

CONTRACT FOR THE PROVISION OF RAPID MANUFACTURE VENTILATOR SYSTEM (RMVS)

This Contract is dated 01/04/20 and is made between:-

1. **The Minister for the Cabinet Office** (the "**Customer**") of 1 Horse Guards Road, London SW1A 2HQ, acting as part of and on behalf of the Crown;

and
2. **Sagentia Limited** (the "**Supplier**") whose registered office is at Harston Mill, Harston, Cambridge, CB22 7GG.

INTRODUCTION

- (A) The present Covid-19 situation is an urgent national matter and the Cabinet Office is taking the necessary precautions to commission the design of mechanical ventilators in response to the crisis.
- (B) On 13/03/2020 the Customer issued its requirement for certain services for the project to design mechanical ventilators in response to the Covid-19 crisis (the "**Project**"). The aim of the Project is to develop a design for mechanical ventilators as set out in the specification, a copy of which is set out in Schedule 1 (the "**Specification**"). The Supplier has indicated its willingness to provide certain services in relation to the development of such a design (the "**Services**"). The Specification and the scope of the Services may be amended over time by the Customer on notice in writing to the Supplier to reflect changing requirements as the crisis develops.
- (C) The Specification and scope of the Services has been supplemented, amended and clarified by any correspondence copies of which are set out in Schedule 5 (the "**Correspondence**").

The parties agree as follows:-

1. SUPPLY OF SERVICES AND PRICE

In consideration of the payments to be made by the Customer to the Supplier for the Services in accordance with paragraph 6 (such payments being together termed the "**Contract Price**"), the Supplier shall provide the Services to the Customer in accordance with: (a) the Specification as amended by any Correspondence; and (b) the Cabinet Office Short-Form Terms and Conditions of Contract for Supplies/Services (a copy of which are attached at Schedule 3) (the "**Terms and Conditions**") as amended by this Contract; and (c) the other terms and conditions of this Contract.

Neither Party limits its liability (if any) to the other for: personal injury or death resulting from negligence; fraud; or any matter for which its liability may not be excluded as a matter of law. Subject to this, the total liability of the Supplier under or in connection with this Contract, whether for breach of contract, negligence or otherwise, shall be limited to the higher of: (i) £500,000; and (ii) one times the aggregate of the Contract Price. Neither the Customer nor the Supplier shall have any liability to the other under or in connection with this Contract for any of the following types of losses: loss of profits; loss of business; loss of contracts; loss or depletion of goodwill; loss of anticipated savings; or any indirect or consequential loss.

The Customer shall indemnify the Supplier, its group companies, and its and their directors and officers, agents and employees in respect of any claim made by a third party which results from the use made by the Customer or any person directly or indirectly authorised by or through the Customer of any product developed or manufactured using the Results and which is not a claim covered by clause 12.6 of the Terms and Conditions (as set out in paragraph 3.2 below).

The Customer is acting as part of the Crown and the Services and Results provided are for the benefit of the Crown. Subject to paragraph 3.2 of this Contract (replacing Clause 12 of the Terms and Conditions), nothing in this Contract shall prevent the Customer from disclosing any of the Results or other information obtained by the Customer pursuant or relating to this Contract to any other central Government body or any third party involved in making use of the Results.

2. COMMENCEMENT AND CONTINUATION

This Contract shall be deemed to have commenced on 13/03/2020 (the "**Effective Date**") and shall continue subject to any provisions for termination contained in the Terms and Conditions or this Contract. Notwithstanding the previous sentence, either party shall be entitled to terminate this Contract upon two days' notice in writing at any time subject to paying the Supplier in respect of any Services performed up to the date of termination.

For the avoidance of doubt, in the event of termination of this Contract, the provisions of paragraph 3.2 (replacing Clause 12 of the Terms and Conditions) shall persist.

3. TERMS AND CONDITIONS

- 3.1 Save as expressly provided in this Contract, the Terms and Conditions shall form part of this Contract. The following provisions of the Terms and Conditions shall not apply to this Contract and shall be deemed for the purposes of this Contract to be deleted from the Terms and Conditions:

- Clause 10 (Inspection of premises);
- Clause 11 (Insurance);
- Clause 23 (Environmental Requirements);
- Clause 26 (Official Secrets Acts); and
- Clauses 30.7 and 30.8 (Staff Vetting Procedures).

