

Annex 2 to Schedule 4

Business as Usual Volumes

Products	Unit of Measure	Business as Usual Volume
Amika Bag w.c., ENFit ST	Eaches	2,167
Amika EB mobil w.c., ENFit ST	Eaches	4,115
Amika EB w.c., ENFit ST	Eaches	8,298
Fresubin Intensive	500ml	840
Fresubin 2kcal HP	500ml	690
Fresubin 2kcal HP Fibre	500ml	258
Fresubin HP Energy*	1000ml	6,750
Fresubin HP Energy Fibre*	1000ml	1,350

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

Schedule 5 – Not Used

Schedule 6 - Pricing

1 Definitions and Interpretation

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

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

“Business as Usual Volume” means the aggregate volume of the Products supplied to all Customers by the Contractor in each Month (calculated as a Monthly average over the six Month period from September 2019 to February 2020), as set out in the table in Annex 2 to this Schedule 6. 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;

“Minimum Viable Shelf-Life” means the minimum Shelf-Life in relation to each of the Products for the purposes of Clause 3 of this Schedule 6 as set out in the column headed “Minimum Viable Shelf-Life” in the table in Annex 2 to this Schedule 6;

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

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

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

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

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

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

2 Payment of Reserve Stock Price

- 2.1 Where the total aggregate volume of Products purchased by all Customers during any Month is less than the Business as Usual Volume of the Products for that Month, the Contractor will continue to supply the Products in accordance with any terms and conditions that are in place between the Contractor and each Customer from time to time, including as to the price of the Products, and the Authority will have no obligations in relation to the supply of such Products or to make any payment to the Contractor for the Products. For the avoidance of doubt, Products supplied pursuant to this Clause 2.1 of this Schedule 6 will not be deemed to have been supplied from the Reserve Stock.
- 2.2 Where the total aggregate volume of Products purchased by all Customers during any Month has exceeded the Business as Usual Volume of the Products for that Month, the Contractor will continue to supply the Products in accordance with any terms and conditions that are in place between the Contractor and each Customer from time to time, including as to the price of the Products, which will be deemed to have been supplied from the Reserve Stock. The Authority agrees that for each Product supplied that is above the Business as Usual Volume for that Product, it will be responsible for paying the Contractor the Reserve Stock Price for the Reserve Stock supplied.
- 2.3 Where the Contractor supplies Reserve Stock to Customers in any Month, the Contractor will issue the Authority with invoices Monthly in arrears for the Reserve Stock Price payable by the Authority under Clause 2.2 of this Schedule 6 and the Parties will comply with Clause 4 of Schedule 2 in relation to each invoice issued.

3 Payment for Reserve Stock at the end of the Term

- 3.1 Subject to Clause 3.2 of this Schedule 6, if at the end of the Term the Contractor continues to store any Reserve Stock and it has not been possible to rotate the remaining Reserve Stock despite the Contractor using its reasonable endeavours to maximise the Shelf-Life of the Reserve Stock during the term and minimise any obsolete Reserve Stock at the end of the Term as required by Clause 3.5 of Schedule 4 or supply them to a Customer, the Authority

will pay a percentage of the Unit Price of these Products based on the remaining Shelf-Life of each Product, as follows:

- 3.1.1 for Products that have a remaining Shelf-Life of equal to or greater than the Minimum Viable Shelf-Life (as set out in Annex 2 of this Schedule 6 for each Product), the Authority will pay the Contractor the Unused Viable Reserve Stock Percentage of the Unit Price for that Product; and
 - 3.1.2 for Products that have a remaining Shelf-Life of less than the Minimum Viable Shelf-Life (as set out in Annex 2 of this Schedule 6 for each Product), the Authority will pay the Contractor the Unused Non-Viable Reserve Stock Percentage of the Unit Price for that Product.
- 3.2 The Authority will only be required to pay for Reserve Stock under Clause 3.1 of this Schedule 6 provided that the Contractor:
- 3.2.1 submits evidence to the reasonable satisfaction of the Authority that the Products remain in the possession of the Contractor and have not been sold to a Customer or a third party;
 - 3.2.2 notifies the Authority of the reasons why the Products could not be rotated to maintain a Shelf-Life of equal to or greater than the Minimum Viable Shelf-Life (as set out in Annex 2 of this Schedule 6 for each Product) and provides such evidence as the Authority may reasonably require in relation to the Contractor's compliance with its obligations in under Clause 3.5 of Schedule 4 and in particular evidence of the Contractor's rotation of the Products in each Month and its performance against the Business as Usual Volumes;
 - 3.2.3 has notified the Authority no less than three Months prior to the end of the Term if the Contractor believes that any of the Reserve Stock will remain in the possession of the Contractor at the end of the Term for the reasons described above.
- 3.3 The Contractor will issue the Authority with an invoice for any amounts payable under Clause 3.1 of this Schedule 6 within 30 days of the end of the Term and the Parties will comply with Clause 4 of Schedule 2 in relation to that invoice.

