



1 Horse Guards Road
London
SW1A 2HQ

BAE Systems Plc
Stirling Square
6 Carlton Gardens
London
SW1Y 5AD

Dear Dominic,

AirCare

The Minister for the Cabinet Office on behalf of the Crown ("Cabinet Office") refers to our Letter of Intent dated 2 April 2020 placing a contingent order for the purchase of ventilator units from BAE Systems Plc ("**BAE**") for the purposes of the Ventilator Challenge Project ("**the Project**") and our letter dated 28 April 2020 to BAE ("**the April Letter**"). The ventilator units in question ("**the Products**"), currently known as AirCare ventilators, have been designed by BAE and its Affiliates. For the purposes of this letter, "**an Affiliate**" means, in respect of any company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company, where "holding company" and "subsidiary," as each of these are used herein, are defined in section 1159 of the Companies Act 2006.

This letter sets out the terms for the conclusion of your involvement in the Project and is entered into by BAE on its behalf and on behalf of its Affiliates. Please confirm your agreement to these terms by counter signing and returning a copy of this letter following which we shall arrange for the final payment below to be made to you in full and final settlement of all or any sums due to BAE and its Affiliates in connection with the Project.

We recognise the nature of the COVID-19 emergency and the exceptional circumstances that it has and is giving rise to. In all matters relating to the Project, the parties have acted and will act reasonably and in good faith, recognising that certain costs may have been incurred in expedited timescales given the urgent requirement to develop, manufacture and supply the Products.

It is agreed between us that:

- 1 The reasonable costs incurred by BAE and its Affiliates in connection with the Project (except any and all costs for or otherwise relating to the design of the Products which BAE will pay) are as set out in the schedule attached. These costs have been agreed



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by the Cabinet Office on the basis that BAE and its Affiliates have taken reasonable steps to mitigate their costs in connection with the Project. BAE will not charge profit for its work on the Project.

- 2 The Cabinet Office shall pay the costs in the schedule within 30 days of receipt of BAE's valid VAT invoice(s) and that payment shall, subject only to any credit or additional cost arising under paragraphs 4 and 5 respectively below, represent the satisfaction of all sums due to BAE and its Affiliates in accordance with the April Letter or howsoever arising in connection with the Project. For the avoidance of doubt the parties acknowledge that the costs may be invoiced by BAE in more than one invoice, to reflect the phased nature of the cost review by Cabinet Office and its advisors.
- 3 BAE has provided and will continue to provide full transparency of its costs and the costs of its Affiliates in connection with the Project and, if requested, will provide all reasonable further evidence to the Cabinet Office of such costs.
- 4 BAE confirms that it and its Affiliates have taken, and will continue to take, reasonable steps to mitigate the costs that have been or are incurred, including returning or reusing inventory where possible, in discussion with its suppliers. The Cabinet Office acknowledges the steps taken by BAE to date and BAE confirms that it shall reimburse payment and provide a valid VAT credit note to the Cabinet Office for any further cost savings in respect of the Project made after the date of this letter.
- 5 If, notwithstanding the reasonable steps to mitigate costs through the return or reuse of inventory there is excess inventory remaining, ("**Excess Inventory**") the Cabinet Office will instruct BAE and its Affiliates to either dispose of the Excess Inventory in accordance with standard disposal, recycling or destruction processes for the inventory in question, or to provide the particular inventory to the Cabinet Office in which case the Cabinet Office will take ownership of such inventory. The Cabinet Office acknowledges that further costs may be incurred by BAE in either eventuality and agrees to further reimburse BAE or its Affiliates for such reasonable costs.
- 6 BAE shall deliver the Excess Inventory to the Cabinet Office as and when instructed to a UK delivery location. At such time, BAE and its Affiliates will transfer its title in all Excess Inventory to the Cabinet Office (or to such other part of the Crown as the Cabinet Office may specify) free of any charge, pledge, lien, title retention or any other security agreement or arrangement and will assign the full benefit of all its interests in and its right arising under or out of the warranties it has received from its suppliers in



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respect of the Excess Inventory together with all rights for the Cabinet Office to sue or take action in respect of the said warranties.

