STANDARD TERMS AND CONDITIONS

FOR

CONTRACT FOR THE SUPPLY OF GOODS OR SERVICES
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1 Definitions and Interpretation

1.1 In these terms and conditions:

“Employer” means The Francis Crick Institute (The Crick) or The Francis Crick Trading Company Limited, as applicable;

“Contract” means the agreement concluded between the Employer and the Contractor for the supply of the Goods or Goods/Services into which these terms and conditions are incorporated;

“Supplier/Contractor” means the person who agrees to supply the Goods /Goods/Services to the Employer and includes any person to whom all or part of the Supplier/Contractor’s obligations are assigned pursuant to clause 4.1;

“Force Majeure Event” has the meaning ascribed by clause 20.1;

“Employer’s Property” means anything issued or otherwise provided to the Supplier/Contractor in connection with the Contract by or on behalf of the Employer;

“Material Default” means any breach of these terms and conditions or of the Contract by the Supplier/Contractor which the Employer considers to be sufficiently material as to justify termination of all or part of the Contract. A breach of any of the following of these terms and conditions by the Supplier/Contractor shall be a Material Default: clause 2.1 (Supplier/Contractor’s warranties), clause 3.2 (Supplier/Contractor’s personnel), clause 7.6.3 (security of electronic data) clause 8.2 (confidentiality) clause 13 (Supplier/Contractor’s insurance requirements); clause 14.2 (bribery), clause 16 (non-discrimination and equality) and clause 19 (health and safety);

“BIS” – UK Department of Business Innovation and Skills

“Party” means the Employer or the Supplier/Contractor and “Parties” shall be interpreted accordingly;

“Price” means the price payable by the Employer to the Supplier/Contractor in consideration of the provision of the Goods/Services, excluding VAT;

“Goods/Services” means the Goods/Services to be supplied to the Employer by the Supplier/Contractor under the Contract;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)

“VAT” means value added tax.

“Working Day” means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England;

1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

1.2.1 clause headings shall not affect the interpretation of these terms and conditions;

1.2.2 a reference to any statute, enactment, order, regulation or similar instrument is a reference to it as in force from time to time taking account of any amendment or re-enactment;

1.2.3 a reference to a statute or statutory provision shall include any subordinate legislation made under that statute or statutory provision;

1.2.4 references to a “person” includes a natural person and a corporate or unincorporated body;

1.2.5 words in the singular shall include the plural and vice versa;

1.2.6 a reference to one gender shall include a reference to the other genders;

1.2.7 references to clauses are to clauses in these terms and conditions.

2 Provision of Goods/Services

2.1 The Supplier/Contractor warrants to the Employer that:

2.1.1 the Supplier/Contractor will perform the Goods/Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards;

2.1.2 the manner in which the Goods/Services are provided will conform to the Employer’s specification and the terms of the Contract;

2.1.3 the Goods/Services will be provided in accordance with all applicable legislation from time to time in force and the Supplier/Contractor will inform the Employer as soon as it becomes aware of any changes in that legislation.

2.2 The Supplier/Contractor will provide timely commencement and provision of the Goods/Services in accordance with time scales agreed by the Employer. Time shall only be of the essence of the Contract if the Employer so specifies in writing.

2.3 The Employer’s rights under these terms and conditions are in addition to the statutory terms implied in favour of the Employer by the Supply of Goods and Services Act 1982 and any other statute.

2.4 Without prejudice to any other rights or remedies of the Employer (including but not limited to those in clause 24):

2.4.1 the Employer may reduce the Price payable in respect of any Goods/Services by a reasonable amount in circumstances where in the reasonable opinion of the Employer the Supplier/Contractor has either failed to provide those Goods/Services or has provided them inadequately;
2.4.2 where the Employer notifies the Supplier/Contractor that the Employer considers any work comprising part of the Goods/Services to be inadequate or in any way differing from the Contract (and this is other than because of the Employer’s own default) the Supplier/Contractor shall at its own expense re-schedule and perform the work in accordance with the Contract within such reasonable time as may be specified by the Employer;

2.4.3 the Supplier/Contractor shall reimburse the Employer for all reasonable costs incurred by the Employer which have arisen as a direct consequence of the Supplier/Contractor’s delay in the performance of the Contract arising other than as a result of a Force Majeure Event.

2.5 The Employer may at any time notify the Supplier/Contractor in writing to suspend provision of the Goods/Services. If the Employer gives such notification to the Supplier/Contractor or otherwise delays the Supplier/Contractor’s ability to provide the Goods/Services (other than as a consequence of a Force Majeure Event or a breach of contract or breach of duty on the part of the Supplier/Contractor) the Employer shall, subject to the Supplier/Contractor using its best endeavours to mitigate its losses, reimburse the Supplier/Contractor:

2.5.1 for any resulting unavoidable and reasonably foreseeable direct losses; and

2.5.2 for the cost of any binding commitments entered into by the Supplier/Contractor with a third party which cease to be required due to the suspension or delay and in respect of which the Supplier/Contractor cannot obtain a refund (where the Supplier/Contractor has already paid in relation to the commitment) or is obliged to pay (where the Supplier/Contractor has not already paid in relation to the commitment).