- 3.4 If the Authority makes a payment for Reserve Stock at the end of the Term under Clause 3.1 of this Schedule 6 and the Contractor is able to sell any of that Reserve Stock to a third party or to a Customer, the Contractor will pay to the Authority a percentage of the price paid by the third party or Customer to the Contractor, which will be agreed between the Parties in relation to each Product supplied to a third party or to a Customer, and if the Parties are unable to agree to such a percentage for any Product the matter will be dealt with under the dispute resolution procedure set out at Clause 42 of Schedule 2.

4 Reconciliation

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

Annex 1 to Schedule 6

Unit Prices, Average Selling Prices and Reserve Stock Prices

Product type	MPC	Products	Unit of Measure	Unit Price (exclusive of VAT)	Average Selling Price (exclusive of VAT)	Reserve Stock Price (exclusive of VAT)
Giving sets	7751914	Amika Bag w.c., ENFit ST	Eaches			
	7751916	Amika EB mobil w.c., ENFit ST	Eaches			
	7751917	Amika EB w.c., ENFit ST	Eaches			
Tube Feed	7135221	Fresubin Intensive	500ml			
	7190221	Fresubin 2kcal HP	500ml			
	7191221	Fresubin 2kcal HP Fibre	500ml			
	7348231	Fresubin HP Energy*	1000ml			
	7987231	Fresubin HP Energy Fibre*	1000ml			

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

Annex 2 to Schedule 6

Unused Stock – Viable and Non-Viable Payment Rates

Product type	Products	Unit of measure	Business as Usual Volume	Unit Price of unused Reserve Stock (exclusive of VAT)	Minimum Viable Shelf-Life (months)	Unused Viable Reserve Stock Percentage (%)	Unused Non-Viable Reserve Stock Percentage (%)
Giving sets	Amika Bag w.c., ENFit ST	Eaches	2,167	████	12	15	100
	Amika EB mobil w.c., ENFit ST	Eaches	4,115	████	12	15	100
	Amika EB w.c., ENFit ST	Eaches	8,298	████	12	15	100
Tube feed	Fresubin Intensive	500ml	840	████	6	20	100
	Fresubin 2kcal HP	500ml	690	████	6	20	100
	Fresubin 2kcal HP Fibre	500ml	258	████	6	20	100
	Fresubin HP Energy*	1000ml	6,750	████	6	20	100
	Fresubin HP Energy Fibre*	1000ml	1,350	████	6	20	100

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

Schedule 7 - Contract monitoring

1 Definitions and Interpretation

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

2 Reporting and Contract Management Requirements

- 2.1 The Contractor will provide the Authority during the Term with regular reports on the status of the Reserve Stock, volume of orders of Products fulfilled, demand from Customers for these Products, and the Shelf-Life and rotation of the Reserve Stock.

- 2.2 The frequency, form and format of the reports referred to in Clause 2.1 of this Schedule 7 will be agreed by the Parties as soon as reasonably practicable following the Commencement Date but will comprise as a minimum the reports required by Clause 2.5.2 of Schedule 4 and regular Monthly reports providing a detailed breakdown of the following:

- 2.2.1 “Reserve Stock Levels Report”, including (but not limited to):

- 2.2.1.1 Product name and stock-keeping unit (SKU) size of the Reserve Stock;
- 2.2.1.2 quantity of each Product forming the Reserve Stock in stock at the Premises;
- 2.2.1.3 Shelf-Life remaining for each of the Products forming the Reserve Stock in stock at the Premises;
- 2.2.1.4 storage location and confirmation that Products forming the Reserve Stock are held within the United Kingdom (if any of the Products forming the Reserve Stock are being stored elsewhere other than the Premises with the Authority’s prior written consent);

