

DHSC Terms and Conditions for the Supply of Goods For COVID-19 use only

The Authority	The Secretary of State for Health and Social Care, on behalf of the Crown 39 Victoria Street Westminster London SW1H 0EU
The Supplier	Oxford Nanopore Technologies Limited incorporated and registered in England and Wales with company number 05386273 whose registered office is at Gosling Building, Edmund Halley Road, Oxford Science Park, Oxford, Oxfordshire, United Kingdom, OX4 4DQ
Date	21 April 2020
Type of Goods	<ol style="list-style-type: none">1. Real-time fluorescent RT-PCR kit for detecting 2019-nCoV2. MGIEasy Magnetic Beads Virus DNA/RNA Extraction Kit3. Training, support and Coordination Services for the above Goods, and4. Additional Services (Distribution)

This Contract is made on the date set out above subject to the terms set out in the Order Form and schedules ("**Schedules**") below. The Authority and the Supplier undertake to comply with the provisions of the Order Form and the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Goods on the terms of this Contract. For the avoidance of doubt, the Contract consists of the terms set out in the Order Form and the Schedules, together with the annexes as stated.

The Definitions in Schedule 3 apply to the use of all capitalised terms in this Contract.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Definitions and Interpretations
Schedule 4	Additional Special Conditions
Schedule 5	<p>Annexes:</p> <p>Annex 1: Goods Specification- Product leaflet for the Real-time fluorescent RT-PCR kit for detecting 2019-nCoV and the User Manual for the DNA/RNA Extraction Kits</p> <p>Annex 2: Supplier's Proposal</p> <p>Annex 3: Suppliers Quotation</p> <p>Annex 4: IVD legislation</p>

Order Form

1. Contract Reference	Covid-19 WS1 ON
2. Date	21 April 2020
3. the Authority	The Department of Health and Social Care
4. Supplier	Oxford Nanopore Technologies Limited incorporated and registered in England and Wales with company number 05386273 whose registered office is at Gosling Building, Edmund Halley Road, Oxford Science Park, Oxford, Oxfordshire, United Kingdom, OX4 4DQ
5. The Contract	<p>The Supplier shall supply the deliverables described below on the terms set out in this Order Form and the Schedules and any Annexes</p> <p>Unless the Contract otherwise requires, capitalised expressed used in this Order Form have the same meanings as in Schedule 3.</p> <p>In the event of any conflict between this Order Form and the Schedules, this Order Form shall prevail.</p> <div style="background-color: black; height: 100px; width: 100%;"></div> <p>Remedies for breach of warranty are conditioned on use of the goods in accordance with the Goods Specification as set out in Annex 1.</p> <p>Clause 10.2 in the General Terms & Conditions, Schedule 2 shall now read:</p>

	<p>"Subject to Clauses 9.2, 10.1 and 10.3 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 one hundred percent (100%) of the total Contract Price paid or payable by the Authority to the Supplier for the Goods.</p> <p>Clause 10.3 of the DSHC General Terms and Conditions shall be amended by adding "or consequential" prior to "loss of any nature" in the first sentence.</p> <p>Clause 10.3.3. shall read now: "costs associated with communication to, and re-testing of, affected patients"</p> <p>Clauses 10.3.4 and 10.3.5 are deleted in their entirety.</p> <p>Clause 10.5 is deleted in its entirety.</p> <p>Please do not attach any supplier terms and conditions to this Order Form as they will not be accepted by the Authority and may delay conclusion of the Contract.</p>
6. Deliverables	<p>(Goods and Services)</p> <p>Real-time fluorescent RT-PCR kit for detecting 2019-nCoV and 578 MGIEasy Magnetic Beads Virus DNA/RNA Extraction Kit (together the "Kits")</p> <ul style="list-style-type: none"> - Delivery and Support for above Goods <p>Plus an option (exercisable by the Authority on the issue of a purchase order to the Supplier) to order up to more Kits on these terms and conditions, such option to expire on 20 July 2020.</p> <p>The Kits shall be delivered as follows:</p> <p>The first Kits will be delivered according to the following delivery schedules:</p> <ul style="list-style-type: none"> a) of Real-time fluorescent RT-PCR kits (comprising tests) for detecting 2019-nCoV and 217 MGIEasy Magnetic Beads Virus DNA/RNA Extraction Kit to be available to the Authority at the Supplier's warehouse at Oxford Nanopore Technologies, MinION Building, Becquerel Avenue, Harwell Campus, Didcot OX11 0RA, UK on or before 1st May 2020; and b) of Real-time fluorescent RT-PCR kits (comprising 625,000 tests) for detecting 2019-nCoV and 361 MGIEasy Magnetic Beads Virus DNA/RNA Extraction Kits to be available to the Authority at the Supplier's warehouse at Oxford Nanopore Technologies, MinION Building, Becquerel Avenue, Harwell Campus, Didcot OX11 0RA, UK on or before 15th May 2020. <p>In the event that the Authority notifies the Supplier that it would like the first Kits to be delivered by the Supplier to the end users, the Authority shall issue instructions to the Supplier as to the exact quantity to be despatched to each end user. An indicative (but not exhaustive) list of the end users to whom despatch may be required is as follows:</p> <ol style="list-style-type: none"> 1. ROYAL BROMPTON HOSPITAL (CHELSEA; LONDON)

