

**"Law"** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply including but not limited to the Modern Slavery Act 2015;

**"Month"** means calendar month;

**"Occasion of Tax Non-Compliance"** if applicable, means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
  - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;

**"Party"** means a party to the Contract;

**"Person"** where the context allows, includes a corporation or an unincorporated association;

**“Processor Personal”** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

**“Protective Measures”** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

**“Premises”** means, where applicable, the location where the Services are to be supplied, as set out in the Schedule 4 (Specification);

**“Processing”** means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

**Profiling “** means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;

**“Prohibited Act”** means:

- (a) to directly or indirectly offer, promise or give any person working or engaged by a Contracting Authority and/or the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity; or

- (b) committing any offence:
  - (i) under the Bribery Act 2010; or
  - (ii) under legislation creating offences concerning Fraud; or
  - (iii) at common law concerning Fraud; or
  - (iv) committing (or attempting or conspiring to commit) Fraud;

**“Property”** means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract;

**“pseudonymising”** means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Schedule 4 (Specification) and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body;

**“Regulations”** means the Public Contracts Regulations 2015 as amended from time to time;

**“Regulatory Bodies”** means government departments and regulatory, statutory and other entities, committees, ombudsman and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Contract and **“Regulatory Body”** shall be construed accordingly;

**"Relevant Requirements"** means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

**"Relevant Tax Authority"** if applicable, means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

**"Relevant Transfer"** shall have the meaning ascribed in Schedule 10 (Staff Transfer);

**"Replacement Contractor"** means any third party contractor of Replacement Services appointed by the Authority from time to time and in accordance with the terms of the Contract;

**"Replacement Services"** means any services which are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of the Contract, whether those services are provided by the Authority itself or by any Replacement Contractor;

**"Security Policy"** means the HMG Security Policy Framework (April 2014) available at <https://www.gov.uk/government/publications/security-policy-framework>, as amended by notification to the Contractor from time to time;

**"Services"** means the services to be supplied as specified in Schedule 4 (Specification);

**"Services Commencement Date"** means the services commencement date, if any, referred to in the Key Provisions;

**"SME"** means an enterprise falling within the category of micro, small and medium-sized enterprises ([http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)) defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

**"Step In Rights"** means the step in rights, if any, referred to in the Key Provisions;

**"Sub-contract"** means the Contractor's contract with a Sub-contractor whereby that Sub-contractor agrees to provide to the Contractor the Services (or any part thereof)

or facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the Services;

**"Sub-contractor"** means any person appointed by the Contractor to carry out any and/or all of the Contractor's obligations under the Contract;

**"Sub-processor"** means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract;

**"Term"** means the term as set out in the Key Provisions;

**"Termination Notice"** means any notice to terminate this Contract which is given by either Party in accordance with the provisions of the Contract;

**"Termination Period"** means the period specified in the Termination Notice during which period the Authority may require the Contractor to continue to provide the Services after a Termination Notice has been given provided always that such period may not extend the Term (as extended by Clause 2 (Extension) of Schedule 2) by more than six (6) Months;

**"Transferring Former Contractor Employees"** shall have the meaning ascribed in Schedule 10 (Staff Transfer);

**"Transferring Authority Employees"** shall have the meaning ascribed in Schedule 10 (Staff Transfer);

**"Transitional Assistance Service Charges"** means the charges, if any, payable by the Authority to the Contractor for the provision of the Transitional Assistance Services, which shall be calculated in accordance with Schedule 6;

**"Transitional Assistance Services"** means the services to be provided by the Contractor to the Authority pursuant to Clause 15 of Schedule 1 in order to facilitate the transfer of the Services to the Authority or a Replacement Contractor;

**"Variation"** has the meaning given to it in Clause 10.2 of Schedule 1;

**"Variation Form"** means the form set out in Schedule 9 (Variation Form);

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

**“Voluntary, Community and Social Enterprise” or “ VCSE ”** means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

**“Worker”** means any one of the Contractor Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies in respect of the Services;

**“Working Day”** means any day other than a Saturday or Sunday or public holiday in England and Wales.

- 1.2 The interpretation and construction of the Contract shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;
  - 1.2.2 words importing the masculine include the feminine and the neuter;
  - 1.2.3 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
  - 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
  - 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  - 1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3 Not used.
- 1.4 In entering into this Contract the Authority is acting as part of the Crown.
- 1.5 Any reference in this Contract which immediately before Exit Day is a reference to (as it has effect from time to time):
- (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("EU References") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - (ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

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## Schedule 4 - Specification

### 1 Definitions and Interpretation

- 1.1 In addition to the definitions and rules of interpretation set out in Schedule 3, unless the context requires otherwise the following definitions shall be used for the purposes of interpreting this Schedule 4:

**“Average Monthly BAU Volume”** means the average Monthly Business as Usual Volume of Products as set out in the column headed “2019 Average Monthly BAU Volume” in the table in Annex 2 to this Schedule 4;

**“Business as Usual Volume”** means the aggregate volume of the Products supplied to all Customers by the Contractor in each Month in 2019, as set out in the table in Annex 2 to this Schedule 4. For the avoidance of doubt, the Business as Usual Volume is an aggregate volume applicable to all Customers and is not a separate volume for each individual Customer;

