

**DATED 2<sup>nd</sup> April 2020**

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**THE MINISTER FOR THE CABINET (1)  
OFFICE**

**AND**

**Cogent Technology Ltd (2)**

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**AGREEMENT FOR THE  
MANUFACTURE AND SUPPLY OF  
VENTILATOR EQUIPMENT**

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**MILLS & REEVE**

## Contents

1	Interpretation .....	3
2	Provision of Customer IPR .....	6
3	Pre-Production Samples.....	7
4	Regulatory Requirements and Contract management .....	8
5	Supply of Products .....	9
6	Exceptional Circumstances .....	10
7	Orders .....	11
8	Manufacture, quality and packing .....	12
9	Inspections .....	13
10	Delivery .....	14
11	QA Tests and defective Products .....	14
12	Product liability .....	15
13	Set Up Costs and Product price.....	15
14	Terms of payment .....	16
15	Insurance .....	16
16	Compliance with Mandatory Policies .....	17
17	Ownership of intellectual property rights .....	17
18	Licence to use Customer IPR .....	17
19	Improvements.....	17
20	IPR indemnity .....	18
21	Limitation of liability .....	19
22	Assignment and other dealings .....	20
23	Confidentiality .....	20
24	Commencement and term .....	22
25	Termination and suspension.....	22
26	Obligations on termination .....	24

27	Survival .....	25
28	Data Protection and FOIA Obligations .....	25
29	Costs .....	25
30	Severance .....	25
31	Dispute resolution procedure .....	25
32	Further assurance .....	26
33	Variation .....	26
34	Waiver .....	26
35	Notices .....	26
36	Entire agreement .....	27
37	Third party rights .....	28
38	Counterparts .....	28
39	Governing law .....	28
40	Jurisdiction .....	28
	Schedule 1 .....	29
	Order Form format .....	29
	Schedule 2 .....	33
	Specification .....	33
	Schedule 3 .....	34
	Product Price calculation mechanism .....	34
	Part A – Set Up Costs .....	34
	Part B – Product Price Calculation Mechanism .....	34
	Schedule 4 .....	37
	Data Protection and FOIA Obligations .....	37
	Schedule 5 - Mandatory Policies	

DUNS NUMBER: 226586865

**THIS AGREEMENT** is dated 2<sup>nd</sup> April 2020 and made between:

- (1) **THE MINISTER FOR THE CABINET OFFICE** of 1 Horse Guards Road, London, SW1A 2HQ, acting as part of the Crown ("**the Customer**"); and
- (2) **Cogent Technology Ltd** incorporated and registered in England and Wales with company number 1855453 whose registered office is at Dock Lane, Melton, Woodbridge, Suffolk IP12 1PE ("**the Manufacturer**")

## **INTRODUCTION**

- (A) The present Covid-19 situation is an urgent national matter and the Cabinet Office is taking all necessary steps to ensure the supply of ventilator equipment. The Cabinet Office has commissioned designs of mechanical ventilators and now wishes to appoint manufacturers to manufacture such ventilators to ensure that that the UK government is able to respond to the current Covid-19 emergency.
- (B) The Customer wishes to appoint the Manufacturer to manufacture a number of pre-production samples and testing samples of specified mechanical ventilators in accordance with the designs commissioned by the Customer and, if such pre-production samples of mechanical ventilators are approved (pursuant to the mechanism set out at clause 3 below), to manufacture and supply such mechanical ventilators to the Customer. The Customer and the Manufacturer have agreed that the terms and conditions set out in this agreement apply to these arrangements.

## **AGREED TERMS**

### **1 Interpretation**

The following definitions and rules of interpretation in this clause apply in this agreement.

#### **1.1 Definitions:**

**Business Day:** means Monday through to Friday except on days designated as official public holidays in England.

**Change Process:** the process set out at clause 4.4.

**Commencement Date:** the date of this agreement.

**Component Parts:** means those parts and constituent elements of parts which will be assembled and incorporated together to form the Products.

**Confidential Information:** any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of the other party, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

**Customer IPRs:** all Intellectual Property Rights of which the Customer is the owner or licensee and which are disclosed, licensed or provided to the Manufacturer pursuant to this agreement.

**Contracting Authority:** means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended).

**Data Protection and FOIA Obligations:** those obligations set out in Schedule 4.

**Delivery:** completion of delivery of an Order in accordance with clause 10.

**Delivery Date:** the date specified for delivery of Products as set out in the delivery schedule included in an Order.

**Delivery Location:** the location(s) for delivery of the Products as set out in an Order or as otherwise agreed in writing between the Customer and the Manufacturer.

**Equipment:** any equipment and tooling specifically purchased by the Manufacturer solely to fulfil its obligations under this agreement and agreed by the Customer and the Manufacturer in writing.

**Improvement:** any improvement, development, enhancement, modification or derivative of the Products, or its design or manufacturing process, which would make the Products cheaper, more effective, more useful or prolong the lifecycle of the Products.

**Intellectual Property Rights or IPRs:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of,

confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Mandatory Policies:** means the policies, rules and procedures of the Customer or any Contracting Authority as set out in Schedule 5 or as otherwise notified to the Manufacturer from time to time.

**Month:** a calendar month.

**Operational Standards:** the operational and manufacturing standards and requirements set out in the Specification.

**Order:** an order for Products submitted by the Customer in the format set out in Schedule 1.

**Packing Requirements:** the requirements for the packaging of the Products set out in the Specification.

**Product Authorisation:** a regulatory authorisation for the Product(s) as described in clause 3.2.

**Products:** the product(s) described in the Specification.

**Product Prices:** the prices of the Products as determined in accordance with clause 13.1 and Schedule 3.

**QA Tests:** the quality assurance tests set out in the Specification.

**Set-Up Costs:** the costs to be incurred by the Manufacturer in order to manufacture and supply Products under this agreement as specified in Schedule 3 or as otherwise agreed in writing between the Manufacturer and the Customer.

