



Contract for the for Supply of Badger BCG vaccine

Contract Ref: 27202

July 2020

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procurement@defra.gsi.gov.uk

SECTION 1

FORM OF CONTRACT

PARTIES:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR (the “**Authority**”);

AND

- (2) AJ Vaccines A/S of Artillerivej 5, DK-2300 Copenhagen S, Denmark (the “**Contractor**”)

(each a “**Party**” and together the “**Parties**”).

WHEREAS

The Authority wishes to appoint the Contractor to supply certain goods for use in, and only in, the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales) and the Contractor agrees to provide those goods in accordance with these terms and conditions.

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

- 1.1 The “**Contract**” comprises the following:

Section 1:	Form of Contract
Section 2:	Terms and Conditions
Schedule 1:	Specification
Schedule 2:	Prices
Schedule 3:	Change Control
Schedule 4:	Commercially Sensitive Information

- 1.2 Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority’s electronic contract management system (“**Bravo**”).
- 1.3 The Contract starts on 01/08/2020 (the “**Commencement Date**”) and ends on 31/07/2022 (the “**End Date**”) unless it is terminated early or extended in accordance with the Contract.
- 1.4 The Authority may extend the term of the Contract until 31/07/2025 (“**Extension**”). The terms of the Contract will apply throughout the period of any Extension.

Contents

SECTION 1.....	4
FORM OF CONTRACT	4
Contents	5
SECTION 2.....	1
TERMS AND CONDITIONS	1
A GENERAL PROVISIONS	2
B. THE GOODS.....	10
C PAYMENT	13
D. STATUTORY OBLIGATIONS.....	14
E PROTECTION OF INFORMATION	17
F. CONTROL OF THE CONTRACT	24
G LIABILITIES.....	30
H DEFAULT, DISRUPTION AND TERMINATION	34
I DISPUTES AND LAW	39
SCHEDULE 1 - SPECIFICATION.....	41
SCHEDULE 2 - PRICING	48
SCHEDULE 3 - CHANGE CONTROL	49
SCHEDULE 4 - COMMERCIAL SENSITIVE INFORMATION.....	50

SECTION 2

TERMS AND CONDITIONS

CONTENTS

A1	Definitions and Interpretation
A2	The Authority's Obligations
A3	Contractor's Status
A4	Notices and Communications
A5	Mistakes in Information
A6	Conflicts of Interest
B1	Specification
B2	Delivery
B3	Risk and Ownership
B4	Non-Delivery
B5	Labelling and Packaging
B6	Inspection of Premises
C1	Price
C2	Payment
C3	Recovery of Sums Due
C4	Price during Extension
D1	Prevention of Fraud and Bribery
D2	Discrimination
D3	Rights of Third Parties
D4	Health and Safety
D5	Environmental Requirements
E1	Authority Data
E2	Data Protection Act
E3	Official Secrets Acts and Finance Act
E4	Confidential Information
E5	Freedom of Information
E6	Publicity, Media and Official Enquiries
E7	Security
E8	Intellectual Property Rights
E9	Audit
E10	Tax Compliance
F1	Failure to meet requirements
F2	Monitoring Contract Performance
F3	Remedies for inadequate performance
F4	Transfer and Sub-Contracting
F5	Waiver
F6	Variation
F7	Severability
F8	Remedies Cumulative
F9	Entire Agreement
F10	Counterparts
G1	Liability, Indemnity and Insurance

G2	Warranties and Representations
G3	Force Majeure
H1	Termination on Insolvency and Change of Control
H2	Termination on Default
H3	Termination on Notice
H4	Other Termination Grounds
H5	Consequences of Expiry or Termination
H6	Disruption
H7	Recovery upon Termination
H8	Retendering and Handover
H9	Exit Management
H10	Exit Procedures
I1	Governing Law and Jurisdiction
I2	Dispute Resolution

A GENERAL PROVISIONS

A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

“Affected Party” means the Party seeking to claim relief in respect of a Force Majeure Event.

“Affiliate” means in relation to a body corporate, any other entity which directly or indirectly Controls is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

“Approval” and **“Approved”** means the prior written consent of the Authority.

“Authorised Representative” means the Authority representative named in the CCN as authorised to approve agreed Variations.

“Authority Data” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Authority is the Data Controller.

“Authority Premises” means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Goods.

“Authority Software” means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Contractor for the purposes of providing the Goods.

“Authority System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Goods.

“BPSS” means the HMG Baseline Personnel Security Standard for Government employees.

“Bravo” has the meaning given in paragraph 1.2 of the Form of Contract.

“CCN” means a change control notice in the form set out in Schedule 3.

“Commencement Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Commercially Sensitive Information” means the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to:

- (a) the Price;
- (b) details of the Contractor’s Intellectual Property Rights; and
- (c) the Contractor’s business and investment plans

which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Contract” has the meaning given in paragraph 1.1 of the Form of Contract.

“Contract Period” means the period from the Commencement Date to:

- (a) the End Date; or
- (b) following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

“Contracting Authority” means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Goods and which is set out in Schedule 6.

“Contractor System” means the information and communications technology system used by the Contractor in providing the Goods including the Software, the Contractor Equipment and related cabling (but excluding the Authority System).

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly.

