

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS
Conditions of Contract for the Provision of Services

DATED: 1 July 2022

THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE AS PART OF THE
CROWN

AND

FRESENIUS KABI LIMITED

CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES RELATING TO
RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

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Conditions of Contract for the Provision of Services

Conditions of Contract for the Provision of Services

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The Authority	The Secretary of State for Health and Social Care acting as part of the Crown of 39 Victoria St, Westminster, London SW1H 0EU
The Contractor	Fresenius Kabi Limited which is a company registered in England and Wales under company number 2182135 and whose registered office is at Cestrian Court, Eastgate Way, Manor Park, Runcorn, Cheshire, UK, WA7 1NT

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Background

- A. It is recognised that the treatment of COVID-19 patients in critical care presents a new pathway with specific requirements for enteral nutrition products over and above business as usual levels of demand previously experienced and is usually required only during a hospital stay rather than on a long term basis after discharge. This new pathway is distinct from the normal usage patterns of these products and therefore a new commercial arrangement is required to enable the COVID-19 specific demand for these products to be met.
- B. For COVID-19 patients requiring mechanical ventilation or non-invasive ventilation and other forms of oxygen therapy, clinical guidance suggests that the specific composition of enteral feed can make a material difference to patient outcomes and therefore the Authority is seeking to take steps to minimise the risk of a supply shortage of these specific products.
- C. The Authority is seeking to establish arrangements that enable reserve quantities of these specific products to be manufactured, stored and distributed to NHS bodies when required for the treatment of COVID-19 patients in an acute setting.
- D. The Contractor has agreed to establish and maintain a reserve of these specific products that will be supplied to NHS bodies for the treatment of COVID-19 patients in an acute setting to mitigate the risk of a supply shortage as a result of the COVID-19 pandemic.
- E. Contractual requirements are proportionate to the current COVID environment and projected threat, however, it is anticipated that the requirement for enhanced resilience will progressively decrease over the next three years. In line with this and to accommodate uncertainties, contracts will include a break clause at the end of the first year and provide the provision to extend, allowing flexibility to respond to the prevailing COVID risk.

IT IS AGREED as follows:

- 1. This Contract is made on the date set out above subject to the terms set out in the schedules listed below ("Schedules"). The Authority and the Contractor undertake to comply with the provisions of the Schedules in the performance of this Contract.
- 2. The Contractor shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.
- 3. The Definitions in Schedule 3 apply to the use of all capitalised terms in this Contract.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Definitions and Interpretation
Schedule 4	Specification
Schedule 5	[Not Used]

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Schedule 6	Pricing
Schedule 7	Contract monitoring
Schedule 8	Commercially sensitive information
Schedule 9	Variation Form
Schedule 10	Staff Transfer
Schedule 11	[Not Used]
Schedule 12	Key Personnel
Schedule 13	Business Continuity and Disaster Recovery
Schedule 14	Processing, Personal Data and Data Subjects

Signed by the authorised representative of THE AUTHORITY

Name:	Redacted Under FOIA Section 40, Personal Information	Signature:	Redacted Under FOIA Section 40, Personal Information
Position:	Senior Commercial Manager	Date:	21-Feb-2023 6:43 AM PST

Signed by the authorised representative of THE CONTRACTOR

Name:	Redacted Under FOIA Section 40, Personal Information	Signature:	Redacted Under FOIA Section 40, Personal Information
Position:	Sales & Marketing Director	Date:	09-Feb-2023 8:17 AM GMT

Redacted Under FOIA Section 40, Personal Information

Managing Director UK &
Ireland

10-Feb-2023 | 6:25 PM CET

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Schedule 1 Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 6 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 7 and 12 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.

2 Term

- 2.1 This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with this contract, until **30 June 2023** ("the Expiry Date"). The Term may be extended by agreement of the parties in accordance with Clause 2 (Extension) of Schedule 2 provided that this Contract shall not continue beyond **30 June 2025** and following any such extension, the last date of such extension period shall become the new Expiry Date.

3 Authority Representative and Contractor Representative

- 3.1 The contract managers at the commencement of this Contract are:
- 3.1.1 for the Authority:
- The Authority will notify the Contractor of the identity of the Authority Representative following the Commencement Date. Until such notification the Contractor can contact the Authority Representative by email at "nhsi.covidicuanalysis@nhs.net" headed "For the Attention of the Enteral Contract Manager".
- 3.1.2 for the Contractor:
- Contract Manager.

4 Names and addresses for notices

- 4.1 Notices served under this Contract are to be delivered to:
- 4.1.1 for the Authority:
- For the Attention of the Enteral Contract Manager
Department of Health and Social Care
39 Victoria St
Westminster
London
SW1H 0EU
Email: **Redacted Under FOIA Section 40, Personal Information** For the
Attention of the Contracts Manager and Business Unit Manager

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Cestrian Court, Eastgate Way, Manor Park, Runcorn,
Cheshire, UK,
WA7 1NT

5 Order of precedence

5.1 Subject always to Clause 1.3 of Schedule 3, in the event of any conflict between any parts of this Contract the order of precedence shall be:

- 5.1.1 Schedule 1 (Key Provisions);
- 5.1.2 Schedule 4 (Specification);
- 5.1.3 Not used
- 5.1.4 Schedule 2 (General Terms and Conditions);
- 5.1.5 Schedule 8 (Commercially sensitive information);
- 5.1.6 Schedule 10 (Staff Transfer);
- 5.1.7 Schedule 3 (Definitions and Interpretation); and
- 5.1.8 the order in which all subsequent Schedules, if any, appear.

6 Application of TUPE at the commencement of the provision of Services

6.1 The Parties agree that:

- 6.1.1 Not used
- 6.1.2 the commencement of the provision of the Services or a part of the Services will not result in a Relevant Transfer and Part C of Schedule 10 shall apply and Parts A and B of Schedule 10 shall not apply; and
- 6.1.3 Part D of Schedule 10 shall apply on the expiry or termination of the Services or any part of the Services.

Optional Key Provisions

7 Implementation phase ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)

7.1 Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in Clause 1.3 of Schedule 2 (General Terms and Conditions) to the Implementation Plan shall apply and the Implementation Plan is set out in Schedule [insert schedule number].

8 Services Commencement Date (where the Services are to start at a date different from the Commencement Date) ☐ (only applicable to the Contract if this box is checked and the date is inserted in Clause 8.1 of this Schedule 1)

8.1 Not used.

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- 9 Not used Different levels and/or types of insurance ☐ (only applicable to the Contract if this box is checked and the table sets out the requirements)not used**
- 10 Not used**
- 11 Not used**
- 11.1 Subject to the provisions of this Clause 10 and Clause 5 (Price Adjustment On Extension Of Term) of Schedule 2 (General Terms and Conditions) may request a variation to the Contract provided that such variation does not amount to a substantial modification of the Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 11.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 11.3 Where the Authority has so specified on receipt of a Variation Form from the Contractor, the Contractor shall carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
- 11.3.1 details of the impact of the proposed Variation on the Services and the Contractor's ability to meet its other obligations under the Contract;
 - 11.3.2 details of the cost of implementing the proposed Variation;
 - 11.3.3 details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Contract Price, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - 11.3.4 a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - 11.3.5 such other information as the Authority may reasonably request in (or in response to) the Variation request.
- 11.4 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 11.5 Subject to Clause 10.4 of this Schedule 1, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.
- 11.6 In the event that:
- 11.6.1 the Contractor is unable to agree to or provide the Variation; and/or
 - 11.6.2 the Parties are unable to agree a change to the Contract Price may be included in a request of a Variation or response to it as a consequence thereof,

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the Authority may:

- (a) agree to continue to perform its obligations under the Contract without the Variation; or
- (b) terminate the Contract with immediate effect, except where the Contractor has already fulfilled part or all of the provision of the Services in accordance with the Contract or where the Contractor can show evidence of substantial work being carried out to provide the Services under the Contract,

and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure set out at Clause 43 (Dispute Resolution) of Schedule 2.

11.7 If the Parties agree the Variation, the Contractor shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

11.8 Within ten (10) Working Days of the Parties agreeing the Variation the Contractor shall deliver to the Authority a copy of this Contract updated to reflect all Variations agreed in the relevant Variation Form and annotated with a reference to the Variation Form pursuant to which the relevant Variations were agreed. Upon receipt of the updated Contract from the Contractor the Authority shall review such updated Contract to verify its accuracy and shall thereafter notify the Contractor whether such updated Contract is approved. Following approval the Contractor shall provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

12 Guarantee ☐ (only applicable to the Contract if this box is checked)

12.1 Promptly following the execution of this Contract, the Contractor shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the procurement process followed by the Authority. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.

13 Termination for convenience ☒ (only applicable to the Contract if this box is checked and Clause 9 of this Schedule 1 is completed)

13.1 The Authority may terminate this Contract at any time by giving one (1) Month's written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension of such notice. Such notice shall not be served before 30 June 2023.

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- 13.2 Subject to Clauses 19 (Liability) and 20 (Insurance) of Schedule 2, should the Authority terminate this Contract in accordance with Clause 12.1 of this Schedule 1 then the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause 12.1 of this Schedule 1.
- 13.3 The Authority shall not be liable under Clause 12.2 of this Schedule 1 to pay any sum which:
- 13.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
 - 13.3.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Term; or
 - 13.3.3 is a claim by the Contractor for loss of profit, due to early termination of the Contract.

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Schedule 2 General Terms and Conditions

1 Provision Of Services

- 1.1 The Authority appoints the Contractor and the Contractor agrees to provide the Services:
- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions;
 - 1.1.4 in accordance with the Law;
 - 1.1.5 in accordance with clause 32 (Preventing Modern Slavery); and
 - 1.1.6 in accordance with Good Industry Practice.
- 1.2 The Authority may inspect and examine the manner in which the Contractor supplies the Services during normal business hours on reasonable notice. Such an inspection and examination may be undertaken virtually rather than in person if both Parties agree that it is reasonable and practicable to do so.
- 1.3 Immediately following the Commencement Date, the Contractor shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Contractor shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Contractor shall comply with the full Implementation Plan.
- 1.4 The Contractor shall commence delivery of the Services on the Commencement Date.
- 1.5 The Contractor shall comply fully with its obligations set out in the Specification.
- 1.6 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements and/or standards of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- 1.7 The Contractor shall notify the Authority as soon as it becomes aware of:
- 1.7.1 any breach, or potential breach, of clause 32 (Preventing Modern Slavery); or
 - 1.7.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

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- 1.8 If required by the Authority, the Contractor shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business. The Contractor shall indemnify the Authority against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Authority as a result of any breach of clause 32 (Preventing Modern Slavery).

