



Department  
for Environment  
Food & Rural Affairs

**COMMERCIAL IN CONFIDENCE**

Chembio Diagnostic Systems Inc.  
3661 Horseblock Road  
Medford  
NY 11763  
USA

Our Ref: 21907  
Date: 30th April 2015

FTAO [REDACTED]

By Email to: [REDACTED]

Dear [REDACTED]

**Award of contract for the supply of DPP® VetTB Assay for Cervids Kits) (Goods)**

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

This letter (**Award Letter**) and its schedules set out the terms of the contract between the Customer and Chembio Diagnostic Systems (**Contractor**) for the provision of the Goods.

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

If there is any conflict between this Award Letter and the Conditions, this Award Letter shall prevail.

Please do not attach any Contractor terms and conditions to this Agreement as they will not be accepted by the Customer and may delay the process.

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

- 1) The Goods shall be Delivered in accordance with the following instructions:

**Delivery Address**

Animal and Plant Health Agency (APHA),  
Central Stores,  
Woodham Lane,  
New Haw, Addlestone,  
Surrey.



Department  
for Environment  
Food & Rural Affairs

KT15 3NB  
United Kingdom



**Date of Delivery**

Friday 15<sup>th</sup> May 2015

**Packaging Instructions:**

Securely packaged in boxes to ensure product is not damaged in transit.

**Additional Delivery Instructions:**

The delivery shall be made within normal working hours 9am – 5pm Monday to Friday

- 2) The charges for the Goods shall be as set out in Schedule 2 (21907 Contract Goods Final.doc).
- 3) The specification of the Goods to be Delivered is as set out in Schedule 1 (21907 Contract Goods Final.doc).
- 4) The address for notices of the Parties are:

**Customer**

The Secretary of State for  
Environment, Food and Rural Affairs,  
acting as part of the Crown.

Email:



**Contractor**

Chembio Diagnostic Systems Inc.  
3661 Horseblock Road,  
Medford  
NY 11763  
USA

Email:



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



Department  
for Environment  
Food & Rural Affairs

## Payment

All invoices should be sent, quoting a valid purchase order number (PO Number), to: Tim Pollard, Animal and Plant Health Agency, Woodham Lane, New Haw, Addlestone, Surrey. KT15 3NB. You must be in receipt of a valid PO Number before submitting an invoice.

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

## Liaison

For general liaison, your contact will continue to be

[REDACTED]

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful supply of the Goods.

Please confirm your acceptance of the award of this contract by approving electronically on the Customer's e-Sourcing platform (Bravo) within seven (7) days from the date of this Award Letter. No other form of acknowledgement will be accepted.

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

Yours sincerely,

[REDACTED]

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

T: [REDACTED]

e-mail: [REDACTED]



Department  
for Environment  
Food & Rural Affairs

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

## **Contract (Short Form – Goods)**

### **Contract for supply of DPP® VetTB Assay for Cervids Kits**

**Contract Reference 21907**

Date: 30th April 2015

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# Terms and Conditions of Contract for Goods

## 1. Interpretation

1.1. In these terms and conditions:

“Agreement”	means the contract between (i) the Secretary of State for Environment, Food and Rural Affairs and (ii) the Contractor constituted by the Contractor’s countersignature of the Award Letter;
“Award Letter”	means the letter from the Customer to the Contractor containing these terms and conditions;
“Carriage paid to”	means that the Contractor pays the transportation and freight for the carriage of the Goods to the Delivery address specified in the award letter.
“Carrier”	means any person who, in a contract of carriage, undertakes to perform or to procure the performance of carriage, by rail, road, sea, air, inland waterway or by a combination of such modes;
“Central Government Body”	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <p>Government Department;</p> <p>Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>Non-Ministerial Department; or</p> <p>Executive Agency;</p>
“Charges”	means the charges for the Goods as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by

