RANDOX

[redacted]
Department of Health and Social Care
1st Floor
39 Victoria Street
London
SW1H 0EU

30 March 2020

Department of Health and Social Care ("DoH") Delivery of Covid-19 Testing

Dear [redacted]

As discussed, I set out below the additional points we have agreed with regard to the delivery of Covid-19 testing. This letter or purchase order, together with the terms and conditions scheduled as an appendix hereto (including the appendices to such terms) (the "**Terms**"), form the "**Contract**".

1. Randox shall provide [redacted] tests at [redacted] (excluding VAT) per test.
2. Tests shall be delivered as per the Delivery Schedule below.
3. A payment on account of [redacted] shall be made to Randox upon signature on this side letter and the provision of a purchase order to provide Randox with a neutral cash position.
4. The [redacted] payment on account shall be recovered as a pro-rata discount applied to each invoice. As an example, if Randox were to invoice DOH for [redacted] delivered tests, the price of the tests would be [redacted] a discount of [redacted] of [redacted] would then be applied giving an invoice value of [redacted]
5. DoH shall be entitled to terminate the Contract (in accordance with the relevant clauses of the Terms) should Randox fail to materially achieve the delivery schedule set out below, having used all reasonable endeavours (subject always to the provisions of the Terms). In such circumstances, Randox shall return the balance of the payment on account in respect of an undelivered tests as at the date of termination to DoH.

   This shall be provided always that (in relation to this section 5) that DoH shall not be entitled to terminate the Contract, and shall allow a grace period of 12 weeks, in circumstances where Randox is unable to achieve the delivery schedule set out below for reasons outside its control, including without limitation where this is a disorderly supply of raw materials to Randox or a material number of Randox group employees contract Covid-19, provided always that Randox shall use all reasonable endeavours to resume supply, as contemplated in clause 18 of the Terms.

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6. Randox shall provide daily reporting regarding the number of test kits delivered by Randox, test samples received, tests completed and a forecast of testing capacity up to the completion of the [redacted] tests.

7. DoH shall have the right to have a representative on site at Randox's premises in Crumlin, during the execution of the of the Contract at such times as DoH shall reasonably require, subject to the provisions around such inspections contained within clause of 3.5 Terms.

8. Randox agrees to collaborate the DoH to share information pertaining to the testing supply chain as reasonably required by the DoH to enable DoH to support Randox with scheduling testing.

9. Payment terms are net [redacted] from receipt of invoice which shall be submitted in respect of all delivered tests as at the relevant date [redacted]

Delivery Schedule

Week No	Week Commencing	No Tests/Day	No Tests/Week
1	[redacted]		
2			
3			
4			
5			
6			
7			
8			
9			
01			
11			
12			

I would be grateful if you could acknowledge DoH's agreement with these additional points by counter-signing the enclosed copy of this letter.

We look forward to working with you on this critical project.

Yours sincerely

[redacted]

Agreed and countersigned on behalf of Department of Health and Social Care:

[redacted]

Enc(s) – Terms and Conditions

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TERMS AND CONDITIONS

1. INTRODUCTION

1.1 The Contractor carries on the business of providing the Goods and Services, and the Parties hereto have agreed to enter into the Contract for the provision of Goods and Services by the Contractor to the Authority accordingly.

1.2 This Contract takes precedence over any other document not specifically incorporated into it. The parties acknowledge that they have read and understood the Contract and are not entering into the Contract on the basis of any representations not expressly set forth in it.

1.3 In the event of any conflict or inconsistency between the constituent documents comprising the Contract, they shall take effect in the following order of precedence (to the extent of such conflict or inconsistency: (a) the Purchase Order; (b) these Terms (excluding the Appendices); and (c) the Appendices.

2. DEFINITIONS

The following definitions and rules of interpretation in this clause apply in these Terms:

2.1 **"Authority"** means the Secretary of State for Health and Social Care', acting on behalf of the Department of Health and Social Care.

2.2 "**Confidential Information**" has the meaning given to it in clause 15.1.

2.3 **"Contract"** means the arrangement between the Authority and the Contractor, comprising the Purchase Order and these Terms.

2.4 **"Contractor"** means Randox Laboratories Limited (company number NI015738).

2.5 "**Data Protection Legislation**" means all data protection legislation from time to time in force in the UK, including the General Data Protection Regulation and the Data Protection Act 2018;

2.6 **"Force Majeure Event**" has the meaning given in clause 18.1.

2.7 **"Goods"** the COVID-19 test kits set out in the Specification, referred to as "tests" in the Purchase Order.