**Specification:** the specification of the Product, the Operational Standards and the Packing Requirements provided by the Customer to the Manufacturer (as referenced in Schedule 2).

**Term:** the duration of this agreement, as determined in accordance with clause 24.

**VAT:** value added tax (or equivalent) chargeable in the UK.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and a reference to one gender shall include a reference to other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to **writing** or **written** includes fax and email.
- 1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement; and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 Provision of Customer IPR**

- 2.1 As soon as practicable after the execution of this agreement, the Customer shall at its own cost disclose to the Manufacturer details of such Customer IPRs as are necessary to enable the Manufacturer to manufacture the pre-production samples and testing samples of the Products as contemplated by clause 3 in accordance with the Specification and, if approval is obtained pursuant to clause 3, to manufacture and supply the Products in accordance with the Specification.

- 2.2 The disclosure of the Customer IPR to the Manufacturer and any document containing or recording it in connection with this agreement is subject to clauses 17 and 23.

### **3 Pre-Production Samples**

- 3.1 The Manufacturer shall by the date agreed in writing with the Customer submit to the Customer for approval agreed quantities of pre-production samples and testing samples of the Product ("**Pre-Production Samples**"), such samples to be manufactured in conformance with the Specification.
- 3.2 The Manufacturer shall, at the Customer's request, provide reasonable support, cooperation and information to the Customer to assist the Customer in obtaining and maintaining an authorisation pursuant to Regulation 12(5) Medical Devices Regulation 2002 for the placing of the Products of the market in the United Kingdom ("**Product Authorisation**"). In relation to the Products, the Manufacturer shall by dates agreed in writing with the Customer provide to the Customer:
- 3.2.1 information relating to such facilities that it will use for the manufacture and storage of the Products in question for inspection by the Customer and any regulatory authority;
  - 3.2.2 details of any manufacturing processes and controls that it will use in connection with the manufacture and supply of any such Products in such detail that the Customer shall reasonably require; and
  - 3.2.3 such quantities of the Products for testing in a healthcare environment that the Customer may reasonably require ("**Testing Samples**").
- 3.3 The Manufacturer shall promptly notify the Customer if it experiences or anticipates that it may experience any difficulties or challenges with respect to manufacturing Pre-Production Samples or Testing Samples and the Customer shall provide such reasonable assistance to the Manufacturer as it is able (taking into account the exceptional circumstances described in the recitals to this agreement).
- 3.4 It is a condition of this agreement that the Manufacturer shall not commence manufacture of the Products until the Customer has: (a) obtained the Product Authorisation and notified the Manufacturer of the same; and (b) communicated its approval of the samples to the Manufacturer in writing (such approval not to be unreasonably withheld or delayed). The Customer shall be entitled to waive the



condition referred to in the preceding sentence by notice in writing to the Manufacturer subject to any requirements notified to the Manufacturer in writing.

- 3.5 The Customer's approval of the Pre-Production Samples and Testing Samples constitutes confirmation that the Products manufactured in conformity with those samples, and the manufacturing and supply of the Products, will comply with the Specification and the quality requirements set out at clause 8.4.
- 3.6 The Manufacturer shall following the grant of a Product Authorisation for Products strictly adhere to any conditions applying to such Product Authorisation in manufacturing and supplying those Products and otherwise complying with this agreement, and shall cease manufacture and supply if or once the Product Authorisation in question is withdrawn or expires unless the Customer otherwise requires in writing and the Manufacturer shall provide reasonable assistance and cooperation to the Customer in recalling the Products and the Customer shall meet the Manufacturer's reasonable costs of such assistance and cooperation save where the withdrawal of the Product Authorisation results from a breach of this agreement by the Manufacturer.

#### **4 Regulatory Requirements, Contract management and Change Control**

- 4.1 The Manufacturer and the Customer each undertake to co-operate with each other, and to provide on reasonable notice such information as the other party may reasonably request for the proper performance of its obligations under this agreement and for its compliance with applicable law and regulation, and shall nominate one or more senior managers who shall be responsible for liaising in connection with the manufacture and development of the Product, and who shall be responsible for the co-ordination of all matters relating to this agreement ("**Project Manager**"). Each party shall notify the other promptly of any change in these appointments.
- 4.2 All communications, documentation and materials relating to the agreement and sent to the parties shall be sent to the Project Managers.
- 4.3 The parties recognise the nature of the Covid-19 emergency and the exceptional circumstances that the Covid-19 emergency is giving rise to. Accordingly, in all matters relating to this agreement, the parties will act reasonably and in good faith to ensure that the Products can be manufactured and supplied as quickly and efficiently as possible in accordance with the requirements of this agreement.

- 4.4 If either party wishes to implement a change to this agreement (including any change to the Order, Delivery Dates or Specification ("change request"), the party proposing the change request ("proposing party") shall notify the other party ("receiving party") in writing and shall seek to set out as much detail as possible on the impact of the proposed change to its performance of its obligations under this agreement and any impact on the Product Price. The receiving party shall assess the change request and respond as soon as practicable with its assessment of the impact of the change request. If necessary, the parties shall together discuss the change request to assess together the impact of the change request. A change request shall not be effective unless agreed in writing by both parties.

## **5 Supply of Products**

- 5.1 During the Term, the Manufacturer shall supply and the Customer shall purchase such quantities of Products as the Customer may Order under clause 7 in accordance with the terms and conditions of this agreement.
- 5.2 If the Order submitted by the Customer includes accessories and/or spare parts for the Products, the Manufacturer shall supply and the Customer shall purchase such quantities of accessories and/or spare parts as are set out in the Order.
- 5.3 In order to manufacture the Products, the Manufacturer shall source and purchase all necessary Component Parts in accordance with the requirements of this agreement, including the Operational Standards.
- 5.4 During the Term, if the Customer has paid or has committed to paying Set Up Costs to the Manufacturer in recognition of the Covid-19 emergency, the Manufacturer shall use its manufacturing capacity, the Equipment and the Component Parts to give first priority to the Orders submitted by the Customer and Contracting Authorities and the Manufacturer shall not enter into commitments to supply products equivalent to or similar to the Products so as to create potential risks to its ability to manufacture and supply the Products to the Customer and Contracting Authorities. If the Manufacturer receives orders which may give rise to a conflict with this clause or its obligations under this agreement, the Manufacturer shall promptly notify the Customer and shall discuss with the Customer the extent to which it is appropriate for it to accept such orders.