“Copyright” means as defined in s.1 of Part 1 of Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **“Crown Body”** is an emanation of the foregoing.

“Database Rights” means rights in databases as defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Default” means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“End Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Equipment” means the Contractor’s equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the provision of the Goods.

“Extension” has the meaning given in paragraph 1.4 of the Form of Contract.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Force Majeure Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor's supply chain.

“Form of Contract” means Section 1 of the Contract.

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs;

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Goods” means any goods supplied by the Contractor (or by a Sub-Contractor) under the Contract as specified in Schedule 1 including any modified or alternative goods.

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“Security Policy Framework” means the HMG Security Policy Framework (available from the Cabinet Office's Government Security Secretariat) as updated from time to time.

“HMRC” means HM Revenue & Customs.

“ICT Environment” means the Authority System and the Contractor System.

“Information” has the meaning given under section 84 of the FOIA.

“Initial Contract Period” means the period from the Commencement Date to the End Date.

“Intellectual Property Rights” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003.

“Know-How” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists,

instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

“Law” means law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply.

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10.

“Month” means calendar month.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Premises” means the location where the Goods are to be supplied as set out in the Specification.

“Price” means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Contractor of its obligations under the Contract.

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or

- ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - ii) under legislation or common law concerning fraudulent acts; or
 - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Property” means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.

“Purchase Order” means the document in which the Authority specifies the Goods which are to be supplied by the Contractor under the Contract.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

“Receipt” means the physical or electronic arrival of the invoice at the address specified in clause A4.4 or at any other address given by the Authority to the Contractor for the submission of invoices from time to time.

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102).

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

“Relevant Conviction” means a conviction that is relevant to the nature of the Goods or as listed by the Authority and/or relevant to the work of the Authority.

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

“Replacement Contractor” means any third party supplier appointed by the Authority to supply any goods which are substantially similar to any of the Goods in substitution for any of the Goods following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

“Results” means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other materials which is held, prepared by (or for) either Party and used of the Party in relation to the performance of its obligations under the Contract.

“Specification” means the description of the Goods to be supplied under the Contract as set out in Schedule 1 including, where appropriate, the Premises and the Quality Standards.

“SSCBA” means the Social Security Contributions and Benefits Act 1992.

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

“Sub-Contract” means a contract between 2 or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and **“Sub-Contractor”** shall be construed accordingly.

“Tender” means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Goods.

“TFEU” means the Treaty on the Functioning of the European Union.

“Third Party IP Claim” has the meaning given to it in clause E7.4 (Intellectual Property Rights).

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Goods including the software and which is specified as such in Schedule 6.

“Treaties” means the Treaty on European Union and the TFEU.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“TUPE Information” means the information set out in clause B17.1.

“Valid Invoice” means an invoice containing the information set out in clause C2.5.

“Variation” means a change in the Specification, the Price or any of the terms or conditions of the Contract.

“VAT” means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;

- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (h) references to the Contract are references to the Contract as amended from time to time.

A2 The Authority’s Obligations

- A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Contractor.

A3 Contractor’s Status

- A3.1 The Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
- A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.

A4 Notices and Communications

- A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.
- A4.2 If it is not returned as undelivered a notice served:
 - (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
 - (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

A4.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

(a) For the Authority:

Contact Name: [REDACTED]

Address: Area 2A, Nobel House, London, SW1P 3JR and

[REDACTED]

(b) For the Contractor:

Contact Name: [REDACTED]

Address: Artillerivej 5, 2100 Copenhagen S, Denmark; and

[REDACTED]

A5 Mistakes in Information

A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the Goods and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A6 Conflicts of Interest

A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.

A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

B. THE GOODS

B1 Specification

B1.1 In consideration of the Contractor supplying the Goods the Contractor shall be paid the Price.

B2 Delivery

B2.1 Delivery will take place by airfreight to CIP London Heathrow Airport, Incoterms 2020, Transport and packaging will be invoiced separately.

B2.2 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date agreed for the specific delivery stated in the Order form ("Agreed Delivery Date"). However, if the Authority elects to accept Goods supplied earlier than the Agreed Delivery Date, the Authority will pay for the delivered Goods as agreed in the Order form.

B2.3 The yield of the BCG Badger Batch variate slightly. In order to minimise the waste of resources the amount will vary between 80% to 110% of the ordered amount. If the Authority elects to accept Goods delivered in excess of the quantity ordered, the Authority will pay a proportionately higher price covering Goods delivered in excess of 110% of the quantity ordered. If the Authority elects not to accept such over-delivered Goods according the Agreement it shall give notice to the Contractor to remove them within 5 Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Authority.

B2.4 The Authority may inspect and examine the manner in which the Contractor supplies the Goods at the Premises during normal business hours on reasonable notice. The Contractor shall provide free of charge all such facilities as the Authority may reasonably require for such inspection and examination. In this clause B3, Goods include planning or preliminary work in connection with the supply of the Goods. During such inspections and inspections at Contractor facilities, the Authority will comply with any policy and/or instructions provided by Contractor.

B2.5 The Contractor shall perform its obligations under the Contract:

- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (b) in accordance with Good Industry Practice; and
- (c) in compliance with all applicable Laws.

B2.6 The Contractor shall ensure the Goods:

- (a) conform in all respects with the Specification and, where applicable, with any sample approved by the Authority;
- (b) operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification;
- (c) conform in all respects with all applicable Laws; and

- (d) are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority.