- 2.2.1.5 percentage of the Total Volume of Reserve Stock remaining for each of the Products forming the Reserve Stock; and
- 2.2.1.6 number of Products rotated from the Reserve Stock with other stock stored by the Contractor, including the Contractor's performance against the Business as Usual Volumes in relation to the rotation of the Reserve Stock;
- 2.2.2 "Demand and Order Fulfilment Report", including (but not limited to):
 - 2.2.2.1 volume of Products supplied at Product and unit of issue level by each Customer;
 - 2.2.2.2 details of any unusual or outlier Product orders queried with any Customers at the time of receipt; and
 - 2.2.2.3 any trends identified by the Contractor in demand or supply patterns and any potential issues or risks to the supply of the Products and the Reserve Stock,and the Contractor will use its reasonable endeavours to include:
 - 2.2.2.4 volume of Products ordered at Product and unit of issue level by each Customer;
 - 2.2.2.5 date of Product order requests from Customers; and
 - 2.2.2.6 date of Product orders despatched to Customers.
- 2.2A The Contractor shall monitor returns from Customers of Products supplied by the Contractor that relate to the remaining Shelf-Life of the Products. Where there are two or more instances of returns from Customers of Products supplied by the Contractor with Shelf-Life of three months or more in any Month, the Contractor shall notify the Authority by including details of the returns in the Monthly reports submitted by the Contractor under Clause 2.1 of this Schedule 7 and the matter shall be discussed at the Monthly meetings held under Clause 2.5 of this Schedule 7.

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

Schedule 8 - Commercially sensitive information

Schedule 9 - Variation Form

No of Contract being varied:

.....

Variation Form No:

.....

BETWEEN:

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

and

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

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

[Insert details of the Variation]

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

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS
Appendix A – Terms of Participation

Name (in Capitals)

Address

Schedule 10 - Staff Transfer

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

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

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

"Former Contractor"

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

"New Fair Deal"

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

"Notified Sub-contractor"

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

"Replacement Sub-contractor"

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

"Relevant Transfer"

a transfer of employment to which the Employment Regulations applies;

"Relevant Transfer Date"

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

"Schemes"

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

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

"Service Transfer"

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

"Service Transfer Date"

the date of a Service Transfer;

"Staffing Information"

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

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

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

**"Transferring Authority
Employees"**

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

**"Transferring Former Contractor
Employees"**

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

"Transferring Contractor"

Employees”

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

2 INTERPRETATION

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

PART A

Not Used

PART B

Not Used

PART C

No transfer of employees at commencement of Services

1 PROCEDURE IN THE EVENT OF TRANSFER

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

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

2 INDEMNITIES

2.1 Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:

- (a) indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Contractor and/or the Sub-contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Contractor and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the Authority and any Former Contractor, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

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

3 PROCUREMENT OBLIGATIONS

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

PART D

Employment exit provisions

1. PRE-SERVICE TRANSFER OBLIGATIONS

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

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

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

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

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

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

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

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

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

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

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

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

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

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

- (b) the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the Authority shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5(b) has elapsed:
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Contractor and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
 - (a) shall not apply to:
 - (i) any claim for:

(ii) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(iii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

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

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

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

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

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

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

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

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

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

ANNEX: LIST OF NOTIFIED SUB- CONTRACTORS

Schedule 11 - Key Personnel

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

Schedule 12 - Not Used

Schedule 13 - Processing, Personal Data and Data Subjects

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

Conditions of Contract for the Provision of Services

Contents

CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES	1
SCHEDULE 1 - KEY PROVISIONS	4
SCHEDULE 2 - GENERAL TERMS AND CONDITIONS.....	15
SCHEDULE 3 - DEFINITIONS AND INTERPRETATION	74
SCHEDULE 4 - SPECIFICATION	87
ANNEX 1 TO SCHEDULE 4.....	94
ANNEX 2 TO SCHEDULE 4.....	95
SCHEDULE 5 – NOT USED	96
SCHEDULE 6 - PRICING.....	97
ANNEX 1 TO SCHEDULE 6.....	101
ANNEX 2 TO SCHEDULE 6.....	102
SCHEDULE 7 - CONTRACT MONITORING	103
SCHEDULE 8 - COMMERCIAL SENSITIVE INFORMATION.....	106
SCHEDULE 9 - VARIATION FORM.....	107
SCHEDULE 10 - STAFF TRANSFER.....	109
ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS.....	130
SCHEDULE 11 - KEY PERSONNEL.....	131
SCHEDULE 12 - NOT USED	132
SCHEDULE 13 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS	133

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Conditions of Contract for the Provision of Services

The Authority	The Secretary of State for Health and Social Care of 39 Victoria St, Westminster, London SW1H 0EU acting as part of the Crown
The Contractor	Abbott Laboratories Limited which is a company registered in England under company number 329102 and whose registered office is at Abbott House, Vanwall Business Park, Vanwall Road, Maidenhead, Berkshire SL6 4XE
Date	5 November 2020