This Contract shall be deemed to constitute a "**Purchase Order**" for the purposes of the Terms and Conditions.

The "**Expiry Date**" shall be any future date notified in writing by the Customer to the Supplier as the Expiry Date (which shall be no less than two days from the date of such notice).

Where used in the Terms and Conditions the term "**this Agreement**" shall be deemed to refer to "this Contract".

Clause 33.1(c) of the Terms and Conditions shall also exclude from being confidential "*any information that is independently developed without reference to the other party's confidential information*".

- 3.2 Clause 12 of the Terms and Conditions shall be amended as follows by replacing the same with the following new Clause 12: -

Clause 12 Intellectual Property rights

- 12.1 *All intellectual property rights of any nature in any designs, inventions, materials or other results:*

(i) provided by or on behalf of the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer (or the original third party owner); or

*(ii) generated by or for the Supplier for or in connection with the performance of the Services ("**Results**"), shall vest in the Customer.*

If, and to the extent, that such intellectual property rights in the Results do not vest automatically in the Customer, the Supplier hereby assigns all intellectual property rights in the Results to the Customer. On request, the Supplier shall demonstrate to the Customer's reasonable satisfaction that, where it has sub-contracted work under this Agreement, it has secured that vesting in the work performed by its sub-contractors.

Apart from intellectual property rights vested in the Customer by virtue of this Clause 12.1, ownership of all other intellectual property (including without limitation any intellectual property rights owned by a third party which have been developed prior to the Effective Date or otherwise than in performing the Services) are not transferred to the Customer by this Clause 12.

- 12.2 The Customer may use, have used, copy and disclose the Results by itself or through other central Government bodies for the purpose of the Project within the United Kingdom, subject to the rights of third parties not employed in the performance of work under this Agreement.

Where the Results are subject to the Supplier's or any relevant third party's pre-existing patents and/or registered or unregistered design rights then without prejudice to the Customer's rights under this Clause 12, the Supplier or relevant third party shall, where applicable, be entitled to claim compensation as provided for under the provisions of the Patents Act 1977, the Registered Designs Act 1949, and/or the Copyright, Designs and Patents Act 1988 in the event that such patents and/or designs are used for the services of the Crown.

- 12.3 The Supplier hereby grants to the Customer a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use copy and disclose any intellectual property rights contained in a Contract deliverable, that the Supplier owns, or has developed, prior to the Effective Date, or otherwise than in connection with the performance of the Services, and which the Customer reasonably requires in order to exercise its rights to use the Results and take the benefit of this Contract including the Services and the Results provided.
- 12.4 The Customer shall be responsible for obtaining, at its cost, any licence or authority from any third party owning relevant intellectual property rights that the Customer requires in order to exercise its rights to use the Results.
- 12.5 The Supplier shall deliver up to the Customer all Results and other deliverables to be provided under this Contract, including without limitation specific outputs and deliverables required by the Specification, as and when required by the Customer, and such other information as is reasonably requested by the Customer for the purposes of: (i) understanding the Results and the Supplier's outputs from the Services; and (ii) further developing, manufacturing and putting to use any product developed using the Results, including without limitation for assessing the safety or dealing with any safety concern with regard to such product. The Supplier shall promptly provide all such reasonable assistance and cooperation to the Customer as is required further in that regard.
- 12.6 The Customer shall assume all liability for, and shall indemnify the Supplier, its group companies, and its and their directors and officers, agents and employees against liability, including the Supplier's costs, as a result of, any claim made by a third party for infringement by the Supplier or its sub-contractors of any

patent or other intellectual property right in the performance of the Services and this Contract when such infringement arises from or is incurred by reason of the Supplier or its sub-contractors: (a) following any specification, statement of work or instruction required by the Customer under this Contract; or (b) using, keeping, modifying or disposing of any item given by the Customer for the purpose of this Contract (an "**IP Claim**"). This indemnity is given subject to the Customer promptly being given control of the defence of any IP Claim and the Supplier and its group companies providing such reasonable cooperation as may be required by the Customer, at the Customer's cost, with regard to such defence.