B2.7 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Goods has not been specified in the Contract, the Contractor shall agree the relevant standard of the Goods with the Authority prior to the supply of the Goods and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B2.8 The Contractor shall ensure that all Staff supplying the Goods do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Goods. The Contractor shall ensure that those Staff are properly managed and supervised.

B3 Risk and Ownership

B3.1 Subject to clauses B2.6, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1 (Failure to meet Requirements)), pass to the Authority at the time of delivery.

B3.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1), pass to the Authority at the time of payment of the Price in full .

B4 Non-Delivery

B4.1 On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.

B5 Labelling and Packaging

B5.1 The Contractor shall ensure that the Goods are labelled and packaged in accordance with the Contract.

B5.2 The Contractor shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2003. The container in which the Goods are held shall be labelled with the Contractor's name, the net, gross and tare weights, and contain a description of its contents. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

B5.3 The Contractor shall:

- (a) use packaging capable of easy recovery for further use or recycling. Packaging materials shall be easily separable by hand into recyclable parts consisting of one material (e.g. cardboard, paper, plastic, textile); glass vials, rubber stopper and metal caps are not easy to reuse
- (b) review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist; and

B6 Inspection of Premises

- B6.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have complete due diligence in relation to all matters connected with the performance of its obligations under the Contract.

C PAYMENT

C1 Price

- C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Price in accordance with clause C2.

C2 Payment

- C2.1 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 2.
- C2.2 All Contractor invoices shall be expressed in DKK (Danish Krone).
- C2.3 Valid Invoices shall include:
- (a) the Contractor's full name, address and title of the Contract;
 - (b) the name and quantity of the Goods delivered including batch numbers;
 - (c) the Purchase Order number.
- C2.4 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.
- C2.5 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.
- C2.6 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address: ssd.apdefradefra.gsi.gov.uk (the Authority's preferred option); or SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ.
- C2.7 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.138 The Contractor shall ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- C2.9 The Contractor shall not suspend supply of the Goods unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.
- C2.10 The Authority shall not pay an invoice which is not Valid Invoice.

C3 Recovery of Sums Due

- C3.1 Any overpayment by either Party, whether of the Price or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C2.2 Neither Party shall make any payment due to the other with any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the said Party has a valid court order requiring an amount equal to such deduction to be paid by the other Party to the said Party.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- C4 Price During Extension**
- C4.1 Subject to Schedule 2 and clause F6 (Variation), the Price shall apply for the Initial Contract Period or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract. In case of Extension the price can be adjusted with the index in Danish consumer index from the date of last signature, during extension the price will be adjusted every year in January with the index of Danish consumer price index since last adjustment.

D. STATUTORY OBLIGATIONS

D1 Prevention of Fraud and Bribery

- D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- D1.2 The Contractor shall not during the Contract Period:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- D1.3 The Contractor shall, during the Contract Period:
- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

- D1.4 The Contractor shall without undue delay notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond without undue delay to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, records and/or any other relevant documentation.
- D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:
- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
 - (b) immediately terminate the Contract.
- D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

D2 Discrimination

- D2.1 The Contractor shall:
- (a) perform its obligations under the Contract in accordance with:
 - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
 - ii) the Authority's equality and diversity policy as given to the Contractor from time to time;
 - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
 - (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

D3 Rights of Third Parties

- D3.1 The provisions of clause E7.2 confer benefits on persons named in such provisions (together “**Third Party Provisions**”) other than the Parties (each person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”).
- D3.2 Subject to clause D3.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- D3.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.
- D3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

D4 Health and Safety

- D4.1 The Contractor shall perform its obligations under the Contract in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Authority's health and safety policy while at the Authority's Premises.
- D4.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

D5 Environmental Requirements

- D5.1 The Contractor shall in the performance of the Contract to the best of its ability have due regard to the Authority's environmental, sustainable and ethical procurement policies (“**Environmental Policies**”) which encourage the Contractor to:
- conserve energy, water, wood, paper and other resources and reduce waste;
 - phase out the use of ozone depleting substances;
 - minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
 - minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
 - reduce fuel emissions wherever possible;

maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and

promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

- D5.2 The Authority has encouraged the Contractor to use equipment and materials used in the supply of the Goods which do not contain:

ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances; and/or

HFCs and other gaseous and non-gaseous substances with a high global warming potential;

unless given written permission by the Authority to do so.

- D5.3 The Authority encourages the Contractor to conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

- D5.4 If required by the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under clause D5.3.

- D5.5 The Contractor shall, if deemed relevant by the Contract, make its Staff aware of the Authority's Environmental Policies.

- D5.6 The Authority encourages the Contractor to comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where relevant, to comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Authority by or on behalf of the Contractor under the Contract.

- D5.7 The Authority encourages to the Contractor to:

identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Goods; and if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Goods.

E PROTECTION OF INFORMATION

E1 Authority Data

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

- E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.
- E1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority without undue delay upon request.
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.
- E1.7 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- (a) require the Contractor (at the Contractor's reasonable expense) to restore or procure the restoration of Authority Data and the Contractor shall do so without undue delay; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority without undue delay and inform the Authority of the remedial action the Contractor proposes to take.