1. Background

- 1.1. It is recognised that the treatment of COVID-19 patients in critical care presents a new pathway with specific requirements for enteral nutrition products over and above business as usual levels of demand previously experienced and is usually required only during a hospital stay rather than on a long term basis after discharge. This new pathway is distinct from the normal usage patterns of these products and therefore a new commercial arrangement is required to enable the COVID-19 specific demand for these products to be met.
- 1.2. For COVID-19 patients requiring mechanical ventilation or non-invasive ventilation and other forms of oxygen therapy, clinical guidance as per the Clinical Guidance Group suggests that the specific composition of enteral feed can make a material difference to patient outcomes and therefore the Authority is seeking to take steps to minimise the risk of a supply shortage of these specific products.
- 1.3. The Authority is seeking to establish arrangements that enable reserve quantities of these specific products to be manufactured, stored and distributed to NHS bodies when required for the treatment of COVID-19 patients in an acute setting.
- 1.4. The Contractor has agreed to establish and maintain a reserve of these specific products that will be supplied to NHS bodies for the treatment of COVID-19 patients in an acute setting to mitigate the risk of a supply shortage as a result of the COVID-19 pandemic in accordance with the terms and conditions set out in this Contract.

2. The Contract

RESILIENCE FOR ENTERAL FEED AND CONSUMABLES FOR COVID-19 PATIENTS

Conditions of Contract for the Provision of Services

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

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Definitions and Interpretations
Schedule 4	Specification
Schedule 5	Not Used
Schedule 6	Pricing
Schedule 7	Contract Monitoring
Schedule 8	Commercially Sensitive Information
Schedule 9	Variation Form
Schedule 10	Staff Transfer
Schedule 11	Key Personnel
Schedule 12	Not Used
Schedule 13	Processing, Personal Data and Data Subjects

Signed by the authorised representative of THE AUTHORITY

Name:		Signature	
Position:	Deputy Director, Procurement		

Signed by the authorised representative of THE CONTRACTOR

Name:		Signature	
Position:		UK & Ireland Finance Controller,	

Schedule 1 - Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 6 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 7 to 15 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.

2 Term

- 2.1 This Contract shall commence on the Services Commencement Date and the Term of this Contract shall expire on **30 June 2021** ("the **Expiry Date**"). The Term may be extended in accordance with Clause 2 (Extension) of Schedule 2 provided that this Contract shall not continue beyond **30 June 2022**.

3 Authority Representative and Contractor Representative

- 3.1 The contract managers at the commencement of this Contract are:

- 3.1.1 for the Authority:

The Authority will notify the Contractor of the identity of the Authority Representative following the Commencement Date. Until such notification the Contractor can contact the Authority Representative by email at [REDACTED] headed "For the Attention of the Enteral Contract Manager".

- 3.1.2 for the Contractor:

[REDACTED] Healthcare Services Director, Abbott

4 Names and addresses for notices

4.1 Notices served under this Contract are to be delivered to:

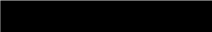
4.1.1 for the Authority:

For the Attention of the Enteral Contract Manager

Department of Health and Social Care
39 Victoria St
Westminster
London
SW1H 0EU



4.1.2 for the Contractor:

 Healthcare Services Director, Abbott House, Vanwall Business Park,
Vanwall Road, Maidenhead, Berkshire SL6 4XE

5 Order of precedence

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

5.1.1 Schedule 1 (Key Provisions);

5.1.2 Schedule 4 (Specification);

5.1.3 not used;

5.1.4 Schedule 2 (General Terms and Conditions);

5.1.5 Schedule 8 (Commercially Sensitive Information);

5.1.6 Schedule 10 (Staff Transfer);

5.1.7 Schedule 3 (Definitions and Interpretations); and

5.1.8 the order in which all subsequent Schedules, if any, appear.

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

6.1 The Parties agree that:

6.1.1 not used;

6.1.2 the commencement of the provision of the Services or a part of the Services will not result in a Relevant Transfer and Part C of Schedule 10 shall apply and Parts A and B of Schedule 10 shall not apply; and

6.1.3 Part D of Schedule 10 shall apply on the expiry or termination of the Services or any part of the Services.

Optional Key Provisions

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

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

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

8.1 The Services Commencement Date shall be **1 October 2020**.

9 **Different levels and/or types of insurance** ☒ (only applicable to the Contract if this box is checked and the table sets out the requirements)

9.1 The Contractor shall put in place and maintain in force the following insurances with the following minimum cover per claim:

Type of insurance required	Minimum cover
Employer's Liability	

Public Liability		
Professional Indemnity		
Cyber Liability Insurance		
Insert other types of insurance as appropriate		

- 10 **Inclusion of a Change Control Process** ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)
- 10.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in this Clause 10.
- 10.2 Subject to the provisions of this Clause 10 and Clause 5 (Price Adjustment on Extension of Term) of Schedule 2, either Party may request a variation to the Contract provided that such variation does not amount to a substantial modification of the Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **"Variation"**.
- 10.3 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 10.4 Where the Authority has so specified on receipt of a Variation Form from the Contractor, the Contractor shall carry out an impact assessment of the Variation on the Services (the **"Impact Assessment"**). The Impact Assessment shall be completed in good faith and shall include:
- 10.4.1 details of the impact of the proposed Variation on the Services and the Contractor's ability to meet its other obligations under the Contract;
- 10.4.2 details of the cost of implementing the proposed Variation;
- 10.4.3 details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Contract Price, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