2 Extension

- 2.1 Subject to Clause 5 (Price Adjustment On Extension Of Term) of this Schedule 2, the Parties may agree to extend the Term on one or more occasions prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions. The provisions of the Contract will apply and take effect mutatis mutandis (subject to any Variation or adjustment to the Contract Price pursuant to Clause 5 (Price Adjustment On Extension Of Term) of this Schedule 2 and Clause 5.2 of Schedule 4) throughout any such extended period.

3 Contract Price

- 3.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contractor the Contract Price in accordance with Clause 4 (Payment And Vat) of this Schedule 2. The Contract Price shall remain fixed for the Term.
- 3.2 The Authority shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- 3.3 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of VAT chargeable under the Contract and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor under Clause 14 (Recovery Of Sums Due) of this Schedule 2.
- 3.4 The Authority's right to request paper form invoicing shall be subject to procurement policy note 11/15 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf) in respect of the Authority's obligation to accept unstructured electronic invoices from the Contractor where and as required under that procurement policy note (as amended from time to time).

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4 Payment And Vat

- 4.1 Where the Contractor submits an invoice to the Authority in accordance with Clause 4.4 of this Schedule 2 the Authority will consider and verify that invoice in a timely fashion and in any event within thirty (30) days of receipt of the invoice. Where the Authority raises a query with respect to an invoice the Parties will liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the matter will be dealt with under the dispute resolution procedure set out at Clause 43 (Dispute Resolution) of Schedule 2. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 4.1 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Contractor and the Authority has then failed to pay such sum within thirty (30) days following such determination.
- 4.2 Subject to Clause 4.1 of this Schedule 2, the Authority shall pay the Contractor any sums due under such invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 4.3 Where the Authority fails to comply with Clause 4.1 of this Schedule 2 and has failed to consider and verify the invoice and raise a query with respect to the invoice within thirty (30) days of receipt of the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 4.2 of this Schedule 2.
- 4.4 The Contractor shall submit invoices to the Authority in accordance with Clause 2.3 of Schedule 6 (Pricing) and shall submit invoices to the Authority Monthly in arrears in accordance with Clause 2.3 of Schedule 6. The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation as may be reasonably required by the Authority to substantiate such invoice.
- 4.5 The Authority shall be entitled to withhold payment due under Clause 4 (Payment And Vat) of this Schedule 2 for so long as the Contractor, in the Authority's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with Clause 21.11 of this Schedule 2. For the avoidance of doubt the Authority shall not be liable to pay any interest or penalty in withholding such payment.

ELECTRONIC INVOICING

- 4.6 The Authority shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 4.7 For the purposes of clause 4.6, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

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VAT

- 4.8 The Contractor shall add VAT to the Contract Price at the prevailing rate in accordance with applicable law.
- 4.9 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause 4.9 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 4.10 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause 23 (Termination On Default) of this Schedule 2 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.11 Where the Contractor or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under the Contract, the Contractor shall:
- 4.11.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - 4.11.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Contractor or any Contractor Personnel.
- 4.12 In the event that any one of the Contractor Personnel is a Worker as defined in Clause 1 of Schedule 3 (Definitions and Interpretation) who receives consideration relating to the Services, then, in addition to its obligations under Clause 4.9 of this Schedule 2, the Contractor shall ensure that its contract with the Worker contains the following requirements:
- 4.12.1 that the Authority may, at any time during the Term, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 4.11 of this Schedule 2, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;

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- 4.12.2 that the Worker's contract may be terminated at the Authority's request if:
- (a) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 4.12.1 of this Schedule 2; and/or
 - (b) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clause 4.9 of this Schedule 2 or confirms that the Worker is not complying with those requirements; and
- 4.12.3 that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

5 Price Adjustment On Extension Of Term

- 5.1 The Contract Price shall apply for the Term. In the event that the Parties agree to extend the Term pursuant to Clause 2 (Extension) of this Schedule 2 the Contract Price will remain unchanged for the period of extension unless otherwise agreed by the Parties.
- 5.2 If a variation in the Contract Price is agreed between the Authority and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

6 Warranties And Representations

- 6.1 The Contractor warrants and undertakes to the Authority that:
- 6.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
 - 6.1.2 in entering the Contract it has not committed any Fraud;
 - 6.1.3 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under the Contract;
 - 6.1.4 it is not subject to any contractual obligation, compliance with which is likely to affect its ability to perform its obligations under the Contract;
 - 6.1.5 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

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- 6.1.6 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 6.1.7 in the three (3) years prior to the Commencement Date:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern, ability to fulfil its obligations under the Contract or provide the Services; and
- 6.2 The Contractor warrants and undertakes to the Authority that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- 6.2.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 6.2.2 promptly provide to the Authority:
- (a) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 6.3 6.3 The Contractor warrants and undertakes to the Authority that:
- 6.3.1 its responses to the Authority's slavery and human trafficking due diligence questionnaire, if any, are complete and accurate; and
- 6.3.2 neither the Contractor nor any of its Contractor Personnel:
- (a) has been has been convicted of any offence involving slavery and human trafficking; and
 - (b) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and

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6.3.3 it undertakes its business in a manner that is consistent with clause 32 (Preventing Modern Slavery).

6.4 The Contractor shall implement due diligence procedures for its own suppliers, Sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

7 Change Control Process

7.1 The Contractor acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Contractor shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification, as may be requested by the Authority from time to time pursuant to Clause 5.1 of Schedule 4.

7.2 Any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

8 Key Personnel

8.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.

8.2 The Contractor shall not remove or replace any Key Personnel unless:

8.2.1 requested to do so by the Authority;

8.2.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;

8.2.3 the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or

8.2.4 the Contractor obtains the Authority's prior written consent.

8.3 8.3 The Authority shall not unreasonably withhold its consent under Clause 8.2 of this Schedule 2. Such consent shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

9 Contractor Personnel

9.1 At all times, the Contractor shall ensure that:

9.1.1 each of the Contractor Personnel responsible for providing the Services is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

9.1.2 there is an adequate number of Contractor Personnel to provide the Services properly and in accordance with the Contract;

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- 9.1.3 only those people who are authorised by the Contractor are involved in providing the Services; and
- 9.1.4 all of the Contractor Personnel comply with all of the Authority's policies, rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for conduct when at or outside the Premises of the Authority.
- 9.2 The Authority may refuse to grant access to and remove any of the Contractor Personnel who do not comply with Clause 9.1.4 of this Schedule 2 or if they otherwise present a security threat or the Authority reasonably determines their presence to be undesirable.
- 9.3 The Contractor shall replace any of the Contractor Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 9.4 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and the Services and giving such other particulars as the Authority may reasonably request. The Contractor shall ensure at all times that it has the right to provide these records under Data Protection Legislation.
- 9.5 The Contractor shall comply with the Authority's procedures for the vetting of personnel and as advised to the Contractor by the Authority in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Authority's procedures for the vetting of personnel.
- 9.6 If the Contractor fails to comply with Clause 9.4 of this Schedule 2 within one (1) Month of the date of the request and, in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract with immediate effect by giving written notice to the Contractor at any time after the end of that one (1) Month period, such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 9.7 The decision of the Authority as to whether any person is to be refused access to the Premises and/or as to whether the Contractor has failed to comply with Clause 9.4 of this Schedule 2 shall be final and conclusive.

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10 Manner Of Carrying Out The Services

- 10.1 The Contractor shall begin performing the Services on the Commencement Date and continue to perform them for the Term. The Authority may, by written notice, require the Contractor to execute the Services in such order as the Authority may decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.
- 10.2 The Contractor shall at all times comply with the Quality Standards. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 10.3 The Contractor shall ensure that all Contractor Personnel supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 10.4 The Contractor will be responsible for providing and delivering the Services in each and every respect with all relevant provisions of the Contract at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with Schedule 4.

ENVIRONMENTAL REQUIREMENTS

- 10.5 The Contractor must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.
- 10.6 In performing its obligations under the Contract, the Contractor shall, where applicable to the Contract, to the reasonable satisfaction of the Authority:
- 10.6.1 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
 - 10.6.2 be responsible for ensuring that any waste generated by the Contractor and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and
 - 10.6.3 ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.
- 10.7 In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Contractor shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.

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- 10.8 In performing its obligations under the Contract, the Contractor shall to the reasonable satisfaction of the Authority (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.
- 10.9 The Contractor shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>
- 11 Contract Management And Monitoring Of Contractor's Performance**
- 11.1 The Parties shall each appoint a contract manager to be known respectively as the Authority Representative and the Contractor Representative. The Authority Representative and the Contractor Representative shall meet at least Monthly (unless otherwise notified by the Authority) to discuss the Contractor's performance and other matters connected to the delivery of the Contract.
- 11.2 The Contractor shall comply, as the Authority shall require, with the monitoring arrangements set out in the Schedule 7 including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.
- 11.3 The Contractor shall comply with any and all of the monitoring arrangements that the Authority shall require from time to time. This shall include, but shall not be limited to, providing such information as the Authority may require the Contractor to produce under the Contract.
- 11.4 At the Authority's request, within five (5) Working Days of such request, the Contractor shall supply such management information to the Authority as the Authority may reasonably request from time to time (including without limit any information about the Contractor's supply chain and its compliance in relation to sustainability requirements).
- 11.5 The Contractor shall provide the Authority with such supporting documentation as the Authority may require to establish and verify the Contractor's levels of performance.
- 11.6 The Contractor shall meet with the Authority following the completion of the provision of the Services to discuss:
- 11.6.1 whether the Contractor believes the objectives of the Contract were achieved;
- 11.6.2 how far the intended benefits sought in the Authority's specification in Schedule 4 were achieved; and
- 11.6.3 to identify any lessons learnt for future projects.
- 11.7 The Authority shall be able to share and use any information arising from such meetings referred to in Clauses 11.6.1 to 11.6.3 of this Schedule 2 as it sees fit.

