



Department  
for Environment  
Food & Rural Affairs

## COMMERCIAL IN CONFIDENCE

Hamilton Robotics Ltd  
6120 Ground Floor, Knights Court,  
Solihull Parkway,  
Birmingham,  
B37 7WY

Our Ref: 22159  
Date: 5<sup>th</sup> June 2015

FTAO [REDACTED]

By Email to: [REDACTED]

Dear [REDACTED]

### **Award of contract for service of Hamilton Microlab Star Robots**

Following your proposal for the supply of the Services to the Department for Environment, Food and Rural Affairs (**Customer**), we are pleased to award this contract to you.

This letter (**Award Letter**) and its schedules set out the terms of the contract between the Customer and Hamilton Robotics (**Contractor**) for the provision of the Services.

Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract attached to this Award Letter (**Conditions**).

If there is any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Contractor terms and conditions to this Agreement as they will not be accepted by the Customer and may delay the process.

For the purposes of the Agreement, the Customer and the Contractor agree as follows:

The Services shall be performed at the location below:

APHA Weybridge  
Woodham Lane  
New Haw  
Addlestone  
Surrey  
KT15 3NB



Department  
for Environment  
Food & Rural Affairs

The charges for the Services shall be as set out in Schedule 2.

The specification of the Services to be supplied is as set out in Schedule 1.

The Term shall commence on 9<sup>th</sup> May 2015 and the Expiry Date shall be 31<sup>st</sup> March 2016. The addresses for notices of the Parties are:

**Customer**

APHA Weybridge  
Woodham Lane  
New Haw  
Addlestone  
Surrey  
KT15 3NB

Email:

[REDACTED]

**Contractor**

Hamilton Robotics Ltd  
6120 Ground Floor, Knights Court  
Solihull Parkway,  
Birmingham,  
B37 7WY

Attention:

[REDACTED]

Email:

[REDACTED]

The Customer may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a “**Relevant Conviction**”), or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

**Payment**

All invoices should be sent, quoting a valid purchase order number (PO Number), to: SSCL, Room 211, 2<sup>nd</sup> Floor, Foss House, 1-2 Peasholme Green, York, YO1 7PX. Within ten (10) Working Days of receipt of your approving electronically on the Authority’s e-Sourcing platform (Bravo), we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [ssd.enquiries@defra.gsi.gov.uk](mailto:ssd.enquiries@defra.gsi.gov.uk) or by telephone **0845 603 7262** between 09:00-17:00 Monday to Friday.



Department  
for Environment  
Food & Rural Affairs

## Liaison

For general liaison your contact will continue to be [REDACTED]  
[REDACTED]

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by approving electronically on the Customer's e-Sourcing platform (Bravo) within seven (7) days from the date of this Award Letter. No other form of acknowledgement will be accepted.

Please remember to quote the reference number above in any future communications relating to this contract.

Yours sincerely,

[REDACTED]  
Category Manager  
Network Procurement, Department for Environment, Food and Rural Affairs  
Woodham Lane, New Haw  
Addlestone  
Surrey KT15 3NB  
[REDACTED]  
[REDACTED]



Department  
for Environment  
Food & Rural Affairs

[www.gov.uk/defra](http://www.gov.uk/defra)

## **Contract (Short Form – Services)**

### **Contract for service of Hamilton Microlab Star Robots**

**Contract Reference 22159**

**Date: 5<sup>th</sup> June 2015**

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# Terms and Conditions of Contract for Services

## 1 Interpretation

### 1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Secretary of State for Environment, Food and Rural Affairs and (ii) the Contractor constituted by the Contractor’s countersignature of the Award Letter;
“Award Letter”	means the letter from the Customer to the Contractor containing these terms and conditions;
“Central Government Body”	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <p>Government Department;</p> <p>Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>Non-Ministerial Department; or</p> <p>Executive Agency;</p>
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means the person named as Customer in the Award Letter;
“DPA”	means the Data Protection Act 1998;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award

	Letter;
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Contractor in writing;
“Party”	means the Contractor or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA) which is processed by the Contractor or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Purchase Order Number”	means the Customer’s unique number relating to the supply of the Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Contractor to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Contractor from time to time;
“Contractor”	means the person named as Contractor in the Award Letter;

- “Term” means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
- “VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
- “Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

## **2 Basis of Agreement**

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Contractor once approved by the Contractor electronically on the Authority’s e-Sourcing platform (Bravo) within seven (7) days from the date of the Award Letter. No other form of acknowledgement will be accepted.