**“Customers”** means NHS bodies (including NHS bodies that operate field hospitals) in England, Wales and Scotland that provide acute services to COVID-19 patients;

**“Minimum Stockbuild Shelf-Life”** means the minimum Shelf-Life in relation to each of the Products for the purposes of Clause 3.3 of this Schedule 4 as set out in the column headed “Minimum Stockbuild Shelf-Life” in the table in Annex 1 to this Schedule 4;

**“Premises”** means Ceva Logistics LTD, Pipers Road, Park Farm South Industrial Estate, Redditch B98 0HU, or such other premises that may be agreed by the Parties from time to time provided that the Authority shall not unreasonably withhold its agreement to any request from the Contractor to change the location of the Premises but the Premises shall at all times be within the mainland of the United Kingdom;

**“Products”** means the enteral feed products and related consumables which will form the Reserve Stock, as set out in the column headed “Products” in the table in Annex 1 to this Schedule 4, and for the avoidance of doubt will not include any products that are not set out in the column headed “Products” in the table in Annex 1 to this Schedule 4 and will not include capital enteral equipment such as enteral feeding pumps;



**“Reserve Stock”** means the reserve of the Products which will be stored, managed, distributed and reported on by the Contractor in accordance with this Schedule 4;

**“Reserve Stock Price”** has the meaning given in Clause 1 of Schedule 6;

**“Shelf-Life”** means the unexpired period of time as specified by the manufacturer of the Products and stated on the Products; and

**“Total Volume of Reserve Stock”** means the total volume of the Reserve Stock for each of the Products that the Contractor is required to store, manage, distribute and report on in accordance with this Schedule 4, as set out in the in the column headed “Total Volume of Reserve Stock” in the table in Annex 1 to this Schedule 4.

## **2 Establishment of Reserve Stock**

- 2.1 The Contractor agrees that it will establish a reserve of the Products which will form the Reserve Stock and which will be stored, managed, distributed and reported on as set out in this Schedule 4.
- 2.2 The Contractor will store the Reserve Stock at the Premises at all times during the Term until it is distributed to Customers in accordance with this Schedule 4.
- 2.3 The Contractor will ensure that it has in stock at the Premises not less than 50% of the Total Volume of Reserve Stock by 1 December 2020, or such other date as may be agreed between the Parties.
- 2.4 The Contractor will ensure that it has in stock at the Premises not less than 100% of the Total Volume of Reserve Stock by 7 December 2020, or such other date as may be agreed between the Parties.
- 2.5 The Contractor will:
  - 2.5.1 notify the Authority as soon as reasonably practicable once it has complied with the requirements specified in Clauses 2.3 and 2.4 of this Schedule 4 in relation to the Total Volume of Reserve Stock; and

- 2.5.2 provide the Authority as soon as reasonably practicable, but in any event prior to issuing an invoice under Clause 2.1 of Schedule 6, with an up to date "Reserve Stock Levels Report" (as set out in Clause 2.2.1 of Schedule 7) and a "Demand and Order Fulfilment Report" (as set out in Clause 2.2.2 of Schedule 7), along with such other evidence as the Authority may reasonably require to verify the Contractor's compliance with the requirements specified in Clauses 2.3 and 2.4 of this Schedule 4.
- 2.6 The Contractor will notify the Authority as soon as reasonably practicable on becoming aware of any matter that may reasonably be considered to impact its ability to comply with Clause 2.4 of this Schedule 4. If such notification is given by the Contractor, the Parties will meet as soon as reasonably practicable to discuss the reason(s) given by the Contractor and will, acting reasonably, negotiate and attempt to agree any appropriate changes to Clause 2.4 of this Schedule 4 and Clause 2.1 of Schedule 6 as a result of the notification given by the Contractor.
- 2.7 The Authority will be entitled to inspect the Premises during normal business hours on reasonable notice at any time during the Term to verify the Total Volume of Reserve Stock held by the Contractor and the Contractor's compliance with its obligations under this Contract. Such an inspection may be undertaken virtually rather than in person if both Parties agree that it is reasonable and practicable to do so.
- 2.8 Following the Commencement Date, but before 1 December 2020, the Parties will discuss and agree an exit plan that will apply on the expiry or termination of this Contract.

### **3 Storage of Reserve Stock**

- 3.1 The Contractor will maintain the Premises at all times in such manner that the Premises remain suitable to store the Reserve Stock as required by Clause 3.2 of this Schedule 4.
- 3.2 Prior to the Reserve Stock being supplied to Customers, the Contractor will ensure that:
- 3.2.1 the Reserve Stock is stored at the Premises in such a manner as to protect it from damage or deterioration;
- 3.2.2 any identifying marks or packaging on or relating to the Reserve Stock are not removed, defaced or obscured;