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12 Right Of Audit

- 12.1 The Contractor shall keep secure and maintain until six (6) years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.
- 12.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract. Such access may be granted virtually rather than in person if both Parties agree that it is reasonable and practicable to do so.
- 12.3 For the purpose of:
- 12.3.1 the examination and certification of the Authority's accounts; or
 - 12.3.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources,
- 12.4 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This Clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

13 Property

- 13.1 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority. The Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- 13.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within five (5) Working Days of receipt.
- 13.3 Upon receipt of the Property the Contractor shall subject it to:
- 13.3.1 a reasonable visual inspection, and
 - 13.3.2 such additional inspection and testing as may be necessary and practicable in order to check that the Property is not defective or deficient for the purpose for which it has been provided.

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- 13.4 Within a reasonable period the Authority shall replace or re-issue issued Property agreed by the Parties to be defective.
- 13.5 The Contractor shall ensure the security of all the Property whilst in its possession.
- 13.6 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Default of the Authority. The Contractor shall inform the Authority within two (2) Working Days of any loss of, or damage to, the Property occurring.

14 Recovery Of Sums Due

- 14.1 The Authority may set off any amount owed by the Contractor to the Crown or any part of the Crown (including the Authority) against any amount due to the Contractor under this Contract or under any agreement between the Contractor and the Authority.

15 Confidential Information

- 15.1 For the purposes of this Clause, the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party which receives or obtains directly Confidential Information.
- 15.2 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in the Contract, the Recipient shall:
 - 15.2.1 treat the Disclosing Party's Confidential Information as confidential and safeguard it accordingly (which is appropriate depending on the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 15.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in the Contract or without the Disclosing Party's prior written consent;
 - 15.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract; and
 - 15.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 15.3 Clause 15.1 of this Schedule 2 shall not apply to the extent that:
 - 15.3.1 Law requires such disclosure by the party making the disclosure, including any requirements for disclosure under FOIA, the Regulations or the Environmental Information Regulations;

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- 15.3.2 such information is required in relation to the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources;
 - 15.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
 - 15.3.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 15.3.5 it is independently developed without access to the other Party's Confidential Information.
- 15.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall, as soon as reasonably practicable and to the extent permitted by Law, notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 15.5 The Contractor may only disclose the Confidential Information of the Authority to the Contractor Personnel directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 15.6 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Confidential Information of the Authority received otherwise than for the purposes of the Contract and the provision of the Services.
- 15.7 At the written request of the Authority, the Contractor shall procure that Contractor Personnel identified in the Authority's request shall sign a confidentiality undertaking (in a form acceptable to the Authority) prior to commencing any work in accordance with the Contract.
- 15.8 The Authority may disclose the Confidential Information of the Contractor:
- 15.8.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - 15.8.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 15.8.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

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- 15.8.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 15.8.1 of this Schedule 2 (including any benchmarking organisation) for any purpose relating to or connected with the Contract;
- 15.8.5 on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- 15.8.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 15 (Confidential Information).

- 15.9 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Confidential Information of the Contractor is disclosed pursuant to Clause 15.3 of this Schedule 2 is made aware of the Authority's obligations of confidentiality.
- 15.10 Nothing in this Clause 15 (Confidential Information) shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 15.11 Failure by the Contractor to comply with any of its obligations under this Clause 15 (Confidential Information) shall be an irremediable material breach of this Contract and the Authority shall be entitled to terminate the Contract pursuant to Clause 23.2.1(a) of this Schedule 2.

16 Authority Data

- 16.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 16.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Authority.
- 16.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format the Authority specifies.
- 16.4 Upon receipt or creation by the Contractor of any Authority Data and during any collection, processing, storage and transmission by the Contractor of any Authority Data, the Contractor shall take all precautions necessary to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.

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- 16.5 The Contractor shall perform secure back-ups of all Authority Data. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request.
- 16.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 16.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- 16.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data and the Contractor shall do so as soon as practicable; and/or
 - 16.7.2 itself restore or procure the restoration of the Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 16.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

17 Protection Of Personal Data**STATUS OF THE CONTROLLER**

- 17.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- 17.1.1 "Controller" (where the other Party acts as the "Processor");
 - 17.1.2 "Processor" (where the other Party acts as the "Controller");
 - 17.1.3 "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);
 - 17.1.4 "Independent Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 14 (Processing, Personal Data and Data Subjects) which scenario or scenarios are intended to apply under this Contract.

WHERE ONE PARTY IS CONTROLLER AND THE OTHER PARTY ITS PROCESSOR

- 17.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 14 (Processing, Personal Data and Data Subjects) by the Controller.
- 17.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

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- 17.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- 17.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 17.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 17.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 17.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 17.5.1 process that Personal Data only in accordance with Schedule 14 (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - 17.5.2 ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 16 (Authority Data), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 17.5.3 ensure that:
 - (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 14 (Processing, Personal Data and Data Subjects));
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Clause, Clauses 15 (Confidential Information) and Clause 16 (Authority Data);

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- (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and (D) have undergone; and
 - (iv) adequate training in the use, care, protection and handling of Personal Data;
 - (c) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Section 75 of the DPA 2018) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
 - (d) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 17.6 Subject to Clause 17.7, the Processor shall notify the Controller immediately if it:
- 17.6.1 receives a Data Subject Request (or purported Data Subject Request);
 - 17.6.2 receives a request to rectify, block or erase any Personal Data;
 - 17.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 17.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

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- 17.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 17.6.6 becomes aware of a Data Loss Event.
- 17.7 The Processor's obligation to notify under Clause 17.6 shall include the provision of further information to the Controller in phases, as details become available.
- 17.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 17.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - 17.8.1 the Controller with full details and copies of the complaint, communication or request;
 - 17.8.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 17.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 17.8.4 assistance as requested by the Controller following any Data Loss Event; and/or
 - 17.8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 17.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - 17.9.1 the Controller determines that the processing is not occasional;
 - 17.9.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 17.9.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 17.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 17.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 17.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

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- 17.12.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 17.12.2 obtain the written consent of the Controller;
 - 17.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 17 such that they apply to the Sub-processor; and
 - 17.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 17.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 17.14 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 17.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

WHERE THE PARTIES ARE JOINT CONTROLLERS OF PERSONAL DATA

- 17.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with Article 26 of the GDPR.

WHERE THE PARTIES ARE INDEPENDENT CONTROLLERS OF PERSONAL DATA

- 17.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under a Joint Controller arrangement of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 17.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 17.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 17.7, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 17.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 17.21 The Parties shall only provide Personal Data to each other:

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- 17.21.1 to the extent necessary to perform the respective obligations under this Contract;
 - 17.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - 17.21.3 where it has recorded it in Schedule 14 (Processing, Personal Data and Data Subjects).
- 17.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 17.23 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 of the GDPR and shall make the record available to the other Party upon reasonable request.
- 17.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("the Request Recipient"):
- 17.24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - 17.24.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (b) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request.
- 17.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:
- 17.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - 17.25.2 implement any measures necessary to restore the security of any compromised Personal Data;

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- 17.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- 17.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 17.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 14 (Processing, Personal Data and Data Subjects).
- 17.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 13 (Processing, Personal Data and Data Subjects).
- 17.28 Notwithstanding the general application of Clauses 17.2 to 17.15 to Personal Data, where the Contractor is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 17.16 to 17.27.
- 18 Intellectual Property Rights**
- 18.1 All Intellectual Property Rights in any guidance, know-how, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material, but for the avoidance of doubt not including any Intellectual Property Rights in the Products (as defined in Clause 1 of Schedule 4) (the "IP Materials"):
- 18.1.1 furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and
- 18.1.2 prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Authority;
- and the Contractor shall not, and shall ensure that the Contractor Personnel shall not, (except when necessary for the performance of the Contract) without prior written consent, use or disclose any Intellectual Property Rights in the IP Materials.
- 18.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause 18.1.2 of this Schedule 2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute such assignment.

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- 18.3 The Authority hereby grants a royalty free, non-exclusive, licence (with no right to sub-licence) for the duration of the Term to the Contractor to use all Intellectual Property which may subsist in the IP Materials prepared in accordance with Clause 18.1.2 of this Schedule 2. This licence shall take effect on the date of the Contract.
- 18.4 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided.
- 18.5 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract, the Services or the performance thereof.
- 18.6 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain such Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.
- 18.7 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Term, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:
- 18.7.1 items or materials based upon designs supplied by the Authority; or
 - 18.7.2 the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- 18.8 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 18.9 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- 18.9.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 18.9.2 shall take due and proper account of the interests of the Authority; and

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- 18.9.3 shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 18.10 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Clause 18.7.1 or 18.7.2 of this Schedule 2.
- 18.11 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Contract.
- 18.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or, in the reasonable opinion of the Contractor, is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- 18.12.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
- 18.12.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority; and
- 18.12.3 in the event that the Contractor is unable to comply with Clauses 18.12.1 or 18.12.2 within twenty (20) Working Days of receipt of the Contractor's notification the Authority may terminate the Contract with immediate effect by written notice.