	the receiving Party to be confidential;
“Customer”	means the person identified in the letterhead of the Award Letter;
“Date of Delivery”	means that date by which the Goods must be Delivered to the Customer, as specified in the Award Letter.
“Deliver”	means hand over the Goods to the Customer at the address and on the date specified in the Award Letter, which shall include unloading and any other specific arrangements agreed in accordance with Clause 6. Delivered and Delivery shall be construed accordingly.
“DPA”	means the Data Protection Act 1998;
“FOIA”	means the Freedom of Information Act 2000;
“Goods”	means the goods to be supplied by the Contractor to the Customer under the Agreement;
“Information”	has the meaning given under section 84 of the FOIA;
“Party”	the Contractor or the Customer (as appropriate) and “Parties” shall mean both of them;
“Purchase Order Number”	means the Customer’s unique number relating to the order for Goods to be supplied by the Contractor to the Customer in accordance with the terms of the Agreement;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Specification”	means the specification for the Goods to be supplied by the Contractor to the Customer (including as to quantity, description and quality) as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where applicable, the Customer’s procedures for the vetting of personnel

as provided to the Contractor from time to time;

“Contractor” means the person named as Contractor in the Award Letter;

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

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

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

1.2.1. references to numbered clauses are references to the relevant clause in these terms and conditions;

1.2.2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

1.2.3. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;

1.2.4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.5. the word ‘including’ shall be understood as meaning ‘including without limitation’.

## **2. Basis of Agreement**

2.1. The Award Letter constitutes an offer by the Customer to purchase the Goods subject to and in accordance with the terms and conditions of the Agreement.

2.2. The offer comprised in the Award Letter shall be deemed to be accepted by the Contractor on receipt by the Customer of a copy of the Award Letter countersigned by the Contractor within seven ( 7)days of the date of the Award Letter.

## **3. Supply of Goods**

3.1. In consideration of the Customer’s agreement to pay the Charges, the Contractor shall supply the Goods to the Customer subject to and in accordance with the terms and conditions of the Agreement.



- 3.2. In supplying the Goods, the Contractor shall co-operate with the Customer in all matters relating to the supply of Goods and comply with all the Customer's instructions.
- 3.3. The Contractor shall supply the Goods in accordance with the Specification. The Contractor warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement shall:
  - 3.3.1. be free from defects (manifest or latent), in materials and workmanship and remain so for eight (8) calendar months after Delivery;
  - 3.3.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - 3.3.3. conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Contractor) supplied by, or on behalf of, the Contractor;
  - 3.3.4. be free from design defects;
  - 3.3.5. be fit for any purpose held out by the Contractor or made known to the Contractor by the Customer expressly or by implication, and in this respect the Customer relies on the Contractor's skill and judgement. The Contractor acknowledges and agrees that the approval by the Customer of any designs provided by the Contractor shall not relieve the Contractor of any of its obligations under this sub-clause.

#### **4. Charges, Payment and Recovery of Sums Due**

- 4.1. The Charges for the Goods shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Goods and the Carriage paid to. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the supply of the Goods, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking, export licences and carriage except that the Customer shall pay all duties, taxes and other official charges as well as the costs of carrying out customs upon importation of the Goods into the United Kingdom.

- 4.2. Following Delivery of the Goods, the Contractor shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Goods supplied in the invoice period.
- 4.3. In consideration of the supply of the Goods by the Contractor, the Customer shall pay the Contractor the invoiced amounts no later than thirty (30) days after receipt of a valid invoice which includes a valid Purchase Order Number.
- 4.4. Not used.
- 4.5. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Contractor shall not suspend the supply of the Goods unless the Contractor is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 17.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 4.6. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.7. If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **5. Cancellation**

- 5.1. The Customer shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to the Customer. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Customer shall pay such Charges or that part of the Charges for Goods which have been Delivered to the Customer or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Contractor has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the Contractor of those materials for a refund. For the avoidance of doubt the Customer shall not be liable for any loss of anticipated profits or any consequential loss.