- 3.2.3 the Reserve Stock is kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Authority that are agreed between the Parties from time to time; and
- 3.2.4 the Reserve Stock is kept in accordance with any Law or regulatory requirements applicable to the Products, Good Industry Practice, and any instructions or guidance given by the manufacturer of the Products.
- 3.3 The Contractor will ensure that on 31 December 2020 each Product forming the Reserve Stock has not less than the Minimum Stockbuild Shelf-Life (as set out in Annex 1 of this Schedule 4 for each Product) of remaining Shelf-Life.
- 3.4 The Contractor will notify the Authority as soon as reasonably practicable on becoming aware of any matter that may reasonably be considered to impact its ability to comply with Clause 3.3 of this Schedule 4. If such notification is given by the Contractor, the Parties will meet as soon as reasonably practicable to discuss the reason(s) given by the Contractor and will, acting reasonably, negotiate and attempt to agree any appropriate changes to Clause 3.3 of this Schedule 4 and Clause 2.1 of Schedule 6 as a result of the notification given by the Contractor.
- 3.5 The Contractor will use its reasonable endeavours to maximise the Shelf-Life of the Reserve Stock during the Term and to minimise any obsolete Reserve Stock at the end of the Term by:
  - 3.5.1 undertaking inventory management and stock rotation of the Reserve Stock in accordance with Good Industry Practice and the Contractor's normal business as usual processes for inventory management and stock rotation, taking into account the Shelf-Life of the relevant Products; and
  - 3.5.2 rotating the Reserve Stock with other stock stored by the Contractor to maximise the Shelf-Life of the Reserve Stock, both during the Term and at the end of the Term, which will include in each Month rotating not less than the Average Monthly BAU Volumes of Products forming the Reserve Stock with other stock stored by the Contractor in accordance with this Clause 3.5 of this Schedule 4.

#### **4 Supply of Reserve Stock**

- 4.1 The Contractor acknowledges and agrees that as at the Services Commencement Date it supplies the Products to Customers, whether directly or via third party distributors, in accordance with the terms and conditions that are in place between the Contractor (or third party distributor) and each Customer from time to time.
- 4.2 The Contractor will continue to supply the Products, whether directly or via third party distributors, to Customers during the Term in accordance with the terms and conditions that are in place between the Contractor (or its third party distributor) and each Customer from time to time. For the avoidance of doubt:
- 4.2.1 the agreement for the purchase of the Products (including the Reserve Stock) shall be between the Contractor (or its third party distributor) and each Customer and the Authority will not be party to or have any obligations under any such agreement;
- 4.2.2 the Authority will not purchase any of the Products (including the Reserve Stock) under this Contract; and
- 4.2.3 risk in and title to the Products will pass between the Contractor (or its third party distributor) and each Customer under the terms of the agreement between them for the purchase of the Products and will not transfer to the Authority at any time as a result of this Contract.
- 4.3 The Contractor will ensure that at all times during the Term it has in its possession at the Premises not less than the Total Volume of Reserve Stock, minus the amount of Reserve Stock that has been supplied to Customers pursuant to Clause 4.4 of this Schedule 4.
- 4.4 For the duration of the Term, if the total aggregate volume of any of the Products purchased by all Customers in any Month exceeds the Business as Usual Volume of that Product for the equivalent Month, the Contractor will continue to supply the Products to Customers and the Products supplied will be deemed to have been supplied from the Reserve Stock.
- 4.5 If the Contractor receives any unusually large orders of Products from Customers that cannot reasonably be explained by an increase in COVID-19 hospital cases for the relevant Customer, in keeping with normal customer engagement practices, the Contractor will discuss with the relevant Customer and seek to determine the reason for the quantity of Products ordered

and will use reasonable endeavours to notify the Authority before supplying any Products to that Customer.

4.6 Should the volume of Products supplied by the Contractor to all Customers in any Month during the period from the Services Commencement Date to 7 December 2020 (or such other date as may be agreed pursuant to Clauses 2.4 and 2.6 of this Schedule 4) exceed the Business as Usual Volume for that Month, the Contractor will continue to supply such Products to Customers where possible but will notify the Authority immediately if the supply of such Products may cause the Contractor to fail to comply with its obligations under Clauses 2.3 and 2.4 of this Schedule 4.

4.7 For the avoidance of doubt, where the volume of Products supplied by the Contractor to all Customers in any Month during the period from the Services Commencement Date to 7 December 2020 (or such other date as may be agreed pursuant to Clauses 2.4 and 2.6 of this Schedule 4) exceeds the Business as Usual Volume for that Month:

4.7.1 the Authority agrees that for each Product supplied that is above the Business as Usual Volume for that Product, it will be responsible for paying the Contractor Reserve Stock Price pursuant to Clause 3.2 of Schedule 6; and

4.7.2 each Product supplied that is above the Business as Usual Volume for that Product will count towards the Contractor's compliance with its obligations set out in Clauses 2.3 and 2.4 of this Schedule 4.

## **5 Replenishment of and Variations to Reserve Stock**

5.1 The Authority may request:

5.1.1 that the Contractor replenishes the volume of Reserve Stock required to be held by the Contractor from time to time in accordance with this Schedule 4;

5.1.2 that the Contractor varies the Products forming the Reserve Stock; or

5.1.3 a change to the definition of the Customers as set out in Clause 1.1 of this Schedule 2,

should the Authority consider this to be reasonably necessary during the Term. Subject to Clause 7 of Schedule 2, the Parties will review and discuss any such request and mutually agree any changes to the Contract as a result of the request as part of the Monthly contract management meetings set out in Schedule 7.