## **6      Exceptional Circumstances**

6.1      The Customer and the Manufacturer recognise that the circumstances created as a result of the Covid-19 pandemic are exceptional and fast-moving. As a consequence, both parties agree that they will act reasonably and in good faith together to seek to resolve any difficulties or challenges which may impact upon the manufacture and supply of the Products and in relation to the wider Covid-19 issues so as to ensure that public health is protected and preserved. In this context:

6.1.1      the Manufacturer recognises that there may be a shortage of supply of Component Parts and accordingly, the Manufacturer agrees that it will take all reasonable steps to safeguard and protect all stocks of Component Parts held by it from time to time which may be required to manufacture the Products;

6.1.2      the Manufacturer recognises and agrees that the exceptional circumstances referred to above may mean that it is necessary for the Customer to involve itself in the Manufacturer's inbound supply chain for materials and Component Parts. The Customer will notify the Manufacturer in advance if it considers that this step is necessary and the Manufacturer will provide all information and assistance as the Customer may require in order for it to take this step;

6.1.3      the Manufacturer agrees to provide transparency to the Customer to ensure that the Customer has sufficient visibility of the Manufacturer's production processes and timelines for the manufacture and supply of Products to allow it to plan and adjust order scheduling across the Customer's supply chain for products equivalent to or similar to the Products;

6.1.4      the Manufacturer will notify the Customer promptly of any exceptional events or circumstances which may impact upon the Manufacturer's ability to deliver Products in accordance with the Delivery Dates. If the Manufacturer will be subject to delays in manufacturing and supplying any of the Products to the Customer, the Customer shall be entitled to cancel all or part of an Order;

6.1.5      if the circumstances in clause 6.1.4 apply or if the Pre-Production Samples and/ or Testing Samples of the Products fail to gain approval in accordance with clause 3, the Customer shall be entitled to purchase from the

Manufacturer the Manufacturer's stocks of Component Parts to the extent that such quantities of Component Parts are held in line with the quantities required to fulfil the Customer's Order. The purchase price of such Component Parts shall be an amount equal to the price paid by the Manufacturer for such Component Parts. In addition, the Customer shall be entitled to purchase from the Manufacturer any Equipment at the price paid by the Manufacturer, subject to any depreciation which would ordinarily be applied to such Equipment in line with usual accounting practice. The Customer shall not be obliged to make any payment to the Manufacturer pursuant to this clause 6.1.5 to the extent that the Customer has covered such costs through the payment of Set-Up Costs by the Customer;

- 6.1.6 if the Customer exercises its rights under clause 6.1.5, the Manufacturer will deliver up to the Customer the Component Parts and Equipment and title in such Component Parts and Equipment shall immediately transfer to the Customer. The Manufacturer shall take all such steps and complete all such additional documentation as is necessary to transfer title in the Component Parts and Equipment to the Customer. The Customer shall make payment for such Component Parts and Equipment (calculated in accordance with clause 6.1.5 above) in accordance with the payment terms set out in clause 13.

## **7 Orders**

- 7.1 The Order provided by the Customer will be in the format set out in Schedule 1. The Order will set out a delivery schedule (including Delivery Dates) for quantities of Products. In setting those Delivery Dates, the Customer and the Manufacturer shall discuss and agree the Manufacturer's manufacturing lead times, acting reasonably and in good faith, and Delivery Dates shall be set accordingly. After the Customer's initial Order, if the Customer wishes to place further Orders, this shall be achieved by way of the parties following the Change Process provided that the Product Price will be calculated in accordance with Schedule 3 except where the Manufacturer can demonstrate that it has suffered material increases in material and/or Component Part costs. In those circumstances, the Manufacturer shall notify the Customer immediately and provide the Customer with such information as it may reasonable request to enable the Customer and the Manufacturer to agree revised Product Prices as soon as practicable.

- 7.2 The Order shall lapse and not be binding on the Customer or the Manufacturer if the Pre-Production Samples and/or Testing Samples of the Products fail to be approved pursuant to clause 3.
- 7.3 Notwithstanding any other provision in this agreement, the Customer shall be entitled to cancel an Order in whole or part by giving the Manufacturer not less than fourteen (14) days' notice in writing subject always to the Customer reimbursing to the Manufacturer any reasonable costs incurred by the Manufacturer in performing its obligations under that Order and in respect of which it has not already received reimbursement from or on behalf of the Customer, whether under this agreement or otherwise.
- 7.4 Notwithstanding clause 37, the Manufacturer agrees and accepts that the Customer is entering into this agreement on behalf of a number of Contracting Authorities and accordingly the Manufacturer agrees that any Contracting Authority in the United Kingdom may place an Order under this agreement. Any such Order shall be subject to the terms and conditions of this agreement. Notwithstanding any other provision of this agreement, any Contracting Authority may enforce this agreement insofar as it relates to an Order placed by such Contracting Authority.