12.7 As soon as the Supplier becomes aware, it shall notify the Customer (and provide reasonable details) of:

- a. any invention or design which may be the subject of a patent or registered design (or application therefor) owned by a third party which appears to be relevant to the performance of the Supplier or the use by the Customer of anything required to be done or delivered under this Contract;
- b. any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of this Contract or subsequent use by the Customer of anything delivered under this Contract; and
- c. any allegation of infringement of intellectual property rights made against the Supplier or its sub-contractors and which pertains to the performance of this Contract or subsequent use by the Customer of anything required to be done or delivered under this Contract.

12.8 Notwithstanding anything to the contrary in this Contract: (a) it shall not form part of the Services for the Supplier to carry out searches or make enquiries with third parties as to the existence of intellectual property rights of third parties (other than providing reasonable details of relevant intellectual property rights of which it is aware pursuant to Clause 12.7) that shall or may be infringed by the performance of the Services or use of the Results by the Customer; and (b) the Supplier makes no representation and gives no warranty under or in connection with this Contract concerning non-infringement of such intellectual property rights.

12.9 If, under Clause 12.7, a relevant invention or design is notified to the Customer by the Supplier after the Effective Date, then:

- a. *if the owner (or his exclusive licensee) takes or threatens in writing to take any relevant action against the Supplier or its sub-contractors, the Customer shall issue to the Supplier a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, and*
- b. *in any event, unless the Supplier and the Customer can agree an alternative course of action, the Customer shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 Copyright, Designs and Patents Act 1988.*

12.10 The Customer agrees that the Supplier may further commercialise the Results subject to reasonable terms agreed with the Customer and which are documented by separate written agreement or agreements.

- 3.3 The amendments set out in paragraphs 3.1 and 3.2 of this Contract are for the purposes of this Contract only and do not set a precedent for future contracts between the Supplier and the Customer.
- 3.4 The Supplier's terms and conditions of business shall not apply to this Contract.
- 3.5 This Contract is formed of these paragraphs 1 - 9 and the Schedules hereto. Any other attachments are provided for information purposes only and are not intended to be legally binding. In the event of any conflict or inconsistency, the documents prevail in the following order:
 - a) these paragraphs 1 to 9;
 - b) the Terms and Conditions, as amended by this Contract; and
 - c) the Specification, as supplemented or amended by the Correspondence (if any).

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Services and the Results shall be delivered by the Supplier to the Customer in full compliance with this Contract and the Customer's lawful and reasonable instructions.

5. MANAGEMENT AND COMMUNICATIONS

- 5.1 The Supplier shall perform the Services under the direction of the Customer.

- 5.2 Any direction by the Customer may be given by [REDACTED] (the "Contract Manager") who is an officer in Cabinet Office or such other person as is notified by the Customer to the Supplier in writing.
- 5.3 The Supplier appoints [REDACTED] Managing Director, Medical Division to be the Supplier's first point of contact for this Contract. All queries to the Supplier from the Customer's Contract Manager shall initially be addressed to the Supplier's first point of contact.
- 5.4 The Supplier's first point of contact and the Contract Manager shall meet as often as either the Supplier or the Customer may require, where appropriate by telephone or other remote communication means, to review the Supplier's performance of this Contract.
- 5.5 Clause 41.1 of the Terms and Conditions shall be deemed to be amended such that a notice sent by e-mail shall be a valid notice under this Contract whether or not such notice is confirmed by first class mail or air mail.