E2 Official Secrets Acts and Finance Act

- E2.1 The Contractor shall comply with the provisions of:
- (a) The Official Secrets Acts 1911 to 1989. The Official Secrets Act prohibits the disclosure of official documents and information.
<http://www.legislation.gov.uk/ukpga/1989/6>

E3 Confidential Information

- E3.1 Except to the extent set out in this clause E3 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party (the "Recipient") shall treat all Confidential Information belonging to the other Party (the "Discloser") as confidential and shall not disclose any Confidential Information belonging to the Discloser to any other person without the Discloser's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- E3.2 The Contractor hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.

- E3.3 Recipient hereby warrants that any officer, employee, or authorised person or entity to whom Confidential Information is disseminated in order to fulfil the Recipient's obligations shall be bound to protect that Confidential Information by written obligation or direction as to use and non-disclosure substantially as set out in this Agreement and Recipient shall remain liable for any breach by the same.
- E3.4 The Recipient shall ensure that its Staff, professional advisors and consultants are aware of the Recipient's confidentiality obligations under the Contract.
- E3.5 The Recipient may only disclose the Discloser's Confidential Information to the Staff who are directly involved in the who need to know the information in order to fulfil the , and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E3.6 The Recipient shall not, and shall procure that the Staff do not, use any of the Discloser's Confidential Information received otherwise than for the purposes of this Contract.
- E3.7 Clause E3.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - (e) it is independently developed without access to the other Party's Confidential Information.
 - (f) The exceptions set out in section E3.7(a)-(e) shall not apply to Confidential Information merely because any part of it is expressed in more general terms or included in more general information which is or becomes subject to such exceptions, or merely because it is a compilation or analysis of pieces of information, which pieces individually are or become subject to such exceptions. Moreover, the Parties agree that in any dispute the Recipient shall have the burden of proof to show that the relied-on exception applies.
- E3.8 Nothing in clause E3.1 shall prevent the Recipient disclosing any Confidential Information obtained from the Discloser:
- (a) for the purpose of the examination and certification of the Recipient's accounts;
 - (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the

information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;

(d) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E3.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- E3.9 Nothing in clauses E3.1 to E3.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E3.10 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E3.6 is made aware of the Authority's obligations of confidentiality.
- E3.11 If the Contractor does not comply with clauses E3.1 to E3.6 the Authority may terminate the Contract immediately on written notice to the Contractor.
- E3.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E3.13 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.
- E3.14 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E3.12.

E4 Freedom of Information

- E4.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- E4.2 The Contractor shall:
- (a) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
 - (b) not respond directly to a Request for Information unless authorised to do so in writing by the Authority.
- E4.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive

Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

E5 Publicity, Media and Official Enquiries

- E5.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- E5.2 Either Party shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E5.1.

E6 Security

- E6.1 The Authority is responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements and visa versa.
- E6.2 The Authority shall give the Contractor upon request copies of its written security procedures.
- E6.3 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E6.4 Notwithstanding clause E6.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the supply of Goods.
- E6.5 Any cost arising out of the actions of the Parties taken in compliance with clause E6.4 shall be borne by the Parties as follows:
 - (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
 - (b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

E7 Intellectual Property Rights

- E7.1 Unless otherwise specifically stated in the Contract each Party is and shall remain the owner of all Intellectual Property Rights, inclusive the Results ("**IP Materials**"), that it owns or controls as of the Commencement Date or that it individually develops and/or acquires thereafter.
- E7.2 The Contractor shall:
 - (a) not infringe any Intellectual Property Rights of any third party in supplying the Goods; and
 - (b) during and after the Contract Period, indemnify and keep indemnified the Authority and Indemnified Parties from and against all actions, suits, claims, demands, losses,

charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause E7.2, except to the extent that any such claim results directly from:

- i) items or materials based upon designs supplied by the Authority; or
- ii) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

E7.3 However, the Contractor's indemnification of the Authority pursuant to section E7.2(b) shall be conditional upon the Authority's without undue delay notification to the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.

E7.4 Moreover, the Contractor's indemnification of the Authority pursuant to section E7.2(b) shall be conditional upon the Authority giving the Contractor the full control of the dispute in order for the Contractor to, at its own expense, conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement of any third party Intellectual Property Rights (whether by the Authority, the Contractor or any Indemnified Person) arising from the performance of the Contractor's obligations under the Contract ("**Third Party IP Claim**").

E7.5 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.

E7.6 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E7.7 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and any relevant Indemnified Person and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses G2.1(g)) use its best endeavours to:

- (a) modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
- (b) procure a licence to use the Intellectual Property Rights and supply the Goods which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Contractor is unable to comply with clauses E7.7 (a) or (b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.

E7.9 The Authority shall make relevant raw data, clinical studies, inclusive results, and all repointing with regard to the said and the Contract, available to the Contractor.

E7.10 Notwithstanding the above under clause E7.9 the Contractor is only entitled to use the said information, data and results provided that the publication, presentation, or use of the said does not disclose any Confidential Information.