## 6. Delivery

- 6.1. The Contractor shall Deliver the Goods into the custody of the Carrier, for transportation to the Delivery address of the Customer on or by the Date of Delivery. Unless otherwise agreed in writing by the Customer, Delivery shall be on the date and to the address specified in the Award Letter. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Customer has signed for the Delivery. The risk of loss of or damage to the Goods, as well as any additional costs due to events occurring after the time the Goods have been delivered to the Carrier is transferred from the Contractor to the Customer when the Goods have been delivered into the custody of the Carrier at the port of shipment. The Contractor shall procure air, ocean and vehicle cargo insurance against the Customer's risk of loss of or damage to the Goods during the carriage to the Delivery address. The Contractor contracts for such insurance at its own expense and pays the insurance premium. The minimum insurance shall cover the price provided in the Agreement plus ten per cent (i.e. 110%).
- 6.2. Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with Delivery of the Goods shall be provided without acceptance by the Customer or the Crown of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Contractor shall indemnify the Customer and the Crown in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer or the Crown may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Contractor or any of his sub-Contractors.
- 6.3. Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
- 6.4. Unless otherwise stipulated by the Customer in the Award Letter, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.
- 6.5. Where (i) the Contractor fails to Deliver the Goods or part of the Goods or (ii) the Goods or part of the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:
- 6.5.1. to terminate the Agreement;

- 6.5.2. request the Contractor, free of charge, to deliver substitute Goods within the timescales specified by the Customer;
- 6.5.3. to require the Contractor, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 6.5.4. to reject the Goods (in whole or part) and return them to the Contractor at the Contractor's own risk and expense and the Customer shall be entitled to a full refund on those Goods or part of Goods duly returned;
- 6.5.5. to buy the same or similar Goods from another Contractor and  
to recover any expenses incurred in respect of buying the goods from another Contractor which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

## **7. Property and Guarantee of Title**

- 7.1. Without prejudice to any other rights or remedies of the Customer, title and risk in the Goods shall pass to the Customer when Delivery of the Goods is complete (including off-loading and stacking)
- 7.2. The Contractor warrants that:
  - 7.2.1. it has full clear and unencumbered title to all the Goods;
  - 7.2.2. at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer. On Delivery the Customer shall acquire a valid and unencumbered title to the Goods.

## **8. Staff**

- 8.1. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
  - 8.1.1. refuse admission to the relevant person(s) to the Customer's premises;
  - 8.1.2. direct the Contractor to end the involvement in the provision of the Goods of the relevant person(s); and/or
  - 8.1.3. require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any

security pass issued by the Customer to the person removed is surrendered,

and the Contractor shall comply with any such notice.

8.2. The Contractor shall:

8.2.1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and if requested, comply with the Customer's Staff Vetting Procedures as supplied from time to time;

8.2.2. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and

8.2.3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

## **9. Assignment and Sub-Contracting**

9.1. The Contractor shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

9.2. Where the Contractor enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

9.3. Where the Customer has consented to the placing of sub-contracts, the Contractor shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

9.4. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement.

## **10. Intellectual Property and Indemnity**

- 10.1. The Contractor grants the Customer a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all intellectual property rights in the Goods or in any materials accompanying the Goods to the extent that it is necessary to fulfil its obligations under this Agreement.
- 10.2. The Contractor shall indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Contractor, its employees, agents or sub-contractors.
- 10.3. The Customer shall promptly notify the Contractor of any infringement claim made against it relating to any Goods and, subject to any statutory obligation requiring the Customer to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Customer shall give the Contractor such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

## **11. Governance and Records**

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

## **12. Confidentiality, Transparency and Publicity**

12.1. Subject to clause 12.2, each Party shall:

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

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

12.2. Notwithstanding clause 12.1, a Party may disclose Confidential Information which it receives from the other Party:

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

12.2.2. to its auditors or for the purposes of regulatory requirements;

12.2.3. on a confidential basis, to its professional advisers;

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

12.2.5. where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 12.2.5 shall observe the Contractor's confidentiality obligations under the Agreement; and

12.2.6. where the receiving Party is the Customer:

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

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

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

d) in accordance with clause 13.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 12.