19 Liability

- 19.1 Neither Party excludes or limits liability to the other Party for:
- 19.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors;
- 19.1.2 bribery or Fraud by it or its employees;
- 19.1.3 fraudulent misrepresentation; or

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- 19.1.4 any liability to the extent that it cannot be excluded or limited by any applicable law.
- 19.2 The Contractor does not exclude or limit its liability in respect of the indemnity at Clause 18.7 and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 19.3 Subject to Clauses 19.4, 19.5 and 19.6 of this Schedule 2, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Contractor Personnel on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- 19.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- 19.5 Subject always to Clauses 19.1, 19.2, 19.6 and 19.7 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall in no event exceed the greater of:
- 19.5.1 £5,000,000; or
- 19.5.2 one hundred and twenty five per cent (125%) of the total Contract Price paid or payable by the Authority to the Contractor for the Services.
- 19.6 Subject always to Clause 19.1, in no event shall either Party be liable to the other for any:
- 19.6.1 loss of profits, loss of business, loss of revenue, loss of an opportunity, or loss of goodwill; and/or
- 19.6.2 loss of savings (whether anticipated or otherwise); and/or
- 19.6.3 indirect or consequential loss or damage.
- 19.7 If the total Contract Price paid or payable by the Authority to the Contractor over the Term:
- 19.7.1 not used;
- 19.7.2 not used;

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- 19.7.3 is equal to, exceeds or will exceed **£10,000,000** then the figure of **£5,000,000** at Clause 19.5 of this Schedule 2 shall be replaced with **£10,000,000** and the figure of one hundred and twenty five percent (125%) at Clause 19.5 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%).
- 19.7 Subject always to Clauses 19.1, 19.2, 19.6 and 19.9 of this Schedule 2 the Contractor's aggregate liability in respect of loss of or damage to Authority Data or breach of the Data Protection Legislation that is caused by Default of the Contractor occurring in each and any Contract Year shall in no event exceed £10 million;
- 19.8 The Contractor acknowledges that the Authority may, amongst other things, recover from the Contractor the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- 19.8.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 19.8.2 any wasted expenditure or charges;
 - 19.8.3 the additional costs of procuring replacement Services from an alternative provider for the remainder of the Term where possible, which shall include any incremental costs associated with such replacement Services from an alternative provider above those which would have been payable under the Contract;
 - 19.8.4 any compensation or interest paid to a third party by the Authority; and
 - 19.8.5 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 19.9 Each Party shall use its respective reasonable endeavours to mitigate any loss or damage suffered arising out of or connection with the Contract.
- 19.10 Where the Contractor is a consortium, for the avoidance of doubt, the organisations comprising the Contractor shall be jointly and severally liable with regard to the performance by the Contractor of any and all of its obligations under the Contract and in respect of any losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Contractor.
- 19.11 Clause 19 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
- 20 Insurance**
- 20.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

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- 20.2 The Contractor shall hold employer's liability insurance in respect of Contractor Personnel in accordance with any legal requirement from time to time in force.
- 20.3 Without limitation to any insurance arrangements as required by Law, the Contractor shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 20.4 The Contractor shall from time to time and in any event within five (5) Working Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Contractor pursuant to Clause 20 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 20.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 20.6 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause 19 (Liability) of this Schedule 2.

21 Transfer And Sub-Contracting

- 21.1 The Contractor shall not assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under the Contract or any part of it without the prior written consent of the Authority.
- 21.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under the Contract or any part thereof to:
- 21.2.1 any other body established by the Crown; or
 - 21.2.2 under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - 21.2.3 any private sector body which substantially performs the functions of the Authority,
- and the Contractor shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 21.2.
- 21.3 A change in the legal status of the Authority shall not, subject to Clause 21.4 of this Schedule 2 affect the validity of the Contract and the Contract shall be binding on any successor body to the Authority.

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- 21.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under the Contract to a private sector body in accordance with Clause 21.2.3 of this Schedule 2 (the "Transferee" in the rest of this Clause) the right of termination of the Authority in Clause 22 (Termination On Insolvency And Change Of Control) of this Schedule 2 shall be available to the Contractor in the event of insolvency of the Transferee (as if the references to Contractor in Clause 22 (Termination On Insolvency And Change Of Control) of this Schedule 2 were references to the Transferee).
- 21.5 The Contractor shall exercise due skill and care in the selection of any Sub-contractors to ensure that the Contractor is able to:
- 21.5.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 21.5.2 comply with its obligations under the Contract in the provision of the Services; and
 - 21.5.3 assign, novate or otherwise transfer to the Authority or any Replacement Contractor any of its rights and/or obligations under each Sub-contract that relates exclusively to the Contract.
- 21.6 Prior to sub-contacting any of its obligations under the Contract, the Contractor shall notify the Authority and provide the Authority with:
- 21.6.1 the proposed Sub-contractor's name, registered office and company registration number; and
 - 21.6.2 the scope of any Services to be provided by the proposed Sub-contractor.
- 21.7 If requested by the Authority within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 21.6 of this Schedule 2, the Contractor shall also provide:
- 21.7.1 a copy of the proposed Sub-contract; and
 - 21.7.2 any further information reasonably requested by the Authority.
- 21.8 The Authority may, within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 21.6 of this Schedule 2 (or, if later, receipt of any further information requested pursuant to Clause 21.7 of this Schedule 2), object to the appointment of the relevant Sub-contractor if they consider that:
- 21.8.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Authority under the Contract;
 - 21.8.2 the proposed Sub-contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers;
 - 21.8.3 the proposed Sub-contractor employs unfit persons; and/or
 - 21.8.4 the proposed Sub-contractor should be excluded in accordance with Clause 21.14 of this Schedule 2,

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- in which case, the Contractor shall not proceed with the proposed appointment.
- 21.9 If the Authority has not notified the Contractor that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:
- 21.9.1 the Contractor's notice issued pursuant to Clause 21.6 of this Schedule 2; and
- 21.9.2 any further information requested by the Authority pursuant to Clause 21.7 of this Schedule 2,
- the Contractor may proceed with the proposed appointment.
- 21.10 The Contractor shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Contractor's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:
- 21.10.1 requiring the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- 21.10.2 that if the Contractor or other party fails to consider and verify an invoice in accordance with Clause 21.10.1 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 21.10.3 of this Schedule 2 after a reasonable time has passed;
- 21.10.3 requiring the Contractor or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed; and
- 21.10.4 giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- 21.10.5 requiring the Sub-contractor to include a clause to the same effect as this Clause 21.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.
- 21.11 The Contractor shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed.
- 21.12 Notwithstanding any provision of Clauses 15 (Confidential Information) and 30 (Publicity) of this Schedule 2 if the Contractor notifies the Authority that the Contractor has failed to pay an undisputed Sub-contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

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- 21.13 Notwithstanding the Contractor's right to sub-contract pursuant to this Clause 21, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.
- 21.14 Where the Authority considers whether there are grounds for exclusion of a Sub-contractor under Regulation 57 of the Regulations, then:
- 21.14.1 if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;
- 21.14.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not appoint the Sub-contractor

and the Contractor shall comply with such a requirement.

22 Termination On Insolvency And Change Of Control

- 22.1 The Authority may terminate the Contract with immediate effect by giving written notice where the Contractor is a company and in respect of the Contractor:
- 22.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- 22.1.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Contractor be wound up or a resolution for the winding-up of the Contractor is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 22.1.3 a petition is presented for the winding-up of the Contractor (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Contractor pursuant to section 98 of the Insolvency Act 1986; or
- 22.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets; or
- 22.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within ten (10) Working Days;
- 22.1.6 an application is made in respect of the Contractor either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or

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- 22.1.7 if the Contractor is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 22.1.8 the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 22.1.9 in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which:
 - (a) (a) adversely impacts on the Contractor's ability to supply the Services in accordance with the Contract; or
 - (b) (b) could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Services in accordance with the Contract; or
- 22.1.10 the Contractor demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Contractor; or
- 22.1.11 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Contractor comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 22.1.12 the Contractor being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 22.1.13 the Contractor being an individual or any partner or partners in the Contractor who together are able to exercise control of the Contractor where the Contractor is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or
- 22.1.14 any event similar to those listed in Clauses 22.1.1 to 22.1.13 occurs under the law of any other jurisdiction.

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22.2 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 ("Change of Control"). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

22.2.1 being notified that a Change of Control has occurred or is planned or is in contemplation; or

22.2.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where the Authority's written consent to the continuation of the Contract was granted prior to the Change of Control.

23 Termination On Default

23.1 In the case of a breach of any of the terms of this Contract by the Contractor that is capable of remedy (including, without limitation any failure to pay any sums due under this Contract), the Authority shall, without prejudice to its other rights and remedies under this Contract, issue notice of the breach and allow the Contractor the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Contractor ("Remedial Proposal") before exercising any right to terminate this Contract in accordance with Clause 23.2 of this Schedule 2. Such Remedial Proposal must be agreed with the Authority (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Contractor in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Contractor to:

23.1.1 put forward and agree a Remedial Proposal with the Authority in relation to the relevant default or breach within a period of ten (10) Working Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the Authority;

23.1.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

23.1.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 23.2.1(b) of this Schedule 2, a material breach of this Contract by the Contractor not remedied in accordance with an agreed Remedial Proposal.

23.2 The Authority may terminate the Contract, or terminate the provision of any part of the Services, with immediate effect by giving written notice to the Contractor if the Contractor:

23.2.1 commits a material breach of any of the terms of this Contract which is:

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- (a) not capable of remedy; or
 - (b) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or
- 23.2.2 has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) Month rolling period whether or not the Contractor has remedied the breach in accordance with a Remedial Proposal. The twelve (12) Months rolling period is the twelve (12) Months immediately preceding the date of the third breach notice.
- 23.3 The Authority shall be entitled to terminate the Contract with immediate effect by giving written notice to the Contractor:
 - 23.3.1 if the Contractor does not commence delivery of the Services by the Commencement Date, if any;
 - 23.3.2 pursuant to and in accordance with the Key Provisions and Clauses 9.6, 15.11, 26.4, 28.5, 31.2, 34.4 and 41.1 of this Schedule 2;
 - 23.3.3 where the warranty given by the Contractor pursuant to Clause 6.2 of this Schedule 2 is materially untrue, the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 6.2 of this Schedule 2, or the Contractor fails to provide details of proposed mitigating factors as required by Clause 6.2 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable; or
 - 23.3.4 if the Contractor commits a breach of the Anti-slavery Policy.
- 23.4 If the Authority fails to pay the Contractor undisputed sums of money after thirty (30) days of having received a valid invoice, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause 14 (Recovery Of Sums Due) of this Schedule 2.
- 24 Termination For Breach Of The Regulations**
 - 24.1 The Authority may terminate the Contract with immediate effect by giving written notice to the Contractor on the occurrence of any of the statutory provisions contained in Regulation 73(1)(a) to (c)) of the Regulations.

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25 Consequences Of Expiry Or Earlier Termination

25.1 Where the Authority terminates the Contract under Clause 23 (Termination On Default) of this Schedule 2 and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 23 (Termination On Default) of this Schedule 2, no further payments shall be made by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of arranging an alternative supplier of the Services.

25.2 Save as otherwise expressly provided in the Contract:

25.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

25.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under Clauses 4 (Payment And Vat), 12 (Right Of Audit), 14 (Recovery Of Sums Due), 15 (Confidential Information), 17 (Protection Of Personal Data), 18 (Intellectual Property Rights), 19 (Liability), 20 (Insurance), 25 (Consequences Of Expiry Or Earlier Termination), 27 (Recovery Upon Expiry Or Earlier Termination Of The Contract), 29 (Waiver And Cumulative Remedies), 31 (Official Secrets Acts And Finance Act), 32 (Preventing Modern Slavery), 40 (Freedom Of Information Act) and 48 (Law And Jurisdiction).