- E7.11 If the Authority contemplates publication of any of the said under clause E7.9, in whole or in part, the Authority should notify the Contractor in writing, and provide the Contractor with the draft text in such reasonable time before the submission of the publication for the Contractor to review and comment thereon, and for the Authority to review and take into consideration such comments received from the Contractor, provided that they do not interfere with the scientific nature or the neutrality of the planned publication. However, the Authority must on the Contractor's request remove any of the Contractor's Confidential Information prior to submission for publication or presentation. The time allowed for the Contractor to review and comment on the draft shall be one (1) month. The Contractor shall be free to use any of the relevant publications for marketing purposes or commercial use.

E9 Audit

- E9.1 The Contractor shall keep and maintain until 5 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford t the Authority's representatives, who must be approved Danish chartered accountants, such access to those records and processes as may be requested by the Authority in connection with the Contract.
- E9.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports based on public authorities obtained by the Contractor in relation to the Goods.
- E9.3 The Contractor shall permit duly authorised representatives of the Authority, who must be approved Danish chartered accountants, at the Authority's own expense to examine the Contractor's records and documents relating to the performance of the Contract as reasonably requested by the Authority and to provide such copies and oral or written explanations as may reasonably be required.
- E9.4 The Contractor (and its agents) shall permit a representative of the Comptroller and Auditor General (and his appointed representatives), who must be approved Danish chartered accountants, access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information related to the Contract as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

E10 Tax Compliance

- E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - (b) without undue delay give the Authority:
 - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

- E10.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:
- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
 - (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the supply of the Goods by the Contractor or any Staff.

F. CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

- F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Goods do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Contractor shall at its own expense re-schedule and supply the Goods in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- F1.2 The Authority may by notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a fifteen (15) days after delivery to the Authority of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to its other rights and remedies) either:
- (a) have such Goods promptly, free of charge and in any event within 5 Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
 - (b) treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement.
- F1.3 The Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause F1.2.
- F1.4 The issue by the Authority of a receipt note for delivery of the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Authority's acceptance of them.
- F1.5 The Contractor hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is specified, for a period of 18 months from the date of delivery. The Authority shall within such period or within 25 Working Days thereafter give notice to the Contractor of any defect in any of the Goods as may have arisen during such period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) without undue delay remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.

- F1.6 Any Goods rejected or returned by the Authority as described in clause F1.2 shall be returned to the Contractor at the Contractor's risk and expense.

F2 Monitoring of Contract Performance

- F2.1 The Contractor shall without undue delay inform the Authority if any of the Goods are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- F2.2 At or around Twelve (12) Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "**Review Date**"), the Authority shall carry out a review of the performance of the Contractor ("**Checkpoint Review**"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Goods; the Contractor's contribution to innovation in the Authority; whether the Goods provide the Authority with best value for money; consideration of any changes which may need to be made to the Goods; a review of future requirements in relation to the Goods and progress against key milestones.
- F2.3 The Contractor shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Authority may produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Goods and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under this Contract.
- F2.5 The Authority shall give the Contractor a copy of the Checkpoint Review Report (if applicable). The Authority shall consider any Contractor comments and may produce a revised Checkpoint Review Report.
- F2.6 The Contractor shall, within 20 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

F3 Remedies for inadequate performance

- F3.1 If the Authority reasonably believes the Contractor has committed a Material Breach, and the Contractor has not remedied such breach within twenty (20) Working Days from receipt of notice thereof from the Authority, the Authority may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Goods until such time as the Contractor has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Goods in accordance with the Specification;

- (b) without terminating the whole of the Contract, terminate the Contract in respect of some of the Goods only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods;
 - (a) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or
 - (a) terminate the Contract in accordance with clause H2.
- F3.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Goods by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such of the Goods.
- F3.3 If the Contractor has failed to supply all or any part of the Goods in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.
- F3.4 If the Contractor has been notified of a failure in accordance with clause F3.3 the Authority may:
 - (a) direct the Contractor to identify and remedy the failure within twenty (20) Working Days from receiving the notice and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
 - (b) withhold payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- F3.5 If the Contractor has been notified of a failure in accordance with clause F3.3, it shall:
 - (a) use all reasonable endeavours to as soon as practicable minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
 - (b) without undue delay give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Authority.
- F3.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F3.5 within twenty (20) Working Days, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

F4 Transfer and Sub-Contracting

- F4.1 Except where clauses F4.5 and F4.6 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F4.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 5 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F4.4 If the Authority has consented to the award of a Sub-Contract, the Contractor shall ensure that:
- (a) the Sub-Contract contains a right for the Contractor to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
 - (b) the Sub-Contractor includes a provision having the same effect as set out in clause F4.4 (a) in any Sub-Contract which it awards; and
 - (c) copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.
- F4.5 If there are:
- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
 - (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.
- F4.6 Notwithstanding clause F4.1, the Contractor may assign to a third party (the “Assignee”) the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.6 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
 - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Authority receiving notification under both clauses F4.7 and F4.8.