### **3 Supply of Services**

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Contractor shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Contractor shall:
  - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Contractor at any time request a variation to the scope of the Services. If the Contractor agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Contractor.

### **4 Term**

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to five (5) months by giving not less than ten (10) Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

## **5 Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 5.2 The Contractor shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3 In consideration of the supply of the Services by the Contractor, the Customer shall pay the Contractor the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be

entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6 Premises and equipment**

- 6.1 If necessary, the Customer shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Contractor or the Staff shall be at the Contractor's risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Customer's premises, remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Contractor's premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Contractor shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Contractor

or relevant Staff unless the Customer is notified otherwise in writing within five (5) Working Days.

## **7 Staff and Key Personnel**

7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:

- 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
- 7.1.2 direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
- 7.1.3 require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Contractor shall comply with any such notice.

7.2 The Contractor shall:

- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
- 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
- 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8 Assignment and sub-contracting**

- 8.1 The Contractor shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 If the Contractor enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 8.3 If the Customer has consented to the placing of sub-contracts, the Contractor shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.4 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement.

## **9 Intellectual Property Rights**

- 9.1 All intellectual property rights in any materials provided by the Customer to the Contractor for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Contractor. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Contractor by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Contractor hereby grants the Customer:

- 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
- 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
  - a) any intellectual property rights vested in or licensed to the Contractor on the date of the Agreement; and
  - b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.
- 9.4 The Contractor shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.

## **10 Governance and Records**

- 10.1 The Contractor shall:
  - 10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
  - 10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.
- 10.2 The Contractor shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those

records as may be reasonably requested by the Customer in connection with the Agreement.

## **11 Confidentiality, Transparency and Publicity**

11.1 Subject to clause 11.2, each Party shall:

11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

11.2.2 to its auditors or for the purposes of regulatory requirements;

11.2.3 on a confidential basis, to its professional advisers;

11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

11.2.5 where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Contractor's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is the Customer:

a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;

c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

d) in accordance with clause 12.

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 Customer under this clause 11.

11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Contractor hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

11.4 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## **12 Freedom of Information**

12.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within



five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

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

12.2 The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## **13 Protection of Personal Data and Security of Data**

13.1 The Contractor shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.

13.2 Notwithstanding the general obligation in clause 13.1, where the Contractor is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Contractor shall:

13.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;

13.2.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Contractor is complying with its obligations under the DPA;

13.2.3 promptly notify the Customer of:

- a) any breach of the security requirements of the Customer as referred to in clause 13.3; and
- b) any request for personal data; and

13.2.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.

13.3 When handling Customer data (whether or not Personal Data), the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Contractor from time to time.

## **14 Liability**

14.1 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

14.2.1 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Contractor be liable to the Customer for any:

- a) loss of profits;
- b) loss of business;
- c) loss of revenue;
- d) loss of or damage to goodwill;
- e) loss of savings (whether anticipated or otherwise); and/or
- f) any indirect, special or consequential loss or damage.

- 14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 14.3.1 death or personal injury caused by its negligence or that of its Staff;
  - 14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
  - 14.3.3 any other matter which, by law, may not be excluded or limited.
- 14.4 The Contractor's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

## **15 Force Majeure**

- 15.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Contractor. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## **16 Termination**

- 16.1 The Customer may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least one (1) month (or, if the Agreement is less than three (3) months in duration, at least ten (10) Working Days) later than the date of service of the relevant notice.
- 16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:
- 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
  - 16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
  - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within thirty (30) days of the Contractor receiving notice specifying the breach and requiring it to be remedied;

- 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
  - 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17; or
  - 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction.
- 16.3 The Contractor shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Contractor may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within ninety (90) days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Contractor shall:
- 16.6.1 give all reasonable assistance to the Customer and any incoming Contractor of the Services; and
  - 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **17 Compliance**

- 17.1 The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement.