26 Disruption

26.1 The Contractor shall take reasonable care to ensure that, in the performance of its obligations under the Contract, it does not disrupt the operations of the Authority, its employees or any other contractor employed or engaged by the Authority.

26.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

26.3 In the event of industrial action by the Contractor Personnel, the Contractor shall prepare proposals for the continuation of its obligations under the Contract for the Authority to approve.

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- 26.4 If the Contractor's proposals referred to in Clause 26.3 of this Schedule 2 are considered insufficient or unacceptable by the Authority, acting reasonably, then the Contract may be terminated with immediate effect by the Authority by written notice
- 26.5 The Contractor shall comply with the provisions of Schedule 13 (Business Continuity and Disaster Recovery).
- 26.6 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.
- 27 Recovery Upon Expiry Or Earlier Termination Of The Contract**
- 27.1 Upon expiry or earlier termination (for any reason) of this Contract, the Contractor shall at the request of the Authority and at the Contractor's cost:
- 27.1.1 immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-contractors, which was obtained or produced in the course of providing the Services (but excluding copies of such Confidential Information, Personal Data or IP Materials that the Contractor is required to retain pursuant to the Law or for regulatory purposes);
 - 27.1.2 except where the retention of Personal Data is required by Law or regulatory purposes, promptly destroy all copies of the Personal Data and provide written confirmation to the Authority that the data has been destroyed;
 - 27.1.3 immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor under Clause 13 (Property) of this Schedule 2. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 27.1.4 vacate and procure that the Contractor Personnel vacate any premises of the Authority occupied for the purposes of providing the Services;
 - 27.1.5 return to the Authority any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising);
 - 27.1.6 comply with its obligations under any agreed exit plan; and
 - 27.1.7 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or any Replacement Contractor to conduct due diligence.

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- 27.2 If the Contractor fails to comply with Clause 27.1.1 and 27.1.2 of this Schedule 2, the Authority may recover possession of the items mentioned in those Clauses. The Contractor shall grant, and shall procure that any Sub-contractor shall grant, a licence to the Authority for its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its Sub-contractors where any such items may be held.

28 Remedies In The Event Of Inadequate Performance

- 28.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 23 (Termination On Default) of this Schedule 2.
- 28.2 Should the Authority be of the view, acting reasonably, that the Contractor can no longer provide the Services, then without prejudice to the Authority's rights and remedies under this Contract, the Authority shall be entitled to exercise its Step In Rights if the Key Provisions refer to the Authority having such rights under this Contract.
- 28.3 Without prejudice to its right under Clause 14 (Recovery Of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 28.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall, at its own cost and expense, remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.
- 28.5 In the event that:
- 28.5.1 the Contractor fails to comply with Clause 28.4 of this Schedule 2 and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
 - 28.5.2 the Contractor persistently fails to comply with Clause 28.4 of this Schedule 2;
- the Authority may terminate the Contract with immediate effect by giving written notice.

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29 Waiver And Cumulative Remedies

- 29.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 29.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 39 (Service Of Notices And Communications) of this Schedule 2.
- 29.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 29.4 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

30 Publicity

- 30.1 The Contractor shall not and shall procure that its Sub-contractors shall not:
- 30.1.1 make any press announcements or publicise the Contract in any way; or
- 30.1.2 use the Authority's name or brand in any promotion or marketing or announcement,
- without the prior written consent of the Authority.
- 30.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Authority, including any examination of the Contract, by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
- 30.3 The provisions of this Clause 30 (Publicity) shall apply during the Term and indefinitely after its expiry or the earlier termination of the Contract.

31 Official Secrets Acts And Finance Act

- 31.1 The Contractor shall comply with, and shall ensure the Contractor Personnel comply with, the provisions of:
- 31.1.1 the Official Secrets Acts 1911 to 1989; and
- 31.1.2 section 182 of the Finance Act 1989.
- 31.2 The Authority may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor or any of the Contractor Personnel do not comply with Clause 31.1 of this Schedule 2.

32 Preventing Modern Slavery

- 32.1 The Contractor:
- 32.1.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;

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- 32.1.2 shall not require any Contractor Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- 32.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 32.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 32.1.5 shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 32.1.6 shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- 32.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 32.1.8 shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- 32.2 If the Contractor notifies the Authority pursuant to Clause 32.4 it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.
- 32.3 If the Contractor is in Default under Clause 32.1 the Authority may by notice:
 - 32.3.1 require the Contractor to remove from performance of the Contract any Sub-Contractor, Contractor Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - 32.3.2 immediately terminate the Contract.

WHISTLEBLOWING

- 32.4 As soon as it is aware of it the Contractor and Contractor Personnel must report to the Authority any actual or suspected breach of:
 - 32.4.1 Law;
 - 32.4.2 Clauses 31 to 32.1 or 32.5; or
 - 32.4.3 Clause 33 to 36.

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- 32.5 The Contractor must not retaliate against any of the Contractor Personnel who in good faith reports a breach listed in this Clause to the Authority or a Prescribed Person.

33 Prevention Of Fraud And Bribery

- 33.1 The Contractor warrants and undertakes to the Authority that neither it, nor to the best of its knowledge any Contractor Personnel, have at any time prior to the Commencement Date:

33.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

33.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 33.2 The Contractor shall not during the Term:

33.2.1 commit a Prohibited Act; and/or

33.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, Sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

- 33.3 The Contractor shall during the Term:

33.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

33.3.2 keep appropriate records of its compliance with its obligations under Clause 33.2.1 of this Schedule 2 and make such records available to the Authority on request;

33.3.3 if so required by the Authority, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause of all persons associated with the Contractor or its Sub-contractors who are responsible for supplying the Services in connection with the Contract. The Contractor shall provide such supporting evidence as the Authority may reasonably request; and

33.3.4 have, maintain and, where appropriate, enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Contractor Personnel or any person acting on the Contractor's behalf from committing a Prohibited Act.

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- 33.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 33.1 of this Schedule 2, or has reason to believe that it has or any of the Contractor Personnel has:
- 33.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 33.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 33.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 33.5 If the Contractor makes a notification to the Authority pursuant to Clause 33.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 12 (Right Of Audit) of this Schedule 2.
- 33.6 If the Contractor breaches Clause 33.1 of this Schedule 2, the Authority may by notice:
- 33.6.1 require the Contractor to remove from the performance of the Contract any Contractor Personnel whose acts or omissions have caused the Contractor's breach; or
 - 33.6.2 immediately terminate the Contract pursuant to Clause 23.2.1(a) of this Schedule 2.
- 33.7 Any notice served by the Authority under Clause 33.6 of this Schedule 2 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which the Contract shall terminate).

34 Non-Solicitation

- 34.1 Except in respect of any transfer of staff pursuant to Schedule 10, neither Party shall (except with the prior written consent of the other Party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any person employed or engaged by such other Party in the provision of the Services or (in the case of the Authority) in the receipt of the Services at any time during the Term or for a further period of twelve (12) Months after the termination of the Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the employees of the other Party.

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- 34.2 If either the Contractor or the Authority commits any breach of Clause 34.1 of this Schedule 2 the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.
- 34.3 The Contractor shall promptly notify and provide full particulars to the Authority or the relevant other Contracting Authority if such conflict arises or may reasonably be foreseen as arising.
- 34.4 Without prejudice to the foregoing, the Contractor shall not knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Authority shall thereby exist in relation to the Services. The Contractor shall immediately report to the Authority Representative any matters which involve or could potentially involve a conflict of interest as referred to in this Clause 34.4.
- 34.5 The Authority reserves the right to terminate the Contract with immediate effect by giving written notice to the Contractor and/or take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The action of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

35 Conflict Of Interest

- 35.1 The Contractor recognises that the Authority is subject to PPN 01/19: Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing: (<https://www.gov.uk/government/publications/procurement-policy-note-0119-applying-exclusions-in-public-procurement-managing-conflicts-of-interest-and-whistleblowing>). The Contractor shall comply with the provision of this Clause 35 in order to assist the Authority with its compliance with its obligations under that PPN.
- 35.2 The Contractor shall take appropriate steps to ensure that neither the Contractor nor the Contractor Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interest of the Contractor or the Contractor Personnel and the duties owed to the Authority and other Contracting Authorities under the provisions of the Contract.
- 35.3 The Contractor shall promptly notify and provide full particulars to the Authority or the relevant other Contracting Authority if such conflict arises or may reasonably be foreseen as arising.

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35.4 Without prejudice to the foregoing, the Contractor shall not knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Authority shall thereby exist in relation to the Services. The Contractor shall immediately report to the Authority Representative any matters which involve or could potentially involve a conflict of interest as referred to in this Clause 35.4.

35.5 The Authority reserves the right to terminate the Contract with immediate effect by giving written notice to the Contractor and/or take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The action of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

36 Equality And Diversity

36.1 The Contractor shall:

36.1.1 perform its obligations under the Contract (including those in relation to provision of the Services) in accordance with:

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
- (b) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;

36.1.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

36.2 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in sex, age, race, gender, religion or belief, disability, sexual orientation, gender reassignment, maternity, pregnancy, marriage, civil partnership or otherwise) in employment.

36.3 The Contractor shall take all reasonable steps (at its own expense) to secure the observance of Clause 36.1 of this Schedule 2 by all of its servants, employees or agents of the Contractor engaged in performance of the Contract and shall impose on any Sub-contractor obligations substantially similar to those imposed on the Contractor by Clause 36.1 of this Schedule 2.

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- 36.4 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act 2010 due directly or indirectly to any act or omission by the Contractor, its agents, employees or Sub-contractors.
- 36.5 The Contractor shall (and shall use its reasonable endeavours to procure that the Contractor Personnel shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.
- 36.6 The Contractor shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.
- 36.7 Subject to Clause 19 (Liability) of this Schedule 2, the Contractor agrees to indemnify and keep indemnified the Authority against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under this Clause 36 (Equality And Diversity).