- F4.7 If the Contractor assigns the right to receive the Price under clause F4.6, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F4.8 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- F4.9 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.
- F4.10 Subject to clause F4.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
 - (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F4.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F4.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **"Transferee"**):
- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- F4.13 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F4.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

F5 Waiver

- F5.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A4 (Notices and Communications).
- F5.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F6 Variation

- F6.1 If, at any time after the Commencement Date, the Authority's requirements change the Authority may request a Variation subject to the terms of this Clause F6.
- F6.2 The Authority may request a Variation caused by governmental demand by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing.
- F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:
- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
 - (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).
- F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CCN is made via electronic signature as described in clause 1.2 of Section 1 of the Contract.
- F6.5 A CCN takes effect on the date on which the Parties communicate acceptance of the CCN via Bravo and, on the date it communicates its acceptance of the CCN in this way, the Contractor is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in clause G2.
- F6.6 The provisions of clauses F6.4 and F6.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

F7 Severability

F7.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F8 Remedies Cumulative

F8.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F9 Entire Agreement

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

F10 Counterparts

F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (c) any breach of clauses D1, E1 or E3;
- (d) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

- G1.3 Subject to clause G1.1 the Contractor's aggregate liability in respect of the Contract shall not exceed the amount received by the Contractor from the Authority under this Agreement during the past 12 months, and if less than 12 months have passed , only the amount received by the Contractor under the Agreement during the Agreement period.
- G1.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- G1.5 The Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - (b) any wasted expenditure or charges;
 - (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
 - (d) any compensation or interest paid to a third party by the Authority; and
 - (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- G1.6 Subject to clauses G1.1 and G1.5, for the avoidance of doubt neither Party shall be liable to the other for any:
- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
 - (b) indirect, special or consequential loss.
- G1.7 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 1 year following the end of the Contract.
- G1.8 The Contractor shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.
- G1.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

- G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:
- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
 - (b) in entering the Contract it has not committed any fraud;
 - (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
 - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
 - (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
 - (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
 - (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
 - (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
 - (i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Contract:
 - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G3 Force Majeure

- G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated, but the Contractor has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of goods similar to the Goods, operating to the standards required by the Contract.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:

- i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Goods (or some of the Goods) continue to be supplied in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

- H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Contractor shall notify the Authority without undue delay in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation

H2 Termination on Default

- H2.1 Either Party may terminate the Contract with immediate effect by notice if the the other Party commits a Default and:
- (a) the defaulting Party has not remedied the Default to the satisfaction of the said Party within 25 Working Days or such other period as may be specified by the said Party, after issue of a notice specifying the Default and requesting it to be remedied;
 - (b) the Default is not, in the opinion of the said Part, capable of remedy; or
 - (c) the Default is a Material Breach.
- H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within twenty-five (25) Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

H3 Termination on Notice

- H3.1 The Authority may terminate the Contract at any time by giving 30 Working Days prior notice to the Contractor.

H4 Other Termination Grounds

- H4.1 The Authority may terminate the Contract on written notice to the Contractor if:
- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
 - (b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
 - (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or
 - (d) the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

H5 Consequences of Expiry or Termination

- H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Goods the Authority may recover from the Contractor

the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.

- H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments to the Contractor (for Goods supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.
- H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments to the Contractor except for Goods supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.
- H5.4 Save as otherwise expressly provided in the Contract:
- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection Act Compliance), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H6 Disruption

- H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H6.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.
- H6.5 If the Contractor is unable to deliver the Goods owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H7 Recovery upon Termination

- H7.1 On termination of the Contract for any reason, either Party shall at its cost:

- (a) without undue delay return to the other Party all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Goods;
- (b) immediately deliver to the other Party all Property (including materials, documents, information and access keys) provided to the said Party in good working order;
- (c) without undue delay vacate any premises of the other Party occupied by the said Party;
- (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Goods to the Replacement Contractor and/or the completion of any work in progress; and
- (e) promptly provide all information concerning the supply of the Goods which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Goods have been supplied and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.

H8 Retendering and Handover

- H8.1 Contractor shall at all times during the Contract keep documents specifying the product updated.
- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future supply of the Goods.
- H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H8.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.
- H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future supply of the Goods. The Contractor have to approve the scope timing and persons participating in the audit.
- H8.6 If access is required to the Contractor's Premises for the purposes of clause H8.5, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

- H8.8 Within 10 Working Days of being requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

H9 Exit Management

- H9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause H10.

H10 Exit Procedures

- H10.1 Where the Authority requires a continuation of all or any of the supply of Goods on expiry or termination of this Contract by engaging a third party to supply them, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the supply of the Goods without disruption to routine operational requirements.
- H10.2 The following commercial approach shall apply to the transfer of the supply of the Goods if the Contractor:
- (a) does not have to use resources in addition to those normally used to supply the Goods prior to termination or expiry, there shall be no change to the Price; or
 - (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 2 or forming the basis for the Price.
- H10.3 When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the supply of the Goods including the software licence agreements.
- H10.4 Within one Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

- I1.1 Subject to the provisions of clause I2 the Contract, including shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

I2 Dispute Resolution

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party

notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.

- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 either Party may refer it to mediation pursuant to the procedure set out in clause 12.5.
- 12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
 - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
 - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
 - (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.
- 12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:
- (a) The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7;

- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7; and
- (c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 If any arbitration proceedings are commenced pursuant to clause 12.6,

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SCHEDULE 1 - SPECIFICATION

This Section sets out the Authority’s requirements.