17.2 The Contractor shall:

17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and

17.2.2 notify the Customer immediately of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.3 The Contractor shall:

17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Contractor from time to time; and

17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.

17.4 The Contractor shall supply the Services in accordance with the Customer's environmental policy as provided to the Contractor from time to time.

17.5 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

17.5.1 the Official Secrets Acts 1911 to 1989; and

17.5.2 section 182 of the Finance Act 1989.

## **18 Prevention of Fraud and Corruption**

18.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:

- 18.3.1 terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
- 18.3.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause.

## **19 Dispute Resolution**

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “Mediator”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **20 General**

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements,

representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21 Notices**

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22 Governing Law and Jurisdiction**

- 22.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.



## SCHEDULE 1

### SPECIFICATION OF SERVICES

#### Definitions

For the purposes of Schedule 1, unless the context otherwise requires, the following words shall have the meanings given to them below.

“APHA”	means Animal and Plant Health Agency
“Bronze Service Contract”	means level of service contract as described at 2.1.1
“Corrective Maintenance”	means a visit required to undertake repairs, on an unlimited and as required basis
“Equipment”	means five (5) Hamilton Microlab Sequential Transfer and Aliquoting Robots (ML-STAR)
“Gold Service Contract”	means level of service contract as described in 2.1.2, provided in a disease outbreak situation (when requested by APHA)
“Preventative Maintenance”	means a systematic visit for inspection, detection, correction and prevention of incipient failures, before they become actual failures
“Priority Response”	means attend APHA within two (2) Working Days of a reported problem under the Bronze Service Contract. Under the Gold Service Contract attend APHA within one (1) day during a disease outbreak to include weekends and / or Bank Holidays.
“Repair Parts”	means any Equipment part that during Preventative or Corrective Maintenance visits is identified as requiring replacement
“Working Hours”	means 09:00 to 17:30 Monday to Friday, excluding Public Holidays
“Working Day”	means any day other than a weekend or Bank Holiday in England and Wales

#### 1. Background

- 1.1 The Equipment is used for processing serum samples for surveillance and for emergency response in the Surveillance and Laboratory Services Department (S&LSD) at APHA Weybridge.

## 2. Requirements

2.1.1 APHA requires a Bronze Service Contract for the Equipment in the S&LSD. This shall include the following:

- Two Preventative Maintenance visits for the specified Contract term.
- Priority Response.
- Standard Corrective Maintenance call-out charge of [REDACTED]
- Calibration / Verification of the independent channels (to be carried out during the Preventative Maintenance visits).
- 10% discount on Repair Parts and labour.

2.1.2 In the event of a disease outbreak, the Customer reserves the right to upgrade this Contract to the Gold Service Contract. The Customer shall e-mail the Contractor if upgrade to the Gold Service Contract is required for an outbreak. The Gold Service Contract consists of the following:

- Two Preventative Maintenance visits for the specified Contract term.
- Priority Response.
- All Corrective Maintenance visits including labour and Repair Parts. [REDACTED]
- Calibration / Verification of the independent channels (to be carried out during the Preventative Maintenance visits).

## 2.2 Corrective Maintenance and response times

2.2.1 The Contractor shall provide the Customer with priority resource allocation over non contract customers.

2.2.2 The Contractor shall provide a Priority Response following initial contact from the Customer.

2.2.3 Repair Parts shall be provided by the Contractor within two (2) Working Days of the need for Repair Parts being identified by the Contractor or failing that with a deadline for a resolution to the satisfaction of the Customer.

2.2.4 The Contractor shall continue to work on any defective Equipment covered by this agreement until it is fully functional. Repair work may be curtailed temporarily whilst additional spares or information is obtained. Under these circumstances, repair work shall recommence on the next practicable Working Day.

2.2.5 The Contractor shall use reasonable but commercially prudent endeavours to provide a resolution to the satisfaction of the Customer within three (3) Working Days, or failing that with a deadline for a resolution to the satisfaction of the Customer.

## 2.3 Warranty

2.3.1 Any items replaced during the last three (3) months of the term of the Contract will be warranted against further failure for a period of up to 90 days after the expiry or the termination of this Contract.

## 2.4 Support Agreement Limitations

2.4.1 The Contract does not cover, and the Contractor shall not be liable for, any service made necessary by any of the following:

- a) any wilful abuse or misuse of the Equipment;
- b) use of the Equipment by a third party not being an employee of the Authority acting in the course of his employment;
- c) failure to observe and execute specified operating procedures laid down by the manufacturer including, where appropriate, routine maintenance work, which are the responsibility of the Authority;
- d) contamination of the Equipment or any part thereof which is not attributable to Equipment malfunction;
- e) any service, repair work or replacement parts required because of changes in set up, or relocation of the Equipment;
- f) the use of any software (media) not supplied by the Contractor. It is the responsibility of the Customer to ensure that all added electronic files including software and transport media are virus free. The Contractor shall not be liable for any claims resulting from damage caused by failure to install and maintain adequate virus protection when the Customer allows the use of the Contractor's computers for any other purpose than specified by the Contractor. The Contractor shall not be liable for any claims resulting from damage caused by any adjustments, maintenance to the operating system or software installations performed by the Customer's IT personnel. In the case where the Customer's IT personnel must install software and/or adapt the operating system for the purpose of networking the workstation the Contractor recommends that this is completed in accordance with the Contractor's published guidelines and a system back-up is made prior to any change being carried out.

## 3. Delivery of Services

3.1 The Equipment covered under the Contract is located at the following address:

APHA Weybridge  
Woodham Lane  
New Haw  
Addlestone  
Surrey  
KT15 3NB

#### **4. Site Visits**

- 4.1 The Customer shall make arrangements with the site security room for the Contractor to gain access to the site for both Preventative Maintenance and Corrective Maintenance visits. The Customer shall require the name of the service engineer(s) and expected time of arrival from the Contractor by email or phone at least two (2) working hours in advance of the site visit for repair work. For Preventative Maintenance visits a minimum of five (5) Working Days' notice is required from the Contractor. **Note:**



- 4.2 The Contractor, whilst on site, shall adhere to the Customer's health and safety regulations.

#### **5. Costs**

- 5.1 Costs are shown in Schedule 2 – Pricing Schedule.

#### **6. Contract Period**

- 6.1 The Contract period will be 09/05/15 to 31/03/16.

#### **7. Performance Management Framework**

- 7.1 Key Performance Indicators (KPIs) are essential in order to align the Contractor performance with the requirements of the Customer and to do so in a fair and practical way. KPIs have to be realistic, measurable and achievable; they also have to be met otherwise indicating that the service is failing to deliver. Without the use of service credits in such a situation, this service failure places strain on the relationship as delivery fall short of agreed levels.
- 7.12 The proactive approach to correcting failures and addressing their cause improves the relationship and enables a partnership rather than a confrontational style of working. Its focus is on managing and improving service.

- 7.13 The Customer shall work closely with the Contractor on regular occasions to review performance against KPIs and if appropriate agree action plans. The Customer expects the Contractor to agree and implement these plans. If this does not happen, only then shall service credit principles be applied.
- 7.14 The KPIs for this Contract are set out at Annex 1.
- 7.2 Service Credit Principles
- 7.2.1 The use of service credits is governed by the following principles:
- 7.2.1.1 Service credits sit within the wider service management approach being pursued by the Contractor and the Customer.
- 7.2.1.2 The service credit regime shall be instigated on each occasion where there is a service failure (i.e. where it is recognised by the Customer that the standards have fallen below the minimum).
- 7.2.1.3 Failure to achieve the overall performance target of a minimum standard for any KPI at the six (6) month review meeting would result in the reimbursement of 10% of the total charges for the six (6) month period in which the service failure occurred. The six (6) month period will be costed on a pro-rata basis based on the total pricing in Schedule 2.
- 7.2.1.4 Failure to achieve the overall performance target of a minimum standard for any KPI at the end of the contract final review meeting would result in the reimbursement of 10% of the total charges for the six (6) month period in which the service failure occurred. The six (6) month period will be costed on a pro-rata basis based on the total pricing in Schedule 2.
- 7.2.1.5 Service failure in the subsequent six (6) months for the same KPI would have a cumulative effect – i.e. would increase the charges for that service failure by a further 10% of the total charges for the six (6) month period during which the service failure persists. The six (6) month period will be costed on a pro-rata basis based on the total pricing in Schedule 2.
- 7.2.1.6 Achieving the KPI prior to the next review meeting renders that service failure resolved.
- 7.2.1.7 The Customer has full and complete discretion on whether to claim all, part or none of a service credit to which it is due. Any applicable service credits shall be calculated and applied at the six (6) month review and at end of the Contract.
- 7.2.1.8 Service credits claimed shall be paid to the Customer as a credit note within one (1) month following the date at which the service credits were applied.
- 7.2.1.9 The full, agreed service credit regime shall operate from the Contract start date until the end of the Contract.
- 7.2.2.0 Should either the Contractor or the Customer decide to discontinue the service at any point during the agreed period, a final review meeting shall be held.