## **8 Manufacture, quality and packing**

- 8.1 The Manufacturer agrees that during the Term it will maintain sufficient manufacturing capacity, stocks of raw materials, Component Parts and packaging to enable it to manufacture, pack and supply the quantity of Products ordered by the Customer. The Manufacturer shall notify the Customer in accordance with clause 6.1.4 if it anticipates that it will face any difficulties or challenges in complying with the requirements of this clause 8.1.
- 8.2 The Manufacturer shall manufacture, pack and supply the Products in accordance with all of the requirements of this agreement, including the requirements set out in the Specification.
- 8.3 The Manufacturer shall ensure that it performs the QA Tests in accordance with the requirements of the Specification.
- 8.4 All Products supplied by the Manufacturer to the Customer under this agreement shall, for a period of twelve (12) months from the date of delivery (the "Warranty Period"):

8.4.1 conform to the Specification; and

- 8.4.2 be free from defects in material and workmanship.
- 8.5 The Manufacturer shall ensure that all of the Operational Standards are adhered to at all times in the performance of its obligations under this agreement, including with respect to the sourcing and purchasing of the Component Parts.
- 8.6 The Manufacturer shall ensure that the Products are properly packed and secured in a manner to enable them to reach their destination in good condition and in accordance with the Packing Requirements.
- 8.7 The Manufacturer shall obtain and maintain in force for the Term all licences, consents and permissions needed to manufacture and supply the Products in accordance with the terms of this agreement except with respect to any authorisation obtained by the Customer under Regulation 12(5) the Medical Devices Regulation 2002 to permit the placing of the Products on the market.
- 8.8 In performing its obligations under this agreement, the Manufacturer will ensure that it complies with all applicable laws and regulations.

## **9 Inspections**

- 9.1 The Customer shall have the right to enter the Manufacturer's premises to:
- 9.1.1 inspect the manufacturing facilities and equipment (including the Equipment) used by the Manufacturer in the manufacture of the Products;
  - 9.1.2 inspect and take samples of the materials, Component Parts, the packaging and the Products;
  - 9.1.3 inspect the Manufacturer's records and take copies for the purposes of auditing the Manufacturer's compliance with the obligations set out in this agreement.
- 9.2 Inspections carried out under clause 9.1 shall be carried out during business hours on reasonable notice to the Manufacturer, provided that in the event of emergency, the Manufacturer shall grant the Customer immediate access to its premises.
- 9.3 If, following an inspection, the Customer reasonably considers that the Products are not or are not likely to be in conformity with the requirements of this agreement, the Customer shall inform the Manufacturer and the Manufacturer shall take such action as is necessary to ensure that the Products are or will be in compliance with this

agreement. The Customer shall have the right to re-conduct inspections and take further samples after the Manufacturer has carried out its remedial actions.

## **10 Delivery**

- 10.1 The Supplier shall deliver the Products (and where relevant any Pre-Production Samples or Testing Samples) in accordance with the delivery timescales, delivery dates and delivery instructions set out in the Customer's Orders or as otherwise agreed with the Customer in writing.
- 10.2 Delivery is completed when the Products are made available at the Delivery Location.
- 10.2 Each Delivery of Products shall be accompanied by a delivery note from the Manufacturer containing the information set out in the Specification or as otherwise stipulated in writing by the Customer.

## **11 QA Tests and defective Products**

- 11.1 The Manufacturer shall perform the QA Tests. In the event of a Product failing a QA Test, the Manufacturer shall provide a replacement Product and shall not supply any such Product that has failed a QA Test. With respect to any Product which fails a QA Test, the Manufacturer shall take reasonable steps to seek to assess whether any such failure or defect may affect other Products within the same production batch.
- 11.2 If the Customer identifies a defect in a Product (being a Product which does not comply with the requirements of clause 8.4 above) within the Warranty Period, the Customer shall notify the Manufacturer and the Manufacturer shall repair or replace the Product as soon as practicable provided that the Manufacturer shall not be responsible for providing a replacement Product if any of the circumstances at clause 11.3 apply.
- 11.3 The Manufacturer shall not be responsible for a Products' failure to comply with the requirements of this agreement if:
  - 11.3.1 the defect arises as a result of the Manufacturer following any drawing, design or Specification supplied by the Customer; or
  - 11.3.2 the defect arises as a result of fair wear and tear or wilful damage.

## **12     Product liability**

- 12.1    The Customer shall bear all liability arising out of or in connection with use of the Products except to the extent that such liability arises as a result of the Manufacturer's failure to supply Products in compliance with the requirements of this agreement.
- 12.2    The Customer shall indemnify the Manufacturer against all liabilities, costs, expenses, damages and losses (including any reasonable professional costs and expenses) suffered or incurred by the Manufacturer arising out of or in connection with any claim made against the Manufacturer relating to the use of the Products supplied to the Customer under this agreement provided that this indemnity shall not apply if such liability arises as a result of the Manufacturer's failure to supply Products in compliance with the requirements of this agreement.
- 12.3    In the event that the Manufacturer is subject to a claim which it considers to fall within the scope of clause 12.2 above, the conduct of claim and mitigation provisions set out at clauses 20.2 and 20.3 shall apply.
- 12.4    The Manufacturer shall notify the Customer immediately if it becomes aware of any claims, potential claims, risks or potential risks with respect to the Products and shall take such steps as the Customer may require to address such claims or risks. Such steps shall be at the Customer's cost except where such claims and potential risks arise as a result of the Manufacturer's failure to supply Products in accordance with the requirements of clause 8.4.

## **13     Set Up Costs and Product price**

- 13.1    The Customer shall pay the Set Up Costs identified in Schedule 3 in accordance with the milestone payment terms set out in Schedule 3.
- 13.2    The Product Prices shall be calculated in accordance with Schedule 3. The Product Prices are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Manufacturer, pay to the Manufacturer any additional amounts in respect of VAT as are chargeable on a supply of Products.
- 13.3    The Manufacturer shall provide full transparency of all costs it incurs to manufacture and supply the Products and shall provide evidence to the Customer of such costs. If requested by the Customer, the Supplier shall allow the Customer (and the Customer's



professional advisers) with access to its books and records to enable the Customer to verify the Manufacturer's costs.

13.4 The Product Prices are inclusive of the costs of packaging, insurance and carriage of the Products unless otherwise stated in Schedule 1.