5.2 Where the Parties agree that:

5.2.1 the Contractor will vary or replenish the Reserve Stock pursuant to Clause 5.1 of this Schedule 4, the Contractor will vary or replenish the Reserve Stock as agreed by the Parties and will use its reasonable endeavours to comply with any timescales specified by the Authority, taking into account the available production capacity and timescales from time to time; or

5.2.2 the definition of the Customers will be changed pursuant to Clause 5.1 of this Schedule 4, all references to the Customers in this Contract will be amended accordingly to the new agreed definition from the date the Parties agree the change will apply.

5.3 In the event that the Parties agree to extend the Term pursuant to Clause 2 of Schedule 2, the Parties will review and discuss the Products forming the Reserve Stock, the volume of Reserve Stock held, and any replenishment requirements in relation to the Reserve Stock, provided that Clause 5 of Schedule 2 will apply in relation to the existing Products but if the Parties agree to add any new Products to the Reserve Stock the Parties will agree the price payable for such new Products.

## Annex 1 to Schedule 4

### Products and Total Volume of Reserve Stock

Product type	MPC	Products	Unit of Measure	Total Volume of Reserve Stock	Minimum Stockbuild Shelf-Life (month)
Enteral water	132284	Nutrison RTH Enteral Water	1000ml	44,132	9
Giving sets	95347	Flocare Infinity Giving Sets with medication port	Eaches	128,340	24
Tube feed	156330	Nutrison Protein Advance	500ml	38,502	9
	132385	Nutrison Protein Plus	1000ml	67,379	9
	132390 71121	Nutrison Protein Plus Multifibre	1000ml	67,379	9
	132376	Nutrison Concentrated	500ml	77,004	9

## Annex 2 to Schedule 4

### Business as Usual Volumes

Products	Unit of Measure	Business as Usual Volume												
		2019 Average Monthly BAU Volume	Jan 19	Feb 19	Mar 19	Apr 19	May 19	Jun 19	Jul 19	Aug 19	Sep19	Oct 19	Nov 19	Dec 19
Nutrison RTH Enteral Water	1000ml	10,699	11,634	11,039	10,569	10,609	11,027	11,473	9,989	10,165	11,034	9,866	9,416	11,567
Floicare Infinity Giving Sets with medication port	Eaches	143,443	159,419	138,974	126,159	141,633	150,028	138,230	138,319	143,612	136,790	151,099	155,378	141,673
Nutrison Protein Advance	500ml	2,292	2,276	2,175	2,035	2,237	2,385	3,459	2,291	2,663	2,074	1,909	2,401	1,603
Nutrison Protein Plus	1000ml	20,039	20,121	22,125	20,883	19,775	20,418	20,798	18,236	20,412	18,907	19,212	20,173	19,405
Nutrison Protein Plus Multifibre	1000ml	13,944	14,638	14,102	13,221	13,792	15,657	13,304	14,327	13,514	12,840	13,222	14,605	14,107
Nutrison Concentrated	500ml	12,064	12,553	11,761	10,155	10,657	116,24	10,127	10,508	12,183	11,549	13,743	15,908	13,994



## Schedule 5 – Not Used

## Schedule 6 - Pricing

### 1 Definitions and Interpretation

- 1.1 In addition to the definitions and rules of interpretation set out in Schedule 3, unless the context requires otherwise the following definitions shall be used for the purposes of interpreting this Schedule 6:

**“Average Monthly BAU Volume”** means the average Monthly Business as Usual Volume of Products as set out in the column headed “2019 Average Monthly BAU Volume” in the table in Annex 2 to this Schedule 6;

**“Average Selling Price”** means the price specified in the column headed “Average Selling Price” in the table in Annex 1 to this Schedule 6 in relation to each of the Products;

**“Business as Usual Volume”** has the meaning given in Clause 1 of Schedule 4;

**“Initial Payment”** means the payment of £936,000 (nine hundred and thirty-six thousand pounds) in accordance with Clause 2.1 of this Schedule 6;

**“Minimum Viable Shelf-Life”** means the minimum Shelf-Life in relation to each of the Products for the purposes of Clause 4 of this Schedule 6 as set out in the column headed “Minimum Viable Shelf-Life” in the table in Annex 2 to this Schedule 6;

**“Reserve Stock”** has the meaning given in Clause 1 of Schedule 4;

**“Reserve Stock Price”** means the price specified in the column headed “Reserve Stock Price” in the table in Annex 1 to this Schedule 6 in relation to each of the Products, which for each Product is the Unit Price for that Product less the Average Selling Price for that Product;

**“Shelf-Life”** has the meaning given in Clause 1 of Schedule 4;

**“Unit Price”** means the price specified in the column headed “Unit Price” in the table in Annex 1 to this Schedule 6 in relation to each of the Products;

**“Unused Viable Reserve Stock Percentage”** means the percentage specified in the column headed “Unused Viable Reserve Stock Percentage” in the table in Annex 2 to this Schedule 6; and

**“Unused Non-Viable Reserve Stock Percentage”** means the percentage specified in the column headed “Unused Non-Viable Reserve Stock Percentage” in the table in Annex 2 to this Schedule 6.

## **2 Initial Payment**

2.1 Subject to Clause 2.2 of this Schedule 6, the Contractor will issue the Authority with an invoice for the Initial Payment on or after 1 January 2021 and the Parties will comply with Clause 4 of Schedule 2 in relation to that invoice.