	<ol style="list-style-type: none"> 2. GREAT ORMOND STREET HOSPITAL FOR SICK CHILDREN (LONDON) 3. KINGS COLLEGE HOSPITAL 4. PETERBOROUGH MICROBIOLOGY LABORATORY 5. Norfolk & Norwich University Hospital, Microbiology Department 6. FREEMAN HOSPITAL (NEWCASTLE UPON TYNE) 7. JAMES COOK UNIVERSITY HOSPITAL 8. CARLISLE MICROBIOLOGY LABORATORY 9. LEEDS GENERAL INFIRMARY 10. Sheffield Teaching Hospitals NHS Foundation Trust 11. Sheffield Children's NHS Foundation Trust 12. HULL ROYAL INFIRMARY 13. ROYAL STOKE UNIVERSITY HOSPITAL 14. SHREWSBURY MICROBIOLOGY LABORATORY (SHREWSBURY) 15. TRURO MICROBIOLOGY LABORATORY 16. TAUNTON MICROBIOLOGY LABORATORY 17. Southampton Microbiology 18. Chichester Microbiology Laboratory 19. BRIGTON MICROBIOLOGY LABORATORY 20. MAIDSTONE HOSPITAL 21. East Kent Microbiology <p>In the event that the option to order up to a further [REDACTED] Kits is exercised, the applicable delivery Date(s) and delivery address(es) will be set out in the purchase order. It is agreed nonetheless that there shall be a lead time of 10 Business Days from Purchase Order placement to first delivery date, unless agreed otherwise between the parties.</p> <p>Packaging Instructions: The following details shall be shown on the outside of every package:</p> <ol style="list-style-type: none"> 1) a description of the Goods which shall include, without limitation, the weight of the Goods where available and any order number allocated to the Goods by the Authority and/or Supplier 2) the quantity in the package where available; 3) any special directions for storage; 4) the expiry date of the contents where applicable; 5) the batch number; and 6) the name and address of the manufacturer of the Goods and Supplier. <p>In addition, all Goods that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, Supplier shall label all Goods supplied to the Authority, and the packaging of such Goods, to highlight environmental and safety information as required by applicable Law.</p>
7. Specification	The specification of the Deliverables is as set out in Annex 1
8. Term	<p>This Contract shall take effect on 21th April 2020, and performance by the Supplier shall be consistent with the delivery schedule specified above.</p> <p>The option to order up to a further [REDACTED] Kits may be exercised by the Authority on or before 20 July 2020.</p>
9. Charges	The Charges for the Deliverables shall be set out below excluding VAT, in USD.

Oxford Nanopore Part Number	Manufacturer Part Number	Description	Price each pack
OEM-QRT050	MFG030010	Real-time fluorescent RT-PCR kit for detecting 2019-nCoV (50 rxn per pack)	
OEM-RX1728	100020261	MGEasy Magnetic Beads Virus DNA/RNA Extraction Kit (1728 rxn per pack)	

Note:
Prices for Goods include the cost of provision of the "Services" which include the following:

a) Within 10 Days from the commencement of this Contract the Supplier will share its plan on engaging with all sites and how it will work with them to set out how the Goods procured under this Contract will be validated on different types of PCR platforms used at each of those Locations

Once the Authority confirms the testing sites which will be within scope for the training and set-up services being provided as part of the Supplier's obligations under this Contract, the Supplier will diligently coordinate those activities and provide training and support to individual sites performing validation of the Goods

Cost of Additional Services

Option	Description	Price
1	The Supplier to perform bulk shipments up to 26 locations once a week	
2	The Supplier to perform bulk shipments to 1 central location once a week	
3	The Authority to pick up from The Supplier's location as indicated within the Purchase Order	
4	The Supplier to perform small next day parcel shipments to many individual labs	

10. Payment

All invoices must be send quoting a valid purchase order number to the following email address:

Within 2 Business Days of delivery of the Goods to the agreed location countersigned copy of the Contract, we will send you a unique Purchase Order number (the "PO Number"). You must in receipt of a valid PO Number before submitting an invoice.

