

Commitment Contract

THIS IS A LEGAL AGREEMENT CREATING LEGALLY BINDING OBLIGATIONS AND EACH PARTY SHOULD SATISFY ITSELF THAT THIS AGREEMENT IS SUITABLE FOR ITS SPECIFIC NEEDS & TAKE LEGAL ADVICE PRIOR TO ENTERING INTO THE SAME.

This **CONTRACT** is made on **Monday 10th July 2023**

BETWEEN

(1) Roche Diagnostics Limited

whose registered office is at

Charles Avenue, Burgess Hill, West Sussex, RH15 9RY

(the "Supplier")

AND

(2) UK Health Security Agency

whose principal place of business is at

Nobel House, 17 Smith Square, London, SW10 3HX

(the "Authority")

IT IS AGREED as follows:

INTERPRETATION

1. In this Contract (including the Schedules), the following definitions shall apply:

"Acceptance" means acceptance of the Consumables and/or Reagents by the Authority.

"Call-off Terms" means the Call-off Terms and Conditions which are appended to the Framework Agreement'.

"Consumables" shall have the meaning given to it in Schedule 1 and **"Consumables"** shall be construed accordingly.

"Contract" means this contract which shall consist of the terms referred to in the Schedules, in the order of precedence described in Schedule 1.

"Contract Period" means the period specified as such in the Schedule.

“Framework Agreement” means the Framework Agreement dated OJEU reference: 2019/S 212-519575 Term of Framework Agreement: 29th June 2020 to 24th March 2024 between NHS Supply Chain and the Supplier for the supply of Pathology and Point of Care Testing, Associated Equipment, Instruments, Consumables and Accessories and Managed Services.

“NHS Supply Chain” means Supply Chain Coordination Limited (SCCL) whose principal office is at Skipton House, 80 London Road, London, SE1 6LH.

“Party” (or **“Parties”**) means a party (or parties) to the Contract.

“Price” shall have the meaning set out in Schedule 1 (and shall for the avoidance of doubt apply to the Consumables and/or Reagents).

“Reagent” shall have the meaning given to it in Schedule 1 and **“Reagents”** shall be construed accordingly.

“Schedule” means a Schedule to this Contract.

“Specification” means the specification for Consumables and/or Reagents which are set out in the Framework Agreement, as supplemented by the Specification (if any) set out at Appendix 1 to the Schedule.

“Tests” means tests carried out by the Authority as specified in Schedule 1.

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

2. Unless the context otherwise requires it, reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument. The headings to these clauses shall not affect their interpretation.
3. In the event of any conflict between the terms of this Contract and the terms of a Schedule, the latter shall prevail. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or preceding those terms.
4. Any decision, act or thing that the Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by the Authority to take or do that decision, act or thing, provided that upon receipt of a written request the Authority shall inform the Supplier of the name of any person so authorised.

AGREEMENT

5. Subject to the terms and conditions of this Contract, the Supplier shall supply to the Authority:
 - 5.1 the Consumables and/or Reagents, in such quantities, at such times and to such locations as are ordered by the Authority from time to time, at the Price set out in Schedule 1.
6. The Authority shall not be under any obligation to purchase any quantity or value of Consumables and/or Reagents under this Contract.

7. This Contract shall be comprised of the terms referred to in the Schedules, in the order of precedence set out in Schedule 1.

CONTRACT PERIOD

8. The Contract Period shall commence on the date specified in the Schedule.
9. This Contract shall expire on the expiry of the Contract Period unless it is terminated in accordance with its terms or extended by written agreement.

DELIVERY, ACCEPTANCE, RISK AND TITLE

10. The Supplier shall deliver the Consumables and/or Reagents in accordance with the terms (including in relation to delivery lead times and the transfer of risk and title in the Consumables and/or Reagents) set out in the Call-off Terms.
11. The Authority shall accept and or reject such Consumables and/or Reagents promptly following the Supplier's delivery.

PRICE AND PAYMENT

12. The Authority shall pay the Price set out in Schedule 1 for any Consumables and/or Reagents which are ordered by the Authority under this Contract.
13. All payment must, unless otherwise stated in Schedule 1, be paid in sterling and must be paid on time, in full and in cleared funds, free and clear of any set-off, counterclaim, deductions or withholding of any nature whatsoever.
14. An invoice for each payment due to the Supplier shall be rendered in accordance with the Call-off Terms, on the Supplier's own invoice form to the Authority clearly marked with the Authority's order number (where provided). The Authority shall pay the Supplier's invoice on the terms set out in the Call-off Terms.
15. The Authority shall not be required to make payment in the event the Consumables and/or Reagents are unusable or are not in good working order for any reason and for any period.