- 12.3. The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Contractor hereby gives its consent for the Customer to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.4. The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

### **13. Freedom of Information**

- 13.1. The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
  - 13.1.1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
  - 13.1.2. transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 13.1.3. provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
  - 13.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the Customer.



- 13.2. The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Goods (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure
- 13.3. Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Goods is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## **14. Protection and Security of Data**

- 14.1. The Contractor shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 14.2. When handling Customer data, the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Contractor from time to time.

## **15. Liability**

- 15.1. The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 15.2. Subject always to clause 15.3
  - 15.2.1. the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor; and
  - 15.2.2. except in the case of claims arising under clauses 10.1 and 19.3, in no event shall either Party be liable to the other Party for any:
    - a) loss of profits;

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

15.3. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

15.3.1. death or personal injury caused by its negligence or that of its Staff;

15.3.2. fraud or fraudulent misrepresentation by it or that of its Staff;

15.3.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

15.3.4. any other matter which, by law, may not be excluded or limited.

15.4. The Contractor's liability under the indemnity in clauses 10.1 and 19.3 shall be unlimited.

## **16. Force Majeure**

16.1. Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Contractor. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than thirty (30) days, either Party may terminate the Agreement by written notice to the other Party.

## **17. Termination**

17.1. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement in whole or in part before Delivery or after Delivery, where only part of Goods have been Delivered, by written notice to the Contractor with immediate effect if the Contractor:

17.1.1. (without prejudice to clause 17.1.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

- 17.1.2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
- 17.1.3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
- 17.1.4. undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- 17.1.5. breaches the provisions of clauses 8.2, 12, 13, 14 and 18; or
- 17.1.6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.6) in consequence of debt in any jurisdiction.
- 17.2. The Contractor shall notify the Customer as soon as practicable of any change of control as referred to in clause 17.1.4 or any potential such change of control.
- 17.3. In addition to the Contractor's statutory rights, the Contractor may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within ninety (90) days of them falling due.
- 17.4. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under clauses 2, 3.2, 3.3, 8, 10, 11.2, 12, 13, 14, 15, 17.5, 18.4, 19.3, 20 and 21.7 and any other term or condition of the Agreement that either expressly or by implication has effect after termination.
- 17.5. Upon termination or expiry of the Agreement, the Contractor shall:
  - 17.5.1. give all reasonable assistance to the Customer and any incoming Contractor of Goods; and
  - 17.5.2. return all requested documents, information and data to the Customer as soon as reasonably practicable.

## 18. Compliance

- 18.1. The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement.
- 18.2. The Contractor shall:
- 18.2.1. comply with the reasonable requirements of the Customer's security arrangements;
  - 18.2.2. comply with all the Customer's health and safety measures;
  - 18.2.3. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;
  - 18.2.4. perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Contractor from time to time;
  - 18.2.5. take all reasonable steps to secure the observance of clause 18.2.4 by all Staff; and
  - 18.2.6. supply the Goods and any packaging in accordance with the Customer's environmental policy as provided from time to time.
- 18.3. The Goods shall be packed and marked in a proper manner and in accordance with any instructions specified in the Award Letter, any statutory requirements and any requirements of the carriers. All packaging materials shall be considered non-returnable. The Contractor shall indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this clause 18.3.
- 18.4. The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 18.4.1. the Official Secrets Acts 1911 to 1989; and
  - 18.4.2. section 182 of the Finance Act 1989.

## **19. Prevention of Fraud and Corruption**

- 19.1. The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 19.2. The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3. If the Contractor or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
  - 19.3.1. terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 19.3.2. recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause.

