting Authority.

1.10 disqualification of bidders

Bidders acting in contravention of the provisions set out in this ITQ or any other information provided by the Contracting Authority, may, at the sole discretion of the Contracting Authority, be disqualified from further participation in this ITQ process.

1.11 conflicts of interest

The Contracting Authority requires all actual or potential conflicts of interest to be resolved to their satisfaction prior to the submission of Bids in response to this ITQ.

In the event that any actual or potential conflict of interest comes to a Bidder’s attention following the submission of its Bid, that Bidder should immediately notify the Contracting Authority.

Failure to declare such conflicts and/or failure to address such conflicts to the reasonable satisfaction of the Contracting Authority could result in a Bidder being disqualified.

1.12 publicity

Bidders shall not undertake (or permit to be undertaken) at any time, whether at this stage or after execution of Contracts, any publicity activity with any section of the media in relation to the ITQ process other than with the prior written agreement of the Contracting Authority and any representative of the Contracting Authority. Such agreement shall extend to the content of any publicity. In this paragraph the word "media" includes (but without limitation) radio, television, newspapers, trade and specialist press, the internet and email accessible by the public at large and the representatives of such media.

1.13 EMPLOYEES, TUPE AND PENSIONS

Where the ITQ process may include the transfer of affected employees from any current Provider(s) of the Services, the Bidder will need to give careful consideration to the following:

Any staffing information provided as part of this ITQ process will be provided and therefore owned by the current Provider of Services. The Contracting Authority is acting as a broker of this information as it is important information required to support Bid preparation but therefore cannot guarantee its accuracy or completeness. The Contracting Authority will share any staffing information provided by the current Provider of Services with Biddersl.

The information that is to be provided is not intended to be a definitive TUPE list and Bidders are therefore advised that the Contracting Authority cannot provide any further information or guidance relating to staffing or TUPE.

**Bidders are advised to conduct due diligence and take independent professional advice in relation to any staffing or TUPE issues.**

The Recommended Bidder (if not an NHS body) will be expected to comply with the Cabinet Office Statement of Practice.

In line with the above, even if TUPE is deemed not to technically apply to staff employed by other services, the successful bidder will need to accept the principles of TUPE and apply these in relation to affected staff, in other words to accept their transferred employment.

Bidders should assume that all the affected employees on NHS terms and conditions are in the NHS Pension Scheme (the number of staff not included will be advised at a later stage). HM Treasury’s new Fair Deal guidance came into effect from 7 October 2013, and requires that contracting authorities reflect that guidance in procurement practice from that date onward. New Fair Deal sets out how pensions’ issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. Where this is the case, potential bidders will be required to confirm their adherence to the New Fair Deal and demonstrate their understanding of the process required to obtain a Pension Direction in respect of staff transferring to it or its sub-contractor.

Failure by the independent sector contractor or its sub-contractor to comply with its obligations under a Pension Direction, as notified to the contracting authority by NHS Pensions, will constitute an event of default under the service contract, entitling the contracting authority to terminate the contract.

Further information about New Fair Deal and its application in the context of NHS outsourcings can be found at <http://www.nhsbsa.nhs.uk/Pensions/4327.aspx>, with application guidance for Independent Providers available at <http://www.nhsbsa.nhs.uk/Pensions/4328.aspx>.

Bidders should expect the outsourcing to be conducted in a manner which reflects published guidance on the application of New Fair Deal.

New Fair Deal does not apply to transfers within the public sector which involve the transfer of staff from one part of the public sector to another. Those transfers are covered by the Cabinet Office Statement of Practice (COSOP) on staff transfers.

Where the Recommended bidder/ service provider recruits new staff to work on a public service contract alongside staff transferred from the public sector organisation it should be noted that the Cabinet Office Code of Practice on Workforce Matters (the “two-tier code”) was withdrawn with immediate effect on 13 December 2010 and as such the Recommended l Bidder will not be required to comply with that Code of Practice in respect of such new recruits.