2.8 **"Intellectual Property Rights"** means all intellectual property rights of any nature, 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, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

2.9 **"Party"** (and **"Parties"**) means a party to (and both parties to) the Contract.

2.10 **"Prices"** means the price of / payments for the Goods and Services as outlined in the Purchase Order.

2.11 **"Purchase Order"** means the commercial letter showing the agreed type, quantity and price of Goods and/or Service the Contractor will supply to the Authority, agreed between the parties and to which these Terms are appended.

2.12 **"Service"** means the services to be supplied in relation to the Goods, as set out in the Specification.

2.13 **"Specification**" means the specification of for the Goods and Services set out in 8RAN7319.6317719.8

2.14 **"Staff"** means all persons employed by the Contractor (or any member of the Contractor's group of companies) to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and sub-contractors used in performing the Contract.

2.15 "**Terms**" means the terms and conditions set out herein.

2.16 "**Up-Front Payment**" means the up-front payment of [redacted] referred to in section 3 of the Purchase Order.

2.17 Clause headings shall not affect the interpretation of the Contract.

2.18 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2.19 The Appendices to these Terms form part of the Contract and shall have effect as if set out in full in the body of these Terms.

2.20 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

2.21 The Contract shall be binding on, and enure to the benefit of, the parties to the Contract and their respective successors and permitted assigns, and references to any party shall include such.

2.22 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and includes all subordinate legislation made from time to time under same.

2.23 A reference to writing or written do not include email or fax.

2.24 References to clauses are to clauses of these Terms, and references to sections to sections of the Purchase Order, unless the context requires otherwise.

2.25 Any words following the terms including, include, in particular, for example or any similar expression shall be illustrative and shall not limit the generality of any preceding words.

3. OBLIGATIONS

3.1 Each party shall co-operate with the other in all matters relating to the supply of the Goods and/or Services, including in the provision of information relating to the subject matter of the Contract, as reasonably required by the other, acting in good faith.

3.2 Contractor shall comply with the Authority's reasonable instructions from time to time.

3.3 During the term of the Contract, the Contractor shall provide the Goods and Services, using reasonable skill and care (subject to limitations where anything is outside of Contractor's reasonable control, including as outlined in the Specification), in accordance with the Contract and all applicable laws (including health, safety and welfare at work legislation, and the Human Rights Act 1998), and the Authority commits to purchasing all Goods and Services specified in the Purchase Order.

3.4 In carrying out the Contract, the Parties shall comply with all relevant provisions of the Data Protection Legislation (the Contractor acting as a data processor on the Authority's behalf as a data controller) in accordance with the data protection and data security appendix to be scheduled at Appendix 2. This clause is in addition to, and does not relieve, remove or replace, either Party's obligations under the Data Protection Legislation. The Contractor shall comply with, shall be liable for, and indemnify the Authority against, any expense, liability, loss, claim or proceedings arising as a result of

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or in connection with any breach of this clause 3.4, subject to the provisions of clause 11.

3.5 Authority shall have the right to enter Contractor's premises at Randalstown Road, Antrim, County Antrim, BT41 4LP to inspect the manufacturing facilities and the equipment used by Contractor in the provision of the Goods and Services, provided that all inspections carried out under this clause shall be carried out during business hours on reasonable notice to Contractor, with Authority using all reasonable endeavours to minimise disruption to the business of Contractor (and having regard to the safety of Contractor's Staff). All information obtained by the Authority in the course of such inspections shall be treated as the Confidential Information of the Contractor.

4. PRICE AND PAYMENT

4.1 The Authority shall pay the Contractor the Prices stated in the Purchase Order for the Goods and Services, which shall be the full and exclusive remuneration of the Contractor in respect of the agreed Goods and Services set out in the Purchase Order.

4.2 Save as expressly set out in the Contract, the Prices are non-refundable and non-cancellable.

4.3 The Authority shall pay the Contractor the Prices in accordance with the payment terms set out in the Purchase Order.

4.4 The Prices are exclusive of VAT, if chargeable in respect of the supply of the Goods or Services to the Authority. In such circumstances, if applicable Authority shall, on receipt of a valid VAT invoice from Contractor, pay to Contractor any additional amounts in respect of VAT as are chargeable on the relevant supply of Goods or Services

4.5 The Prices are inclusive of the costs of packaging, insurance and carriage of the Goods to the agreed delivery locations (for the collection of samples), but all costs of returning the completed samples and Goods to the Contractor shall be for the Authority's account.