- 10.4.4 a timetable for the implementation, together with any proposals for the testing of the Variation; and
- 10.4.5 such other information as the Authority may reasonably request in (or in response to) the Variation request.
- 10.5 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 10.6 Subject to Clause 10.4 of this Schedule 1, the receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.
- 10.7 In the event that:
- 10.7.1 the Contractor is unable to agree to or provide the Variation; and/or
- 10.7.2 the Parties are unable to agree a change to the Contract Price may be included in a request of a Variation or response to it as a consequence thereof,
- the Authority may:
- (A) agree to continue to perform its obligations under the Contract without the Variation; or
- (B) terminate the Contract with immediate effect, except where the Contractor has already fulfilled part or all of the provision of the Services in accordance with the Contract or where the Contractor can show evidence of substantial work being carried out to provide the Services under the Contract,
- and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure set out at Clause 42 (Dispute Resolution) of Schedule 2.

- 10.8 If the Parties agree the Variation, the Contractor shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.
- 10.9 Within ten (10) Working Days of the Parties agreeing the Variation the Contractor shall deliver to the Authority a copy of this Contract updated to reflect all Variations agreed in the relevant Variation Form and annotated with a reference to the Variation Form pursuant to which the relevant Variations were agreed. Upon receipt of the updated Contract from the Contractor the Authority shall review such updated Contract to verify its accuracy and shall thereafter notify the Contractor whether such updated Contract is approved. Following approval the Contractor shall provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.
- 11 Guarantee** ☐ (only applicable to the Contract if this box is checked)
- 11.1 Promptly following the execution of this Contract, the Contractor shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the procurement process followed by the Authority. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.
- 12 Termination for convenience** ☒ (only applicable to the Contract if this box is checked and Clause 12 of this Schedule 1 is completed)
- 12.1 The Authority may terminate this Contract at any time by giving one (1) Month's written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension of such notice. Such notice shall not be served before 30 June 2021.
- 12.2 Subject to Clauses 19 (Liability) and 20 (Insurance) of Schedule 2, should the Authority terminate this Contract in accordance with Clause 12.1 of this Schedule 1, then the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover

from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause 12.1 of this Schedule 1.

12.3 The Authority shall not be liable under Clause 12.2 of this Schedule 1 to pay any sum which:

12.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

12.3.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Term; or

12.3.3 is a claim by the Contractor for loss of profit, due to early termination of the Contract.

13 Measures to promote tax compliance ☐ (only applicable to the Contract if this box is checked)

13.1 The Procurement Policy Note: Measures to Promote Tax Compliance Action 03/14 applies and therefore all references in Clause 6.2 and 23.3.3 of Schedule 2, together with the associated definitions in Schedule 3, shall apply.

14 Authority step-in rights ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)

14.1 If the Contractor is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights set out in Schedule **[insert schedule number]**.

15 Exit and Service Transfer ☐ (only applicable to the Contract if this box is checked)

15.1 In the event of the termination or expiry of the Contract for any reason the Contractor shall provide the Transitional Assistance Services to the Authority in accordance with the requirements of the Exit Plan and both Parties shall comply with their respective obligations set out in Schedule 12. The Contractor shall co-operate with the Authority and/or the Replacement Contractor to the extent reasonably required to facilitate the smooth migration of the Services from the Contractor to the Authority or the Replacement Contractor.

- 15.2 The Authority shall pay the Transitional Services Charges in respect of the provision of the Transitional Assistance Services, except in circumstances where the Authority has terminated the Contract pursuant to Clauses 22, 23.2 or 23.3 of Schedule 2.
- 15.3 The Contractor shall, within three (3) Months after the Commencement Date, produce an Exit Plan based on the principles set out in Schedule 12 for the orderly transition of the Services from the Contractor to the Authority or any Replacement Contractor in the event of any termination or expiry of the Contract. Within ten (10) Working Days after the submission of that Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan, based on the principles set out in Schedule 12. If the Parties are unable to agree the contents of the Exit Plan within that ten (10) Working Day period, the principles set out in Schedule 12 shall apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 42 of Schedule 2.
- 15.4 The Contractor shall update the Exit Plan no less than once during each Contract Year to reflect changes in the Services and shall keep the Exit Plan under continuous review. Following each update, the Contractor shall:
- 15.4.1 submit the revised Exit Plan to the Authority for review;
 - 15.4.2 within ten (10) Working Days after the submission of the revised Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in Schedule 12 and the changes that have occurred in the Services since the Exit Plan was last agreed; and
 - 15.4.3 if the Parties are unable to agree the contents of the revised Exit Plan within that ten (10) Working Day period, the previous version shall continue to apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 42 of Schedule 2.
- 15.5 Until the agreement of the Exit Plan, the Contractor shall provide the Transitional Assistance Services in accordance with the principles set out in Schedule 12 and the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith. The Contractor shall ensure that it is able to implement the Exit Plan at any time.
- 15.6 Within thirty (30) days after service of a Termination Notice by either Party or six (6) Months prior to the expiration of the Contract:

- 15.6.1 the Contractor shall update the Exit Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to the Authority for review and approval; and
- 15.6.2 the Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles set out in Schedule 12; and
- 15.6.3 until the agreement of the updated Exit Plan, the Contractor shall provide the Transitional Assistance Services in accordance with the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith.

16. Supply Chain Visibility ☐ (only applicable to the Contract if this box is checked)

Visibility of Sub-Contract Opportunities in the Supply Chain

16.1 The Contractor shall:

- 16.1.1 subject to clause 16.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Term;
- 16.1.2 within 90 days of awarding a Sub-Contract to a Sub-contractor, update the notice on Contract Finder with details of the successful Sub-contractor;
- 16.2.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- 16.2.4 provide reports on the information at clause 16.2.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
- 16.2.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

- 16.3 Each advert referred to at clause 16.1.1 of this Schedule 1 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.
- 16.4 The obligation on the Contractor set out at clause 16.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.
- 16.5 Notwithstanding clause 16.1, the Authority may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Contractor on Contracts Finder.

Visibility of Supply Chain Spend

- 16.6 In addition to any other management information requirements set out in the Contract, the Contractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “**SME Management Information Reports**”) to the Relevant Authority which incorporates the data described in the Supply Chain Information Report Template which is:
- (a) the total contract revenue received directly on the Contract;
 - (b) the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
 - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 16.7 The SME Management Information Reports shall be provided by the Contractor in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Authority from time to time. The Contractor agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at clause 16.6 (a)–(c) and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Relevant Authority issuing a replacement version. The Relevant Authority agrees to give at least thirty (30) days’ notice in writing of any such change and shall specify the date from which it must be used.

- 16.8 The Contractor further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Authority.

Schedule 2 - General Terms and Conditions

1 PROVISION OF SERVICES

- 1.1 The Authority appoints the Contractor and the Contractor agrees to provide the Services:
- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions;
 - 1.1.4 in accordance with the Law;
 - 1.1.5 in accordance with the Anti-slavery Policy; and
 - 1.1.6 in accordance with Good Industry Practice.
- 1.2 The Authority may inspect and examine the manner in which the Contractor supplies the Services during normal business hours on reasonable notice. Such an inspection and examination may be undertaken virtually rather than in person if both Parties agree that it is reasonable and practicable to do so.
- 1.3 Immediately following the Commencement Date, the Contractor shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Contractor shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Contractor shall comply with the full Implementation Plan.
- 1.4 The Contractor shall commence delivery of the Services on the Services Commencement Date.
- 1.5 The Contractor shall comply fully with its obligations set out in the Specification.

- 1.6 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements and/or standards of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- 1.7 The Contractor shall notify the Authority as soon as it becomes aware of:
- 1.7.1 any breach, or potential breach, of the Anti-slavery Policy; or
 - 1.7.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
- 1.8 If required by the Authority, the Contractor shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business. The Contractor shall indemnify the Authority against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Authority as a result of any breach of the Anti-slavery Policy.

2 EXTENSION

- 2.1 Subject to Clause 5 (Price Adjustment on Extension of Term) of this Schedule 2, the Parties may agree to extend the Term on one or more occasions prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions. The provisions of the Contract will apply and take effect mutatis mutandis (subject to any Variation or adjustment to the Contract Price pursuant to Clause 5 (Price Adjustment on Extension of Term) of this Schedule 2 and Clause 5.3 of Schedule 4) throughout any such extended period.

3 CONTRACT PRICE

- 3.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contractor the Contract Price in accordance with Clause 4 (Payment and VAT) of this Schedule 2. The Contract Price shall remain fixed for the Term.

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

4 PAYMENT AND VAT

- 4.1 Where the Contractor submits an invoice to the Authority in accordance with Clause 4.4 of this Schedule 2 the Authority will consider and verify that invoice in a timely fashion and in any event within thirty (30) days of receipt of the invoice. Where the Authority raises a query with respect to an invoice the Parties will liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the matter will be dealt with under the dispute resolution procedure set out at Clause 42 (Dispute Resolution) of Schedule 2. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 4.1 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Contractor and the Authority has then failed to pay such sum within thirty (30) days following such determination.
- 4.2 Subject to Clause 4.1 of this Schedule 2, the Authority shall pay the Contractor any sums due under such invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.

