**Document 7 – Non-Disclosure Agreement**

**One way (pro-discloser)**

**CONFIDENTIALITY AGREEMENT**

This agreement is dated [DATE].

**Parties**

**NHS England** of Wellington House, 133-155 Waterloo Rd, London, SE1 8UG (“**NHS England**”)]; and

[NAME OF OTHER PARTY] incorporated and registered in [England and Wales] with company number [number] whose registered office is at [REGISTERED OFFICE OF OTHER PARTY].

Agreed terms

1. Disclosure
   1. NHS England wishes to provide information to [NAME OF RECIPIENT PARTY REFERRED TO ABOVE IN THE PARTIES CLAUSE] relating to TUPE information from the incumbent supplier in relation to Tender C346803 National Staff Mental Health Support Service (Purpose).
   2. In this agreement:

Confidential Information means all confidential or proprietary information (however recorded or preserved) relating to the Purpose that is disclosed or made available whether before or after the date of this agreement (in any form or medium), directly or indirectly, by the Discloser to the Recipient.

Discloser means a party to this agreement which discloses or makes available directly or indirectly Confidential Information.

**Recipient** means a party to this agreement which receives or obtains directly or indirectly Confidential Information.

* 1. In consideration of the Discloser agreeing to disclose Confidential Information to the Recipient, the Recipient undertakes to the Discloser that it shall:
     1. keep the Confidential Information secret and confidential;
     2. not use or exploit the Confidential Information in any way, except for or in connection with, the Purpose; and
     3. only make disclosure of the Confidential Information in accordance with clause 1.4 and clause 1.5. Any other disclosure can only be made with the Discloser’s prior written consent.
     4. Apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use.
  2. The Recipient may disclose the Confidential Information to any of its officers, and employees, advisers, subcontractors and contractors that need to know the relevant Confidential Information for the Purpose only, provided that it procures that each such person to whom the Confidential Information is disclosed complies with the obligations set out in this agreement as if they were the Recipient and procures that any such person also enters into a confidentiality agreement with the Recipient on terms equivalent to those contained in this agreement.
  3. The Recipient may disclose the Confidential Information to the minimum extent required by:
     1. any order of any court of competent jurisdiction or any regulatory, judicial, governmental, or similar body or taxation authority of competent jurisdiction;
     2. the rules of any listing authority or stock exchange on which its shares are listed; or
     3. the laws or regulations of any country to which its affairs are subject.

1. Limitations on obligations
   1. The obligations set out in clause 1 shall not apply, or shall cease to apply, to Confidential Information which the Recipient can show to the Discloser’s reasonable satisfaction:
      1. is, or becomes generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient in breach of this agreement; or
      2. was already lawfully known to the Recipient before it was disclosed by the Discloser; or
      3. has been received by the Recipient from a third party source that is not connected with the Discloser and that such source was not under any obligation of confidence in respect of that information.
2. Return or destruction of the Confidential Information
   1. If requested by the Discloser at any time, the Recipient shall immediately destroy or return to the Discloser all documents and other records of the Confidential Information that have been supplied to or generated by the Recipient. If the Confidential Information is stored in electronic form, the Recipient shall permanently erase all such Confidential Information from its computer and communications systems and devices used by it (to the extent technically practicable).
   2. The Discloser may request the Recipient to certify in writing that it has complied with its obligations in clause 3.1.
   3. Nothing in this clause 3 shall require the Recipient to return or destroy any Confidential Information that the Recipient is required to retain by applicable law or to satisfy the requirements of any regulatory body or court of competent jurisdiction or the rules of any listing authority to which it is subject.
3. Term and Termination
   1. If either party decides not to continue to be involved in the Purpose with the other party, it shall notify that party immediately in writing.
   2. Notwithstanding the termination of discussions between the parties in relation to the Purpose pursuant to clause 4.1, the obligations of each party shall continue for a period of two years from the termination of this agreement.
4. Acknowledgment and inadequacy of damages
   1. The Recipient acknowledges that the Confidential Information may not be accurate or complete and the Discloser makes no warranty or representation (whether express or implied) concerning the Confidential Information, or its accuracy or completeness.
   2. Without prejudice to any other rights or remedies that the Discloser may have, the Recipient acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement. Accordingly, the Discloser shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this agreement by the Recipient.
5. Governing law and jurisdiction
   1. This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
   2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement is entered into on the date stated at the beginning of it.

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| Signed by [NAME OF DIRECTOR]  for and on behalf of  [NAME OF SECOND PARTY] |
| ................................................................ |
| Signed by Nick Knight, Associate Director of Commercial  for and on behalf of  **NHS ENGLAND** |