## **20. Dispute Resolution**

- 20.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 20.2. If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 20.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 20.3. If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## 21. General

- 21.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 21.2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 21.3. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 21.4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 21.5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 21.6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 21.7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 21.8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **22. Notices**

- 22.1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 22.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 22.2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 22.3. Notices under clauses 16 (Force Majeure) and 17 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 22.1.

## **23. Governing Law and Jurisdiction**

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

## SCHEDULE 1

### SPECIFICATION OF GOODS

#### Definitions

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

“APHA”	means Animal and Plant Health Agency
“ DPP®”	means Chembio’s trademarked name for a lateral flow device test
“Delivery”	means the fixed price for delivery, door-to-door

#### 1. Background to requirement

- 1.1 APHA requires a qualitative screening test for the detection of antibodies to Mycobacterium tuberculosis and Mycobacterium bovis in Elk / Red Deer, Fallow Deer and White-tailed Deer serum, plasma and whole blood.
- 1.2 The test will be used at various APHA locations as an aid in the diagnosis of active tuberculosis (TB) in conjunction with other diagnostic methods.

#### 2. Procurement Requirement

- 2.1 The Customer requires one hundred and five (105) DPP® VetTB Assay for Cervids kits (each kit contains 20 tests).

- 2.2 The test device is comprised as follows:

A membrane strip containing two recombinant antigens, an M.tuberculosis and an M.bovis antigen, which are separately immobilised on the membrane solid phase. It also utilises recombinant Protein A/G conjugated to colloidal gold particles for antibody detection. The kit does not contain any live or active levels of TB.

- 2.3 The Running Buffer is comprised as follows:

Six (6) millilitre dilute buffer solution in a dropper bottle sufficient for twenty (20) test devices.

#### 3. Delivery

- 3.1 One hundred and five (105) DPP® VetTB Assay for Cervids kits (20 tests per kit) shall be delivered no later than Friday 15<sup>th</sup> May 2015.

- 3.2 The delivery location is detailed below:



Animal and Plant Health Agency (APHA),  
**Central Stores,**  
Woodham Lane,  
New Haw, Addlestone,  
Surrey.  
KT15 3NB  
United Kingdom

- 3.3 The delivery shall be made within normal working hours 9am – 5pm Monday to Friday (excluding Public Holidays).
- 3.4 All freight costs, door-to-door, to be met by the Contractor. The cost of Delivery is included in Schedule 2.

#### **4. Warranty**

- 4.1 The Contractor shall supply free of charge any faulty items offering a replacement, unless the damage is caused by third parties or abuse or misuse whilst in use.
- 4.2 The Contractors replacement service shall be dependent of damage and quantities and shall be advised to the Authority on an individual basis.
- 4.3 The Contractor shall replace any DPP® VetTB Assay kits within three (3) months of being notified by the Customer (within six (6) weeks if there is an existing batch available).

#### **5. Performance Management Framework (including Key Performance Indicators (KPIs and Service Credits)**

- 5.1 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 and achievable; they also have to be met otherwise indicating that the service is failing to deliver.
- 5.2 The KPIs for this Contract are set out at below.

##### **Service Credit Principles**

- 5.3 Service credits sit within the wider service management approach being pursued by the Contractor and the Customer.
- 5.4 The service credit regime shall be instigated on each occasion where there is a service failure (i.e. where a KPI is identified as having a 'Red status'). This shall give rise to a remediation plan.

- 5.5 Failure to achieve the performance target of a minimum 'Amber Status' for KPI 1 shall result in the 70% fixed price not being paid until resolved to the Customer's satisfaction.
- 5.6 Failure to achieve the performance target of a minimum 'Amber Status' for KPI 3 shall result in the 30% fixed price not being paid until resolved to the Customer's satisfaction.
- 5.7 Failure to achieve the overall performance target of a minimum of 'Amber Status' for KPI 2 shall result in the reimbursement of 1% of the total cost. This shall be measured once per annum of the contract.