2.6 The Employer shall have the power to inspect and examine the performance of the Goods/Services at the Employer’s Premises at any reasonable time or, provided that the Employer gives reasonable notice to the Supplier/Contractor, at any other premises where any part of the Goods/Services is being performed.

2.7 The provisions of this clause 2 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial Goods/services provided by the Supplier/Contractor.

3 Supplier/Contractor’s Personnel

3.1 The Supplier/Contractor agrees that if required by the Employer it will submit any person employed by the Supplier/Contractor or its sub Supplier/Contractors to the Employer’s security vetting procedure. The Supplier/Contractor further agrees that unless the Employer agrees otherwise in writing any individual who refuses to submit to such vetting procedure or who does not attain the requisite clearance will not carry out any work on the Goods/Services supplied under the Contract.

3.2 Whenever requested to do so by the Employer in writing the Supplier/Contractor shall within five Working Days provide a list of the names and addresses of all persons who may at any time require admission to the Employer’s Premises in order to provide the Goods/Services. This list will include any such persons employed by or under the control of the Supplier/Contractor’s consultants, agents or sub-Supplier/Contractors. The Supplier/Contractor shall specify the role of each person on the list and provide such other particulars as the Employer may reasonably require.

3.3 The Employer reserves the right to refuse admission to the Employer’s Premises to any person employed by the Supplier/Contractor or its consultants, agents or sub-contractors, whose admission would, in the reasonable opinion of the Employer, be undesirable.

4 Assignment and Sub-Contracting

4.1 The Supplier/Contractor shall not without the prior written consent of the Employer (not to be unreasonably withheld or delayed) assign, novate, charge, mortgage, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

4.2 If the use of sub-Supplier/Contractors is approved by the Employer the Supplier/Contractor shall be responsible for the acts and omissions of its sub-Supplier/Contractors as though they were its own.

4.3 If the Supplier/Contractor uses a sub-Supplier/Contractor for the purpose of performing the Goods/Services or any part of them, the Supplier/Contractor shall include in the relevant sub-contract a provision which requires the Supplier/Contractor to pay for those goods or Goods/Services within 30 days of the Supplier/Contractor receiving a correct invoice from the sub-Supplier/Contractor.

4.4 The Supplier/Contractor shall not use the Goods/Services of self-employed individuals in connection with the Contract without the previous agreement in writing of the Employer.

4.5 The Employer may at any time assign, novate, transfer or charge the Contract and may sub-contract or delegate in any manner all of its obligations under the Contract to any third party or agent.

5 Invoices Payment and VAT

5.1 The Supplier/Contractor shall submit invoices to the Employer at the times and intervals and in the format specified by the Employer in the Contract or as otherwise notified to the Supplier/Contractor in writing. The Supplier/Contractor shall ensure that any invoice it submits to the Employer contains the Employer’s purchase order or contract number. Such invoices will normally be paid by the Employer within 30 days of receipt.

5.2 If the Supplier/Contractor is registered for VAT, the Employer shall pay to the Supplier/Contractor in addition to the Price, a sum equal to the VAT...
5.3 For the avoidance of doubt the Supplier/Contractor shall not be entitled to charge for the provision of any Goods/Services that are not part of the Goods/Services unless the Contract has been properly varied in accordance with the procedure in clause 30 of these terms and conditions.

5.4 If the Supplier/Contractor believes that payment for a correctly submitted invoice is overdue, the Supplier/Contractor should, in the first instance, speak to the Employer’s named first point of contact on the face of the Contract. In the event that the problem is not satisfactorily resolved, the Supplier/Contractor should write to the Employer’s Head of Procurement setting out its case.

5.5 For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the Employer received the invoice, or, if the Supplier/Contractor had not completed the Goods/Services (or the part of the Goods/Services to which the invoice relates) before submitting the invoice, the last day of a period of 30 days commencing on the day when the Supplier/Contractor completed the Goods/Services (or the part of the Goods/Services to which the invoice relates).

5.6 If the Employer disputes any part of any invoice issued by the Supplier/Contractor, the Employer shall:

5.6.1 promptly notify the Supplier/Contractor of the reasons for the dispute; and

5.6.2 be obliged to pay only the undisputed part of the invoice on the due date.

6 Intellectual Property Rights

6.1 In this clause “Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or not), applications for any of those rights, copyright (including Crown copyright), database rights, domain names, trade or business names, moral rights and other similar rights or obligations, whether registrable or not, in any country (including but not limited to, the United Kingdom) and the right to sue for passing off.

