

## Appendix 1 PHE Public Health Microbiology Framework Agreement Order Form

(in accordance with NHS Framework Agreement for the Supply of Goods (August 2014) – Appendix A –Call-off Terms and Conditions for the Supply of Goods)

**FROM**

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| <b>Participating Authority:</b>               | Public Health England  |
| <b>Service address:</b>                       | As per PHE official purchase order   |
| <b>Invoice address:</b>                       | PHE Accounts Payable Team<br>Financial Accounting Services<br>PHE Porton Down, Manor Farm Road<br>Salisbury, Wiltshire SP4 0JG<br>United Kingdom<br>Email: payables@phe.gov.uk |
| <b>PHE Procurement Lead:</b>                  | Name: [REDACTED]<br>Phone: [REDACTED]<br>E-mail: [REDACTED]  |
| <b>PHE Internal Reference (if applicable)</b> | To be quoted on all correspondence relating to this Order:<br>ecm_7620   |

**TOs**

|                          |                         |
|--------------------------|-------------------------|
| <b>Supplier Name:</b>    | Abbott Laboratories Ltd |
| <b>Contact Name:</b>     | [REDACTED]              |
| <b>E-mail:</b>           | [REDACTED]              |
| <b>Telephone number:</b> | [REDACTED]              |

**1. CONTRACT DETAILS**

Provision of Alinity m SARS-CoV-2 assays and associated consumables.

**(1.2) Contract Start Date:**

9 October 2020

**(1.3) Contract Value (and breakdown if applicable):**

Total Contract value of up to £18,000,000 (excluding VAT). The value for the Initial Term (as defined below) is approximately £8,451,981.36, as set out in Appendix B.

Please note that the consumables volumes stated in Appendix B are based on usage estimates provided by the Supplier. For the avoidance of doubt, the Authority does not agree to any minimum volume commitments.

The Authority reserves the right to purchase additional Alinity m SARS-CoV-2 assays and associated consumables, if required.

**(1.4) Contract End Date:**

31 March 2021 subject to any extension effected under the provisions of section 1.5 below.

**(1.5) Contract Extension Options:**

The Contract shall be for the period starting on the Contract Start Date and ending on 31 March 2021 ("Initial Term") subject to an option for the Authority and the Supplier by

agreement to extend it for a further period of up to 6 months ("**Extension Term**").

## **2 ADDITIONAL REQUIREMENTS**

### **(2.1) Supplemental requirements in addition to Call-off Terms and Conditions:**

2.1.1 Without prejudice to the Parties' obligations under the Contract (including but not limited to the Supplier's obligations under the Contract to supply the Goods, including as set out within the Order Form) the Parties recognise that the circumstances created as a result of the COVID-19 pandemic are exceptional and fast-moving. As a consequence, the Parties agree that they will act reasonably and in good faith together to seek to resolve any difficulties or challenges which may impact upon the manufacture and supply of Goods and in relation to the wider COVID-19 issues so as to ensure that public health is protected and preserved.

2.1.2 In this context:

(a) the Supplier recognises that there may be a shortage of supply of component parts and accordingly, the Supplier shall take all reasonable steps to safeguard and protect all stocks of goods and materials held by it and its corporate group from time to time which may be required to manufacture the Goods;

(b) the Supplier agrees to provide the Authority sufficient visibility of the Supplier's manufacturing processes and timelines for the manufacture and supply of Goods, in the form of its 90 day forecast, if so requested, to allow the Authority to plan and adjust order scheduling across the Authority's supply chain for products equivalent to or similar to the Goods (in such case in relation to other manufacturers' test instruments); and

(c) the Supplier shall notify the Authority promptly of any exceptional events or circumstances which may impact upon the Supplier's ability to manufacture and supply Goods in accordance with this Contract and the Authority's requirements.

2.1.3 In the event of being notified of any exceptional events or circumstances as referred to above, the Authority acknowledges and agrees that it may be necessary for the Supplier to deliver Goods as and when they become available, and/or make partial delivery of Goods ordered as a consequence for the period during which they are affected by such events or circumstances.

2.1.4 Where the Authority and the Supplier, working under this provision, agree a strategy to mitigate such impacts, so long as the Supplier complies with such strategy (as it may be further varied with the agreement of both Parties from time to time) for the period during which such exceptional events or circumstances pertain the Supplier will not be liable for such delay or failure to supply the Goods.

2.1.5 For the avoidance of doubt, the Authority acknowledges that the non-exclusive licence of the Supplier's Intellectual Property Rights for it to receive and use the Goods as further provided within the provision at Clause 11.1 of the Call-off Terms and Conditions covers the Authority's use of the Goods for COVID-19 testing on test instruments on the Supplier's test platform only. The Authority confirms that that is the extent of the use the receiving laboratories designated under this Contract need to make of the Goods. Accordingly, the Authority acknowledges and agrees that the non-exclusive licence granted by the Supplier at Clause 11.1 of the Call-off Terms and Conditions extends only to cover such use and not for any additional or wider use.