37 Health And Safety

- 37.1 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Contractor Personnel in the performance of the Services.
- 37.2 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 37.3 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises of the Authority and which may affect the Contractor in the performance of the Services.
- 37.4 The Contractor shall inform all Contractor Personnel engaged in the provision of Services at the Premises of the Authority of all known health and safety hazards and shall instruct those Contractor Personnel in connection with any necessary safety measures.
- 37.5 Whilst on the Premises of the Authority, the Contractor shall comply, and shall procure that the Contractor Personnel comply, with any health and safety measures implemented by the Authority in respect of persons working on those Premises.
- 37.6 The Contractor shall notify the Authority Representative immediately in the event of any incident occurring in the performance of the Services on the Premises of the Authority where that incident causes any personal injury or any damage to property which could give rise to personal injury.
- 37.7 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

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38 Relationship Of The Parties

- 38.1 Except as expressly provided otherwise in the Contract, nothing in the Contract, nor any actions taken by the Parties pursuant to the Contract shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

39 Service Of Notices And Communications

- 39.1 Any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
- 39.2 A notice shall be treated as having been received:
- 39.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
 - 39.2.2 if sent by first class recorded delivery mail on a normal Working Day, at 9.00 am on the second Working Day subsequent to the day of posting, or, if the notice was not posted on a Working Day, at 9.00 am on the third Working Day subsequent to the day of posting; or
 - 39.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

40 Freedom Of Information Act

- 40.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall:
- 40.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority, at the Contractor's expense, to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations;
 - 40.1.2 transfer to the Authority all requests for information that it receives under the FOIA and the Environmental Information Regulations ("Requests for Information") relating to the Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

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- 40.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Contractor's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- 40.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 40.2 The Contractor acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations.
- 40.3 The Contractor shall ensure that all Information is retained for disclosure in accordance with Clause 12 (Right Of Audit) of this Schedule 2 and shall permit the Authority to inspect such records as the Authority requests from time to time. Such an inspection may be undertaken virtually rather than in person if both Parties agree that it is reasonable and practicable to do so.
- 40.4 The Contractor acknowledges that the Commercially Sensitive Information is of indicative value only and that such information may be disclosed pursuant to Clause 14 (Right of Audit) of this Schedule 2.

41 Transparency

- 41.1 The Contractor recognises that the Authority is subject to PPN 01/17: Update to Transparency Principles (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>). The Contractor shall comply with the provision of this Clause 40 in order to assist the Authority with its compliance with its obligations under that PPN.
- 41.2 The Parties agree and acknowledge that the content of this Contract is not Confidential Information, except for:
- 41.2.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
- 41.2.2 Commercially Sensitive Information.

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41.3 Notwithstanding any other provision of this Contract, the Contractor hereby gives consent for the Authority to publish to the general public this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Contract agreed from time to time. The Authority may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

41.4 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

42 Force Majeure

42.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by giving written notice.

42.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

42.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 42.1 of this Schedule 2 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

43 Dispute Resolution

43.1 The Authority and the Contractor shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either notifying the other party of the dispute and such efforts shall involve the escalation of the dispute to senior management of each Party.

43.2 Nothing in this dispute resolution procedure shall prevent the Authority or the Contractor from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

43.3 If the dispute cannot be resolved by the Authority and the Contractor pursuant to Clause 43.1 of this Schedule 2, the Authority and the Contractor shall refer it to mediation pursuant to the procedure set out in Clause 43.5 of this Schedule 2 unless:

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- 43.3.1 the Authority considers that the dispute is not suitable for resolution by mediation; or
- 43.3.2 the Contractor does not agree to mediation.
- 43.4 The obligations of the Authority and the Contractor under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor and the Contractor Personnel shall comply fully with the requirements of the Contract at all times.
- 43.5 The procedure for mediation is as follows:
 - 43.5.1 a neutral adviser or mediator (the "Contract Mediator") shall be chosen by agreement between the Authority and the Contractor or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;
 - 43.5.2 the Authority and the Contractor shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Authority and the Contractor may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
 - 43.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - 43.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - 43.5.5 failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
 - 43.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

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44 Severability

- 44.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

45 Entire Agreement

- 45.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

46 Further Assurances

- 46.1 Each Party undertakes at the request of the other, and at the cost of the requesting party, to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

47 The Contracts (Rights Of Third Parties) Act 1999

- 47.1 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

48 Law And Jurisdiction

- 48.1 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 48.2 Subject to Clause 43 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.

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Schedule 3 Definitions and Interpretation

1 Definitions

- 1.1 In the Contract unless the context requires otherwise the following definitions shall be used for the purposes of interpreting the Contract. Other definitions that are not of general application are stated in the Clause where the definition first appears and shall apply only to that Clause unless otherwise shown below:

“Authority” means the Secretary of State for Health and Social Care acting as part of the Crown;

“Authority Data” means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- (a) supplied to the Contractor by or on behalf of the Authority; or
- (b) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or

any Personal Data for which the Authority is the Controller;

“Authority Representative” means the person authorised to act for the Authority for the purposes of the Contract, being the person specified in the Key Provisions;

“Biometric Data” means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;

“Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Change Control Process” means the change control process, if any, referred to in the Key Provisions;

“Commencement Date” means 1 July 2022;

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“Commercially Sensitive Information” means the information, if any, listed in Schedule 8 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Contractor, its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss;

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the GDPR. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 15 (Confidential Information));
- (b) was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information;

“Contract” means the form of contract at the front of this document and all schedules attached to the form of contract;

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in Schedule 6 (Pricing)) for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with Clause 5 (Price Adjustment On Extension Of Term) of Schedule 2;

“Contracting Authority” means any contracting authority as defined in Regulation 2 of the Regulations;

“Contractor” means the contractor named on the form of Contract on the second page

“Contractor Personnel” means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor engaged in the performance of the Contractor’s obligations under the Contract from time to time;

“Contractor Representative” means the individual authorised to act for the Contractor for the purposes of the Contract, being the person specified in the Key Provisions;

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“Contracts Finder” means the facility provided by the Cabinet Office to advertise contract opportunities available at <https://www.gov.uk/contracts-finder> and any successor facility or website;

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer” take the meaning given in the GDPR

“Crown” means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

“Data concerning health” means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation” means (i) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; (ii) Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement:

- (a) in the case of the Authority, of its employees, servants or agents; or
- (b) in the case of the Contractor, of its Sub-contractors or any Contractor Personnel,

in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other;

“DOTAS” if applicable means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

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“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

“Exit Day” shall have the meaning in the European Union (Withdrawal) Act 2018;

“Exit Plan” means the plan for the provisions of the Transitional Assistance Services in the event of the expiry or termination of the Contract, which is to be developed by the Parties pursuant to Clause 15 of Schedule 1;

“Expiry Date” means the date upon which the Contract shall end as specified in the Key Provisions;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Force Majeure” any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Contractor Personnel or any other failure in the Contractor’s or a Sub-contractors’ supply chain or, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;

“GDPR” means the General Data Protection Regulations (Regulation (EU) 2016/679);

“General Anti-Abuse Rule” if applicable, means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

“Halifax Abuse Principle” if applicable, means the principle explained in the CJEU Case C-255/02 Halifax and others;

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“Impact Assessment” has the meaning given to it in Clause 10.4 of Schedule 1;

“Implementation Plan” means the implementation plan, if any, referred to in the Key Provisions;

“Information” means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

“Intellectual Property Rights” includes but is not limited to patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, rights in software programmes, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Joint Controllers” means where two or more Controllers jointly determine the purposes and means of processing;

“Key Personnel” means those persons named in the Schedule 12 (Key Personnel) as being key personnel or such persons as shall be agreed in writing by the Authority from time to time;

“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

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- (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 (Definitions and Interpretation);

“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

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- (ii) under legislation creating offences concerning Fraud; or
- (iii) at common level 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 Definitions and Interpretation 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;

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“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 Definitions and Interpretation;

“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) 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 if any to be provided by the Contractor to the Authority pursuant to 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;

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“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 In entering into this Contract the Authority is acting as part of the Crown.
- 1.4 Any reference in this Contract which immediately before Exit Day is a reference to (as it has effect from time to time):

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- 1.4.1 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
- 1.4.2 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:

“Business as Usual Volume” means the aggregate volume of the Products supplied to all Customers by the Contractor in each Month (calculated as a Monthly average over the four Month period from January- March 2019 and November- December 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 Northern Ireland 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 in the column headed “Minimum Stockbuild Shelf-Life” in the table in Annex 1 to this Schedule 4;

“Premises” means Cestrian Court, Manor Park, Runcorn, 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.

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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 the Commencement Date, 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 15 December 2022, 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 with an up to date "Reserve Stock Levels Report" (as set out in Clause 2.2.1 of Schedule 7); a "Demand and Order Fulfilment Report" (as set out in Clause 2.2.2 of Schedule 7), and a "Forecasting Report" (as set out in Clause 3 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 2.3 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 2.3 of this Schedule 4.
- 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 The Parties will comply with the exit plan set out in Annex 3 of this Schedule 4 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.

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- 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 15 December 2022 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. 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 Business as Usual 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 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.

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- 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 Business as Usual Volume, 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 Commencement Date to [15 December 2022] (or such other date as may be agreed pursuant to Clauses 2.3 and 2.5 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 Clause 2.3 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 [15 December 2022] (or such other date as may be agreed pursuant to Clauses 2.3 and 2.5 of this Schedule 4) exceeds the Business as Usual Volume for that Month:

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- 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 2.2 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 Clause 2.3 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 4,

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.