2.2 The Authority’s payment of the Initial Payment will be subject to the Contractor’s compliance with its obligations under Clauses 2.4 and 3.3 of Schedule 4 (subject to any changes agreed by the Parties pursuant to Clauses 2.6 or 3.4 of Schedule 4). The Contractor will not issue an invoice under Clause 2.1 of this Schedule 6 and the Authority will have no obligation to pay the Initial Payment unless the Contractor has complied with its obligations under Clauses 2.4 and 3.3 of Schedule 4 (subject to any changes agreed by the Parties pursuant to Clauses 2.6 or 3.4 of Schedule 4) and the Authority has verified the Contractor’s compliance with these obligations. The provisions set out in Clause 4 of Schedule 2 will apply to the Authority’s verification and payment of the invoice issued by the Contractor pursuant to Clause 2.1 of this Schedule 6.

2.3 The Parties acknowledge and agree that:

2.3.1 the Initial Payment payable under Clause 2.1 of this Schedule 6 represents a non-refundable payment of the minimum amount that will be payable by the Authority to the Contractor for the Reserve Stock under this Contract;

2.3.2 the Authority will be entitled to set-off any payments it is due to make to the Contractor under invoices issued under Clauses 3.3 and 4.3 of this Schedule 6 against the value of the Initial Payment; and

2.3.3 for the avoidance of doubt, where the total aggregate value payments due under invoices issued by the Contractor under Clauses 3.3 and 4.3 of this Schedule 6 is less than or equal to the value of the Initial Payment, the Authority will be deemed

to have paid the amount due under such invoices by the payment of the Initial Payment. The Authority will only be required to make a further payment to the Contractor where the total aggregate value of payments due under invoices issued by the Contractor under Clauses 3.3 and 4.3 of this Schedule 6 is greater than the value of the Initial Payment.

### **3 Payment of Reserve Stock Price**

- 3.1 Where the total aggregate volume of Products purchased by all Customers during any Month is less than the Business as Usual Volume of the Products for the equivalent Month, the Contractor will continue to supply the Products in accordance with any terms and conditions that are in place between the Contractor and each Customer from time to time, including as to the price of the Products, and the Authority will have no obligations in relation to the supply of such Products or to make any payment to the Contractor for the Products. For the avoidance of doubt, Products supplied pursuant to this Clause 3.1 of this Schedule 6 will not be deemed to have been supplied from the Reserve Stock.
- 3.2 Where the total aggregate volume of Products purchased by all Customers during any Month has exceeded the Business as Usual Volume of the Products for the equivalent Month, the Contractor will continue to supply the Products in accordance with any terms and conditions that are in place between the Contractor and each Customer from time to time, including as to the price of the Products, which will be deemed to have been supplied from the Reserve Stock. Subject to Clause 2.3 of this Schedule 6, the Authority agrees that for each Product supplied that is above the Business as Usual Volume for that Product, it will be responsible for paying the Contractor the Reserve Stock Price for the Reserve Stock supplied.
- 3.3 Subject to Clause 2.3 of this Schedule 6, where the Contractor supplies Reserve Stock to Customers in any Month, the Contractor will issue the Authority with invoices Monthly in arrears for the Reserve Stock Price payable by the Authority under Clause 3.2 of this Schedule 6 and the Parties will comply with Clause 4 of Schedule 2 in relation to each invoice issued.

### **4 Payment for Reserve Stock at the end of the Term**

- 4.1 Subject to Clauses 2.3 and 4.2 of this Schedule 6, if at the end of the Term the Contractor continues to store any Reserve Stock and it has not been possible to rotate the remaining Reserve Stock despite the Contractor using its reasonable endeavours to maximise the Shelf-Life of the Reserve Stock during the term and minimise any obsolete Reserve Stock at the

end of the Term as required by Clause 3.5 of Schedule 4 or supply them to a Customer, the Authority will pay a percentage of the Unit Price of these Products based on the remaining Shelf-Life of each Product, as follows:

- 4.1.1 for Products that have a remaining Shelf-Life of equal to or greater than the Minimum Viable Shelf-Life (as set out in Annex 2 of this Schedule 6 for each Product), the Authority will pay the Contractor the Unused Viable Reserve Stock Percentage of the Unit Price for that Product; and
  - 4.1.2 for Products that have a remaining Shelf-Life of less than the Minimum Viable Shelf-Life (as set out in Annex 2 of this Schedule 6 for each Product), the Authority will pay the Contractor the Unused Non-Viable Reserve Stock Percentage of the Unit Price for that Product.
- 4.2 The Authority will only be required to pay for Reserve Stock under Clause 4.1 of this Schedule 6 provided that the Contractor:
- 4.2.1 submits evidence to the reasonable satisfaction of the Authority that the Products remain in the possession of the Contractor and have not been sold to a Customer or a third party;
  - 4.2.2 notifies the Authority of the reasons why the Products could not be rotated to maintain a Shelf-Life of equal to or greater than the Minimum Viable Shelf-Life (as set out in Annex 2 of this Schedule 6 for each Product) and provides such evidence as the Authority may reasonably require in relation to the Contractor's compliance with its obligations in under Clause 3.5 of Schedule 4 and in particular evidence of the Contractor's rotation of the Products in each Month and its performance against the Average Monthly BAU Volumes;
  - 4.2.3 has notified the Authority no less than three Months prior to the end of the Term if the Contractor believes that any of the Reserve Stock will remain in the possession of the Contractor at the end of the Term for the reasons described above.
- 4.3 Subject to Clause 2.3 of this Schedule 6, the Contractor will issue the Authority with an invoice for any amounts payable under Clause 4.1 of this Schedule 6 within 30 days of the end of the Term and the Parties will comply with Clause 4 of Schedule 2 in relation to that invoice.