4.6 All invoices should be paid in full and cleared funds to the bank account nominated in writing by Contractor on its invoices.

4.7 If Authority disputes any invoice or other statement of monies due, Authority shall immediately notify Contractor in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. Contractor shall provide all evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date.

4.8 Each party may at any time, without notice to the other party, set off any liability of the other party to it against any liability it has to the other party, provided always such liabilities are present and liquidated. Any exercise by a party of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise. The Up-Front Payment may only be set off or deducted by the Authority from payments due to the Contractor in the circumstances explicitly set out in the Contract.

5. SUPPLY AND DELIVERY OF GOODS AND SERVICES

5.1 The Contractor shall use all reasonable endeavours ensure that the Goods shall correspond with the Specification and be delivered on the dates specified and to the location agreed in writing with the Authority's representative. Contractor shall keep the Authority notified in a reasonable manner of any material anticipated delays.

5.2 For the avoidance of doubt, Contractor shall be responsible for delivery of any physical Goods to the agreed locations at the times agreed as contractually binding. The risk in the Goods (and in any samples relating to those Goods) shall transfer once the

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Contractor or its nominated courier places the Goods at Authority's disposal at the relevant delivery location, and shall remain with the Authority until such point as the Goods are returned to Contractor's premises in Crumlin for the provision of the testing Services (for which Authority shall be responsible, although Contractor shall include a pre-paid return kit with the Goods when posted out to assist with this).

5.3 Authority may reject any Goods that do not comply with the terms of this Contract, provided that notice of rejection is given to Contractor: (a) in the case of a defect that is apparent on normal visual inspection, for example damage caused in transit, within five days of delivery; and (b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent. If Authority rejects Goods under this clause then it shall be entitled to require Contractor to replace the rejected Goods.

5.4 The Contractor shall not be responsible for the failure of the Goods to meet the relevant warranties in the Contract to the extent that:

(a) Authority makes any further use of those Goods after giving notice in accordance with clause 5.3;

(b) the defect arises because Authority (or the relevant third-party taking custody of the Goods) failed to follow Contractor's reasonable written instructions for the storage and use of the Goods (including as set out in the Specification);

(c) the defect arises as a result of Contractor following any drawing, design or specification supplied by Authority; or

(d) the defect arises as a result of any wear and tear, damage to the Goods, negligence, or abnormal storage or use conditions.

5.5 The Contractor shall use all reasonable endeavours to meet any performance dates agreed in the Specification and/or the Purchase Order, or otherwise agreed in writing as binding performance dates with the Authority's representative.

5.6 Contractor shall have no liability for any failure or delay in provision of any Goods or Services to the extent that any failure or delay is caused by Authority's failure to comply with its obligations under the Contract, or any other situation outside the reasonable control of Contractor, including the scenarios outlined in section 5 of the Purchase Order.

5.7 The Contractor shall use all reasonable endeavours to ensure that the Services materially conform with the Specification.

5.8 The Contractor shall provide all equipment, tools and vehicles and such other items as are reasonably required to provide the Services, subject to the caveats outlined in the Specification.

5.9 The Contractor shall satisfy itself that Staff are suitable to provide the Goods and/or Service. The Contractor shall use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor can fulfil its obligations under the Contract.

6. ASSIGNMENT AND SUB-CONTRACTING

The benefit and burden of this Contract may not be assigned or sub-contracted by the Contractor without the written consent of the Authority (not to be unreasonably withheld or delayed).

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Parties acknowledge that all Intellectual Property Rights owned at the date of the

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Contract by the Authority shall remain so owned and all Intellectual Property Rights owned at the date of the Contract by the Contractor shall remain so owned.

7.2 All Intellectual Property Rights in any material or works that the Contractor produces to comply with its obligations under the Contract after its formation (including in any guidance, specifications, instructions, plans, data, drawings, databases, models, designs or other material prepared by or for the Contractor to perform the Service) shall belong to the Contractor, including where such materials or works were created based on, or incorporate any information provided by, the Authority. This clause shall not affect the ownership of Intellectual Property Rights that existed prior to the Contract, as described in clause 7.1.

7.3 The Contractor shall indemnify the Authority against all claims, demands, actions, costs (including legal costs and disbursements on a solicitor and client basis), and losses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Right in connection with provision of the Goods and/or Service by the Contractor, subject to the provisions of clause 11.

8. STATUS OF CONTRACTOR

The Contractor agrees that nothing in the Contract shall create a contract of employment, relationship of agency, partnership or joint venture between the Parties.