6. INVOICES AND PAYMENT

- 6.1 Subject to the Supplier providing the Services to the Customer in accordance with this Contract and submitting invoices to the Contract Manager in the manner reasonably required by the Contract Manager, payment shall be made by the Customer to the Supplier in accordance with Clause 6 of the Terms and Conditions save that Clause 6.3 is amended to read "In consideration of the supply of the Services by the Supplier, the Customer will pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice" and subsequent wording in Clause 6.3 of the Terms and Conditions is deleted.
- 6.2 All Services shall be rendered on a time and materials basis according to the rates set out in Schedule 4 – The Pricing Schedule. Each week the Supplier shall provide to the Customer a summary of the incurred time and materials costs for the preceding week and a projection for the forthcoming week. The total Contract Price, including materials, equipment and samples purchased in relation to the Services, shall not exceed £3,000,000 plus VAT without prior written approval from the Customer. For clarity, any number of days specified in Schedule 4 is an estimate only and nothing in this Contract shall require the Supplier to produce a design fully meeting the Specification within any estimated number of days in Schedule 4 or within the amount specified in this paragraph 6.2.
- 6.3 The Supplier shall submit invoices for actual hours worked at the time and materials rates as outlined in the Schedule 4 – The Pricing Schedule. Travel and living expenses are not included in the rate. Any travel and living expenses incurred shall be submitted to the Customer as actuals and copies of receipts (where available), and any other information required by the Customer for the purposes of determining

payments to be made to the Supplier, shall be required for invoicing and payment purposes.

- 6.4 Invoices provided by the Supplier shall include the following information: Supplier name, address, VAT number, bank name, bank account number, sort code, VAT number and detailed description of goods and services provided. Invoices shall include an electronic signature, if possible, and shall be sent to the following email address: [REDACTED] with a copy to [REDACTED]

7. TRANSPARENCY

- 7.1 The Customer may be required to submit a Voluntary Ex-ante Transparency Notice (VEAT) about this Contract within the Official Journal of the European Union.

The Customer's decision not to publish full details of this Contract does not however preclude it publishing such information in the future (subject to applicable redactions) and the Customer may be required to disclose such information under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 (EIR) or other legal requirement. In such cases, the Customer would need to consider disclosure in the context of the circumstances of the request or requirement concerned.

8. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the Customer and the Supplier regarding its subject matter, and supersedes all prior or contemporaneous understandings or agreements regarding that subject matter, whether oral or written, including any non-disclosure agreement entered into between the Customer and the Supplier in connection with the Project.

The letter attached at Schedule 6 is incorporated into this Agreement.

9. SUB-CONTRACTING

Notwithstanding anything to the contrary in this Contract (but without prejudice to the obligations of the Supplier in this Contract relating to any sub-contractor appointed by it), the Supplier may, subject to written notification to the Customer, appoint sub-contractors to perform the Services.

Signed by the parties' duly authorised representatives:-

For The Minister for the Cabinet Office

Signature: ..

Print Name:

Job Title: Government Chief Commercial Officer

Date: 01/04/20

For the Supplier

Signature: ...

Print Name: ...

Job Title: *Crap Legal Counsel*

Date: *31 March 2020*

The following Schedules form part of this Contract:

| | |
|------------|---|
| Schedule 1 | The Specification |
| Schedule 2 | Not used |
| Schedule 3 | The Customer's Short-Form Terms & Conditions of Contract for Services |
| Schedule 4 | The Pricing Schedule |
| Schedule 5 | The Correspondence (if any) |
| Schedule 6 | Side Letter |

Schedule 1

The Specification



MHRA RMVS
specification v2.1.pc

Schedule 2

Not used

Schedule 3

Short-Form Terms & Conditions of Contract for Services



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Schedule 4

Pricing Schedule



Schedule 5

The Correspondence

Sagentia Limited
Harston Mill
Harston
Cambridge CB22 7GG

31st March 2020

Dear Sirs

This letter is supplemental to the Contract for the Provision of Rapid Manufacture Ventilator System of even date (**Design Contract**) between the Cabinet Office and Sagentia Limited (**Sagentia**), a subsidiary of Science Group plc.