- 4.4 If the Authority makes a payment for Reserve Stock at the end of the Term under Clause 4.1 of this Schedule 6 and the Contractor is able to sell any of that Reserve Stock to a third party or to a Customer, the Contractor will pay to the Authority a percentage of the price paid by the third party or Customer to the Contractor, which will be agreed between the Parties in relation to each Product supplied to a third party or to a Customer, and if the Parties are unable to agree to such a percentage for any Product the matter will be dealt with under the dispute resolution procedure set out at Clause 42 of Schedule 2.

## **5 Reconciliation**

- 5.1 If an examination of the Contractor's records undertaken by the Authority, or its authorised agents, under Clause 12 of Schedule 2 reveals a discrepancy between any sums paid to, or invoiced by the Contractor under this Contract and the sums actually due to the Contractor under this Contract the Contractor will immediately either repay to the Authority the amount of the discrepancy in relation to any overpayments made by the Authority (if already paid by the Authority) or issue a revised invoice for the correct sums for any outstanding sums due in relation to any underpayments made by the Authority.

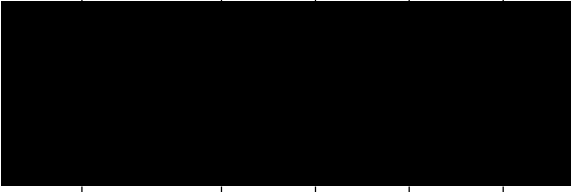
## Annex 1 to Schedule 6

Unit Prices, Average Selling Prices and Reserve Stock Prices

Product type	MPC	Products	Unit of Measure	Unit Price (exclusive of VAT)	Average Selling Price (exclusive of VAT)	Reserve Stock Price (exclusive of VAT)
Enteral water	132284	Nutrison RTH Enteral Water	1000ml			
Giving sets	95347	Flocare Infinity Giving Sets with medication port	Eaches			
Tube feed	156330	Nutrison Protein Advance	500ml			
	132385	Nutrison Protein Plus	1000ml			
	132390 71121	Nutrison Protein Plus Multifibre	1000ml			
	132376	Nutrison Concentrated	500ml			

## Annex 2 to Schedule 6

### Unused Stock – Viable and Non-Viable Payment Rates

Product type	Products	Unit of measure	2019 Average Monthly BAU Volume	Unit Price of unused Reserve Stock (exclusive of VAT)	Minimum Viable Shelf-Life (months)	Unused Viable Reserve Stock Percentage (%)	Unused Non-Viable Reserve Stock Percentage (%)
Enteral water	Nutrison RTH Enteral Water	1000ml	10,699		6	22%	100%
Giving sets	Flocare Infinity Giving Sets with medication port	Eaches	143,443		12	22%	100%
Tube feed	Nutrison Protein Advance	500ml	2,292		6	23%	100%
	Nutrison Protein Plus	1000ml	20,039		6	23%	100%
	Nutrison Protein Plus Multifibre	1000ml	13,944		6	23%	100%
	Nutrison Concentrated	500ml	12,064		6	23%	100%



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## Schedule 7 - Contract monitoring

### 1 Definitions and Interpretation

- 1.1 In addition to the definitions and rules of interpretation set out in Schedule 3, unless the context requires otherwise the terms **“Average Monthly BAU Volumes”**, **“Customers”**, **“Products”**, **“Reserve Stock”**, **“Shelf-Life”** and **“Total Volume of Reserve Stock”** shall have the meanings set out in Clause 1 of Schedule 4.

### 2 Reporting and Contract Management Requirements

- 2.1 The Contractor will provide the Authority during the Term with regular reports on the status of the Reserve Stock, volume of orders of Products fulfilled, demand from Customers for these Products, and the Shelf-Life and rotation of the Reserve Stock.
- 2.2 The frequency, form and format of the reports referred to in Clause 2.1 of this Schedule 7 will be agreed by the Parties as soon as reasonably practicable following the Commencement Date but will comprise as a minimum the reports required by Clause 2.5.2 of Schedule 4 and regular Monthly reports providing a detailed breakdown of the following:
- 2.2.1 “Reserve Stock Levels Report”, including (but not limited to):
- 2.2.1.1 Product name and stock-keeping unit (SKU) size of the Reserve Stock;
  - 2.2.1.2 quantity of each Product forming the Reserve Stock in stock at the Premises;
  - 2.2.1.3 Shelf-Life remaining for each of the Products forming the Reserve Stock in stock at the Premises;
  - 2.2.1.4 storage location and confirmation that Products forming the Reserve Stock are held within the United Kingdom (if any of the Products forming the Reserve Stock are being stored elsewhere other than the Premises with the Authority’s prior written consent);

## RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

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- 2.2.1.5 percentage of the Total Volume of Reserve Stock remaining for each of the Products forming the Reserve Stock; and
  - 2.2.1.6 number of Products rotated from the Reserve Stock with other stock stored by the Contractor, including the Contractor's performance against the Average Monthly BAU Volumes in relation to the rotation of the Reserve Stock;
- 2.2.2 "Demand and Order Fulfilment Report", including (but not limited to):
  - 2.2.2.1 volume of Products supplied at Product and unit of issue level by each Customer;
  - 2.2.2.2 details of any unusual or outlier Product orders queried with any Customers at the time of receipt; and
  - 2.2.2.3 any trends identified by the Contractor in demand or supply patterns and any potential issues or risks to the supply of the Products and the Reserve Stock,

and the Contractor will use its reasonable endeavours to include:

  - 2.2.2.4 volume of Products ordered at Product and unit of issue level by each Customer;
  - 2.2.2.5 date of Product order requests from Customers; and
  - 2.2.2.6 date of Product orders despatched to Customers.
- 2.3 Should the Contractor observe any unusual trends or new issues or risks of note relating to the Reserve Stock or orders of Products placed by Customers, including market trends or issues with third party suppliers, the Contractor will notify the Authority without delay and the Parties will discuss and agree any reasonable actions to be taken to mitigate the impact of such trends or risks.

- 2.4 To support the Authority with identifying the need for potential replenishment of the Reserve Stock, the Contractor will to notify the Authority immediately when the volume of the Reserve Stock stored by the Contractor for each Product falls to 75%, 50%, 25% and 10% of the Total Volume of Reserve Stock (regardless whether this is as a result of supply of the Reserve Stock to Customers or unviable Shelf-Life of the Products).
- 2.5 The Authority Representative and the Contractor Representative (and such other representatives of the Parties as may be reasonably required) shall meet at least Monthly (unless otherwise notified by the Authority) to discuss the Monthly reports submitted by the Contractor under Clause 2.1 of this Schedule 7, identify any issues or points for escalation and mitigation, and to discuss the Contractor's performance and other matters connected to the delivery of the Contract.
- 2.6 The Contractor will act in the spirit of trust and mutual co-operation with the Authority and will share any of its findings or observations regarding the Reserve Stock or Products during the Monthly contract management meetings held under Clause 2.5 of this Schedule 7 that inform an understanding of national demand and supply trends relating to the Reserve Stock and the Products.
- 2.7 If the Monthly reports submitted by the Contractor under Clause 2.1 of this Schedule 7 or the Monthly contract management meetings held under Clause 2.5 of this Schedule 7 identify any issues or points for escalation and mitigation in relation to this Contract, the Parties will, acting reasonably, discuss and attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter will be dealt with under the dispute resolution procedure set out at Clause 42 of Schedule 2.

## Schedule 8 - Commercially sensitive information

## Schedule 9 - Variation Form

No of Contract being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Authority ] ("the **Authority**")

and

[insert name of Contract] ("the **Contractor**")

1. The Contract is varied as follows and shall take effect on the date signed by both Parties:

**[Insert details of the Variation]**

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Contractor

Signature

Date

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Name (in Capitals)

Address

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## Schedule 10 - Staff Transfer

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>"Admission Contract"</b>	the agreement to be entered into by which the Contractor agrees to participate in the Schemes as amended from time to time;
<b>"Eligible Employee"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Contract;
<b>"Contractor's Final Contractor Personnel List"</b>	a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;
<b>"Contractor's Provisional Contractor Personnel List"</b>	a list prepared and updated by the Contractor of all Contractor Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;
<b>"Fair Deal Employees"</b>	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Contractor Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and



who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;

**"Former Contractor"**

a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

**"New Fair Deal"**

the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013;

**"Notified Sub-contractor"**

a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;

**"Replacement Sub-contractor"**

a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such subcontractor);

**"Relevant Transfer"**

a transfer of employment to which the Employment Regulations applies;

**"Relevant Transfer Date"**

in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

**"Schemes"**

the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the

Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Contractor by the Minister for the Cabinet Office);

**"Service Transfer"**

any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-contractor to a Replacement Contractor or a Replacement Sub-contractor;

**"Service Transfer Date"**

the date of a Service Transfer;

**"Staffing Information"**

in relation to all persons identified on the Contractor's Provisional Contractor Personnel List or Contractor's Final Contractor Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;

- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in Regulation 11 of the Employment Regulations;

**"Transferring Authority Employees"**

those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

**"Transferring Former Contractor Employees"**

in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**"Transferring Contractor"**

**Employees”**

those employees of the Contractor and/or the Contractor’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

**2 INTERPRETATION**

Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Contractor, Replacement Contractor or Replacement Sub-contractor, as the case may be.

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**PART A**  
**Not Used**

**PART B**  
**Not Used**

**PART C**

**No transfer of employees at commencement of Services**

**1 PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 The Authority and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Contractor.
- 1.1 If any employee of the Authority and/or a Former Contractor claims, or it is determined in relation to any employee of the Authority and/or a Former Contractor, that his/her contract of employment has been transferred from the Authority and/or the Former Contractor to the Contractor and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Contractor shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Contractor; and
  - (b) the Authority and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Contractor), the Contractor shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,

the Contractor and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

## **2 INDEMNITIES**

- 2.1 Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- (a) indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
  - (b) procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Contractor and/or the Sub-contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Contractor and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the Authority and any Former Contractor, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1:



- (a) shall not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or
  - (ii) any claim that the termination of employment was unfair because the Contractor and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Contractor and/or any Sub-contractor to the Authority and, if applicable, Former Contractor within six (6) Months of the Services Commencement Date.