9. REPUTATION AND PUBLIC SERVICE CONSIDERATIONS

9.1 In providing the Goods and/or Service the Contractor shall pay regard to the standing and reputation of the Authority and shall not do (by act or omission) anything (within its reasonable control and relevant to the scope of the Contract) that may bring the standing or reputation of the Authority into disrepute, attract adverse publicity to the Authority or harm public confidence in the Authority.

9.2 Similarly, the Authority shall also have all due regard to the standing and reputation of Contractor, and not do anything (within its reasonable control) which may bring the standing or reputation of the Contractor into disrepute, attract adverse publicity to the Contractor or harm public confidence in the Contractor, subject to the provisions of clause 16.

10. WARRANTIES

10.1 Each Party warrants and represents to the other that:

(a) it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform its obligations under the Contract, and that its entry into the Contract complies with all applicable laws; and

(b) there are no contractual obligations, claims, litigation, or proceedings against it which could materially affect its ability to perform its obligations under the Contract.

10.2 Each Party warrants to the other that it will use all reasonable endeavours to ensure that any representations made to the other are true and accurate to the best of its knowledge and belief.

11. INDEMNITY AND LIABILITY

11.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence, or for fraud or fraudulent

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misrepresentation (including the Authority's right to recovery under clause 13.2).

11.2 Subject to clause 11.1, neither Party shall have any liability to the other for the following types of losses: loss of profit; loss of sales or business; loss of agreements or contracts; loss of anticipated saving; loss or corruption of software, data or information; loss or damage or goodwill; or other indirect or consequential, special or punitive damages.

11.3 Subject to clauses 11.1 and 11.2, the aggregate liability of the Contractor in respect of all defaults, claims or loss, whether arising from breach of the Contract, the supply or failure to supply the Goods and/or Service, tort or otherwise shall in no event exceed the higher of (a) 100% of the value of the Goods or Services the subject to the specific claim (which shall be assessed at 100% of the Price paid or payable by the Authority to the Contractor in respect of the Goods and Services generally to the extent that it relates to all of the Goods and Services collectively); or (b) the amounts actually recoverable by the Contractor under its relevant policies of insurance, using all reasonable endeavours to recover in respect of the relevant claim.

11.4 Contractor has given commitments as to compliance of the Goods and Services with the Specification in, among others, clauses 3.3 and 5.1. In view of these, any implied terms or warranties, including those arising under law, are to the fullest extent permitted by law excluded from the Contract.

11.5 The following provisions shall apply to any indemnities given by the Contractor to the Authority under the Contract:

(a) The indemnities shall not cover the Authority to the extent that a claim under them results from the Authority's negligence, breach of Contract or wilful misconduct.

(b) Liability under the indemnities is conditional on the Authority discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Authority which may reasonably be considered likely to give rise to a liability under the indemnities (a Claim), the Authority shall: (i) as soon as reasonably practicable, give written notice of the Claim to the Contractor, specifying the nature of the Claim in reasonable detail; (ii) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Contractor (such consent not to be unreasonably conditioned, withheld or delayed); (iii) give the Contractor and its professional advisers access at reasonable times (on reasonable prior notice) to any relevant accounts, documents and records within its power or control, so as to enable the Contractor and its professional advisers to examine them and to take copies (at the Contractor's expense) for the purpose of assessing the Claim; and (iv) be deemed to have given to the Contractor sole authority to avoid, dispute, compromise or defend the Claim, provided that the Authority may participate in the defence of any Claim using a counsel of its own choosing and its own cost, and that the Contactor shall have all due regard to any representations made by the Authority regarding the conduct of such Claim.

(c) Nothing in the Contract shall restrict or limit the Authority's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under the indemnities.

(d) Liability under any indemnities is limited under clauses 11.1 to 11.3 (inclusive).

12. TERMINATION

12.1 Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other Party fails to pay any undisputed amount due under the Contract on

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the due date for payment and remains in default not less 30 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of the Contract and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or

(c) the other Party repeatedly breaches any of the terms of the Contract in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract.

12.2 The Authority shall also be entitled to terminate the Contract under the circumstances set out elsewhere herein.

12.3 On valid termination by the Authority, the Contractor shall be required to refund the Authority any proportion of the Up-Front Payment made to it in respect of any Goods not already delivered at the date of termination. Otherwise, the Up-Front Payment shall be non-refundable on termination.

12.4 Termination or expiry of the Contract shall be without prejudice to the continuation in force of any clauses of these Terms or sections of the Purchase Order which, by the context or by their nature, are contemplated or required to survive such termination or expiry. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages for any breach of the Contract that existed at or before the date of termination or expiry.