Definitions

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

“BCG”	means Bacille Calmette Guérin
“CMT”	means Contract Management Team
“GB”	means Great Britain
“KPIs”	means Key Performance Indicators

"PMF"	means Performance Management Framework
"TB"	means tuberculosis

1 Overview

- 1.1 The Authority wishes to obtain supply of Badger BCG to DEFRA
- 1.2 The Contract will be awarded for a period of two (2) years commencing from the 1st August 2020 to the 31st July 2022 with the option to extend for a further three (3) years.

The three (3) year extension period will contain twelve (12) monthly interval check points to ensure against potential policy and price changes during the extension period/s.

2 Background and Policy Context

- 2.1 In 2014 Defra published a document entitled "Defra Strategy for achieving officially bovine TB-free status for England" which laid out the plan to eradicate Bovine TB in Great Britain over a twenty five (25) year period.
- 2.2 As part of the strategy DEFRA is to ensure there is sufficient vaccine for the DEFRA-sponsored badger vaccination projects in the TB Edge Area of England (the Badger Edge Vaccination), the Welsh Government's vaccination programme and for the private projects run by Wildlife Trusts and other voluntary groups an increased volume of vaccine is required to meet demand

3 Requirement

- 3.1 The Authority require the supply of Badger BCG for use in DEFRA-sponsored badger vaccination projects in the TB Edge Area of England (the Badger Edge Vaccination), the Welsh Government's vaccination programme and for the private projects run by Wildlife Trusts and other voluntary groups

- 3.3 Description of Badger BGC Vaccine;

3.3.1 QUALITATIVE AND QUANTITATIVE COMPOSITION

Lyophilised vaccine:

Active substance:

Mycobacterium bovis Bacille Calmette Guérin (BCG)
Danish Strain 1331

2-8 × 10⁶ colony
forming units (cfu)

Diluent:

Sauton diluent

1 mL

List of excipients

Lyophilised vaccine:

Sodium L-glutamate monohydrate

Sauton diluent:

Magnesium sulphate heptahydrate

Dipotassium phosphate

Citric acid, monohydrate

L-Asparagine monohydrate

Ferric ammonium citrate

Glycerol

Water for injections

Nature and composition of immediate packaging

Amber Type I glass vial with bromobutyl stopper and aluminium cap; Type I glass vial with a chlorbutyl stopper and an aluminium cap.

Cardboard box with 10 vials of a 1 dose per vial presentation.

Store in a refrigerator (2 °C – 8 °C).

3.3.2 PHARMACEUTICAL FORM

Lyophilisate and solvent for suspension for injection.

3.3.3 The shelf life of the vaccine is 18 months as approved by the VMD

4 Volumes and Ordering process

4.1 The contract will be set up to facilitate the initial supply of 1800 BCG vials up to the value of [REDACTED]. This price will include the cost of delivery and packaging. It also will allow for further orders to be placed under this contract until its expiry.

4.2 Further orders can be placed with the supplier by completing and issuing the attached order form in Schedule 5 to the Contractor. After placing the order there will be a 3-month lead time for the manufacturing of the order.

4.3 The Authority shall notify the Contractor whether it wishes to exercise the option to extend the Contract for a further period of twelve (12) months and provide order volumes one (1) month before the end of the current agreed Contract duration.

5 Delivery

5.1 All Vaccine will be delivered to Heathrow Airport. The delivery will take 1 week after the manufacturing lead time, which is estimated to take 3-months. The product will be packed and air freighted in accordance with WHO guidelines. Cold packs capable of keeping the temperature at 2°C – 8° for the delivery duration of 1 week and one Electronic Monitoring Device will be included in each shipping container

- 5.2 The Authority will be responsible for ensuring an import permit is obtained prior to arrival of the shipment
- 5.3 The Authority is responsible for collecting and couriering the shipment from Heathrow airport to its UK destination.
- 5.4 If any of the shipment is damaged on arrival to Heathrow the Authority will notify the Contractor within 3 working days of its arrival and provide evidence of damage.
- 5.5 The Contractor will evaluate how to compensate any damaged products that have been shipped.

6 Contact

- 6.1 The Contractor contact shall be:

Jerome Cabannes AJ Vaccines A/S
Artillerivej 5,
2300 Kbh S,
Denmark
E-mail address: JECA@ajvaccines.com

- 6.2 The Authority contact shall be for DEFRA:

Matthew Cocks
Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London
SW1P 3JR
E-mail address: Matthew.Cocks@defra.gov.uk

7 Performance Management Framework (including KPIs and Service Credits)

- 7.1 As part of the Authority's continuous drive to improve the performance of all Contracts, this PMF will be used to monitor, measure and control all aspects of the Contractor's performance of contract responsibilities.
- 7.2 The purpose of the PMF is to set out the obligations on the Contractor, to outline how the Contractor's performance will be evaluated and to detail the sanctions for performance failure. The Contractor is responsible for the performance of any sub-contractors.
- 7.3 The Authority has defined reasonable KPIs set out at Table One (1) of the Specification of Requirements for the Contractor under the following categories:
 - 1 Customer Service
 - 2 Delivery
 - 3 Quality
 - 4 Contract Management
- 7.4 The above categories are consistent within all Contract awards allowing the Authority to monitor Contractor's performance at both individual contract level and at enterprise level with the individual Contractor.