### **3 PROCUREMENT OBLIGATIONS**

Where in this Part C the Authority accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Contractor contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

**PART D**

**Employment exit provisions**

**1. PRE-SERVICE TRANSFER OBLIGATIONS**

1.1 The Contractor agrees that within twenty (20) Working Days of the earliest of:

- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination of this Contract;
- (c) the date which is twelve (12) Months before the end of the Term; and
- (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Contractor's Provisional Contractor Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and it shall provide an updated Contractor's Provisional Contractor Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Contractor shall provide to the Authority or at the direction of the Authority to any Replacement Contractor and/or any Replacement Sub-contractor:

- (a) the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
- (b) the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).

1.2 The Authority shall be permitted to use and disclose information provided by the Contractor under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-contractor.

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- 1.3 The Contractor warrants, for the benefit of the Authority, any Replacement Contractor, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.4 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Contractor agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Contractor Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Contractor Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
  - (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Contractor Personnel (including any payments connected with the termination of employment);
  - (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
  - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Contractor Personnel List;
  - (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
  - (f) terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Contractor Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Contractor and any Replacement Sub-contractor of any notice to terminate employment given by the Contractor

or relevant Sub-contractor or received from any persons listed on the Contractor's Provisional Contractor Personnel List regardless of when such notice takes effect.

- 1.5 During the Term, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
- (a) the numbers of employees engaged in providing the Services;
  - (b) the percentage of time spent by each employee engaged in providing the Services; and
  - (c) a description of the nature of the work undertaken by each employee by location.
- 1.6 The Contractor shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Contractor and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Contractor and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor Employee:
- (a) the most recent Month's copy pay slip data;
  - (b) details of cumulative pay for tax and pension purposes;
  - (c) details of cumulative tax paid;
  - (d) tax code;
  - (e) details of any voluntary deductions from pay; and
  - (f) bank/building society account details for payroll purposes.

## **2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The Authority and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of Regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.
- 2.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Contractor shall indemnify the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission of the Contractor or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to the Authority and/or Replacement Contractor and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date;

- (f) any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-contractor other than a Transferring Contractor Employee for whom it is alleged the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - (g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Contractor to comply with Regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
  - (a) arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
  - (b) arising from the Replacement Contractor's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Contractor Employee claims, or it is determined in relation to any person who is not a Transferring Contractor Employee, that his/her contract of employment has been transferred from the Contractor or any Sub-contractor to the Replacement Contractor and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
  - (a) the Authority shall procure that the Replacement Contractor shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Contractor; and

- (b) the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the Authority shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Contractor and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

- (a) shall not apply to:
  - (i) any claim for:



- (ii) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (iii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-contractor; or

- (iv) any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor within six (6) Months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Contractor or any Sub-contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Contractor Employee and the Replacement Contractor and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

2.11 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Contractor Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Contractor and/or any Sub-contractor; and
- (b) the Replacement Contractor and/or the Replacement Sub-contractor.

- 2.12 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Contractor and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Contractor and/or Replacement Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Contractor and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-contractor in writing such information as is necessary to enable the Contractor and each Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Contractor Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee) arising from or as a result of:
- (a) any act or omission of the Replacement Contractor and/or Replacement Sub-contractor;
  - (b) the breach or non-observance by the Replacement Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
    - (ii) any custom or practice in respect of any Transferring Contractor Employees which the Replacement Contractor and/or Replacement Sub-contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Replacement Contractor and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees on or after their transfer to the Replacement Contractor or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-contractor to, or in respect of, any Transferring Contractor Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-contractor, to the Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Contractor or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period from (and including) the Service Transfer Date; and

(h) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-contractor in relation to obligations under Regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

## ANNEX: LIST OF NOTIFIED SUB- CONTRACTORS

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## Schedule 11 - Key Personnel

Key Role	Name of Key Personnel	Responsibilities / Authorities	Minimum period in Key Role
<b>Contract lead</b>	██████████	<b>VP Healthcare</b>	██████████
<b>Contract management</b>	██████████ ██████████	<b>Head of Tenders</b>	██████████

## Schedule 12 - Not Used

## Schedule 13 - Processing, Personal Data and Data Subjects

1. The Parties acknowledge and agree that:
  - a. they are Independent Controllers for the purposes of the Data Protection Legislation in relation to Personal Data that may be shared under this Contract;
  - b. neither Party will act as a Processor on behalf of the other Party for the purposes of the Data Protection Legislation in relation to this Contract; and
  - c. the Parties will not act as Joint Controllers for the purposes of the Data Protection Legislation in relation to this Contract.
2. The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:
  - a. business contact details of Contractor Personnel;
  - b. business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Contractor Personnel) engaged in the performance of the Authority's duties under this Contract; and
  - c. business contact details of any directors, officers, employees, agents, consultants and contractors of any Customers (as defined in Clause 1 of Schedule 4) in relation to the performance of the Contractor's duties under this Contract relating to those Customers,that may be shared between the Parties in relation this Contract from time to time.