

**CRANFIELD MANAGEMENT DEVELOPMENT LIMITED**

**TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND  
SERVICES**

## 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Background IPR's:** means any Intellectual Property Rights owned, controlled, licensed, conceived, created or developed prior to this agreement and/or devised or developed by a party during the validity of this agreement but not Foreground Intellectual Property;

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 19.8.

**Contract:** the contract between the Purchaser and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Force Majeure;** includes but is not limited to any event beyond its reasonable control, including but not limited to an Act of God, decree of Government, fire, flood, explosion, sabotage, riot, rebellion, war, civil war, armed conflict, terrorism, nuclear, chemical or biological contamination, disease, quarantine, official strike or similar official industrial action or dispute, which directly causes a Party to be unable to comply with all or a material part of its obligations hereunder

**Foreground IPR's:** means any Intellectual Property Rights that arises or is obtained or developed, devised, invented, discovered, generated or created by/or on behalf of a Party in connection with this agreement;

**Goods:** the goods (or any part of them) set out in the Purchase Order.

**Goods Specification:** any specification for the Goods, including any related plans and drawings that is agreed in writing by the Purchaser and the Supplier.

**Head Contract:** A contract between the Purchaser and a third party by which the Purchaser is contracted to provide Goods and/or Services.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use,

and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, 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, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Purchase Order:** the Purchaser's order for the supply of Goods and/or Services, as set out in the Purchaser's Purchase Order or in the Purchaser's written acceptance of the Supplier's quotation as the case may be.

**Purchaser:** Cranfield Management Development Limited incorporated in England and Wales with company number 02760241.

**Purchaser Materials:** has the meaning set out in clause 5.3(i).

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification referenced in the Purchase Order.

**Service Specification:** the description or specification for Services agreed in writing by the Purchaser and the Supplier referenced in the Purchase Order.

**Supplier:** the person or firm from whom the Purchaser purchases the Goods and/or Services.

## 1.2 Construction

In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to writing or written includes e-mails not faxes.

## 2. BASIS OF CONTRACT

- 2.1 The Purchase Order constitutes an offer by the Purchaser to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

- 2.2 The Purchase Order shall be deemed to be accepted on the earlier of:
- (a) the Supplier issuing written acceptance of the Purchase Order; or
  - (b) any act by the Supplier consistent with fulfilling the Purchase Order,
- at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing unless the terms are specified in the Purchase Order.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

### **3. SUPPLY OF GOODS**

- 3.1 The Supplier shall ensure that the Goods shall:
- (a) correspond with their description and any applicable Goods Specification;
  - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser , expressly or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgment;
  - (c) where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery; and
  - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3 The Purchaser shall have the right to inspect and test the Goods at any time before delivery.
- 3.4 If following such inspection or testing the Purchaser considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Purchaser shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Purchaser shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

#### 4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) if the Supplier requires the Purchaser to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Purchase Order or, if no such date is specified, then within thirty (30) days of the date of the Purchase Order;
- (b) to the Purchaser's premises as specified in the Purchase Order or such other location as instructed by the Purchaser before delivery (**Delivery Location**);
- (c) during the Purchaser's normal hours of business on a Business Day or as instructed by the Purchaser.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Supplier:

- (a) delivers less than ninety five (95) per cent of the quantity of Goods ordered, the Purchaser may reject the Goods; or
- (b) delivers more than one hundred and five (105) per cent of the quantity of Goods ordered, the Purchaser may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Purchaser accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without the Purchaser's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Purchaser to the remedies set out in clause 6.1.

4.6 Title and risk in the Goods shall pass to the Purchaser on completion of delivery.

## **5. SUPPLY OF SERVICES**

5.1 The Supplier shall from the Commencement Date or the date set out in the Purchase Order or such other date as the parties shall agree in writing and for the duration of this Contract provide the Services to the Purchaser in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by the Purchaser.

5.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Purchaser in all matters relating to the Services, and comply with all instructions of the Purchaser;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Purchaser ;
- (e) provide the Purchaser with such reports as required by the Purchaser on the Services and at such intervals and in such form as the Purchaser may from time to time require;
- (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used

in the Services or transferred to the Purchaser , will be free from defects in workmanship, installation and design;