The Supplier shall invoice the Authority upon either (i) delivery of the Goods at the Location specified in the Purchase Order, or (ii) where delivery is not required by the Authority in its Purchase Order, availability for collection of the Goods at the Seller's warehouse in Oxford, UK. Invoices will be payable within ten (10) days from the relevant such date.

	<p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable section by email to: [REDACTED]</p>	
11. Authority Authorised Representative(s)	<p>For general liaison your contact will continue to be [REDACTED]</p> <p>DHSC Commercial Group 39 Victoria Street Westminster London SW1H 0EU</p>	
12. Seller's Authorised Representative(s)	<p>For general liaison your contact will continue to be: [REDACTED]</p> <p>or, in their absence: [REDACTED]</p>	
13. Address for notices	<p>Authority: [REDACTED]</p> <p>DHSC Commercial Group 39 Victoria Street Westminster London SW1H 0EU</p> <p>Email: [REDACTED]</p>	<p>Supplier: Oxford Nanopore Technologies Gosling Building, Edmund Halley Road, Oxford Science Park, Oxford, OX4 4DQ</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p>
14. Key personnel	<p>Authority: [REDACTED]</p> <p>Attention: DHSC Commercial Group 39 Victoria Street Westminster London SW1H 0EU</p> <p>Email: [REDACTED]</p>	<p>Supplier: Customer & Technical Support contacts: 1. [REDACTED] 2. [REDACTED]</p>

		<p>Corporate team:</p> <p>Gosling Building, Edmund Halley Road, Oxford Science Park, Oxford, Oxfordshire, UK, OX4 4DQ Email: [REDACTED]</p>
15. Procedures and Policies	<p>The Authority may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclose and Barring Service check.</p> <p>The supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a "Relevant conviction"), or is found by the Supplier 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 Deliverables.</p>	

Signed by the authorised representative of THE AUTHORITY

Name:	[REDACTED]	Signature:	[REDACTED]
Position:	[REDACTED]	Date	21st April 2020

Signed by the authorised representative of THE SUPPLIER

Name:	[REDACTED]	Signature:	[REDACTED]
Position:	[REDACTED]	Date	21st APRIL 2020

Schedule 1

Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 2 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 3 to 12 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Order of precedence

- 2.1 Subject always to Clause **Clause 1.10** of Schedule 3 should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
 - 2.1.1 Order Form
 - 2.1.2 Schedule 1: Key Provisions;
 - 2.1.3 Schedule 2: General Terms and Conditions;
 - 2.1.4 Schedule 3: Definitions and Interpretations;
 - 2.1.5 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.
- 2.2 For the avoidance of doubt, the Order Form shall include, without limitation, 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 as included In these Terms and Conditions. Should there be a conflict between these parts of the Order Form, 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.

3 Quality assurance standards ☒ (only applicable to the Contract if this box is checked and the standards are listed)

- 3.1 The following quality assurance standards shall apply, as appropriate, to the manufacture, supply, and/or installation of the Goods:

- CE marking
- IVD legislation (Annex 4)
- Local laboratories (at the specified Delivery Locations) quality management systems

4 Purchase Orders ☒ (only applicable to the Contract if this box is checked)

- 4.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Goods to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Goods shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods covered by a valid Purchase Order.

5 Time of the essence ☐ (only applicable to the Contract if this box is checked)

- 5.1 Time is of the essence as to any delivery dates under this Contract and if the Supplier fails to meet any delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 12.4 (i) of Schedule 2.

6 Specific time periods for inspection ☒ (only applicable to the Contract if this box is checked and Clause 12.1 of this Schedule 1 is completed)

- 6.1 The Authority shall visually inspect the Goods within 7 days of the date of delivery of the relevant Goods to each Delivery Location.

7 Specific time periods for rights and remedies under Clause 4.6 of Schedule 2. ☒ (only applicable to the Contract if this box is checked and Clause 7.1 of this Schedule 1 is completed)

- 7.1 The Authority's rights and remedies under Clause 4.6 of Schedule 2 shall cease 12 months from the date of delivery of the relevant Goods.

8 Termination for convenience ☒ (only applicable to the Contract if this box is checked and Clause 8.1 of this Schedule 1 is completed)

- 8.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on **one (1) months** written notice

9 Right to terminate ☒ (only applicable to the Contract if this box is checked)

- 9.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least two (2) previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the [third] Breach Notice.

10 Consigned Goods ☐ (only applicable to the Contract if this box is checked)

- 10.1 Provided that such Consignment Request is consistent with the forecast requirement for the Goods (as set out in the Order Form and/or as calculated in accordance with any relevant processes set out in this document and/or as otherwise agreed by the Parties in writing), the Supplier shall deliver the Consigned Goods in accordance with Clause 2 of Schedule 2. in response to a Consignment Request for their eventual purchase and use by the Authority in accordance with the terms set out in this Contract.

