

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.
- 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:

- (a) "Controller" (where the other Party acts as the "Processor");
- (b) "Processor" (where the other Party acts as the "Controller");
- (c) "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);
- (d) "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 13 (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 13 (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.

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:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;

- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) 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:

- (a) process that Personal Data only in accordance with Schedule 13 (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;
- (b) 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:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 13 (Processing, Personal Data and Data Subjects));

- (ii) 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:
 - (A) are aware of and comply with the Processor's duties under this Clause, Clauses 15 (Confidential Information) and 16 (Authority Data);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) 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
 - (D) adequate training in the use, care, protection and handling of Personal Data;
- (d) 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

- (e) 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:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) 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
- (f) 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:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) 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;

- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event; and/or
 - (e) 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:
- (a) the Controller determines that the processing is not occasional;
 - (b) 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
 - (c) 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:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) 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

- (d) 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 17.17, 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:
- (a) to the extent necessary to perform the respective obligations under this Contract;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - (c) where it has recorded it in Schedule 13 (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**"):
- (a) 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
 - (b) 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:
 - (i) 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

- (ii) 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:

- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
- (b) implement any measures necessary to restore the security of any compromised Personal Data;
- (c) 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
- (d) 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 13 (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. For the avoidance of doubt, all Intellectual Property Rights in the Products (as defined in Clause 1 of Schedule 4) shall belong to the Contractor and nothing in this Contract shall be deemed to transfer any Intellectual Property Rights, title or ownership in such Products to the Authority and no licence to any Intellectual Property Rights in such Products is granted to the Authority pursuant to this Contract.

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.

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 Subject to Clause 18.1 of this Schedule 2, 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 owns or develops on or after 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
- 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

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, 19.6 and 19.7 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.

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Appendix A – Terms of Participation

- 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, 19.7 and 19.8 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 [REDACTED] or
- 19.5.2 [REDACTED] 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;
- 19.7.3 is equal to, exceeds or will exceed [REDACTED] at Clause 19.5 of this Schedule 2 shall be replaced with [REDACTED] and the figure of [REDACTED] at Clause 19.5 of this Schedule 2 shall be deemed to have been deleted and replaced with [REDACTED]
- 19.8 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 [REDACTED]

19.9 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:

19.9.1 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;

19.9.2 any wasted expenditure or charges;

19.9.3 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;

19.9.4 any compensation or interest paid to a third party by the Authority; and

19.9.5 any fine, penalty or costs incurred by the Authority pursuant to Law.

19.10 Each Party shall use its respective reasonable endeavours to mitigate any loss or damage suffered arising out of or connection with the Contract.

19.11 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.

19.12 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.
- 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.

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,

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:

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Appendix A – Terms of Participation

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).

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

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Appendix A – Terms of Participation

- 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
- 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) adversely impacts on the Contractor's ability to supply the Services in accordance with the Contract; or
 - (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

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Appendix A – Terms of Participation

- 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.
- 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:

(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 Services Commencement Date, if any;
 - 23.3.2 pursuant to and in accordance with the Key Provisions and Clauses 9.6, 15.11, 18.2.3, 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.

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 Termination), 27 (Recovery upon Termination), 29 (Waiver and Remedies Cumulative), 31 (Official Secrets Acts and Finance Act), 32 (Prevention of Fraud and Bribery), 39 (Freedom of Information Act) and 47 (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.
- 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 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.
- 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.

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 38 (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 Subject to Clause 30.2 of this Schedule 2, the Parties shall not (and the Contractor 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 other Party's name or brand in any promotion or marketing or announcement,
- without the prior written consent of the other Party.
- 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 PREVENTION OF FRAUD AND BRIBERY

32.1 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:

32.1.1 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

32.1.2 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.

32.2 The Contractor shall not during the Term:

32.2.1 commit a Prohibited Act; and/or

32.2.2 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.

32.3 The Contractor shall during the Term:

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Appendix A – Terms of Participation

- 32.3.1 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;
 - 32.3.2 keep appropriate records of its compliance with its obligations under Clause 32.3.1 of this Schedule 2 and make such records available to the Authority on request;
 - 32.3.3 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
 - 32.3.4 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.
- 32.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 32.1 of this Schedule 2, or has reason to believe that it has or any of the Contractor Personnel has:
- 32.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 32.4.2 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
 - 32.4.3 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.

- 32.5 If the Contractor makes a notification to the Authority pursuant to Clause 32.4, 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.
- 32.6 If the Contractor breaches Clause 32.1 of this Schedule 2, the Authority may by notice:
- 32.6.1 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
- 32.6.2 immediately terminate the Contract pursuant to Clause 23.2.1(a) of this Schedule 2.
- 32.7 Any notice served by the Authority under Clause 32.6 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).