- 7.5 Key Performance Indicators (KPIs) are essential in order to align Contractor performance with the requirements of the Authority 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 falls short of agreed levels.
- 7.6 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.
- 7.7 The Authority shall carry out a review of the Contractors performance against KPI's ("**Checkpoint Review**") on a yearly basis. Any performance issues will be highlighted in a performance management report and the Contractor, who will be required to provide an improvement plan to address all issues highlighted within five (5) working days of receipt of the performance management report. Meetings may be instigated and the Authority will work closely with the Contractor to agree action plans. The Authority expects the Contractor to agree and implement these plans. If this does not happen, only then shall service credit principles be applied.
- 7.8 The Contractor is expected to maintain their own management reports, including an issues log.
- 7.9 The KPIs for this Contract are set out at Table One (1).

Table One (1) – KPIs

KPI	Description	Measure	KPI Target	Service Credit Rating
KPI One (1) Customer Service	Contractor to advise the Authority, without delay, of any manufacturing issues that they consider may impact on their ability to maintain the supply chain. Where these issues relate to final product testing and failure to meet the official batch release authority, DEFRA, must have been notified directly and immediately. The Contractor shall respond to queries within three (3) Working Day of contact from the Customer. The response shall provide the Customer with either a suitable resolution within two (2) working Days or agree a timescale for when the issue shall be resolved.	Immediate notification of issues affecting supply or delivery timescales. Responses and resolution timescales are met.	100%	1

KPI Two (2) Delivery	Goods shall be delivered within the agreed timescales following receipt of an Order form. Contractor is able to respond to Authority requests for additional goods.\	Delivery against agreed timescales.	100%	1
KPI Three (3) Quality	The product is accepted as suitable by DEFRA and performs to the manufacturer's specifications.	The product meets the required standards as stated in the specification.	100%	2
KPI	Description	Measure	KPI Target	Service Credit Rating
KPI Four (4) Contract Management	The contractor will maintain a management report and issues log and, if issues are identified during the duration of the contract, will provide an improvement plan within five (5) working days of receipt of a performance management report.	Contractor information is maintained and improvement plans are provided within five (5) working days of receipt of a performance management report.	100%	2

SCHEDULE 2 - PRICING

1. A fixed price of [REDACTED] will be paid for an initial order for 1800 vials as set out in the Contract.

The price of delivery and packaging will not exceed [REDACTED]
The final price will be confirmed prior to the order being dispatched.

2. For any future orders the following prices per vial will be applied

Table 1

Pricing Table	
Number of Vials ordered a delivery	Price per vial (Kroner-Sterling conversion)
1200	[REDACTED]
1800	[REDACTED]
2700	[REDACTED]
3600	[REDACTED]
5400	[REDACTED]
6600	[REDACTED]
8100 and up	[REDACTED]

3. The prices have been confirmed and provided by the Contractor. This is the maximum unit price that can be charged during the contract period and shall not be exceeded without prior written agreement from the Customer.
4. It has been agreed a price review meeting will take place each year in December during the contract to negotiate and agree prices for the following year.
5. It has been agreed a minimum quantity of 1200 Vials will be ordered for any future orders under this agreement.
6. Payment will be made once all goods have been received. The customer must confirm receipt of goods prior to payment being authorised.
7. Freight conditions CIP to London Heathrow Airport as per Incoterms 2020. Packing and airfreight according to GDP requirements. Any related charges will be added to the invoice.
8. Deliveries will be made on the split mentioned above.

SCHEDULE 3 - CHANGE CONTROL

Contract Change Note ("CCN")

CCN	
Contract Reference Number & Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Authority entered into a Contract for the supply of [Badger BCG vaccine] dated [dd/mm/yyyy] (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this CCN:

Change Requestor / Originator		
Summary of Change		
Reason for Change		
Revised Contract Price	Original Contract Value	£
	Previous Contract Changes	£
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
Revised Contract Period		
Change in Contract Manager(s)		
Other Changes		

2. Save as amended all other terms of the Original Contract shall remain effective.
3. This CCN takes effect from the date on which the Parties communicate acceptance of its terms via Bravo.

SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION

- 1.1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E5 (Freedom of Information).
- 1.2 In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.4 Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY
Price information		All Time

SCHEDULE 5 – ORDERING FORM

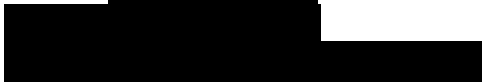
1. The order form template below is to be completed and issued to the contractor any future orders during the term of the contract period.

ORDER FORM

FROM

Authority	Secretary of State for Environment, Food and Rural Affairs
Address	
Contact Ref:	Contract Ref: 27207
Order Number	
Order Date	

TO

Contractor	AJ Vaccines A/S
For attention of:	Name:   Orderfulfilment@ajvaccines.com
Address	Artillerivej 5, 2300 Copenhagen S, Denmark

1. GOODS REQUIREMENTS

(1.1) Order required:

(1.2) Commencement Date:

(1.3) Delivery Date:

2. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]

(2.1) Key Personnel of the Contractor to be involved in the Supply of the Services

(2.2) Performance Standards

BY AGREEING THIS ORDER FORM THE CONTRACTOR AGREES to enter a legally binding contract with the Authority to provide to the Authority the Services specified in this Order Form, incorporating the rights and obligations in the Call-Off Contract that are set out in the Contract entered into by the Contractor and Defra on 01/06/2020

Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("Bravo").