

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

DUNS Number: 211000617

This Contract is dated 20/04/2020 and is made between:-

- 1. The Secretary of State for Cabinet Office** (“the Customer”) of 1 Horse Guards Road, London SW1A 2HQ, acting as part of the Crown;

and
- 2. PA Consulting Services Limited** (the “Supplier”) whose registered office is at 10 Bressenden Place London SW1E 5DN.

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 a quote for the project to design mechanical ventilators in response to the Covid-19 crisis (the “Project”). This is included in the specification, a copy of which is set out in Schedule 1 (the “Specification”). The Supplier has indicated its willingness to provide the Services described in the Specification. This Specification 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 has been supplemented by the 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 Clause 6.3 (such payments being together termed the “Contract Price”) and in accordance with (a) the Specification; and (b) the Cabinet Office ShortForm Terms and Conditions of Contract for Supplies/Services (a copy of which were issued by the Customer with the Quote and are attached at Schedule 3) (the “Terms and Conditions”); and (c) the Correspondence if applicable. The Supplier shall provide the services described in the Specification and the Correspondence (the “Services”) to the Customer.

The 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) £650,000; and (ii) one and a half 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 Agreement for any indirect or consequential loss.

The Customer shall indemnify the Supplier, its agents, employees and officers in respect of any claim made by a third party which results from the use made by the Customer or any person authorised by 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.

The Customer is acting as part of the Crown and the Services and Results provided are for the benefit of the Crown including without limitation the Customer and the Secretary of State for Health and Social Care. 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, the Customer 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.

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.

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

- 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 will 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”), will vest in the Customer.

If, and to the extent, that such intellectual property rights do not vest automatically in the Customer, the Supplier hereby assigns (with full title guarantee and free from all third-party rights) all intellectual property rights in such materials to the Customer and shall take all necessary measures to secure that vesting. On request, the Supplier shall demonstrate to the Customer’s 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, or rights in, all other intellectual property 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 or third parties for any purpose whatsoever subject the rights of third parties not employed in the performance of work under this Agreement.

Where the Results are subject to the Supplier’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 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 shall mark any copyright work comprising Results with the legend '© Crown-owned copyright 2020'.*
- 12.4 The Supplier hereby grants to the Customer a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-license) 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.*
- 12.5 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 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 subcontractors 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 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 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.*

12.9 The Customer shall give reasonable consideration to any request made by the Supplier to further commercialise the Results subject to terms being agreed in writing with the Customer.

- 3.3 The amendments set out in Clauses 3.1 and 3.2 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 clauses 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 Clauses
- b) the Terms and Conditions
- c) the Specification

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Services and the Results shall be delivered to the Customer in full compliance with the Specification and the Customer's lawful and reasonable instructions, and shall be of satisfactory quality and fit for purpose. In performing the Services, the Supplier shall do so in accordance with the Specification and exercise reasonable skill and care.

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] 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 to review the Supplier's performance of this Contract.

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 will be made by the Customer to the Supplier in accordance with Condition 6 of the Terms and Conditions.
- 6.2 All Services will be rendered on a time and materials basis according to the day rates set out in Schedule 4 – The Pricing Schedule. The Supplier shall not exceed the total estimated number of days, and or hours, described in Schedule 4 – The Pricing Schedule without prior written approval from the Customer. The Contract Price shall

furthermore not exceed £500,000 in time and £150,000 in materials / expenses plus VAT unless agreed in writing by the Customer.

- 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 need to be evidenced and shall be submitted to the Customer as actuals and copies of receipts, 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.

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.

Signed by the parties' duly authorised representatives:-

For the Secretary of State for Cabinet Office


Signature: 

Print Name: 

Job Title: 

Date:.....20/04/2020.....

For the Supplier

Signature: 

Print Name: 

Job Title: Member of PA's Management Group

Date: 10th April 2020

The following Schedules form part of this Contract:

Schedule 1	The Customer's Specification
Schedule 2	The Supplier's Proposal (not used)
Schedule 3	The Customer's Short-Form Terms & Conditions of Contract for Services
Schedule 4	The Pricing Schedule
Schedule 5	The Correspondence

Schedule 1

The Customer's Specification



RMVS001 Rapidly Manufactured
Venti

Schedule 2

Not used

Schedule 3

Short-Form Terms & Conditions of Contract for Services









Schedule 3 RMVS
Terms and Conditions

Schedule 4

Pricing Schedule

MCF2 Rates

<i>Partner/Managing Director</i>	
<i>Managing Consultant/Associate Director/Director</i>	
<i>Principal Consultant</i>	
<i>Senior Consultant/Manager</i>	
<i>Consultant</i>	
<i>Junior Consultant</i>	

Schedule 5
Not used

The Correspondence