7.2.2.1 Should either the Contractor or the Customer decide to proceed with the service beyond the end of the agreed Contract period, six (6) month review meetings shall continue until the Contract ends.

## Annex 1 – Key Performance Indicators (for Bronze Service Contract)

Annex A – Key Performance Indicators					
KPI	Goal	Measure	Measurement system	Base level requirement	
				Six (6) Month Review	End of Contract
<b>KPI 1</b>  <b>Contract Management</b>	<p>The Contractor provides responses to a request for service or issues in a timely fashion and which meet the Authority expectations. Support shall be provided on Working Days, Monday to Friday 09:00 to 17.30</p>	<p>The Contractor shall respond to suitably addressed emails or telephone calls within one (1) working day of contact from the Customer. The response shall provide the Customer with either a suitable resolution within two (2) working days or failing that agrees a timescale for when the issue shall be resolved.</p>	<p>The Contractor shall provide the Customer with a six (6) monthly review of responsiveness two (2) weeks prior to each six (6) monthly review meeting. The report shall include:</p> <ol style="list-style-type: none"> <li>1. Responses (against target of within one (1) working day)</li> <li>2. Resolution (against target of within two (2) working days)</li> <li>3. Timescale for resolution provided (against target of providing a resolution date)</li> </ol>	95% of the time	97% of the time

<b>KPI 2</b>  <b>Quality</b>	<p>The Contractor provides suitable support to ensure that the equipment is available to use to a standard that meets the Customer's expectations.</p>	<ol style="list-style-type: none"> <li>1. The Contractor shall make reasonable endeavours to ensure the equipment is operable at all times.</li> <li>2. The Contractor shall be sensitive to the Customer's needs, working conditions and priorities.</li> </ol>	<p>The Contractor shall provide the Customer with a six (6) monthly review of quality two (2) weeks prior to each six (6) monthly review meeting. The report shall include:</p> <ol style="list-style-type: none"> <li>1. Percentage of time the equipment has been out of service</li> <li>2. Details of what efforts have been made to resolve identified issues. (Provided for each case when resolution has exceeded five (5) working days)</li> </ol>	<p>95% of the time</p>	<p>97% of the time</p>
<b>KPI 3</b>  <b>Delivery &amp; Support</b>	<p>The Contractor provides timely annual service, service updates, ad hoc support and repairs to a standard that meets</p>	<p>The Contractor shall:</p> <ol style="list-style-type: none"> <li>1. Schedule (with agreement from the Customer) and attend appointments.</li> <li>2. Provide well trained service engineers.</li> </ol>	<p>The Contractor shall provide the Customer with a six (6) monthly review of service support two (2) weeks prior to each six (6) monthly review: The report should include:</p> <ol style="list-style-type: none"> <li>1. Dates of appointments and whether they were attended.</li> <li>2. Confirmation of the service</li> </ol>	<p>95% of the time</p>	<p>97% of the time</p>



	the Customer's expectations.	3. Provide a service report which confirms work undertaken and any outstanding issues	<p>engineers qualification to undertake the work. (measured by the Customer's suitability of service engineer)</p> <p>3. Service reports to include the work undertaken and any outstanding issues with a timetable for resolution. (Measured by the Customer as satisfaction of resolution)</p>		
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**SCHEDULE 2**  
**PRICING SCHEDULE**

The following Bronze Contract pricing (£21,046.87) shall apply from 09/05/14 to 31/03/16.