- 7 BAE shall provide all reasonable assistance that may be required by the Cabinet Office as owner of the Excess Inventory and assignee of the warranties in paragraph 6 above or any relevant third party to obtain all necessary consents and approvals from the relevant suppliers necessary to give effect to the assignment of the warranties.
- 8 Without limitation to paragraph 7 above, BAE hereby authorises and permits the Cabinet Office to act as its agent to the full extent required to enable the Cabinet Office to secure any necessary data, documentation or other information relating to the Excess Inventory from the relevant suppliers.
- 9 BAE has a limited number of production model AirCare ventilator units which it wishes to keep. The cost of the inventory in these models are not included in the costs set out in the schedule hereto and they shall not comprise "Excess Inventory" for the purposes of this agreement.
- 10 The Cabinet Office acknowledges that all intellectual property rights used by or on behalf of BAE and its Affiliates in the design, development, qualification and productionisation of the product for the Project and its manufacture (including any improvements thereto made by, or on behalf of, BAE or any of its Affiliates) shall remain the exclusive property of BAE and/or its Affiliates (or where applicable, any third party licensor from whom BAE or any of its Affiliates derives the right to use them). Where BAE or any of its Affiliates seeks to market or supply any Product or ventilator unit based on or embodying the designs of the Product then it shall do so:
 - a. on the basis that it assumes full and exclusive responsibility for those products and complies with all applicable laws, regulations and industry standards in respect of the regulatory approval, supply or other use of those products; and
 - b. the Crown has no liability whatsoever for those products and gives no express or implied endorsement for those products.
- 11 Each party undertakes that it shall not at any time disclose to any person any Confidential Information ("**Confidential Information**" means 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,



commercial terms, processes, plans, product information, know-how, designs, trade secrets or software, market opportunities and customers) except:

- a. with the express agreement of the other party;
- b. 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 within this letter or in connection with the Project (provided they are also bound by equivalent confidentiality undertakings);
- c. as may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority or in compliance with any 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, Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records or the Environmental Information Regulations 2004. Where such request is received by a public authority, to the extent permitted by the time for compliance under the Act or the Regulations, the Crown shall consult BAE Systems where it is considering the disclosure of BAE Systems confidential information including BAE Systems commercially sensitive information and intellectual property and in any event, shall provide prior notification to BAE Systems of any decision to disclose such information; or
- d. by the Cabinet Office, to any other central Government body, any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), to any consultant, contractor or other person engaged by the Cabinet Office and/or contracting authority receiving such information, to any relevant party for the purpose of the examination and certification of the Cabinet Office's accounts, 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 Cabinet Office has used its resources, to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements or 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.



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12 The Cabinet Office may assign, novate or otherwise dispose of its rights and obligations under this letter without the consent of BAE or its Affiliates to another part of the Crown (meaning for these purposes the government of the United Kingdom, but not limited to, government ministers, government departments, government offices and government agencies) provided and to the extent that does not prejudice any of the rights of BAE and its Affiliates set out in this letter.

13 The agreement set out in this letter shall be governed by and construed in accordance with the law of England and Wales.

Please confirm your agreement to the terms set out above by signing and dating this letter below and returning a copy to me by 26th June 2020.

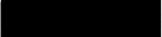
Yours sincerely,


Government Chief Commercial Officer

For and on behalf of the Minister for the Cabinet Office

Signed: 

Dated: 26.06.20

I,  for and on behalf of BAE and its Affiliates hereby agree to and accept the terms set out in this letter.

Signed: 

Dated:  26 / 6 / 2020



Schedule of Costs

BAE Systems Funded Design Activity	£	
Design Support Labour	£	
Production Planning + Support Labour	£	
Production Labour	£	
AI Design Support Labour	£	
Support Materials / Sub-con	£	
Other Materials / Sub-con	£	
Production Materials Purchase Orders	£	
Non-Material Purchase Orders	£	
Maritime Services Buy-Back	-£	
Overheads	£	
Total Cabinet Office Cost (ex. VAT)	£	5,353,864.34