#### **14 Terms of payment**

14.1 Unless otherwise agreed in writing with the Customer, the Manufacturer shall be entitled to invoice the Customer for Products delivered to the Customer pursuant to the Customer's Order on or within fourteen (14) days of the end of each week during which deliveries of Products have been made in accordance with the Order(s). The Manufacturer shall ensure that each invoice includes information stipulated by the Customer in writing from time to time.

14.2 The Customer shall verify and pay each valid and undisputed invoices received pursuant to clause 14.1 within fourteen (14) days of receipt of the Manufacturer's invoice at the latest. However, the Customer shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable prompt payment targets. Payment shall be made to the bank account nominated in writing by the Manufacturer.

14.3 If the Customer raises a query with respect to an invoice, the parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the date of the query being raised with a view to resolving such query promptly and efficiently.

14.4 If a party fails to make payment of an undisputed amount properly due to the other party, the party due such amount shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgement.

#### **15 Insurance**

15.1 The Manufacturer shall ensure that at all times during the Term in maintains in place all insurances which it is required to hold by operation of law. Such insurances shall be with a reputable insurer and the Customer shall, upon request by the Customer, provide the Customer with evidence that such insurance is in place and that all premiums due and payable have been paid.

- 15.2 The Customer and the Manufacturer may agree that the Manufacturer shall put in place additional insurances and the terms set out at clause 15.1 above shall apply to any such additional insurances.

**16 Compliance with Mandatory Policies**

- 16.1 In performing its obligations under the agreement, the Manufacturer shall comply with: the Mandatory Policies.

**17 Ownership of intellectual property rights**

- 17.1 The Manufacturer acknowledges that the Customer IPRs are and remain the exclusive property of the Customer or, where applicable, the third party licensor from whom the Customer derives the right to use them.

- 17.2 The Customer acknowledges that all Intellectual Property Rights used for the manufacture of the Product that were developed by the Manufacturer prior to the Commencement Date shall remain the exclusive property of the Manufacturer (or, where applicable, the third party licensor from whom the Manufacturer derives the right to use them).

**18 Licence to use Customer IPR**

- 18.1 The Customer grants to the Manufacturer a non-exclusive, non-transferable, royalty-free licence to use the Customer IPRs solely for the purpose of performing its obligations under this agreement.

- 18.2 The Manufacturer shall at the request and expense of the Customer take all such steps as the Customer may reasonably require to assist the Customer in maintaining the validity and enforceability of the Customer IPRs, and shall enter into such formal licences as the Customer may reasonably request for this purpose.

**19 Improvements**

- 19.1 The Customer shall at its own cost provide the Manufacturer with details of any Improvement belonging to the Customer which it wishes to be incorporated into the Product, or any other modification which it wishes to be made to the Product from time to time, and the Intellectual Property Rights necessary to implement the Improvement. The parties shall follow the Change Process with respect to any such Improvement. If, having followed the Change Process, the Improvement is to be implemented, the

Customer grants to the Manufacturer a non-exclusive, non-transferable, royalty-free, licence to use such Improvement or modification solely for the purposes of this agreement. In the event that the Manufacturer identifies a potential Improvement, it shall provide the Customer with full details and follow the Change Process. For the avoidance of doubt, the Manufacturer shall not implement any such Improvement without the prior written approval of the Customer.

- 19.2 All Intellectual Property Rights in respect of any Improvement shall be owned by the Customer and the Manufacturer, hereby assigns, by way of present and future assignment, all its rights, title, and interest in such Intellectual property Rights to the Customer and shall do all acts and things, and execute such documents, reasonably required to vest any such Intellectual Property Rights in the Customer.
- 19.3 The disclosure of any Improvements by the Customer to the Manufacturer shall be subject to the obligations of confidentiality set out in clause 23.
- 19.4 Where an Improvement made or acquired by the Manufacturer is severable from and does not utilise, disclose, infringe or reveal any Customer IPRs relating to the Product, the Customer will, on request from the Manufacturer, enter into good faith negotiations with a view to granting to the Manufacturer a right to use such Improvement other than for the purposes of this agreement on terms to be agreed between the parties.

## **20 IPR indemnity**

- 20.1 The Customer shall indemnify the Manufacturer against all liabilities, costs, expenses, damages and losses and all and any reasonable professional costs and expenses) suffered or incurred by the Manufacturer arising out of or in connection with any claim made against the Manufacturer for actual or alleged infringement of a third party's Intellectual Property Rights or moral rights arising out of or in connection with the Manufacturer's use of the Customer IPRs or following the Specification or other written instructions issued by the Customer for the purpose of performing its obligations under this agreement.
- 20.2 The Customer's liability under this indemnity is conditional on the Manufacturer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Manufacturer that may reasonably be considered likely to give rise to a liability under this indemnity ("**Claim**"), the Manufacturer shall:

- 20.2.1 as soon as reasonably practicable, give written notice of the Claim to the Customer, specifying the nature of the Claim in reasonable detail;
  - 20.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Customer;
  - 20.2.3 give the Customer and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Manufacturer, to enable the Customer and its professional advisers to examine them and to take copies (at the Customer's expense) to assess the Claim; and
  - 20.2.4 be deemed to have given the Customer sole authority to avoid, dispute, compromise or defend the Claim.
- 20.3 Nothing in this clause 20 shall restrict or limit the Manufacturer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

## **21 Limitation of liability**

- 21.1 Nothing in this agreement shall limit or exclude the liability of either party for:
- 21.1.1 death or personal injury caused by its negligence;
  - 21.1.2 fraud or fraudulent misrepresentation;
  - 21.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - 21.1.4 breach of section 2 of the Consumer Protection Act 1987.
- 21.2 Nothing in this agreement shall limit the Customer's liability under the indemnities at clauses 12.2 and 20.
- 21.3 Subject to clause 21.1, neither party shall under any circumstances whatsoever be liable to the other for any loss of profit, loss of business, loss of anticipated saving or any special, indirect or consequential damage whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

21.4 Subject to clause 21.1, the Manufacturer's total liability to the Customer, whether in contract, tort (including negligence) or otherwise shall not exceed an amount equal to the aggregate amount of the Product Price for all Products supplied by the Manufacturer to the Customer.