12.5 If the Contract is set aside by order of a court of competent authority for reasons of a perceived breach of public procurement law, or other statutory provision, the Parties hereby record the intention and anticipation that in such circumstances the Contractor shall be paid for any Goods or Services rendered up to the date that the Contract is set aside in accordance with its terms, and, to the extent permitted by law (or the order of such court) the Contractor shall continue to provide said Goods and Services (and be remunerated for them accordingly) on the terms of the Contract for such interim period as is required to permit the Authority to appoint a new contractor to provide substitute or equivalent goods or services.

13. FRAUD

13.1 The Contractor shall use all reasonable endeavours to safeguard the Authority's funding of the Service or purchase of the Goods against fraud and notify the Authority as soon as reasonably possible if it suspects that any serious irregularity or fraud has occurred or is occurring.

13.2 If the Contractor or its Staff commits fraud in relation to the Contract the Authority may terminate the Contract immediately and recover from the Contractor any loss suffered by the Authority resulting from the termination.

14. PREVENTION OF BRIBERY AND CORRUPTION

The Contractor must comply with the Bribery Act 2010 and failure to do so will allow the Authority to terminate the Contract immediately in writing.

15. CONFIDENTIALITY

15.1 Each party (the **Receiving Party**) shall take all necessary precautions to ensure that all information which would be reasonably regarded as confidential or is otherwise explicitly marked as such and which is obtained from or about the other Party or its business (the **Confidential Information**) (the **Disclosing Party**) under or in connection with the

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Contract is treated as confidential and not disclosed (without prior written approval from the Disclosing Party) or used by the Receiving Party, its Staff or its professional advisors otherwise than as reasonably required for the purposes of performing or receiving the benefit of the Contract. In the case of the Contractor, the Confidential Information shall include any Intellectual Property Rights owned by the Contractor, any information obtained by the Authority pursuant to its inspection rights hereunder and the specific Prices of the Goods and Services.

15.2 The obligations in clause 15.1 shall not apply to the extent that any Confidential Information is required to be disclosed by law (subject to the provisions of clause 16) or is released into the public domain otherwise than as a result of the breach of this clause 15.1 by the Receiving Party, its staff or professional advisors (for whom and whose adherence to the terms of the Contract the Receiving Party shall be responsible and liable).

15.3 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 the Contract are granted to the other party or to be implied from the Contract.

16. FREEDOM OF INFORMATION

16.1 The Contractor acknowledges that the Authority is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations (together the **Information Legislation**) and shall assist and cooperate with the Authority as reasonably required by the Authority (at the Contractor's expense) to enable the Authority to comply with its information disclosure requirements pursuant to the Information Legislation.

16.2 The Authority recognises and acknowledges that the Confidential Information of the Contractor is confidential and commercially sensitive and agrees to co-operate and liaise with the Contractor regarding any disclosures which are sought pursuant to the Information Legislation to the extent that such disclosures would or might entail disclosure of such Confidential Information or result in potentially adverse publicity for Contractor (as contemplated in clause 5.2), and to have all due regard to any representations made by the Contractor regarding same, to the utmost extent permitted by law.

17. TERM

The Contract shall commence on the date that the Purchase Order has been signed by or on behalf of both Parties and shall expire when the Contractor has supplied the Goods and/or Service in accordance with the Purchase Order and the Authority has paid all sums due to the Contractor, or when earlier terminated in accordance with its terms.

18. FORCE MAJEURE

18.1 **Force Majeure Event** means any circumstance not in a party's reasonable control including, without limitation:

(a) acts of God, flood, drought, earthquake or other natural disaster;

(b) epidemic or pandemic (including any widespread outbreak of COVID-19 amongst the Contractor's Staff);

(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(d) nuclear, chemical or biological contamination, or sonic boom;

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(e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

(f) unavailability of supplies and/or raw materials, or other disruptions in the supply chain (provided these are outside Contractor's reasonable control having used all reasonable endeavours and/or not attributable to Contractor's negligent or wrongful acts or omissions);

(g) strikes or suspension of labour (provided these are not attributable to Contractor's negligent or wrongful acts or omissions);

(h) collapse of buildings, fire, explosion or accident;

(i) non-performance by suppliers or subcontractors (other than by companies in the same group as the Contractor); and

(j) interruption or failure of utility service.

18.2 Provided it has complied with clause 18.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

18.3 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 3 days from its start, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and

(b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

18.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 12 weeks, the Party not affected by the Force Majeure Event may terminate the Contract by giving 1 week's written notice to the Affected Party.