- 4.3 Where the Authority fails to comply with Clause 4.1 of this Schedule 2 and has failed to consider and verify the invoice and raise a query with respect to the invoice within thirty (30) days of receipt of the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 4.2 of this Schedule 2.
- 4.4 The Contractor shall submit an invoice to the Authority in accordance with Clause 3.3 of Schedule 6 and shall submit invoices to the Authority Monthly in arrears in accordance with Clause 2.3 of Schedule 6. The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation as may be reasonably required by the Authority to substantiate such invoice.
- 4.5 The Authority shall be entitled to withhold payment due under Clause 4 (Payment and VAT) of this Schedule 2 for so long as the Contractor, in the Authority's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with Clause 21.11 of this Schedule 2. For the avoidance of doubt the Authority shall not be liable to pay any interest or penalty in withholding such payment.

ELECTRONIC INVOICING

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

VAT

- 4.8 The Contractor shall add VAT to the Contract Price at the prevailing rate in accordance with applicable law.
- 4.9 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due

under this Clause 4.9 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

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

- (a) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 4.10.1 of this Schedule 2; and/or
- (b) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clause 4.9 of this Schedule 2 or confirms that the Worker is not complying with those requirements; and

4.12.3 that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

5. PRICE ADJUSTMENT ON EXTENSION OF TERM

- 5.1 The Contract Price shall apply for the Term. In the event that the Parties agree to extend the Term pursuant to Clause 2 (Extension) of this Schedule 2 the Contract Price will remain unchanged for the period of extension unless otherwise agreed by the Parties.
- 5.2 Not used.
- 5.3 If a variation in the Contract Price is agreed between the Authority and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- 5.4 Not used.

6 WARRANTIES AND REPRESENTATIONS

- 6.1 The Contractor warrants and undertakes to the Authority that:
- 6.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
 - 6.1.2 in entering the Contract it has not committed any Fraud;

- 6.1.3 not used;
- 6.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under the Contract;
- 6.1.5 it is not subject to any contractual obligation, compliance with which is likely to affect its ability to perform its obligations under the Contract;
- 6.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 6.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 6.1.8 in the three (3) years prior to the Commencement Date:
- (c) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern, ability to fulfil its obligations under the Contract or provide the Services; and
- 6.2 The Contractor warrants and undertakes to the Authority that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance.

If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

6.2.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

6.2.2 promptly provide to the Authority:

(a) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

6.3 The Contractor warrants and undertakes to the Authority that:

6.3.1 its responses to the Authority's slavery and human trafficking due diligence questionnaire, if any, are complete and accurate; and

6.3.2 neither the Contractor nor any of its Contractor Personnel:

(a) has been has been convicted of any offence involving slavery and human trafficking; and

(b) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and

6.3.3 it undertakes its business in a manner that is consistent with the Anti-slavery Policy.

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

7 CHANGE CONTROL PROCESS

- 7.1 The Contractor acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Contractor shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification, as may be requested by the Authority from time to time pursuant to Clause 5.1 of Schedule 4.
- 7.2 Any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

8 KEY PERSONNEL

- 8.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- 8.2 The Contractor shall not remove or replace any Key Personnel unless:
- 8.2.1 requested to do so by the Authority;
 - 8.2.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 8.2.3 the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 8.2.4 the Contractor obtains the Authority's prior written consent.
- 8.3 The Authority shall not unreasonably withhold its consent under Clause 8.2 of this Schedule 2. Such consent shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

9 CONTRACTOR PERSONNEL

9.1 At all times, the Contractor shall ensure that:

- 9.1.1 each of the Contractor Personnel responsible for providing the Services is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- 9.1.2 there is an adequate number of Contractor Personnel to provide the Services properly and in accordance with the Contract;
- 9.1.3 only those people who are authorised by the Contractor are involved in providing the Services; and
- 9.1.4 all of the Contractor Personnel comply with all of the Authority's policies, rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for conduct when at or outside the Premises of the Authority.

9.2 The Authority may refuse to grant access to and remove any of the Contractor Personnel who do not comply with Clause 9.1.4 of this Schedule 2 or if they otherwise present a security threat or the Authority reasonably determines their presence to be undesirable.

9.3 The Contractor shall replace any of the Contractor Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

9.4 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and the Services and giving such other particulars as the Authority may reasonably request. The Contractor shall ensure at all times that it has the right to provide these records under Data Protection Legislation.