The Cabinet Office shall place a contract with Sagentia Technology Advisory Limited (**STAL**) an associated organisation within Science Group plc, upon agreed terms, under which STAL shall manufacture, or have manufactured, at least 10,000 Ventilators embodying the Designs (as defined below) for use within the United Kingdom during the Covid-19 crisis (**Manufacturing Contract**). STAL shall provide the Cabinet Office with a first right of refusal on its and, if applicable, its sub-contractors' (**Sub-Contractor**) manufacturing capacity for the manufacture of Sagentia Ventilators for use by the UK Crown within the United Kingdom for the duration of the Covid-19 crisis. The Cabinet Office confirms that it has no current intention to use any third party manufacturer to manufacture and supply Sagentia Ventilators for use by the National Health Service or other government organisation in the United Kingdom.

Under this letter it is further agreed as follows:

1. The Cabinet Office grants to Sagentia a non-exclusive, perpetual and irrevocable licence to commercialise the ventilator designs generated by Sagentia under the Design Contract (**Designs**) through the sub-licensing of those Designs to third parties for the purposes of third-party manufacturing and supplying ventilators embodying the Designs (**Sagentia Ventilators**) for:
 - a. the supply to the National Health Service (through the Cabinet Office or other Government organisation designated by Cabinet Office) in the United Kingdom (**Territory 1 Licence**); and
 - b. on a worldwide basis excluding supplies pursuant to paragraph (a) above (**Territory 2 Licence**).

The licences granted under this paragraph 1 are sub-licensable, including but not limited to STAL, but are not assignable save with the consent in writing of the Cabinet Office.

2. In relation to the Territory 1 Licence:
 - a. The Cabinet Office shall procure the manufacture and supply of Sagentia Ventilators from STAL.
 - b. Royalties are not payable to the Cabinet Office or any other party by Sagentia, STAL or Science Group.
 - c. Sagentia and/or STAL will not charge Sub-Contractors any royalties for sub-licences granted under the Manufacturing Contract.
 - d. All indemnities given by the Cabinet Office under the Design Contract shall apply to claims made in relation to products produced under the Territory 1 Licence.

3. In relation to the Territory 2 Licence, Sagentia shall pay the Cabinet Office a royalty of [REDACTED] (Royalties) on all sums (net of tax) that it or any of its group companies receives from any person for or in relation to the licensing of the Designs or supply of Sagentia Ventilators.

For the avoidance of doubt, except as set out above, the Cabinet Office shall not be due Royalties for any services or materials supplied by Sagentia, STAL or any other Science Group company. This includes additional support services provided by Sagentia to any licensee of the Designs where those services do not relate to the use of the Designs or the manufacture of Sagentia Ventilators.

The indemnity given by the Cabinet Office under paragraph 1 of the Design Contract shall not apply to claims made in relation to products produced under sub-licences granted directly or indirectly by Sagentia under the Territory 2 Licence.

4. Royalties shall be paid to the Cabinet Office on a quarterly basis and shall be paid within sixty (60) days of the end of each quarter period (commencing 1st January, 1st April, 1st July and 1st October) in respect of cash sums received during the preceding quarter period. Sagentia shall provide such reports and access to its sales and other records as is reasonably required by the Cabinet Office to confirm the level of Royalties payable to it.

5. The Cabinet Office agrees not to solicit any other licensee for the Designs in respect of the manufacture and sale of Sagentia Ventilators under the Territory 2 Licence provided that Sagentia and STAL continue to fulfil their obligations under this letter.
6. Notwithstanding this, the Cabinet Office and other UK Crown bodies shall retain the right at any time to make, use, keep and supply and to authorise others to make, use and keep any products which embody or make use of the Designs for any non-commercial UK government purpose. Further, nothing in this letter shall be construed as in any way limiting or derogating from any rights of the UK Crown arising under any provision of law.
7. It is intended that the parties shall enter into an agreement on more detailed terms which are customary for a licence of type described in this letter and the parties shall in good faith negotiate those terms and use their respective reasonable endeavours to enter into a definitive agreement in good time. Once entered into, the definitive agreement shall replace this letter but until then this letter shall act as the definitive agreement and shall be construed under English law.

Please confirm your agreement to the above terms by countersigning below.
Yours faithfully

For and on behalf the Cabinet Office

Countersigned on behalf of Sagentia Limited and Sagentia Technology Advisory Limited

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Date: