

## FORM OF CONTRACT

### Provision of reagents for GridION platforms to support COG-UK– (Contract ref: ECM 7873)

This Contract is made between:

**The Secretary of State for Health and Social Care acting as part of the Crown through Public Health England** of 133-155 Waterloo Road, London, SE1 8UG (the "Authority")

and

**New England Biolabs UK Ltd**, company number **02833761** with a registered address 75-77 Knowl Piece, Wilbury Way, Hitchin, Hertfordshire, SG4 0TY (the "Supplier")

The following is agreed:

1. The Contract is made up of the following documents:
  - (a) this Form of Contract for the provision of reagents for GridION platforms to support COG-UK - Contract ref: ECM\_ 7873;
  - (b) Schedule 1: Optional Provisions, if any;
  - (c) Schedule 2: General Terms and Conditions;
  - (d) Schedule 7: Commercial Schedule;
  - (e) Schedule 3: Information Governance Provisions;
  - (f) Schedule 4: Definitions and Interpretations;
  - (g) the order in which all subsequent schedules appear, if any;
  - (h) any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

(all of the above documents taken together (as amended in accordance with this Contract) being referred to as the "Contract")

2. Subject always to Clause 1.10 of Schedule 4, if there is an inconsistency between any of the documents listed above, the order of priority for construction purposes shall be that a higher listed document shall prevail over a lower listed document, i.e. document (a) shall prevail over all other documents; document (b) shall prevail over document (c).
3. The parties agree the following amendments to the PHE Terms and Conditions for Provisions of Goods:

Item	Clause	Amendment
1.	Schedule 2 Clause 7.5 added (following Clause 7.4):	This clause reads as follows: "Nothing in this Contract will be construed as a representation or warranty that the use of the Goods is or will be free from infringement of third party Intellectual Property Rights. The Authority acknowledges that it is the sole responsibility of the Authority to determine whether it may be required to obtain any third party Intellectual Property Rights depending upon the particular application in which the Goods are used."





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2.	Schedule 2 Clause 7.6 added (following new Clause 7.5):	This clause reads as follows: "The Authority represents and warrants that it will not, directly or indirectly, perform compositional, structural, functional or other analysis of the Goods, or undertake deconvolution or reverse engineering with respect to the Goods."
3.	Schedule 2 Clause 10.1.1:	This clause is amended to read as follows: "the Goods shall be of satisfactory quality and shall comply with the standards and requirements set out in this Contract;"
4.	Schedule 2 Clause 10.1.4:	This clause is amended to read as follows: "without prejudice to the generality of the warranty at 10.1.3 of this Schedule 2, it shall ensure that the Goods are manufactured, stored and/or distributed in accordance with Good Industry Practice relevant to the Goods and in accordance with any specific instructions of the manufacturer of the Goods;"
5.	Schedule 2 Clause 10.1.11:	This clause is amended to read as follows: "intentionally omitted;"
6.	Schedule 2 Clause 10.1.18:	This clause is amended to read as follows: "receipt of the Goods by or on behalf of the Authority or of any other item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights, <i>provided that</i> , with respect to Intellectual Property Rights (a) the Supplier had actual knowledge or should have reasonably known of such third party Intellectual Property Rights (based on prevailing practices of diligence and inquiry in the industry for launch of commercial products similar to the Goods), and (b) there was actual infringement at the time of delivery of the Goods to the Authority."
7.	Schedule 2 Clause 10.2 (including Clauses 10.2.1 through 10.2.3):	This clause is amended to read as follows: "Intentionally omitted."
8.	Schedule 2 Clause 10.10 added (following Clause 10.9):	This clause reads as follows: "The Authority acknowledges the Goods were designed for research use only and were not intended for any other purposes. The Authority acknowledges that the Goods have not been tested by or for Supplier for safety or efficacy. The Authority is solely (and without assistance from Supplier) responsible: (a) for confirming that the Goods are suitable for the Authority's intended purpose and use; (b) for confirming that the Authority's use complies with all Laws; and (c) for obtaining all necessary approvals, licenses, third party Intellectual Property Rights, and permissions needed for such use. The Authority represents and warrants to Supplier that it will properly test, use, and, to the extent authorized, market any Goods, and any final articles made from the Goods, in accordance with all Laws."
9.	Schedule 2 Clause 11.1	This clause is amended to read as follows: "The Supplier hereby grants to the Authority, for the life of the use of Goods by the Authority, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving, and to the extent necessary to receive, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract."





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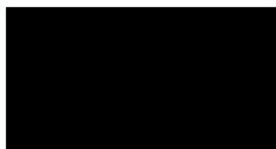
10.	Schedule 2 Clause 12.2:	The clause is amended to read as follows: "Liability under Clause 12.1.1 of this Schedule 2 and under Clause 2.5 of Schedule 3 shall be unlimited. Liability under Clauses 4.9.4, 10.3, 12.1.2, and 12.1.3 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2."
11.	Schedule 2 Clause 12.4 added (following Clause 12.3):	This clause reads as follows: "Subject to the Supplier's obligations to indemnify the Authority hereunder, each Party shall be responsible for liabilities incurred by such Party as a result of its own acts and omissions relating to the Goods, a material breach of its obligations under this Contract, and its use, storage, and disposal of the Goods; limited to the extent that such liabilities are determined by a court to arise out of the negligence or wilful misconduct of the other Party or the material breach of this Contract by the other Party."
12.	Schedule 2 Clause 13.2:	This clause is amended to read as follows: "Subject to Clauses 12.2, 13.1, and 13.3 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the total Contract Price paid by the Authority to the Supplier for the Goods."
13.	Schedule 2 Clause 13.3 (including Clauses 13.3.1 through 13.3.5):	This clause is amended to read as follows: "There shall be no right for either Party to claim any indirect, special, incidental, consequential, or exemplary damages or any other losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty, warranty or otherwise, including any such losses, damages and/or other costs and expenses claimed in respect of loss of production or loss of business opportunity."
14.	Schedule 2 Clause 13.5 (including Clauses 13.5.1 through 13.5.4):	This clause is amended to read as follows: "Intentionally omitted."
15.	Schedule 4 Clause 1.1	The definition of "Specification and Tender Response Document" is amended to read as follows: "means, if any, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements;"

4. The Contract will commence on **15 January 2021** (the "Commencement Date") and shall expire **1 year** from the Commencement Date.
5. The value of the contract is £264,000 (incl. VAT). The Contractor shall be paid by The Authority on successful delivery.

PHE STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

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Signature:



For and on behalf of the Authority

Name:



Job Title:



Date: 07 April 2021

Signature:



For and on behalf of the Supplier

Name:



Job Title:



Date:

6<sup>th</sup> April 2021