21.5 Without prejudice to clause 21.1 and clause 21.2, the Customer's total liability to the Manufacturer, whether in contract, tort (including negligence) or otherwise shall not exceed an amount equal to the aggregate amount of the Product Price for all Products supplied by the Manufacturer to the Customer.

## **22 Assignment and other dealings**

22.1 Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

## **23 Confidentiality**

23.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by clause 23.2.

23.2 Each party may disclose the other party's Confidential Information:

23.2.1 to its employees, officers, agents, consultants or subcontractors ("**Representatives**") who need to know this information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its Representatives to whom it discloses the other parties Confidential Information comply with this clause 23; and

23.2.2 as may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority.

23.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

23.4 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

23.5 Nothing in clause 23 shall prevent the Customer from:

23.5.1 disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**"); or

23.5.2 freely disclosing and publishing, or allowing others to disclose or publish, Customer IPRs or any other materials in which Intellectual Property Rights owned by the Customer subsist.

23.6 The Customer may disclose the Manufacturer's Confidential Information:

23.6.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to 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 Contracting Authority);

23.6.2 on a confidential basis, to any consultant, contractor or other person engaged by the Customer and/or the Contracting Authority receiving such information;

23.6.3 to any relevant party for the purpose of the examination and certification of the Customer's accounts;

23.6.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;

23.6.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or

- 23.6.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this agreement

and for the purposes of this agreement, references to disclosure "on a confidential basis" shall mean the Customer making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or clauses 23.5 and 23.6 of this agreement.

- 23.7 This clause 23 shall remain in force:

- 23.7.1 without limit in time in respect of Confidential Information which comprises Personal Data which relates to national security; and
- 23.7.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this agreement unless otherwise agreed in writing by the parties.

## **24 Commencement and term**

This agreement shall begin on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 25, until the date falling twelve (12) months after the Commencement Date or such other date as the Customer and the Manufacturer may agree in writing from time to time ("**Term**").

## **25 Termination and suspension**

- 25.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- 25.1.1 the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
- 25.1.2 the other party commits a material breach of any other term of this agreement and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;

- 25.2 The Customer shall be entitled to terminate this agreement with immediate effect if:

- 25.2.1 the Pre-Production Samples and/or Testing Samples of the Products are not approved in accordance with clause 3;
- 25.2.2 the Product Authorisation is withdrawn or revoked and not replaced with an authorisation pursuant to Regulation 10 of the Medical Device Regulations 2002 or equivalent laws or regulations applicable in the United Kingdom;
- 25.2.3 the Manufacturer is in breach of its obligation under clause 8.7;
- 25.2.4 the Manufacturer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) of 123(2) of the Insolvency Act 1986;
- 25.2.5 the Manufacturer begins negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- 25.2.6 a petition is filed, a notice is given, a resolution is passed or an order is made, for or in connection with the winding up of the Manufacturer (being a company, a limited liability partnership or partnership);
- 25.2.7 an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or if an administrator is appointed over the Manufacturer;
- 25.2.8 the holder of a qualifying floating charge over the assets of the Manufacturer has become entitled to appoint or has appointed an administrative receiver;
- 25.2.9 a person becomes entitled to appoint a receiver over all or any of the assets of the Manufacturer or a receiver is appointed over all or any of the assets of the Manufacturer;
- 25.2.10 a creditor or encumbrancer of the Manufacturer 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 its assets and such attachment or process is not discharged within seven (7) days;



- 25.2.11 the Manufacturer ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- 25.2.12 there is a change of control of the Manufacturer (within the meaning of section 1124 of the Corporation Tax Act 2010).

## **26 Obligations on termination**

26.1 On termination of this agreement, the Manufacturer shall promptly:

- 26.1.1 return to the Customer all materials and property belonging to the Customer that the Customer had supplied to it in connection with the manufacture supply of the Products under this agreement;
- 26.1.2 in cases where the Customer has made a payment to the Manufacturer in advance for any materials, Equipment and/or Component Parts to be used by the Manufacturer to perform its obligations under this agreement, deliver up to the Customer all such materials, Equipment and Component Parts to the Customer and transfer title in such materials, Equipment and Component Parts to the Customer. The Manufacturer shall take all such steps and execute all documentation necessary to deliver up and transfer title in such materials, Equipment and Component Parts to the Customer;
- 26.1.3 cease to use all of the Customer's Intellectual Property Rights;
- 26.1.4 return to the Customer all documents and materials (and any copies) containing the Customer's Confidential Information;
- 26.1.5 erase all the Customer's Confidential Information from its computer systems (to the extent possible); and
- 26.1.6 on request, certify in writing to the Customer that it has complied with the requirements of this clause 26.

26.2 If this agreement is terminated pursuant to clause 25.2.1, the Customer and the Manufacturer shall take the steps outlined in clause 6.1.5 and 6.1.6.

**27     Survival**

- 27.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 27.2 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination.

**28     Data Protection and FOIA Obligations**

- 28.1 The Parties shall comply at all times with their respective obligations in the Data Protection and FOIA Obligations.

**29     Costs**

Except as expressly provided in this agreement, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this agreement.

**30     Severance**

- 30.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted but that shall not affect the validity and enforceability of the rest of this agreement.
- 30.2 If any provision or part-provision of this agreement is deemed deleted under clause 30.1, the parties shall negotiate in good faith agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**31     Dispute resolution procedure**

- 31.1 The parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the agreement. If the dispute cannot be resolved by the parties within a reasonable period, the dispute may, by agreement between the parties, be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the parties. If they are unable to agree a Mediator or if the chosen Mediator is unable or unwilling to act either party will be able to apply an appropriate mediation provider to appoint a Mediator. Within ten (10) Business Days

of appointing the Mediator, the parties will meet with the Mediator to agree a procedure for negotiations.