- (h) upon receipt of notice from the Purchaser to amend the Services the parties shall proceed to mutually agree any change in cost or completion date arising by reason of such amendment;
- (i) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (j) observe all health and safety rules and regulations and any other security requirements that apply at any of the Purchaser's premises;
- (k) make available for the purposes of the Services any individuals named on the Purchase Order as key personnel. The Supplier shall provide the Purchaser with a list of the names and addresses of all personnel regarded by the Supplier as key personnel and if and when instructed by the Purchaser, the names of all other persons who may be or become concerned with the Services or any part of them, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require. The Supplier shall not without prior written approval of the Purchaser make any changes in the key personnel;
- (l) hold all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Supplier (**Purchaser Materials**) in safe custody at its own risk, maintain the Purchaser Materials in good condition until returned to the Purchaser , and not dispose or use the Purchaser Materials other than in accordance with the Purchaser 's written instructions or authorisation;
- (m) not do or omit to do anything which may cause the Purchaser to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Purchaser may rely or act on the Services;
- (n) shall take such steps as reasonably required by the Purchaser to prevent unauthorised persons being admitted to Purchaser premises. If the Purchaser gives the Supplier notice that any person is not to be admitted to or is to be removed from Purchaser premises or is not to become involved in or is to be removed from involvement in the Services the Supplier shall take all reasonable steps to comply with such notice. The decision of the Purchaser shall be final;
- (o) shall comply with all laws and regulations in force from time to time, affecting the export, or re-export to or from the United Kingdom of Great Britain and Northern Ireland of goods or services including technical information;
- (p) shall ensure that no export, or re-export, whether directly or indirectly shall be sent to any third party who it knows or has any reason to know will illicitly

use any item or information directly or indirectly in any nuclear activity, the design or development of missiles, or missile technology, bacteriological or chemical weapons.

- 5.4 The Supplier hereby undertakes not to enter into any arrangement whether by way of a legal agreement or otherwise which may conflict with any of the Services the Supplier is contracted to supply under this agreement. The Supplier further undertakes not to enter into any direct agreement for the supply of the Services required under a Head Contract to the exclusion of the Purchaser

## **6. PURCHASER REMEDIES**

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Purchaser shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Purchaser in obtaining substitute goods and/or services from a third party;
- (d) where the Purchaser has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to meet such dates.

- 6.2 If the Goods are not delivered by the applicable date, the Purchaser may, at its option, claim or deduct two (2) per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of twenty (20) per cent of the total price of the Goods. If the Purchaser exercises its rights under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the Goods' late delivery.

- 6.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Purchaser shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;



- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods if paid;
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Purchaser in obtaining substitute goods from a third party; and
- (f) To claim damages for any additional costs, loss or expenses incurred by the Purchaser arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- (g) to obtain injunctive relief and damages for breach of clause 5.4

6.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.5 The Purchaser's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## **7. PURCHASER 'S OBLIGATIONS**

The Purchaser shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Purchaser's premises for the purpose of providing the Services;
- (b) provide such information as the Supplier may reasonably request for the provision of the Services and the Purchaser considers reasonably necessary for the purpose of providing the Services;

## **8. CHARGES AND PAYMENT**

8.1 The price for the Goods:

- (a) shall be the price set out in the Purchase Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Purchaser. No extra charges shall be effective unless agreed in writing and signed by the Purchaser.

8.2 The charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Purchaser, the charges shall

include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 8.3 In respect of Goods, the Supplier shall invoice the Purchaser on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Purchaser on completion of the Services. Each invoice shall include such supporting information required by the Purchaser to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.
- 8.4 Where the Supplier is an individual or individuals who is/are not registered with Her Majesty's Revenue & Customs Service as self-employed or who is/are contracting with the Purchaser through an Intermediary and could be considered to be an employee or employees of the Purchaser if that Intermediary did not exist or where the individual or individuals is/are an office holder(s) of the Purchaser, The Purchaser, as a public sector organisation, shall, subject to Condition 8.5, deduct from each payment hereunder, Income Tax, employees and employers National Insurance contributions, Apprenticeship Levy, Employment allowance and any other statutory deductions in accordance with ITEPA 2003 as amended and the 'Off Payroll Working in the Public Sector Reform of the Intermediaries Legislative Measure'.
- 8.5 If the Supplier believes that Condition 8.4 does not apply, the Supplier must provide the Purchaser with sufficient information to demonstrate that to be the case to the satisfaction of the Purchaser prior to the first payment under the Contract becoming due. For the avoidance of doubt, the Purchaser's decision as to whether Condition 8.4 applies or not shall be final.
- 8.6 In consideration of the supply of Goods and/or Services by the Supplier, payment by the Purchaser will be made by 30th of the month following that in which a correctly rendered invoice is received by Accounts Payable to a bank account nominated in writing by the Supplier.
- 8.7 All amounts payable by the Purchaser under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Purchaser, the Purchaser shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.8 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of four (4) % per annum above the National Westminster Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after

judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

- 8.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Purchaser to inspect such records at all reasonable times on request.
- 8.10 The Purchaser may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Purchaser against any liability of the Purchaser to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 In respect of the Goods and any goods that are transferred to the Purchaser as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Purchaser, it will have full and unrestricted rights to sell and transfer all such items to the Purchaser.
- 9.2 The Supplier and its licensors shall retain ownership of all Supplier Background IPRs. The Purchaser and its licensors shall retain ownership of all Purchaser Background IPRs and the Purchaser shall own all Foreground IPRs.
- 9.3 The Supplier grants the Purchaser, or shall procure the direct grant to the Purchaser a perpetual, fully paid-up, worldwide, non-exclusive, royalty-free licence to copy and modify and use the Supplier Background IPRs for the purpose of receiving and using the Services and the Deliverables.
- 9.4 The Supplier assigns to the Purchaser, with full title guarantee and free from all third party rights, the Foreground IPRs, together with the right to sue for and recover damages or other relief in respect of infringement of the Foreground IPRs.
- 9.5 The Purchaser grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Foreground IPRs and the Purchaser Background IPRs for the term of the Call-off Contract solely for the purpose of providing the Services to the Purchaser.
- 9.6 The Supplier shall, promptly at the Purchaser's request, do (or procure the doing of) all such further acts and things and execute (or procure the execution of) all such other documents as the Purchaser may from time to time require for the purpose of

securing for the Purchaser the full benefit of this Call-off Contract, including all rights, title and interest in and to the Foreground IPRs.

- 9.7 The Supplier shall obtain waivers of any moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provision in any jurisdiction. Such waivers shall be in favour of the Purchaser and its licensees, sub-licensees, assignees and successors in title to the Deliverables.
- 9.8 The Supplier warrants that the receipt, use and onward supply of the Services by the Purchaser and its licensees and sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 9.9 The Supplier shall indemnify the Purchaser against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred or paid by the Purchaser arising out of or in connection with any claim brought against the Purchaser for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables

## **10. INDEMNITY**

- 10.1 The Supplier shall keep the Purchaser indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered incurred by the Purchaser as a result of or in connection with:
- (a) any claim made against the Purchaser for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - (b) any claim made against the Purchaser by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
  - (c) any claim made against the Purchaser by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or

delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

- (d) any claim made against the Purchaser by H.M. Revenue & Customs and the Department for Work & Pensions that the Supplier (if an individual) has been represented either personally or by an agent as self-employed and accordingly shall indemnify the Purchaser against any tax, national insurance contributions or similar tax for which the Purchaser may be liable in respect of the Supplier by reason of this Contract.

10.2 This clause 10 shall survive termination of the Contract.

## **11. INSURANCE**

During the term of the Contract and for a period of six (6) years thereafter the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Purchaser 's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **12. CONFIDENTIALITY**

12.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Purchaser, its employees, agents or subcontractors, and any other confidential information concerning the Purchaser's business, its products and services which the receiving party may obtain. The Supplier shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging its obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Supplier may also disclose such of the Purchaser's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

12.2 This clause 12 shall survive termination of the Contract.

## **13. TERMINATION**

13.1 Without limiting its other rights or remedies, the Purchaser may terminate the Contract:

- (a) in respect of the supply of Services, by giving the Supplier two (2) months' written notice; and

- (b) in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. The Purchaser shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
  
- 13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract by giving the Purchaser three (3) months written notice.
  
- 13.3 In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
  
- 13.4 Without limiting its other rights or remedies, the Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if:
  - (a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within twenty (20) business days of receipt of notice in writing to do so;
  - (b) the Supplier repeatedly breaches any of the terms of the Contract 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 of the Contract;
  - (c) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - (d) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - (f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;

- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (i) the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.4(c) to clause 13.4(j) (inclusive);
- (l) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
- (m) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

13.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

#### **14. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason, the Supplier shall immediately deliver to the Purchaser all Deliverables whether or not then complete, and return all Purchaser Materials. If the Supplier fails to do so, then the Purchaser may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

#### **15. ANTI CORRUPTION AND MODERN SLAVERY**

15.1 The Supplier will not, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in

agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this Contract and which:

- (a) is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept;
- (b) is made to or for a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or
- (c) a reasonable person would otherwise consider to be unethical, illegal or improper,

(in this clause 15, a **Corrupt Act**).

15.2 The supplier represents, warrants and undertakes that:

- (a) it has not engaged in any Corrupt Act prior to the date of this Contract; and
- (b) to the best of its knowledge and belief, it has not at any time:
  - i. been found by a court in any jurisdiction to have engaged in any Corrupt Act (or similar conduct);
  - ii. admitted to having engaged in any Corrupt Act (or similar conduct);  
or
  - iii. been investigated or been suspected in any jurisdiction of having engaged in any Corrupt Act (or similar conduct).

15.3 Supplier further agrees:

- (a) to provide any information to the Purchaser as may reasonably require by notice in writing in order to monitor the Suppliers compliance with its obligations under clause 15; and
- (b) to notify the Purchaser in writing as soon as practicable if, at any time, it becomes aware of a breach of clause 15.1 or that any of the representations, warranties and undertakings set out at clause 15.2 are no longer correct.