ACKNOWLEDGEMENTS

16. The Supplier warrants that the Consumables and/or Reagents shall conform to the Specification, be of satisfactory quality and fit for any purpose held out by the Supplier.
17. The Supplier shall transfer to the Authority for the Contract Period (unless terminated earlier) the benefit of all manufacturer's and Supplier's guarantees and warranties in respect of the Consumables and/or Reagents.

DEFAULT AND REMEDIES

18. The Supplier acknowledges and agrees that, should the Supplier commit a material breach of this Contract, the Authority shall be entitled to terminate the Contract forthwith.

MISCELLANEOUS TERMS

19. If any term of the Contract is invalid it will not affect the validity of the remaining terms and the Contract will continue to be enforceable.

INFORMATION SECURITY

20. Without limitation to any other information governance requirements set out in this Contract:
 - 20.1 the Supplier shall notify the Authority forthwith of any information security breaches (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) relating to data that it holds in relation to the Authority or any Contract with the Authority in line with the Authority's information governance policies;
 - 20.2 the Supplier shall fully co-operate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 20.3 The Parties shall comply with the General Data Protection Regulation and any other applicable data protection legislation. In particular, the Parties agree to comply with the provisions as outlined in Schedule 2 of this Contract.
- 20.4 The Authority acknowledges and authorises the Supplier to process the Authority's Personal Data as defined and detailed in Schedule 2 of this Contract.

PROHIBITED ACTS

21. The Supplier warrants and represents that:
 - 21.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
 - 21.1.1 offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of the Contract or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
 - 21.1.2 in connection with any Contract, paid or agreed to pay any fee or commission; and
 - 21.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

22. If the Supplier or anyone employed by it (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this Contract or any other agreement with the Authority or is materially in breach of this Contract:
- 22.1 the Authority shall be entitled to:
- 22.1.1 terminate any Contract to which it is a party and recover from the Supplier the amount of any loss resulting from the termination;
 - 22.1.2 recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
 - 22.1.3 recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
- 22.2 any termination under the terms of this Contract shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
- 22.3 any dispute relating to:
- 22.3.1 the interpretation of clauses 24 and 25; or
 - 22.3.2 the amount or value of any gift, consideration or commission,
- shall be determined by, the Authority, acting reasonably, and its decision shall be final and conclusive.

ENTIRE AGREEMENT AND VARIATION OF CONDITIONS

23. All contractual terms which in any way add to, vary or contradict the Contract upon which the Supplier may seek to rely or otherwise impose on the Authority shall be excluded and not form part of the Contract (whether or not such other contractual terms post-date the Contract) unless the Authority has specifically agreed in writing to be bound by any of such other contractual terms.
24. No later variation shall be binding unless it has been agreed in writing and signed by an authorised representative of the Supplier.
25. All costs and expenses (including legal costs and expenses) incurred by the Supplier in relation to any variation of the terms of the Contract shall, unless otherwise agreed, be the responsibility of the Authority.

THIRD PARTY RIGHTS

26. Save as otherwise provided herein, a person who is not a Party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

LAW AND JURISDICTION

- 27. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 28. The Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

This Contract has been entered into on the date stated at the front of it.

Signed for and on behalf of Roche Diagnostics Limited

DocuSigned by:
[Redacted Signature]
314E7CE192E04DF...
Full Name: [Redacted]
Job Title/Role: [Redacted]
Signed for and on [Redacted] cy
Date Signed: 27.07.2023
DocuSigned by:
Print name:
[Redacted Signature]
D E91C92A57ECD4EA...

Full Name: [Redacted]
Job Title/Role: [Redacted]
Date Signed: 27/07/23

SCHEDULE 1**Form of Schedule**

Contract number/reference/date: PTH-23-25-37661 between the parties referred to below (the "Contract")

The Parties:

- (1) Roche Diagnostics Limited registered in England and Wales no. 571546 and having its registered office at Charles Avenue, Burgess Hill, West Sussex, RH15 9RY (the "Supplier"); and
- (2) UK Health Security Agency having its office at Nobel House, 17 Smith Square, London, SW10 3HX (the "Authority");

Whereas:

- (A) The parties hereto have entered into the Contract.
- (B) This Schedule is entered into pursuant to the Contract.

It is agreed:**1 Contract**

The Contract shall comprise the following terms in the following order of precedence:

1. This Schedule;
2. The terms set out at the front end of this Contract;
3. The Call-off Terms and Conditions which are appended to the Framework Agreement';
4. The Specification;
5. The Framework Agreement (including its Schedules).