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Annex 1 to Schedule 4

Products and Total Volume of Reserve Stock by Year

Product Type	MPC	Products	Unit of Measure	Total Volume of Reserve Stock (Year 1)	Total Volume of Reserve Stock Volume (Year 2)	Total Volume of Reserve Stock Volume (Year 3)	Minimum Stockbuild ShelfLife (month)
Giving Sets	7751914	Amika Bag w.c., ENFit ST	Eaches	4,151	946	0	24
Giving Sets	7751916	Amika EB mobil w.c., ENFit ST	Eaches	12,744	5,443	0	24
Giving Sets	7751917	Amika EB w.c., ENFit ST	Eaches	28,327	12,948	1,413	24
Tube Feed	7135221	Fresubin Intensive	500ml	6,750	4,222	2,327	9
Tube Feed	7190221	Fresubin 2kcal HP	500ml	20,927	15,005	10,564	9
Tube Feed	7191221	Fresubin 2kcal HP Fibre	500ml	10,044	7,275	5,199	9
Tube Feed	7987231	Fresubin HP Energy Fibre	1000ml	4,346	1,910	82	9

*The Parties acknowledge and agree that the Contractor may supply these Products to Customers in 500ml units, in which case the 500ml units supplied will count towards the volumes specified in this Contract on a pro rata basis. For example, every 500ml unit of these Products supplied to Customers will count as 0.5 units for the purposes of the volumes specified in this Contract for each Product

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Annex 2 to Schedule 4

Business as Usual Volumes

Products	Unit of Measure	Business as Usual Volume
Amika Bag w.c., ENFit ST	Eaches	2,167
Amika EB mobil w.c., ENFit ST	Eaches	4,115
Amika EB w.c., ENFit ST	Eaches	8,298
Fresubin Intensive	500ml	840
Fresubin 2kcal HP	500ml	690
Fresubin 2kcal HP Fibre	500ml	258

*The Parties acknowledge and agree that the Contractor may supply these Products to Customers in 500ml units, in which case the 500ml units supplied will count towards the volumes specified in this Contract on a pro rata basis. For example, every 500ml unit of these Products supplied to Customers will count as 0.5 units for the purposes of the volumes specified in this Contract for each Product

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Annex 3 to Schedule 4

Exit plan

1 Purpose

- 1.1 This exit plan has been prepared pursuant to Clause 2.7 of Schedule 4 of the Contract. It sets out the process to be followed by the Parties upon the expiry or termination of the Contract.
- 1.2 The definitions and rules of interpretation set out in the Contract apply to this exit plan unless the context requires otherwise.

2 Reporting and Contract Management Requirements

- 2.1 Within 14 days of the expiry or termination of the Contract, the Contractor will submit to the Authority in writing:
 - 2.1.1 final versions of the reports referred to in Clauses 2.1 and 2.2 of Schedule 7 of the Contract; and
 - 2.1.2 a completed report in the form set out in paragraph 5 below.
- 2.2 Within 14 days of the submission of the reports specified in paragraph 2.1 above, the Authority Representative and the Contractor Representative (and such other representatives of the Parties as may be reasonably required) will meet to discuss the reports submitted by the Contractor, identify any issues or points for escalation and mitigation, and to discuss the Contractor's performance and other matters connected to the Contract.
- 2.3 If the reports submitted by the Contractor under paragraph 2.1 above or the contract management meetings held under paragraph 2.2 above 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 43 of Schedule 2 of the Contract.

3 Payment for Reserve Stock at the end of the Term

- 3.1 Clauses 2 and 3 of Schedule 6 of the Contract will apply in relation to the Authority's payment to the Contractor for unused Reserve Stock remaining at the end of the Term.

4 Consequences of Expiry or Termination

- 4.1 The Parties acknowledge and agree that Clause 25 of Schedule 2 of the Contract will apply on the expiry or termination of the Contract. The Parties will continue to comply with any provisions of the Contract that expressly or by implication continue after the expiry or termination of the Contract.

5 Final Reconciled Report

- 5.1 The report referred to in paragraph 2.1.2 above will be in the following form:

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

Conditions of Contract for the Provision of Services

Product Type	Product		Minimum Viable Shelf-Life (months)	Unused Viable Reserve Stock Percentage (%)	Unit Price for Unused viable reserve stock	Unused Viable Reserve Stock Volume	Total Cost of Unused Viable Reserve Stock
Giving Sets	Amika Bag w.c., ENFit ST	Eaches		22%		[to be inserted]	[to be inserted]
Giving Sets	Amika EB mobil w.c., ENFit ST	Eaches	24	22%		[to be inserted]	[to be inserted]
Giving Sets	Amika EB w.c., ENFit ST	Eaches	24	22%		[to be inserted]	[to be inserted]
Tube Feed	Fresubin Intensive	500ml	24	22%		[to be inserted]	[to be inserted]
Tube Feed	Fresubin 2kcal HP	500ml	9	23%		[to be inserted]	[to be inserted]
Tube Feed	Fresubin 2kcal HP Fibre	500ml	9	23%		[to be inserted]	[to be inserted]
Tube Feed	Fresubin HP Energy Fibre	1000ml	9	23%		[to be inserted]	[to be inserted]
			9				

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Conditions of Contract for the Provision of Services

Product Type	Product	Unit of Measure	Minimum Viable Shelf-Life (months)	Unused Non-Viable Reserve Stock Percentage (%)	Unit Price for Unused Non-viable reserve stock	Unused Non-Viable Reserve Stock Volume	Total Cost of Unused Non-Viable Reserve Stock (£)
Giving Sets	Amika Bag w.c., ENFit ST	Eaches		22%		[to be inserted]	[to be inserted]
Giving Sets	Amika EB mobil w.c., ENFit ST	Eaches	24	22%		[to be inserted]	[to be inserted]
Giving Sets	Amika EB w.c., ENFit ST	Eaches	24	22%		[to be inserted]	[to be inserted]
Tube Feed	Fresubin Intensive	500ml	24	22%		[to be inserted]	[to be inserted]
Tube Feed	Fresubin 2kcal HP	500ml	9	23%		[to be inserted]	[to be inserted]
Tube Feed	Fresubin 2kcal HP Fibre	500ml	9	23%		[to be inserted]	[to be inserted]
Tube Feed	Fresubin HP Energy Fibre	1000ml	9	23%		[to be inserted]	[to be inserted]
			9				

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RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS
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Schedule 5 [Not Used]

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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 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;

“Minimum Viable Shelf-Life” means the minimum Shelf-Life in relation to each of the Products for the purposes of Clause 3 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 1 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 Payment of Reserve Stock Price

- 2.1 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 2.1 of this Schedule 6 will not be deemed to have been supplied from the Reserve Stock.

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- 2.2 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. 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.
- 2.3 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 2.2 of this Schedule 6 and the Parties will comply with Clause 4 of Schedule 2 in relation to each invoice issued.
- 3 Payment for Reserve Stock at the end of the Term**
- 3.1 Subject to Clauses 2.3 and 3.2 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:
- 3.1.1 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
- 3.1.2 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.
- 3.2 The Authority will only be required to pay for Reserve Stock under Clause 3.1 of this Schedule 6 provided that the Contractor:
- 3.2.1 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;

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- 3.2.2 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;
- 3.2.3 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.
- 3.3 Subject to Clause 4.1 of this Schedule 6, the Contractor will issue the Authority with an invoice for any amounts payable under Clause 3.1 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.
- 3.4 If the Authority makes a payment for Reserve Stock at the end of the Term under Clause 3.1 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 43 of Schedule 2.
- 4 Reconciliation**
- 4.1 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.

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Conditions of Contract for the Provision of Services

Annex 1 to Schedule 6

Unit Prices, Average Selling Prices and Reserve Stock Prices

Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Conditions of Contract for the Provision of Services

Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests

*The Parties acknowledge and agree that the Contractor may supply these Products to Customers in 500ml units, in which case the 500ml units supplied will count towards the volumes specified in this Contract on a pro rata basis. For example, every 500ml unit of these Products supplied to Customers will count as 0.5 units for the purposes of the volumes specified in this Contract for each Product

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Annex 2 to Schedule 6

Unused Stock – Viable and Non-Viable Payment Rates

Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests

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Interests	43(2), Commercial Interests		43(2), Commercial Interests	Interests	Interests		
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests
Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests	Redacted Under FOIA Section 43(2), Commercial Interests

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Schedule 7 Contract monitoring

1 Definitions and Interpretation

- 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 2.4.2 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):

- (a) Product name and stock-keeping unit (SKU) size of the Reserve Stock;
- (b) quantity of each Product forming the Reserve Stock in stock at the Premises;
- (c) Shelf-Life remaining for each of the Products forming the Reserve Stock in stock at the Premises;
- (d) 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);
- (e) percentage of the Total Volume of Reserve Stock remaining for each of the Products forming the Reserve Stock; and

2.2.2 “Demand and Order Fulfilment Report”, including (but not limited to):

- (a) volume of Products supplied at Product and unit of issue level by each Customer;
- (b) details of any unusual or outlier Product orders queried with any Customers at the time of receipt; and
- (c) 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:

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- (d) volume of Products ordered at Product and unit of issue level by each Customer;
- (e) date of Product order requests from Customers; and
- (f) date of Product orders despatched to Customers.

2.2.3 "Forecast Report", including but not limited to:

- (a) predicted order volume for the following month
- (b) predicted order volume for the following quarter
- (c) predicted order volume for the following 6 month-period
- (d) and predicted order volume for the following 12 month-period

- 2.2A The Contractor shall monitor returns from Customers of Products supplied by the Contractor that relate to the remaining Shelf-Life of the Products. Where there are two or more instances of returns from Customers of Products supplied by the Contractor with Shelf-Life of three months or more in any Month, the Contractor shall notify the Authority by including details of the returns in the Monthly reports submitted by the Contractor under Clause 2.1 of this Schedule 7 and the matter shall be discussed at the Monthly meetings held under Clause 2.5 of this Schedule 7.
- 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.

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- 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 43 of Schedule 2.

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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”)

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

[Insert details of the Variation]

Words and expressions in this Variation shall have the meanings given to them in the Contract.

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

Name (in Capitals)

Address

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Schedule 10 Staff Transfer

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

“Admission Contract” means the agreement to be entered into by which the Contractor agrees to participate in the Schemes as amended from time to time;

“Eligible Employee” means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Contract;

“Contractor's Final Contractor Personnel List” means a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

“Contractor's Provisional Contractor Personnel List” means 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;

“Fair Deal Employees” means 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” means 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” means 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” means 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” means 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” means a transfer of employment to which the Employment Regulations applies;

“Relevant Transfer Date” means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

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“Schemes” means 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” means 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” means the date of a Service Transfer;

“Staffing Information” means 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;

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“Transferring Authority Employees” means those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Former Contractor Employees” means 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” means 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

- 2.1 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

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PART B

Not Used

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PART C

No transfer of employees at commencement of Services

3 PROCEDURE IN THE EVENT OF TRANSFER

- 3.1 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.
- 3.2 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:
- 3.2.1 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
- 3.2.2 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.
- 3.3 If an offer referred to in Paragraph 3.2.2 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.
- 3.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 3.2.2:
- 3.4.1 no such offer of employment has been made;
- 3.4.2 such offer has been made but not accepted; or
- 3.4.3 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.