- 31.2 All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings. The parties agree to be bound by any written agreement once signed by both parties. If the parties fail to appoint a Mediator, or fail to reach agreement within one month of the Mediator being appointed, either party may exercise any remedy that it has under this agreement.

**32 Further assurance**

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

**33 Variation**

No variation of this agreement shall be effective unless it is in writing and signed by authorised representatives of each party.

**34 Waiver**

- 34.1 A waiver of any right or remedy under this agreement or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 34.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**35 Notices**

- 35.1 Any notice required to be given by either party under this agreement shall be in writing quoting the date of this agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Order with a copy to the Project Manager or such other person as one party may inform the other party in writing from time to time.

35.2 A notice shall be treated as having been received:

35.2.1 if delivered by hand within normal business hours on a Business Day when so delivered or, if delivered by hand outside normal business hours on a Business Day, at the start of normal business hours on the next Business Day; or

35.2.2 if sent by first class recorded delivery mail on a Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or

35.2.3 if sent by email, if sent within normal business hours on a Business Day when so sent or, if sent outside normal business hours, at the start of normal business hours on the next Business Day provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

35.3 This clause 35 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

### **36 Entire agreement**

36.1 This agreement constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

36.2 Each party acknowledges that in entering into this agreement it does not rely on and shall have no remedies for any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

36.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**37     Third party rights**

- 37.1    Subject to clause 7.4, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 37.2    Notwithstanding clause 7.4, the rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

**38     Counterparts**

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**39     Governing law**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**40     Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

**Schedule 1**



Order Form format

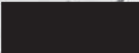

Requirement serial	Description	Quantity	Delivery Mode	Price (ex-VAT) £GBP	Specification/Requirement Detail	Payment Criteria
1a	Pre-production setup inclusive of Materials	1	Ex-Works		In accordance with the Specification (Schedule 2).	£1,105,000 Inv SI/127262 Paid 27MAR20  £14,461,350 Invoice on SI/127263 paid 31MAR20  Subject to verification of material costs. Estimated at per unit.
1b	Provision of Pre-Production Samples and Testing Samples	10	Ex-Works		In accordance with the Specification (Schedule 2).  Price adjusted to allow for pre-payment received 1a.	Provisions of the required quantity of pre-production samples and testing samples in accordance with the

Requirement serial	Description	Quantity	Delivery Mode	Price (ex-VAT) £GBP	Specification/Requirement Detail	Payment Criteria
						Specification (Schedule 2). Subject to verification of assembly times.
2a	Ventilator Production – Order 1	70	Ex Works	£ [REDACTED] each	In accordance with the Specification (Schedule 2).  Price adjusted to allow for pre-payment received 1a.  Subject to verification of assembly times.	Provisions of the required quantity of pre-production samples and testing samples in accordance with the Specification (Schedule 2). Subject to verification of assembly times.
2b	Ventilator Production – Order 2 etc etc	250	Ex Works	£ [REDACTED] each	In accordance with the Specification (Schedule 2).  Price adjusted to allow for pre-payment received 1a.  Subject to verification of assembly times.	Provisions of the required quantity of pre-production samples and testing samples in accordance with the Specification (Schedule 2). Subject to verification of assembly times.

Requirement serial	Description	Quantity	Delivery Mode	Price (ex-VAT) £GBP	Specification/Requirement Detail	Payment Criteria
2c	Ventilator Production – Order 3 etc etc	500	Ex Works	£ [REDACTED] each	In accordance with the Specification (Schedule 2).  Price adjusted to allow for pre-payment received 1a.  Subject to verification of assembly times.	Provisions of the required quantity of pre-production samples and testing samples in accordance with the Specification (Schedule 2).  Subject to verification of assembly times.
2d etc	Ventilator Production – Order 4 etc etc	1500	Ex Works	£ [REDACTED] each	In accordance with the Specification (Schedule 2).  Price adjusted to allow for pre-payment received 1a.  Subject to verification of assembly times.	Provisions of the required quantity of pre-production samples and testing samples in accordance with the Specification (Schedule 2).  Subject to verification of assembly times.
3	Production of consumables/spares	TBC	TBC	TBC	In accordance with the Specification (Schedule 2 Part 6)	



  
Signed by  acting on behalf of the Minister for Cabinet Office

  
Signed by  for and on behalf of Cogent Technology Ltd



.....  
**Signed by** \_\_\_\_\_ **acting on behalf of the Minister for Cabinet Office**

.....  
**Signed by** \_\_\_\_\_ **for and on behalf of Cogent Technology Ltd**

## **Schedule 2**

**Specification** – note that the following embedded documents in Schedule 2 are in draft stages and will be finalised and re-embedded once correct.



**NOTE** – SPECIFICATION SHOULD INCLUDE PRODUCT DESCRIPTION, BOM, DESIGN/BUILD INSTRUCTIONS, REQUIRED FUNCTIONALITIES/ OPERATIONAL REQUIREMENTS AND STANDARDS/ QA TESTING, PACKING INSTRUCTIONS – SUGGEST DIVIDED INTO PARTS AS FOLLOWS:

**PART 1** – PRE PRODUCTION REQUIREMENTS – INCLUDING PRE-PRODUCTION SAMPLES AND TEST SAMPLES

**PART 2** – DESIGN PACKS AND BOM

**PART 3** – QA TESTING

**PART 4** – PRODUCTION/OPERATIONAL SPECIFIC REQUIREMENTS

**PART 5** – PACKING

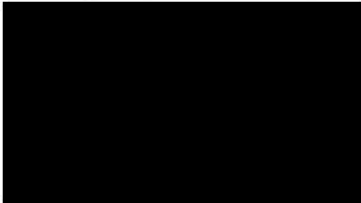
**[PART 6 – CONSUMABLES, ACCESSORIES AND SPARES]**