19. VARIATION

The Contract cannot be varied except as signed in writing by both Parties.

20. ENTIRE AGREEMENT

20.1 The Contract 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.

20.2 Each party acknowledges that in entering into the Contract 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 the Contract.

20.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

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21. SEVERANCE AND WAIVER

21.1 If any provision or part-provision of the Contract 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 the Contract.

21.2 If any provision or part-provision of the Contract is deemed deleted under clause 21.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21.3 A waiver of any right or remedy under the Contract or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

21.4 A failure or delay by a party to exercise any right or remedy provided under the Contract 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 the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22. DISPUTE RESOLUTION

The Parties shall attempt in good faith to negotiate a settlement to any dispute arising out of or in connection with the Contract. Such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

23. LAW AND JURISDICTION

The formation, interpretation and operation of the Contract and any disputes arising under or in any way connected with its subject matter shall be subject to Northern Irish law and the exclusive jurisdiction of the Northern Irish courts.

The Contract has been entered into on the date stated on the Purchase Order.

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APPENDIX 1 – SPECIFICATION

Specification for Goods / Test Kits:

Sampling test kit includes swab and tube containing transport medium, instructions on self-sampling i.e. swabbing of throat and nose and a return tube for test subject to place the sample tube containing the swab into for return transport. A pre-paid Royal Mail delivery envelope will also be placed in box to assist with the return of sample to Contractor.

Specification for Services / Testing:

The testing process entails opening bags / tubes, logging into Laboratory Information System (**LIMS**) the test subject's URN for the sample and sample details. Contractor will then run two tests for the COVID-19 virus on each correctly and properly returned and intact sample and not running any others. Samples will be processed through lab, reported on the LIMS and then reported to the individual test subject following the process set out below.

Anticipated Process

1. Contractor manufactures test kits / Goods (per Goods specification), and ships these to Amazon warehouse hub in bulk in accordance with agreed delivery schedule appended to Purchase Order;

2. Test subject (e.g. NHS key worker) identified;

3. Tests ordered for this test subject through an Amazon / NHS portal (generating NHS unique individual identifier (**UIN**));

4. Amazon / NHS portal (for which Authority is solely responsible) connects with Amazon logistics hub, and Amazon arranges for direct delivery of test kits to relevant individuals (or bulk deliveries to specific trusts / hospitals for distribution to individuals) against relevant UINs;

5. Individual registers online via the Contractor's registration portal against a unique reference number associated with the physical kit they have been sent (**URN**) (which will be distinct from the UIN mentioned above), takes swab of nose and throat in accordance with guidance enclosed in testing kits, and posts collected sample using Royal Mail facilities no later than 1 hour following self-collection of samples;

6. Royal Mail fulfilment (or other nominated courier) returns sample to Contractor's Science Park at Randalstown Road, Antrim, County Antrim, BT41 4LP no later than 24 hours after posting by identified individual;

7. Contractor runs testing / provides Services in relation to the provided sample (per Services specification above);

8. Contractor reports results directly back to individual test subject via the email address entered for or by the relevant test subject on the Contractor's registration portal (Contractor has no responsibility over the security of those email addresses, and relies on accurate email addresses being entered in its portal); and

9. Contractor shall aim and expects to securely and safely destroy all samples returned one week after test results have been generated and reported on.

Limitations / Caveats:

- **Test Portal:** Contractor is not responsible for the operation or effectiveness of any Amazon or NHS platforms or portals, nor for ensuring that accurate URNs are provided by the relevant test subjects and linked to physical testing kits.

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- **Sampling**: Contractor has no control over sampling or failure by those collecting samples to follow instructions. For example, the test subject or the person taking any sample on the test subject may only swab the nose or throat and not both, reducing detection rate, or may fail to properly swab throat. There may also be limitations inherent in large-scale rapid testing (e.g. where sputum samples are not taken) versus smaller scale lab-controlled testing.

- **Other Failures by Test Subject**: Test subject may fail to place cap on the tube or affix it properly, resulting in loss of liquid during transport (and limitations in testing capability), or contamination, complete labelling or form as required, or fail to register online (if applicable), in which case Contractor may have incorrect or inadequate details to properly identify the test subject, or may be unable to proceed with testing due to lack of consent.

- **Delivery Issues:** Whilst Contractor is covering the costs of postage to agreed delivery locations and agrees to cover loss or damage to samples prior to reaching delivery locations, Contractor takes no responsibility for any issues arising in the return of samples to Contractor's testing facilities as specified above (notwithstanding that Contractor encloses a pre-paid return envelope), including loss or damage to returned samples, proper storage of returned samples, or timeliness of delivery per Contractor's requirements.