4 INDEMNITIES

- 4.1 Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 3.2 to 3.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 4.4, the Authority shall:

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- 4.1.1 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 3.2 made pursuant to the provisions of Paragraph 3.4 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 4.1.2 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 3.4 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 4.2 If any such person as is described in Paragraph 3.2 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 3.4 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.
- 4.3 Where any person remains employed by the Contractor and/or any Sub-contractor pursuant to Paragraph 4.2, 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.
- 4.4 The indemnities in Paragraph 4.1:
 - 4.4.1 shall not apply to:
 - (a) any claim for:
 - (i) 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
 - (ii) 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
 - (b) 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

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- 4.4.2 shall apply only where the notification referred to in Paragraph 3.2.1 is made by the Contractor and/or any Sub-contractor to the Authority and, if applicable, Former Contractor within six (6) Months of the Commencement Date.

5 PROCUREMENT OBLIGATIONS

- 5.1 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.

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PART D

Employment exit provisions

6 PRE-SERVICE TRANSFER OBLIGATIONS

- 6.1 The Contractor agrees that within twenty (20) Working Days of the earliest of:
- 6.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - 6.1.2 receipt of the giving of notice of early termination of this Contract;
 - 6.1.3 the date which is twelve (12) Months before the end of the Term; and
 - 6.1.4 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.
- 6.2 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:
- 6.2.1 the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
 - 6.2.2 the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).
- 6.3 The Authority shall be permitted to use and disclose information provided by the Contractor under Paragraphs 6.1 and 6.2 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-contractor.
- 6.4 The Contractor warrants, for the benefit of the Authority, any Replacement Contractor, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 6.1 and 6.2 shall be true and accurate in all material respects at the time of providing the information.
- 6.5 From the date of the earliest event referred to in Paragraph 6.1.1, 6.1.2 and 6.1.3, 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):

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- 6.5.1 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;
- 6.5.2 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);
- 6.5.3 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;
- 6.5.4 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;
- 6.5.5 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
- 6.5.6 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.

- 6.6 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:

- 6.6.1 the numbers of employees engaged in providing the Services;
- 6.6.2 the percentage of time spent by each employee engaged in providing the Services; and
- 6.6.3 a description of the nature of the work undertaken by each employee by location.

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6.7 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:

- 6.7.1 the most recent Month's copy pay slip data;
- 6.7.2 details of cumulative pay for tax and pension purposes;
- 6.7.3 details of cumulative tax paid;
- 6.7.4 tax code;
- 6.7.5 details of any voluntary deductions from pay; and
- 6.7.6 bank/building society account details for payroll purposes.

7 EMPLOYMENT REGULATIONS EXIT PROVISIONS

7.1 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.

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- 7.2 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.
- 7.3 Subject to Paragraph 7.4, 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:
- 7.3.1 any act or omission of the Contractor or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - 7.3.2 the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (b) 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;
 - 7.3.3 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;
 - 7.3.4 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:
 - (a) 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

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- (b) 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;
- 7.3.5 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);
- 7.3.6 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
- 7.3.7 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.
- 7.4 The indemnities in Paragraph 7.3 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:
 - 7.4.1 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
 - 7.4.2 arising from the Replacement Contractor's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

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- 7.5 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:
- 7.5.1 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
- 7.5.2 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.
- 7.6 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.
- 7.7 If after the fifteen (15) Working Day period specified in Paragraph 7.5.2 has elapsed:
- 7.7.1 no such offer of employment has been made;
- 7.7.2 such offer has been made but not accepted; or
- 7.7.3 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.
- 7.8 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 7.5 to 7.7, 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 7.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 7.9 The indemnity in Paragraph 7.8:
- 7.9.1 shall not apply to:
- (a) any claim for:

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- (i) 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
 - (ii) 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
 - (b) 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
- 7.9.2 shall apply only where the notification referred to in Paragraph 7.5.1 is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor within six (6) Months of the Service Transfer Date.
- 7.10 If any such person as is described in Paragraph 7.5 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 7.5 to 7.7, 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.
- 7.11 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:
- 7.11.1 the Contractor and/or any Sub-contractor; and
 - 7.11.2 the Replacement Contractor and/or the Replacement Sub-contractor.

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- 7.12 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.
- 7.13 Subject to Paragraph 7.14, 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:
- 7.13.1 any act or omission of the Replacement Contractor and/or Replacement Sub-contractor;
 - 7.13.2 the breach or non-observance by the Replacement Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (b) 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;
 - 7.13.3 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;
 - 7.13.4 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;

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- 7.13.5 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;
- 7.13.6 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:
- (a) 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
 - (b) 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;
- 7.13.7 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
- 7.13.8 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.
- 7.14 The indemnities in Paragraph 7.13 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.

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Annex 1to Schedule 10: List of Notified Sub Contractors

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Schedule 11 [Not Used]

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Schedule 12 Key Personnel

Key Role	Name of Key Personnel	Responsibilities / Authorities	Minimum period in Key Role
Business Unit Manager – Clinical Nutrition			
Enteral Marketing Manager			
Head of Enteral Sales			
National Sales Manager			
Financial Controller			

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Schedule 13

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Schedule 14 Business Continuity and Disaster Recovery

1 Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 3 (Definitions and Interpretation):

“**BCDR Plan**” means has the meaning given to it in Paragraph 2.1 of this Schedule;

“**Business Continuity Plan**” means has the meaning given to it in Paragraph 2.2.2 of this Schedule;

“**Disaster Recovery Plan**” means has the meaning given to it in Paragraph 2.2.3 of this Schedule;

“**Related Contractor**” means any person who provides Deliverables to the Authority which are related to the Deliverables from time to time;

“**Review Report**” means has the meaning given to it in Paragraph 6.3 of this Schedule; and

“**Contractor's Proposals**” means has the meaning given to it in Paragraph 6.3 of this Schedule;

2 BCDR Plan

- 2.1 At least ninety (90) Working Days prior to the Start Date the Contractor shall prepare and deliver to the Authority for the Authority’s written approval a plan (a “BCDR Plan”), which shall detail the processes and arrangements that the Contractor shall follow to:

2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and

2.1.2 the recovery of the Deliverables in the event of a Disaster

- 2.2 The BCDR Plan shall be divided into three sections:

2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;

2.2.2 Section 2 which shall relate to business continuity (the “Business Continuity Plan”); and

2.2.3 Section 3 which shall relate to disaster recovery (the “Disaster Recovery Plan”).

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- 2.3 Following receipt of the draft BCDR Plan from the Contractor, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3 General Principles of the BCDR Plan (Section 1)**3.1** Section 1 of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Authority by a Related Contractor;
- 3.1.3 contain an obligation upon the Contractor to liaise with the Authority and any Related Contractors with respect to business continuity and disaster recovery;
- 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Authority and any of its other Related Contractor in each case as notified to the Contractor by the Authority from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
 - (c) identification of risks arising from an Insolvency Event of the Contractor, any Key Subcontractors and/or Contractor Group member;
 - (d) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Contractor; and
 - (e) a business impact analysis of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details for the Contractor (and any Subcontractors) and for the Authority;

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- 3.1.9 identify the procedures for reverting to “normal service”;
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
- 3.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical assistance to key contacts at the Authority as required by the Authority to inform decisions in support of the Authority’s business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
 - 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
 - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Contractor shall not be entitled to any relief from its obligations under the Service Levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Contractor of this Contract.
- 4 Business Continuity (Section 2)**
 - 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
 - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
 - 4.1.2 the steps to be taken by the Contractor upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
 - 4.2 The Business Continuity Plan shall:
 - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;

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- 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
- 4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
- 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

5 Disaster Recovery (Section 3)

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Contractor's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
 - 5.2.1 loss of access to the Authority Premises;
 - 5.2.2 loss of utilities to the Authority Premises;
 - 5.2.3 loss of the Contractor's helpdesk or CAFM system;
 - 5.2.4 loss of a Subcontractor;
 - 5.2.5 emergency notification and escalation process;
 - 5.2.6 contact lists;
 - 5.2.7 staff training and awareness;
 - 5.2.8 BCDR Plan testing;
 - 5.2.9 post implementation review process;
 - 5.2.10 any applicable Service Levels with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
 - 5.2.11 details of how the Contractor shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - 5.2.12 access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Schedule; and
 - 5.2.13 testing and management arrangements.

6 Review and changing the BCDR Plan

- 6.1 The Contractor shall review the BCDR Plan:

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- 6.1.1 on a regular basis and as a minimum once every six (6) Months;
 - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
 - 6.1.3 where the Authority requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Contractor shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Contractor shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Contractor shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Contractor within such period as the Authority shall reasonably require.
- 6.3 The Contractor shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a "Review Report") setting out the Contractor's proposals (the "Contractor's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the Contractor's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Contractor's Proposals. If the Parties are unable to agree Review Report and the Contractor's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Contractor shall as soon as is reasonably practicable after receiving the approval of the Contractor's Proposals effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.
- 7 Testing the BCDR Plan**
- 7.1 The Contractor shall test the BCDR Plan:
- 7.1.1 regularly and in any event not less than once in every Contract Year;
 - 7.1.2 in the event of any major reconfiguration of the Deliverables

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- 7.1.3 at any time where the Authority considers it necessary (acting in its sole discretion).
- 7.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Contractor written notice and the Contractor shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Contractor's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Contractor's costs of that failed test shall be borne by the Contractor.
- 7.3 The Contractor shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority.
- 7.4 The Contractor shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.5 The Contractor shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
- 7.5.1 the outcome of the test;
- 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
- 7.5.3 the Contractor's proposals for remedying any such failures.
- 7.6 Following each test, the Contractor shall take all measures requested by the Authority to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Contractor, at its own cost, by the date reasonably required by the Authority.
- 8 Invoking the BCDR Plan**
- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Contractor shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Contractor shall invoke or test the BCDR Plan only with the prior consent of the Authority.

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Schedule 15 Processing, Personal Data and Data Subjects

1 The Parties acknowledge and agree that:

- 1.1 they are Independent Controllers for the purposes of the Data Protection Legislation in relation to Personal Data that may be shared under this Contract;
- 1.2 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
- 1.3 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:

- 2.1 business contact details of Contractor Personnel;
- 2.2 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
- 2.3 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.