#### **Governance and Contract Management**

- 5.8 The Contractor shall be managed by a Nominated Officer within the Customer who shall be responsible for the day to day management of the Contract. The Contractor shall appoint a Project Manager who will act as the principal point of contact for the Customer.
- 5.9 The Customer's Nominated Officer shall make regular contact with the Contractor to review the progress of the production of the kits and to discuss any issues that arise.
- 5.10 The Contract shall be managed in accordance with the Customer Terms and Conditions and KPIs/credit regime contained within Schedule 1, Specification, Section 5 Performance Management Framework.

### Key Performance Indicators

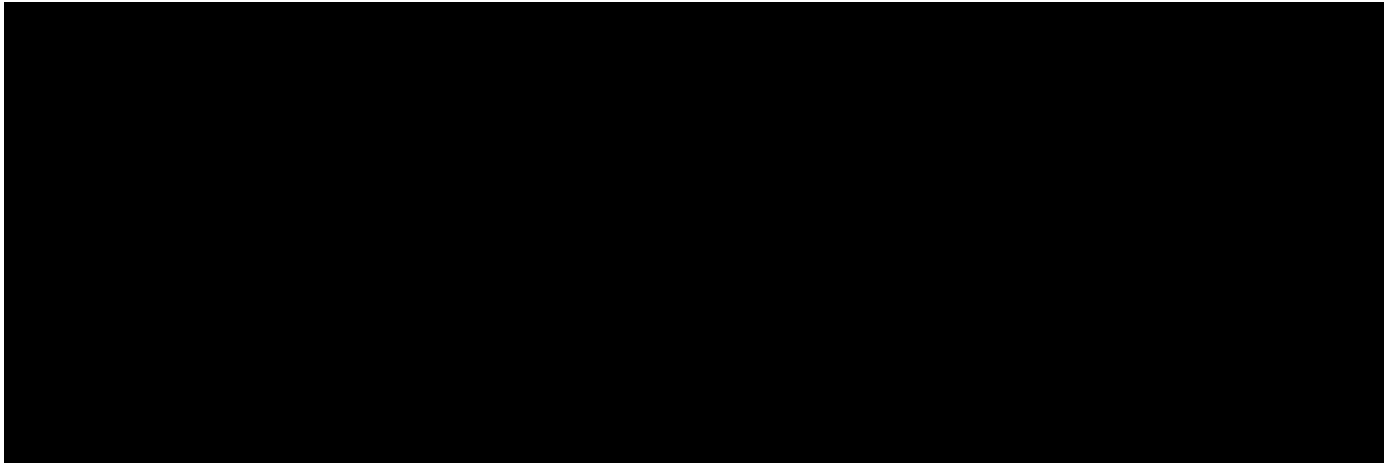
KPI	Measure	KPI Measurement	KPI Rating		
			Red	Amber	Green
<b>KPI 1</b> - Delivery on time	The kits are delivered before the deadline	Delivery against agreed timescales	Delivered after 15 <sup>th</sup> May 2015	Delivered on 15 <sup>th</sup> May 2015	Delivered before 15 <sup>th</sup> May 2015
<b>KPI 2</b> - Warranty	The Customer contract manager view of warranty issues	Standard of service under warranty	Below expectations (less than 90% of the time)	Meets expectations (90% to 95% of the time)	Exceeds expectations (96% - 100% of the time)
<b>KPI 3</b> - Suitability	The kits are accepted as suitable by the Customer	The kits meet the required standard	Strongly disagree	Neutral	Strongly Agree

## SCHEDULE 2

### PRICES

The following pricing shall apply for the provision of one hundred and five (105) DPP® VetTB Assay for Cervids Kits

(Exchange rate of 1 USD = 0.672653 GBP applied on 24<sup>th</sup> March 2015)



Total Price		<b>£14,704.36</b>	<b>\$21,860.25</b>
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All prices are exclusive of VAT.