- **Supply Issues / Raw Materials:** Contractor anticipates that it will be able to cover supplies of raw materials, including reagents, until the end of week three from the Contract commencement date. Authority support may be required in procurement chains thereafter (including access to third party items outside Contractor control as indicated in presentation sent to OLS).

- **Return of Samples:** Contractor has a finite capacity of tests that it can run per day and has no control over the rate at which samples are returned, or ability to conduct tests above its capacity levels.

- **Repeat Testing**: Delays may also be incurred if repeat testing is required, e.g. where results equivocal or controls fail.

Generally, in addition to the specific limitations and caveats above, Contractor does not take responsibility for any issues outside of its reasonable control including to the extent attributable to the acts or omissions of test subjects, fulfilment partners, or other third parties (including the Authority).

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APPENDIX 2 – DATA SECURITY AND DATA PRIVACY APPENDIX

1. BACKGROUND

1.1 This Appendix 2 is an appendix to the contract (the **Contract**) between the Department of Health and Social Care (the **Authority**) and Randox Laboratories Limited (the **Contractor**). Any defined terms used herein but not otherwise defined shall be given the meanings attributed to them in the Terms forming part of the Contract. References to "paragraphs" are to paragraphs or clauses of this Appendix 2.

2. PERSONAL DATA

2.1 The Authority shall own all right, title and interest in and to all of the data collected in relation to individual tests subject pursuant to and in connection with the subject matter of the Contract (the **Medical Data**).

2.2 The parties acknowledge that for the purposes of the Data Protection Legislation, in relation to any personal data comprised within the Medical Data (the **Personal Data**), the Authority is the Data Controller and Contractor is the Data Processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation), and that the Contractor shall not be determining the purposes and means of the processing relevant Personal Data.

2.3 Without prejudice to the generality of paragraph 2.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data provided to Contractor, including the Personal Data, for the duration and purposes of the Contract, and for the Contractor to generate additional data from such Personal Data (with which the relevant data may be associated, including relevant test results and the connected report as noted in the Data Processing Table below).

2.4 Without prejudice to the generality of paragraph 2.1, Contractor shall, in relation to any Personal Data:

(a) process that Personal Data only in accordance with the Data Processing Table set out below, or the written instructions of the Authority, unless Contractor is required by Data Protection Legislation to otherwise process that Personal Data. Where Contractor is relying on relevant law as the basis for processing Personal Data, Contractor shall promptly notify the Authority of this before performing the processing required by the Data Protection Legislation unless the relevant Data Protection Legislation prohibits Contractor from so notifying the Authority;

(b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled: (i) the Authority or Contractor has provided appropriate safeguards in relation to the transfer; (ii) the relevant data subject(s) whose Personal Data is being transferred (**Data Subjects**) has/have enforceable rights and effective legal remedies; (iii) Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (iv) Contractor

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complies with reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

(e) assist the Authority, at the Authority's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators. For the avoidance of doubt, any breach notifications at the Contractor end shall be notified to the Authority, which shall notify the appropriate authorities correspondingly;

(f) notify the Authority without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority on termination of the Contract unless required by Applicable Law to store the Personal Data; and

(h) maintain materially complete and accurate records and information to demonstrate its compliance with this paragraph 2.3.

DATA PROCESSING TABLE

PROCESSING BY THE CONTRACTOR

1. **SCOPE, NATURE AND PURPOSE OF PROCESSING:** The Contractor shall collect the Personal Data noted in this Data Processing Table below from or about relevant test subjects through the Contractor's registration portal, as contemplated in the Specification.

The Contractor shall then process that data pursuant to its obligations under the Contract, fulfilling the testing Services, and reporting back to the relevant test subjects / Data Subjects, again as contemplated in the Specification.

Contractor may also provide Medical Data (including Personal Data) to the Authority, upon request, where the Authority is lawfully permitted to receive such Medical Data.

2. **DURATION:** For the duration of the Contract, and for a period of three months thereafter, over which the Contractor will continue to hold all legacy Medical Data (over which period shall provide Medical Data it holds upon request to the Authority, or otherwise process such Medical Data as directed by the Authority).