2 The Consumables and/or Reagents

The Consumables and/or Reagents to be supplied under this Contract shall be as follows:

Product Number	Description	Unit	Uom	Customer Name
06997503190	KIT COBAS 58/68/8800 WASH IVD	1	PC	UK Health Security Agency (UKHSA)
06997538190	KIT COBAS 58/68/8800 LYS REAGENT IVD	1	PC	UK Health Security Agency (UKHSA)
06997511190	KIT COBAS 58/68/8800 SPEC DIL RGNT IVD	1	PC	UK Health Security Agency (UKHSA)
06997546190	KIT COBAS 58/68/8800 MGP IVD	1	PC	UK Health Security Agency (UKHSA)
05534917001	cobas omni Processing Plate	1	PC	UK Health Security Agency (UKHSA)
05534925001	cobas omni Pipette Tips	1	PC	UK Health Security Agency (UKHSA)
05534941001	cobas omni Amplification Plate	1	PC	UK Health Security Agency (UKHSA)
07002238190	KIT COBAS 6800/8800 BUFF NEG RMC IVD	1	PC	UK Health Security Agency (UKHSA)
08030073001	Solid Waste Bag With Insert Set of 20	1	PC	UK Health Security Agency (UKHSA)
09175440190	KIT COBAS 6800/8800 SARS-COV-2 RMC	1	PC	UK Health Security Agency (UKHSA)
09343733190	KIT COBAS 6800/8800 SARS-COV-2 480T	1	PC	UK Health Security Agency (UKHSA)
09052011190	KIT COBAS 58/68/88 UTIL CHAN 192T IVD	1	PC	UK Health Security Agency (UKHSA)
07099592001	RNA Process Control Kit	1	PC	UK Health Security Agency (UKHSA)
09233962190	KIT C68/88 UC INFLUENZA A/B RSV 192T IVD	1	PC	UK Health Security Agency (UKHSA)
09356525190	KIT C68/88 UC INFLUENZA A/B RSV PC IVD	1	PC	UK Health Security Agency (UKHSA)
09233474190	KIT COBAS 6800/8800 SARS-COV-2/FLU 384T	1	PC	UK Health Security Agency (UKHSA)
09233482190	KIT COBAS 6800/8800 SARS-COV-2/FLU RMC	1	PC	UK Health Security Agency (UKHSA)
07731663190	KIT COBAS OMNI OPTIMIZATION	1	PC	UK Health Security Agency (UKHSA)

(the "Consumables")

Indicative contract value over the 12-month contract period: £426,276.00.

3 Contract Period and Termination

- 3.1 This Contract shall commence on **26/07/2023** and (subject to the right of early termination set out at paragraph 3.2 below) shall expire on **25/07/2024** (the “Contract Period”). There is also an option to extend for a further 12 Months.
- 3.2 Without prejudice to any other right of termination set out in this Contract, **either Party** may terminate this contract by giving to the other not less than **3 months’** prior written notice.

4 Price of Consumables and/or Reagents

The price (excluding VAT at the applicable rate) in respect of the Consumables and/or Reagents (the “Price”) shall be:

Product Number	Description	Unit	Uom	Customer Name
06997503190	KIT COBAS 58/68/8800 WASH IVD	1	PC	UK Health Security Agency (UKHSA)
06997538190	KIT COBAS 58/68/8800 LYS REAGENT IVD	1	PC	UK Health Security Agency (UKHSA)
06997511190	KIT COBAS 58/68/8800 SPEC DIL RGNT IVD	1	PC	UK Health Security Agency (UKHSA)
06997546190	KIT COBAS 58/68/8800 MGP IVD	1	PC	UK Health Security Agency (UKHSA)
05534917001	cobas omni Processing Plate	1	PC	UK Health Security Agency (UKHSA)
05534925001	cobas omni Pipette Tips	1	PC	UK Health Security Agency (UKHSA)
05534941001	cobas omni Amplification Plate	1	PC	UK Health Security Agency (UKHSA)
07002238190	KIT COBAS 6800/8800 BUFF NEG RMC IVD	1	PC	UK Health Security Agency (UKHSA)
08030073001	Solid Waste Bag With Insert Set of 20	1	PC	UK Health Security Agency (UKHSA)
09175440190	KIT COBAS 6800/8800 SARS-COV-2 RMC	1	PC	UK Health Security Agency (UKHSA)
09343733190	KIT COBAS 6800/8800 SARS-COV-2 480T	1	PC	UK Health Security Agency (UKHSA)
09052011190	KIT COBAS 58/68/88 UTIL CHAN 192T IVD	1	PC	UK Health Security Agency (UKHSA)
07099592001	RNA Process Control Kit	1	PC	UK Health Security Agency (UKHSA)
09233962190	KIT C68/88 UC INFLUENZA A/B RSV 192T IVD	1	PC	UK Health Security Agency (UKHSA)
09356525190	KIT C68/88 UC INFLUENZA A/B RSV PC IVD	1	PC	UK Health Security Agency (UKHSA)
09233474190	KIT COBAS 6800/8800 SARS-COV-2/FLU 384T	1	PC	UK Health Security Agency (UKHSA)
09233482190	KIT COBAS 6800/8800 SARS-COV-2/FLU RMC	1	PC	UK Health Security Agency (UKHSA)
07731663190	KIT COBAS OMNI OPTIMIZATION	1	PC	UK Health Security Agency (UKHSA)

Indicative contract value over the 12-month contract period: £426,276.00.