2.1.6 Use of Goods: The Authority shall not: (a) resell or distribute any Goods purchased under this Contract to any third party; (b) use Goods past their expiration date; or (c) use any Goods in any manner inconsistent with its intended use as such intended use is set out in the instructions for use supplied by the Supplier to the Authority with the Goods. If the Authority fails to comply with these restrictions, the Supplier may terminate this Agreement

Immediately upon written notice to the Authority.

2.1.7 For the avoidance of doubt, in the provision at 2.1.6 above, "third party" means any party that is not a designated PHE or affiliated site. The Supplier recognises that the Authority may wish to redistribute any Goods purchased under this Contract amongst the Authority laboratory network and may wish to add additional laboratories to this network, particularly if it becomes possible for the Authority to secure additional platforms.

**(2.2) Variations to Call-off Terms and Conditions for the Supply of Goods:**  
As contained in Annex A.

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| <b>3. GOODS AND/OR SERVICES REQUIREMENTS (fill in if applicable)</b>   |
| <b>(3.1) Key personnel of the Supplier to be involved in the Services [and deliverables]:</b><br>The Authority's specification (as set out in invitation to tender ("ITT") number: 2515); and the Contractor's tender response: including price schedule for awarded product and services, as well as any correspondence and clarifications. |
| <b>(3.2) Performance standards:</b><br>According to the Authority's specification (as set out in ITT 2515); and the Contractor's tender response: including price schedule for awarded product and services, as well as any correspondence and clarifications.   |
| <b>(3.3) Location(s) at which the Goods are to be provided:</b><br>PHE-Agency wide   |
| <b>(3.4) Quality standards:</b><br>According to the Authority's specification (as set out in ITT 2515); and the Contractor's tender response: including price schedule for awarded product and services, as well as any correspondence and clarifications.   |
| <b>(3.5) Contract monitoring arrangements:</b><br>As agreed by both parties in line with Schedule 8: SRM of the Framework Agreement, this includes but it is not limited to Implementation Plans for each site.  |
| <b>(3.6) Management Information and meetings:</b><br>As agreed by both parties in line with Schedule 8: SRM of the Framework Agreement.  |

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| <b>4. CONFIDENTIAL INFORMATION (if applicable)</b>  |
| <b>(4.1) The following information shall be deemed Confidential Information:</b><br>N/A     |
| <b>(4.2) Duration that the information shall be deemed Confidential Information:</b><br>N/A |

Signature: 

For and on behalf of the Authority

Name: 

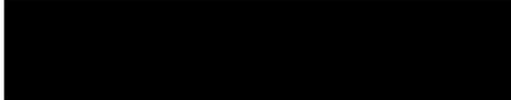
Job Title: 

Date: 27 November 2020

Signature: 

For and on behalf of the Supplier

Name: 

Job Title: 

Date: 9<sup>th</sup> Nov 2020

**Annex A**

The Parties agree the following amendments to the Framework Call-Off Terms and Conditions for the Supply of Goods:

## Appendix Ai – Call Off Terms and Conditions for the Supply of Goods

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| Schedule 2 Clause 1.7     | The cross-reference to Clause 1.5 shall be amended to cross-refer to Clause 1.6.   |
| Schedule 2 Clause 2.3     | <p>The existing Clause 2.3 shall be removed and replaced as follows:</p> <p>“The following details shall be shown on the outside of every package and within a delivery note which must accompany each package:</p> <p>2.3.1 a description of the Goods which shall include, without limitation, the weight of the Goods where available and any order number allocated to the Goods by the Authority and/or Supplier;</p> <p>2.3.2 the quantity in the package, where available;</p> <p>2.3.3 any special directions for storage;</p> <p>2.3.4 the expiry date of the contents, where applicable;</p> <p>2.3.5 the batch number; and</p> <p>2.3.6 the name and address of the manufacturer of the Goods and Supplier.</p> <p>In addition, all Goods that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Supplier shall label all Goods supplied to the Authority, and the packaging of such Goods, to highlight environmental and safety information as required by applicable Law.”</p> |
| Schedule 2 Clause 10.1.31 | <p>A new clause 10.1.31 shall be inserted as follows:</p> <p>“it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;”</p>   |
| Schedule 2 Clause 10.1.32 | <p>A new clause 10.1.32 shall be inserted as follows:</p> <p>“it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority that is notified to the Supplier and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier’s compliance with this Clause 10.1.32 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery</p>  |