15.4 Each Party agrees that it shall, and that it shall procure that its personnel shall:

- a) comply with all applicable law relating to slavery and human trafficking including but not limited to the Modern Slavery Act 2015 (**Anti-Slavery Requirements**);
- b) not take or knowingly permit any action to be taken that would or might cause or lead the company to be in violation of any Anti-Slavery Requirements;



- c) at the other Party's reasonable request and cost, provide any reasonable assistance to enable it to perform any activity required by any regulatory body for the purpose of complying with Anti-Slavery Requirements.

## 16. DATA PROTECTION

16.1 In this clause:

- (a) **"Personal Data"**, **"Controller"**, **"Processor"**, **"Data Subject"** and **"Processing"** **"Third Country"** and **"International Organisation"** have the same meaning as in the Data Protection Legislation; and
- (b) **"Data Protection Legislation"** shall mean the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the Information Commissioner from time to time (all as amended, updated or re-enacted from time to time).
- (c) **"Data Controller"** shall mean the Party that transfers Personal Data to the other Party"
- (d) **"Data Processor"** shall mean the Party that receives Personal Data from the other Party".

## 16.2 Responsibilities

16.2.1 The parties undertake to comply with all relevant requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. Either party can be a Data Controller or Data Processor if passing personal data to the other party.

16.2.2 The Data Controller will ensure that all required consents and notices are in place to legally transfer of the Personal Data to the Data Processor for the duration and purposes of the Contract.

16.2.3 Without prejudice to the generality of this clause the Data Processor shall perform its Data Processing obligation under this Contract by:

- a) processing Personal Data on the written instructions of the Data Controller unless otherwise required by the laws of any member of the European Union or by the laws of the European Union applicable to the Data Processor Applicable Data Processing Laws ("ADPL") to process Personal Data. When relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Data Processor shall notify the Data Controller prior to performing the processing as required by the ADPL unless those ADPL prohibit the Data Processor from notifying the Data Controller;

- b) having appropriate technical and organisational measures in place, approved by the Data Controller, to protect against unauthorised or unlawful processing of Personal Data together with protection for accidental loss, destruction, or damage, to Personal Data, as is appropriate to the harm that might result from the unauthorised or unlawful processing, accidental loss, destruction, 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored quickly after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- c) ensuring that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- d) not transferring any Personal Data outside of the European Economic Area to a Third Country or an International Organisation, unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
  - i. the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer;
  - ii. the Data Subject has enforceable rights and effective legal remedies;
  - iii. the Data Processor 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. the Data Processor complies with reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;
  - v. assist the Data Controller, 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;
  - vi. notify the Data Controller without undue delay on becoming aware of a Personal Data breach;
  - vii. at the written direction of the Data Controller, delete or return Personal Data and copies thereof to the Data Controller on termination of the agreement unless required by Applicable Data Processing Law to store the Personal Data; and
  - viii. maintain complete and accurate records and information to demonstrate its compliance with this clause.

- 16.3 The Data Controller consents to the Data Processor appointing a third-party processor of Personal Data under the Contract should it be necessary. The Data Processor 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.
- 16.4 Either party may, at any time on not less than thirty (30) days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

## **17. FORCE MAJEURE**

- 17.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control (**Force Majeure Event**).
- 17.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 17.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than thirty (30) Business Days, the Purchaser may terminate the Contract immediately by giving written notice to the Supplier.

## **18. SUBCONTRACTING ASSIGNMENT AND OTHER DEALINGS**

- 18.1 The Purchaser may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.2 The Supplier is permitted to subcontract the Services with the prior written consent of the Purchaser such consent shall not be unreasonably withheld or delayed.
- 18.3 In the event that the Supplier is contracted by the Purchaser to conduct Services as a subcontractor these terms shall apply subject to any special conditions which may be added as a Schedule to these terms (Subcontract Schedule) and attached to the Purchase Order. For the avoidance of doubt this may include the flow down of terms from a Head Contract.

18.4 The Supplier may not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Purchaser.

## 19. GENERAL

### 19.1 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.1(a); if sent by pre-paid first class post or other next working day delivery service, at 10.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

19.2 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

19.3 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19.4 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 19.5 **Except as expressly provided** otherwise in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law. Any right or remedy expressly included in any provision of this Agreement (or the exercise thereof) shall not be considered as limiting Cranfield's rights or remedies under any other provision of this Agreement (or the exercise thereof).
- 19.6 **A failure to exercise**, or delay in exercising a right, power or remedy provided to Cranfield by this Agreement or by law does not constitute a waiver of that, or any other, right, power or remedy and shall not (and nor shall any single or partial exercise of any such right, power or remedy) preclude the further exercise of that, or any other, right, power or remedy
- 19.7 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 19.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Purchaser.
- 19.9 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it shall be governed by, and construed in accordance with the law of England and shall be subject to the exclusive jurisdiction of the courts of England and Wales.