### Schedule 3

#### Product Price calculation mechanism

#### Part A – Set Up Costs

Please see supplementary sheet (Schedule 3.xls) attached for details



	Paid Inv SI/127262 @27MAR20	Paid Inv SI/127263 @31MAR20	Grand Total
Total	£1,105,000	£14,461,350	£15,566,350

Part B – Product Price Calculation Mechanism – in conjunction with supplementary sheet  
(Schedule 3.xls)

Actual Product Pricing 'X' can be derived from;

A – Part A Setup Costs

B – Weekly Costs of Operations (see Spreadsheet Schedule3.xls)

n = units shipped

$X = (A+B)/n = \text{£ } \blacksquare$  estimated at time of contract signature subject to review ref clause 4.1

Pricing will be based upon the following summary for a 16 week project timeline to complete 13,570 units.

The charge period may be protracted if any constraints prohibit production and the project timeline is extended resulting in increased cost of B.

Costs for assembly staff will be reviewed and adjusted according to need once manufacturing cycle time can be established.

Cost of labour and material handling will be adjusted according to heads employed and actual material costs based upon the following rates of charge.

Invoices paid for good shipped will net off in proportion to volume shipped the prepaid value of A and any supplements to A that occur.

<i>Activity</i>	<b>Hourly Rate</b>	
Management / Engineer		
Indirect team Eng., Procurement, Planning		
Technical Documentation		
<i>Manual Operations Rate</i>		
<i>Test Rate</i>		
<i>Quality Rate</i>		
<i>Materials Handling Rate</i>		

For clarity, the cost of Component Parts will be the amount paid by the Manufacturer to Component Part suppliers/manufacturers net of any taxes, discounts and rebates. The Manufacturer will provide transparency to the Customer with respect to such costs and accordingly it will provide such evidence as the Customer may reasonably require to enable the Customer to verify such cost prices.

## **Schedule 4**

### **Data Protection and FOIA Obligations**

#### **1 Data protection**

For the purposes of this schedule 4, the following words and phrases shall have the meaning set out opposite:

**"Data Protection Legislation"** (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing law as amended from time to time; and (iii) all applicable law about the processing of personal data and privacy.

**"Data Protection Protocol"** any document of that name as provided to the Manufacturer by the Customer (as amended from time to time in accordance with its terms).

**"GDPR"** the General Data Protection Regulation (Regulation (EU 2016/679)).

**"Personal Data"** has the meaning given to it in GDPR.

**"Process"** shall have the meaning given to it in GDPR. Processing and Processed shall be construed accordingly.

**"Processor"** shall have the meaning given to it in GDPR.

- 1.1 The parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Manufacturer shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 1.2 Where the Manufacturer is Processing Personal Data under or in connection with this agreement the parties shall comply with the Data Protection Protocol.



- 1.3 The Manufacturer and the Customer shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Customer and any Contracting Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 1.4 Where any Personal Data is Processed by any sub-contractor of the Manufacturer in connection with this agreement, the Manufacturer shall procure that such sub-contractor shall comply with the relevant obligations set out in paragraph 1 of this Schedule 4, as if such sub-contractor were the Manufacturer.
- 1.5 The Manufacturer shall indemnify and keep the Customer and Contracting Authorities indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Manufacturer's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this agreement.

## **2 Freedom of Information and Transparency**

- 2.1 The parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 2.2 The Manufacturer shall assist and cooperate with the Customer and Contracting Authorities to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Manufacturer agrees:
- 2.2.1 that this agreement and any recorded information held by the Manufacturer on the Customers (and any Contracting Authority's ) behalf for the purposes of this agreement are subject to the obligations and commitments of the Customer and the Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations;
- 2.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received

under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Customer and the Contracting Authorities;

2.2.3 that where the Manufacturer receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Manufacturer itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Customer as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Customer;

2.2.4 that where the Manufacturer receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Manufacturer is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Customer) and will promptly (and in any event within two (2) Business Days) transfer the request to the Customer;

2.2.5 that the Customer, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Manufacturer and this agreement; and

2.2.6 to assist the Customer in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Customer within five (5) Business Days of that request and without charge.

2.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this agreement is not Confidential Information.

2.4 Notwithstanding any other term of this agreement, the Manufacturer consents to the publication of this agreement in its entirety (including variations), subject only to the

redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.

- 2.5 In preparing a copy of this agreement for publication under paragraph 2.4 of this Schedule 4, the Customer may consult with the Manufacturer to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Customer's absolute discretion.
- 2.6 The Manufacturer shall assist and cooperate with the Customer to enable the Customer to publish this agreement.
- 2.7 Where any information is held by any sub-contractor of the Manufacturer in connection with this agreement, the Manufacturer shall procure that such sub-contractor shall comply with the relevant obligations set out in paragraph 2 of this Schedule 4, as if such sub-contractor were the Manufacturer.

### **3 Information Security**

- 3.1 Without limitation to any other information governance requirements set out in this Schedule 4, the Manufacturer shall:
  - 3.1.1 notify the Customer forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Customer's information governance policies; and
  - 3.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Customer and shall provide full information as may be reasonably requested by the Customer in relation to such audits, investigations and assessments.

#### **Schedule 5 - Mandatory Policies**

- Prevention of Corruption Policy
- Prevention of Fraud Policy
- Modern Slavery Policy
- Health & Safety Policy
- Environmental Policy

Signed by [REDACTED]  
for and on behalf of Cogent  
Technology Ltd

[REDACTED]  
Director

Signed by [REDACTED]  
acting on behalf of  
MINISTER FOR THE  
CABINET OFFICE

[REDACTED]  
Authorised Signatory