1.14 right to reject bids

The Contracting Authority reserves the right to reject or disqualify a Bidder and/or its Bidder Members where:

* A Bid is submitted late, is completed incorrectly, is materially incomplete or fails to meet the submission requirements, including adherence to response maximum word limits defined which have been notified to Bidders;
* The Bidder and/or its Bidder Members are unable to satisfy the terms of Article 57 of Directive 2014/24/EU and/or Regulation 57 of the Public Contracts Regulations 2015 at any stage during the ITQ process;
* The Bidder and/or its Bidder Members are guilty of material misrepresentation in relation to its application and/or the process;
* The Bidder and/or its Bidder Members contravene any of the provisions set out in this ITQ; or
* There is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Bidder and/or its Bidder Members.

The disqualification of a Bidder will not prejudice any other civil remedy available to the Contracting Authority and will not prejudice any criminal liability that such conduct by a Bidder may attract.

The Contracting Authority shall not be bound to accept any Bid and reserves the right not to conclude a Contract for some or all of the ITQ for which Bids are invited.

The Contracting Authority shall not be committed to any course of action as a result of:

* Issuing this ITQ or any invitation to participate in this ITQ process
* An invitation to submit any Bid in respect of this ITQ process
* Communicating with a Bidder or any Bidder Members in respect of this ITQ process.

1.15 right to cancel or vary the process

The Contracting Authority reserves the right:

* To cancel or withdraw from the ITQ process at any stage whether in respect of all or any of the Contracting Authority or any ICB on whose behalf this exercise is being undertaken.
* Not to award a contract under this ITQ process.
* To change dates and times for each stage of the ITQ process

The Contracting Authority reserves the right to amend, add to or withdraw all or any part of this ITQ at any time during the process.

1.16 validity of bids

All Bids submitted by Bidders must remain open for acceptance for a period of 120 days. A Bid valid for a shorter period may be rejected.

The Contracting Authority reserves the right to require the Bidder to provide a Parent Company Guarantee prior to contract signature.

1.17 Confidentiality

Bidders shall treat all information supplied by the Contracting Authority in connection with this ITQ as confidential. Information may be disclosed by Bidders insofar as is necessary for the preparation, submission, and evaluation of quotes.

The Contracting Authority as a public body is subject to the provisions of the Freedom of Information Act 2000 (FOI). If Bidders consider that any information supplied as part of the ITQ response is either commercially sensitive or confidential in nature, this should be highlighted and the reasons for its sensitivity given.

1.18 Contract Award and Due Diligence

As part of its due diligence, the contracting authority may wish to more fully assess and consider the information provided by the bidder to determine the extent to which a bidder presents any risks which the contracting authority may deem to be unacceptable, in its sole discretion, to the delivery of the services. Where such risk is identified, the contracting authority may invite the bidder to agree how the risk can be mitigated to an extent considered by the contracting authority to be sufficient. Where mitigation cannot be agreed to the satisfaction of the contracting authority, such satisfaction being at the sole discretion of the contracting authority, the contracting authority reserves the right to award a contract to one of the other bidders, such award to be decided on the basis of ranking of the highest scoring bids. Alternatively it may decide to re-run part or all of the ITQ process or cancel the ITQ process completely.

Bidders should note that the contracting authority may require additional documents or information from the bidders as part of a due diligence process prior to deciding upon the recommended bidder and/or contract signature.

Timely responses for any due diligence is required from the recommended bidder in order to facilitate timely progression towards contract signature. In the event that the required information is not provided by the bidder, or the information provided is not satisfactory or it comes to light that information supplied and relied on to arrive at the decision regarding the choice of recommended bidder is incorrect, the contracting authority reserves the right in its absolute discretion not to enter into a contract. Under such circumstances, the contracting authority reserves the right to award a contract to one of the other bidders, such award to be decided on the basis of ranking of the highest scoring bids. Alternatively, it may decide to re-run part or all of the ITQ process or cancel the ITQ process completely.

Without prejudice to any other actions which the contracting authority may wish to take, findings from the due diligence undertaken may identify the need for specific conditions precedents to the contract.