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|                        | Policy.”  |
| Schedule 2 Clause 11.1 | <p>A new clause 11.1 shall be inserted as follows:</p> <p>“The Supplier hereby grants to the Authority, for the life of the use of Goods by the Authority, a royalty -free, non-exclusive licence, for the duration of using the Goods ordered and delivered of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract.”</p>  |
| Schedule 2 Clause 15   | <p>A new clause 15.5.6 shall be inserted as follows:</p> <p>“15.5.6 Upon the occurrence of any of the events in regulations 73(1)(a)-(c) of the Public Contracts Regulations 2015 (SI 2015/102).”</p>   |
| Schedule 2 Clause 17.2 | <p>The following wording shall be inserted after the current provision:</p> <p>“and in relation to Goods imported into the United Kingdom for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and all applicable product and safety liability legislation in force in the United Kingdom from time to time, the Supplier shall assume all obligations for all activities performed outside the United Kingdom in relation to the Goods and the packaging, in addition to any other obligations the Supplier may have pursuant to such regulations and other legislation.”</p>  |
| Schedule 2 Clause 17.4 | <p>The existing Clause 17.4 shall be removed and replaced as follows:</p> <p>“The Supplier shall ensure that all Goods that are required by Law or Guidance to bear any safety information, environmental information, any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality at the point such Goods are delivered shall comply with such requirements at the point of delivery.”</p>   |
| Schedule 2 Clause 20.4 | <p>A new Clause 20.4 shall be inserted as follows:</p> <p>“The Supplier grants the Authority a non-exclusive, royalty free license for the duration of this Contract to use and exploit the Product Information and any Intellectual Property Rights in the Product Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods) available pursuant to the Authority’s contracts from time to time. Subject to Clause 20.5 of this Schedule 2 of these Call-off Terms and Conditions, no obligation to illustrate or advertise the Product Information is imposed on the Authority, as a consequence of the license conferred by this Clause 20.4 of this Schedule 2 of these Call-Off Terms and Conditions.”</p> |

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| Schedule 3 Clause 2.1   | <p>The existing clause 2.1 shall be removed and replaced as follows:</p> <p>“The Parties each acknowledge and agree that they may need to undertake Processing of Personal Data relating to each Party’s representatives (in their respective capacities as Controllers) in order to (as appropriate):</p> <ul style="list-style-type: none"> <li>(a) administer and provide the Goods;</li> <li>(b) request and receive the Goods;</li> <li>(c) compile, dispatch and manage the payment of invoices relating to the Goods;</li> <li>(d) manage the Contract and resolve any disputes relating to it;</li> <li>(e) respond and/or raise general queries relating to the Goods; and</li> <li>(f) comply with their respective regulatory obligations.</li> </ul> <p>Processing of Personal Data relating to each Party's representatives for the purposes set out above shall only be done by each Party in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities</p> |
|   | <p>listed above, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation.”</p>   |
| Schedule 4 clause 1.1<br><b>“Contracting Authority”</b>       | <p>The existing definition shall be amended to read as follows:</p> <p>“means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;”</p>  |
| Schedule 4 clause 1.1<br><b>“Controller”</b>                  | <p>A new definition shall be inserted as follows:</p> <p>“shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);”</p>   |
| Schedule 4 clause 1.1<br><b>“Data Protection Legislation”</b> | <p>The existing definition shall be amended to read as follows:</p> <p>“means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;”</p>  |
| Schedule 4 clause 1.1<br><b>“Data Subject”</b>                | <p>The existing definition shall be amended to read as follows:</p> <p>“shall have the same meaning as given to it in the Data Protection Legislation;”</p>   |

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| Schedule 4 clause 1.1<br><b>"Force Majeure Event"</b>     | Paragraph (i) of the existing definition shall be renamed paragraph (j) and a new paragraph (i) shall be inserted to read as follows:<br><br>“(i) pandemic (excluding COVID-19 and any related circumstances, events, changes or requirements but this exclusion shall only apply to the extent that the same (aa) is, or ought to have been, known to the affected Party as at the Commencement Date; and (bb) is within the reasonable control of the affected Party); and” |
| Schedule 4 clause 1.1<br><b>"Personal Data"</b>           | The existing definition shall be amended to read as follows:<br><br>“shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);”  |
| Schedule 4 clause 1.1<br><b>"Process"</b>                 | The existing definition shall be amended to read as follows:<br><br>“shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679) and for the purposes of this Contract shall include both manual and automatic processing. <b>"Processing"</b> and <b>"Processed"</b> shall be construed accordingly;”  |
| Schedule 4 clause 1.1<br><b>"Sensitive Personal Data"</b> | The existing definition shall be removed and replaced as follows:<br><br>“means special categories of personal data as defined in the Data Protection Legislation;”   |