- 9.5 The Contractor shall comply with the Authority's procedures for the vetting of personnel and as advised to the Contractor by the Authority in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Authority's procedures for the vetting of personnel.
- 9.6 If the Contractor fails to comply with Clause 9.4 of this Schedule 2 within one (1) Month of the date of the request and, in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract with immediate effect by giving written notice to the Contractor at any time after the end of that one (1) Month period, such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 9.7 The decision of the Authority as to whether any person is to be refused access to the Premises and/or as to whether the Contractor has failed to comply with Clause 9.4 of this Schedule 2 shall be final and conclusive.

10 MANNER OF CARRYING OUT THE SERVICES

- 10.1 The Contractor shall begin performing the Services on the Services Commencement Date and continue to perform them for the Term. The Authority may, by written notice, require the Contractor to execute the Services in such order as the Authority may decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.
- 10.2 The Contractor shall at all times comply with the Quality Standards. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 10.3 The Contractor shall ensure that all Contractor Personnel supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

- 10.4 The Contractor will be responsible for providing and delivering the Services in each and every respect with all relevant provisions of the Contract at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with Schedule 4.

11 CONTRACT MANAGEMENT AND MONITORING OF CONTRACTOR'S PERFORMANCE

- 11.1 The Parties shall each appoint a contract manager to be known respectively as the Authority Representative and the Contractor Representative. The Authority Representative and the Contractor Representative shall meet at least Monthly (unless otherwise notified by the Authority) to discuss the Contractor's performance and other matters connected to the delivery of the Contract.
- 11.2 The Contractor shall comply, as the Authority shall require, with the monitoring arrangements set out in the Schedule 7 including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.
- 11.3 The Contractor shall comply with any and all of the monitoring arrangements that the Authority shall require from time to time. This shall include, but shall not be limited to, providing such information as the Authority may require the Contractor to produce under the Contract.
- 11.4 At the Authority's request, within five (5) Working Days of such request or such other reasonable period of time as may be agreed between the Parties, the Contractor shall supply such management information to the Authority as the Authority may reasonably request from time to time (including without limit any information about the Contractor's supply chain and its compliance in relation to sustainability requirements).
- 11.5 The Contractor shall provide the Authority with such supporting documentation as the Authority may require to establish and verify the Contractor's levels of performance.
- 11.6 The Contractor shall meet with the Authority following the completion of the provision of the Services to discuss:
- 11.6.1 whether the Contractor believes the objectives of the Contract were achieved;
- 11.6.2 how far the intended benefits sought in the Authority's specification in Schedule 4 were achieved; and

11.6.3 to identify any lessons learnt for future projects.

11.7 The Authority shall be able to share and use any information arising from such meetings referred to in Clauses 11.6.1 to 11.6.3 of this Schedule 2 as it sees fit.

12 RIGHT OF AUDIT

12.1 The Contractor shall keep secure and maintain until six (6) years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

12.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract. Such access may be granted virtually rather than in person if both Parties agree that it is reasonable and practicable to do so.

12.3 For the purpose of:

12.3.1 the examination and certification of the Authority's accounts; or

12.3.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources,

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This Clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

13 PROPERTY

13.1 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority. The Contractor irrevocably licences the Authority

and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

13.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within five (5) Working Days of receipt.

13.3 Upon receipt of the Property the Contractor shall subject it to:

13.3.1 a reasonable visual inspection, and

13.3.2 such additional inspection and testing as may be necessary and practicable in order to check that the Property is not defective or deficient for the purpose for which it has been provided.

13.4 Within a reasonable period the Authority shall replace or re-issue issued Property agreed by the Parties to be defective.

13.5 The Contractor shall ensure the security of all the Property whilst in its possession.

13.6 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Default of the Authority. The Contractor shall inform the Authority within two (2) Working Days of any loss of, or damage to, the Property occurring.

14 RECOVERY OF SUMS DUE

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

15 CONFIDENTIAL INFORMATION

- 15.1 For the purposes of this Clause, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly Confidential Information.
- 15.2 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in the Contract, the Recipient shall:
- 15.2.1 treat the Disclosing Party's Confidential Information as confidential and safeguard it accordingly (which is appropriate depending on the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 15.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in the Contract or without the Disclosing Party's prior written consent;
 - 15.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract; and
 - 15.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 15.3 Clause 15.1 of this Schedule 2 shall not apply to the extent that:
- 15.3.1 Law requires such disclosure by the party making the disclosure, including any requirements for disclosure under FOIA, the Regulations or the Environmental Information Regulations;
 - 15.3.2 such information is required in relation to the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources;

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

- 15.8.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 15.8.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 15.8.1 of this Schedule 2 (including any benchmarking organisation) for any purpose relating to or connected with the Contract;
- 15.8.5 on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- 15.8.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,

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

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