TYPES OF PERSONAL DATA

The following Personal Data will all be inputted by the relevant test subject / Data Subject themselves (or by a third party on their behalf):

- URN (associated with each testing kit as outlined in Specification) (mandatory);
- First name (mandatory);
- Last name (mandatory);
- Primary email address (mandatory);
- Secondary email address (optional);
- Phone number (mandatory);
- Gender (mandatory);
- Date of birth (mandatory);
- Country / nationality (mandatory);
- Date sample collected (mandatory);
- Full address (including postcode) (mandatory)
- National Insurance Number (optional);

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• NHS / employee number (optional / if applicable); and The test results will, following provision of the testing Services, be generated on a report and emailed back to the relevant test subjects together with (and connected to) the application Personal Data as outlined above.
CATEGORIES OF DATA SUBJECT Test subjects who are having their test results reported on.
THIRD PARTY PROCESSORS Microsoft®, who shall host all Medical Data (including all Personal Data) via its UK-based servers in accordance with their standard terms and privacy policy, which are available at: *https://www.microsoft.com/en-ie/trust-center/product-overview*

2.5 The Authority consents to Contractor appointing the third-party processors listed in the Data Processing Table as third-party processors of any Personal Data processed by Contractor under the Contract. Contractor confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Authority and Contractor, Contractor shall remain liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph 2.5, subject to the limitations set out in paragraph 3 below and clause 11 of the Terms.

2.6 In the event of any loss or damage to Customer Data, save for a breach of obligations arising pursuant to the Data Protection Legislation, the Authority's sole and exclusive remedy shall be for Contractor to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Contractor in accordance with its internal archiving procedure and the Microsoft Azure archiving procedure. Contractor shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party or any damages (whether direct, indirect or consequential) suffered as a result, save to the extent that those were within Contractor's reasonable control.

3. INFORMATION SECURITY

3.1 The Contractor shall implement the following security measures to help secure any Medical Data for the duration of the time that it holds Medical Data:

(a) The Contactor's registration portal for test subjects, once they have received a testing kit as noted in the Specification, will be hosted on Microsoft Azure; and

(b) There shall be no access control on the registration page as this will be public facing, however the portal will have: (i) HTTPS – ensuring encryption of data between client and backend servers; (ii) data encryption at rest within Microsoft Azure; (iii) Microsoft Azure Front door (web application firewall) protection at the front end registration; and (iv) such other security features as are offered by the Microsoft Azure portal from time to time. Given that the portal will be public facing, the Contractor is not responsible for any fraud or misrepresentation of data submitted through the portal.

3.2 The Contractor shall otherwise use reasonable endeavours to maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Medical Data (including all Personal Data therein) in accordance with reasonable industry standards. However, the Authority understands and acknowledges that Contractor's delivery of the Contract will necessarily involve

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transmission of Medical Data over networks that are not owned, operated or controlled by the Contractor, and that the Contractor cannot be held responsible for any Medical Data lost, altered, intercepted or stored across such networks. The Contractor does not guarantee that its security procedures will be error-free, that transmissions of Medical Data will always be secure or that unauthorized third parties will never be able to defeat the Contractor's security measures or those of Microsoft (as outlined above).

3.3 For the avoidance of any doubt, and subject to clauses 11.1 and 11.2 of the Terms:

(a) the Contractor's aggregate liability for any breach of this Appendix 2 or any relevant terms of the Contract relating to data privacy or data security (including its liability under the indemnity given at clause 3.4 of the Terms), or any related or similar obligations or liabilities (collectively the **Data Obligations**), howsoever arising and whether in tort, contract or otherwise, shall be limited to the higher of: (i) the amounts actually recoverable by the Contractor under its relevant policies of insurance, using all reasonable endeavours to recover in respect of the relevant claim, or (ii) £1,000,000 (one million pounds sterling);

(b) the Contractor's aggregate liability for any breach of the Data Obligations, howsoever arising and whether in tort, contract or otherwise, insofar as such breach was caused or contributed to by any breach by Microsoft of relevant law or the terms of its sub-processor contract with the Contractor, or Microsoft's other negligent or wrongful acts or omissions, shall be limited to the higher of: (i) the amounts actually recoverable by the Contractor under its relevant policies of insurance, or (ii) the amounts actually recoverable by the Contractor against Microsoft, the Contract using all reasonable endeavours to recover in respect of the relevant claim in each case; and

(c) Contractor shall otherwise not be liable under the Contract generally (including under this Appendix 2) to the extent that any such liability was caused or contributed to by the negligent or wrongful acts or omissions, or breach of Contract or relevant laws by the Authority or any other third party outside of the Contractor's reasonable control, and the Parties here record their expectation that the Contractor shall be entitled to recover from such third parties to the extent they are responsible under law or the terms of the Contract.

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