5 Delivery and Risk:**Delivery**

The Supplier shall deliver the Consumables and/or Reagents to the following location at the following times:

All goods are to be supplied to the following address:	Primary location: <i>RIPL laboratory, UK Health Security Agency, Porton Down, Salisbury, SP4 0JG</i> Secondary location: <i>Manchester Medical Microbiology Partnership, 3rd Floor Clinical sciences building 1, Clinical Sciences Centre, Manchester Royal Infirmary, Oxford Road, M13 9WL</i>
Deliveries must be made on the following date(s) and time(s):	<i>As per the Orders placed by the Authority provided that time is not of the essence.</i>

Risk

The Authority shall bear the risk of loss or damage to the Consumables and/or Reagents from the date of delivery. Any damages or missing items shall be reported to the Supplier within 5 working days’ of the date of delivery.

6 Supplementary conditions

Additional Terms shall apply: NO

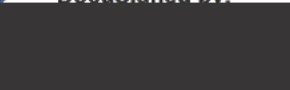
7 Authority Obligations

Will the terms set out in this paragraph apply to the Contract: YES

The Authority shall accept the Consumables and/or Reagents or reject such Consumables and/or Reagents promptly following the Supplier’s delivery (and, where appropriate, the Supplier’s installation and configuration of them).

This Contract has been entered into on the day and date given below:

Signed for and on behalf of Roche Diagnostics Limited

DocuSigned by:


Print Name: 314E7CE192E04DF...

Full Name: 

Job Title:

Job Title/Role: 

Date of Signature:

Date Signed: 27.07.2023

Signed for and on behalf of the UK Health Security Agency

DocuSigned by:


Print Name: E91C92A57ECD4EA...

Full Name: 

Job Title:

Job Title/Role: 

Date of Signature:

Date Signed: 27/07/23

Schedule 2**Appendix 2: DATA PROCESSING TABLE**

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor.
Subject matter of the Processing	<p>The Processor may process the Controller's Personal Data:</p> <ul style="list-style-type: none"> • To fulfill its obligations under the Contract • To comply with the instructions of the Controller.
Duration of the Processing	Equal to the term of the contract plus any post-termination processing requirements.
Nature and purposes of the Processing	<p>To enable the Processor to fulfil its obligations under the contract, fulfil Authority orders and instructions and provide technical support.</p> <p>The Controller acknowledges and agrees that:</p> <p>a. in order to provide technical support including, but not limited to, remote technical support, the Processor will need to view, store and/or transfer (including outside the EEA) data which may contain Personal Data. When the data has been evaluated and the technical support case has been closed, any data stored will be deleted; and</p> <p>b. the majority of technical support will be offered from the UK and Republic of Ireland by the Processor, however where second and third line escalations are required, the Processor may utilise global expertise within other Processor group companies by safely and securely transferring data (which may include Personal Data), employing infrastructure that has been specially implemented for this purpose and which is fully certified against ISO27001.</p> <p>The Controller confirms its general authorisation for the appointment of all sub-processors engaged by the Processor under the agreement between the Parties (the "Sub-Processors"). The Processor shall inform the Controller of any material change(s) to the Sub-Processors and the Controller shall inform the Processor in writing within 7 days of the date of such notice if it has any objections to the proposed Sub-Processor change(s). If the Controller does not object to the Sub-Processor change(s) then the change(s) shall have effect no earlier than the 8th day after the date of the relevant notice from the Processor. The Parties will discuss any objection to the Sub-Processor change(s) in good faith to resolve the issue in accordance with the dispute resolution procedure set out in the agreement between the Parties.</p>

Type of Personal Data being Processed	Name, contact details, job title, health data
Categories of Data Subject	Patients, healthcare professionals, customer key contacts
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>1) When a PC or instrument which may have data on board is removed from the Controller's site or replaced, the Hard drives or flash cards are left with the Controller.</p> <p>2) Data collected during the troubleshooting process is transferred and stored on an encrypted drive at the Processor's site the data is deleted after the trouble shooting is completed and will be automatically deleted after 90 days.</p> <p>3) Sales orders (which may contain personal data) will be held for a period beyond the end of the Agreement in accordance with VAT requirements.</p> <p>4) Call recordings are held for a period of three months.</p>