33 NON-SOLICITATION

- 33.1 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.
- 33.2 If either the Contractor or the Authority commits any breach of Clause 33.1 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 CONFLICT OF INTEREST

- 34.1 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 34 in order to assist the Authority with its compliance with its obligations under that PPN.
- 34.2 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.
- 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 EQUALITY AND DIVERSITY

- 35.1 The Contractor shall:

- 35.1.1 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;
- 35.1.2 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).
- 35.2 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.
- 35.3 The Contractor shall take all reasonable steps (at its own expense) to secure the observance of Clause 35.1 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 35.1 of this Schedule 2.
- 35.4 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.
- 35.5 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.

35.6 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.

35.7 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 35 (Equality and Diversity).

36 HEALTH AND SAFETY

36.1 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.

36.2 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.

36.3 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.

36.4 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.

36.5 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.

36.6 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.

36.7 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.

37 RELATIONSHIP OF THE PARTIES

37.1 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.

38 SERVICE OF NOTICES AND COMMUNICATIONS

38.1 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.

38.2 A notice shall be treated as having been received:

38.2.1 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

38.2.2 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

38.2.3 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.

39 FREEDOM OF INFORMATION ACT

39.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall:

39.1.1 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;

39.1.2 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;

39.1.3 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

39.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

39.2 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.

39.3 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.

39.4 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.

40 TRANSPARENCY

40.1 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.

40.2 The Parties agree and acknowledge that the content of this Contract is not Confidential Information, except for:

40.2.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

40.2.2 Commercially Sensitive Information.

40.3 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.

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

41 FORCE MAJEURE

41.1 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.

- 41.2 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.
- 41.3 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 41.1 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.

42 DISPUTE RESOLUTION

- 42.1 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.
- 42.2 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.
- 42.3 If the dispute cannot be resolved by the Authority and the Contractor pursuant to Clause 42.1 of this Schedule 2, the Authority and the Contractor shall refer it to mediation pursuant to the procedure set out in Clause 47.5 of this Schedule 2 unless:
- 42.3.1 the Authority considers that the dispute is not suitable for resolution by mediation;
or
- 42.3.2 the Contractor does not agree to mediation.

- 42.4 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.
- 42.5 The procedure for mediation is as follows:
- 42.5.1 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;
 - 42.5.2 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;
 - 42.5.3 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;
 - 42.5.4 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;
 - 42.5.5 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

42.5.6 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.

43 SEVERABILITY

43.1 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.

44 ENTIRE AGREEMENT

44.1 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.

45 FURTHER ASSURANCES

45.1 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.

46 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

46.1 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.

47 LAW AND JURISDICTION

47.1 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.

47.2 Subject to Clause 42 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.

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:

"Anti-slavery Policy" means the Contractor's slavery and human trafficking policy, if any;

"Authority" means the Secretary of State for Health 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 the date of this Contract;

"Commercially Sensitive Information" means the information 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:

1. was public knowledge at the time of disclosure (otherwise than by breach of Clause 15 (Confidential Information));
2. was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
3. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

4. 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;

“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;

“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-contractor’s 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;

“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 11 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
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;

"Party" means a party to the Contract;

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

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

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

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

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

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

“Prohibited Act” means:

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

- (b) committing any offence:
 - (i) under the Bribery Act 2010; or
 - (ii) under legislation creating offences concerning Fraud; or
 - (iii) at common 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 (Specification) and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Schedule 4 - Specification

1 Definitions and Interpretation

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

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

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

“Customers” means NHS bodies (including NHS bodies that operate field hospitals) in England, Wales, Scotland and 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 the column headed “Minimum Stockbuild Shelf-Life” in the table in Annex 1 to this Schedule 4;

“Premises” means Sovereign House, 1-2 Bingham Road, Sittingbourne, Kent ME10 3SU or such other premises that may be agreed by the Parties from time to time provided that the Authority shall not unreasonably withhold its agreement to any request from the Contractor to change the location of the Premises but the Premises shall at all times be within the mainland of the United Kingdom;

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

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

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

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

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

2 Establishment of Reserve Stock

- 2.1 The Contractor agrees that it will establish a reserve of the Products which will form the Reserve Stock and which will be stored, managed, distributed and reported on as set out in this Schedule 4.
- 2.2 The Contractor will store the Reserve Stock at the Premises at all times during the Term until it is distributed to Customers in accordance with this Schedule 4.
- 2.3 The Contractor will ensure that it has in stock at the Premises not less than 50% of the Total Volume of Reserve Stock by 15th November 2020, or such other date as may be agreed between the Parties.
- 2.4 The Contractor will ensure that it has in stock at the Premises not less than 100% of the Total Volume of Reserve Stock by 15th December 2020, or such other date as may be agreed between the Parties.
- 2.5 The Contractor will:
 - 2.5.1 notify the Authority as soon as reasonably practicable once it has complied with the requirements specified in Clauses 2.3 and 2.4 of this Schedule 4 in relation to the Total Volume of Reserve Stock; and

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

3 Storage of Reserve Stock

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

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

4 Supply of Reserve Stock

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