- 10.2 For the avoidance of doubt, Clause 4 of Schedule 2 shall apply to the inspection, rejection, return and recall of the Consigned Goods.

- 10.3 The Authority shall, or shall procure that its third party provider shall, maintain any storage facilities throughout the term of this Contract where the Consigned Goods are to be stored in such manner that such storage facilities remain suitable to store the Consigned Goods.

- 10.4 Prior to the Consigned Goods being taken into use by the Authority, the Authority shall ensure that:

- 10.4.1 the Consigned Goods are stored at the storage facilities in such a manner as to protect them from damage or deterioration;
- 10.4.2 the Consigned Goods in its possession remain readily identifiable as the Supplier's property;
- 10.4.3 any identifying marks or packaging on or relating to the Consigned Goods are not removed, defaced or obscured; and
- 10.4.4 the Consigned Goods are kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Supplier from time to time.
- 10.5 The Authority shall keep accurate stock records in relation to any Consigned Goods and shall provide the Supplier with a sales report ("**Sales Report**") each [week/month/quarter/other agreed period] detailing current stock levels and the Consigned Goods taken into use by the Authority. For the avoidance of doubt, a sale will take place at the point any Consigned Goods are taken into use by the Authority.

- 10.6 On receipt of the Sales Report, the Supplier may invoice the Authority the Contract Price for all of the Consigned Goods taken into use by the Authority (as set out in that Sales Report).
- 10.7 Each [**week/month/quarter/other agreed period**] the Authority shall take into use and purchase at the Contract Price at least the minimum quantity of Consigned Goods specified in the Order Form for such period (if any) ("**Minimum Quantity**"). If the Supplier fails to supply the Authority with any Consigned Goods required by the Authority (including, without limitation, where the Authority obtains substitute goods from a third party as a result), the Minimum Quantity for the period in question shall be reduced by the quantity of the Consigned Goods that the Supplier fails to supply. Except to the extent that the Authority's failure to purchase the Minimum Quantity during any given period is caused by the Supplier's default or a Force Majeure Event, if the Authority purchases less than the Minimum Quantity for a given period, the Supplier may charge the Authority for any shortfall between:
- 10.7.1 the Contract Price of the Minimum Quantity in the relevant period; and
- 10.7.2 the Contract Price for Consigned Goods purchased by the Authority in that period.
- 10.8 The Authority (on a first in first out basis) may return to the Supplier any Consigned Goods that it is unable to use ("**Returned Goods**") by giving written notice to that effect ("**Returns Notice**"). Upon receipt of a Returns Notice, the Supplier shall collect the Returned Goods at the Supplier's risk and expense within ten (10) Business Days of the date of the Returns Notice. If the Supplier requests and the Authority accepts that the Returned Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority may invoice the Supplier for the costs associated with the disposal of the Returned Goods and the Supplier shall pay any such costs.
- 10.9 Risk in respect of any Returned Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier; or (b) immediately following the expiry of ten (10) Business Days from the date of the Returns Notice related to such Returned Goods. If Returned Goods are not collected within ten (10) Business Days of the date of the relevant Returns Notice, the Authority may return the Returned Goods to the Supplier at the Supplier's risk and expense and/or charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of the relevant Returns Notice. The Authority may invoice the Supplier for such return expenses and/or storage costs and the Supplier shall pay any such expenses or costs.
- 10.10 The Consigned Goods shall at all times be subject to the direction and control of the Supplier, and the Supplier may (at the Supplier's risk and expense), upon (10) Business Days written notice to the Authority, collect (on a first in first out basis) any Consigned Goods that have not been taken into use by the Authority within [**insert period**] of their delivery to the Authority and/or which have a remaining shelf life of less than [**insert period**].
- 10.11 The Authority acknowledges that it holds Consigned Goods in its possession as bailee for the Consignor until such time as ownership passes in accordance with Clause 3.2 of Schedule 2.
- 10.12 On the termination or expiry of this Contract for whatever reason, all Consigned Goods not taken into use by Authority as at the point of such termination or expiry

shall be deemed Returned Goods. Such Returned Goods shall be deemed the subject of a Returns Notice that shall be deemed to have been received by the Supplier with a notice date the same as the date of the expiry or earlier termination of this Contract. Clauses 10.8 and 10.9 of this Schedule 1 shall then apply accordingly and this Clause, together with Clauses 10.8 and 10.9 of this Schedule 1, shall survive the expiry or earlier termination of this Contract for these purposes.