6.2 Subject to any pre-existing Intellectual Property Rights of the Supplier/Contractor or any third party, the Supplier/Contractor assigns to the Employer with full title guarantee and free from all third party rights the Intellectual Property Rights comprised in all reports, data, databases, plans, drawings, patents, patterns, models or other material prepared for the Employer in the provision of the Goods/Services.

6.3 If the Supplier/Contractor in providing the Goods/Services uses any materials in which there are pre-existing Intellectual Property Rights owned by itself or its agents, sub-Supplier/Contractors or third parties:

6.3.1 the Supplier/Contractor shall itself provide, or procure from such agent, subcontractor or third party a non-exclusive licence (or sub-licence) allowing the Employer to use, reproduce, modify, adapt and enhance those materials as the Employer sees fit. Such licence (or sub-licence) shall be perpetual, irrevocable and granted at no cost to the Employer;

6.3.2 the Supplier/Contractor shall ensure that all royalties, licence fees or similar expenses in respect of such pre-existing Intellectual Property Rights are paid and included in the Price.

6.4 The Supplier/Contractor indemnifies the Employer against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Employer for actual or alleged infringement of a third party’s Intellectual Property Rights arising out of or in connection with the performance of the Contract by the Supplier/Contractor save where such infringement or alleged infringement is caused by or contributed to by any act or omission on the part of the Employer.

6.5 Nothing in the Contract or done under the Contract shall be taken to diminish Intellectual Property Rights which would, apart from the Contract, vest in the Employer.

6.6 If the Employer reimburses the Supplier/Contractor for the cost of any equipment acquired by the Supplier/Contractor for providing any of the Goods/Services such equipment shall become the property of the Employer. The Supplier/Contractor will deliver such equipment to the Employer on request. The Supplier/Contractor shall keep a proper inventory of such equipment and shall ensure that whilst it remains in the Supplier/Contractor’s possession or control it is securely stored when not in use and is insured for its full replacement value in the event of theft, loss or damage.

7 Employer’s Property

7.1 The Supplier/Contractor shall not handle or examine any Employer’s Property bearing a security classification of “Confidential”, other than at the Employer’s Premises and the Supplier/Contractor shall not remove any such Employer’s Property from the Employer’s Premises without the prior written consent of the Employer.

7.2 The Employer’s Property shall only be used by the Supplier/Contractor in provision of the Goods/Services except with the prior agreement in writing of the Employer.

7.3 All Employer’s Property shall be deemed to be in good condition when received by or on behalf of the Supplier/Contractor unless it notifies the Employer in writing to the contrary within 10 Working Days of it receiving such Employer’s Property.

7.4 The Supplier/Contractor undertakes to return all Employer’s Property to the Employer on completion of the Contract or upon receipt of any earlier request made by the Employer in writing.
7.5 The Supplier/Contractor shall repair or replace or, at the option of the Employer, pay compensation for all loss, destruction or damage occurring to any Employer’s Property caused by the Supplier/Contractor, or by the Supplier/Contractor’s employees, consultants, agents or sub-Supplier/Contractors.

7.6 Where the Employer’s Property comprises data issued in electronic form to the Supplier/Contractor (including “personal data” as defined in the Data Protection Act 1998) the Supplier/Contractor:

7.6.1 shall not process, store, copy, disclose or use such electronic data except as necessary for the performance of its obligations under the Contract or as otherwise expressly authorised in writing by the Employer;

7.6.2 shall perform secure back-ups of all such electronic data in its possession and shall ensure that an up to date back up copy is securely stored at a site other than that where any original copies of such electronic data are being stored;

7.6.3 shall, and shall procure that its employees, consultants, agents or sub-contractors observe best practice when handling or in possession of any such electronic data. By way of example if the Supplier/Contractor removes any such data or information from the Employer’s Premises or another Government establishment, or is sent such data or information by the Employer it shall ensure that the data and any equipment or media on which it is stored or is otherwise being processed is kept secure at all times. The Supplier/Contractor shall impress on any of its employees, consultants, agents or sub-Supplier/Contractors who are required to handle or have possession of such electronic data that they must safeguard it all times, and are not to place it in jeopardy, for example by leaving it unattended in a vehicle or on public transport or by transmitting or posting it by insecure means.

7.7 If at any time the Supplier/Contractor suspects or has reason to believe that Employer’s Property comprising electronic data has or may become corrupted, lost, destroyed, altered (other than to the extent that the Supplier/Contractor alters it by lawful processing in accordance with its obligations under the Contract) or degraded so as to be unusable then the Supplier/Contractor shall notify the Employer immediately and inform the Employer of the remedial action the Supplier/Contractor proposes to take.

7.8 The Supplier/Contractor indemnifies the Employer against any loss or expense incurred by the Employer arising from the loss, destruction, alteration (other than by lawful processing permitted by the Contract) or degradation of Employer’s Property (including any Employer’s Property comprising electronic data) where this is caused by any act or omission (including negligence) on the part of the Supplier/Contractor or its employees, consultants, agents or sub-Supplier/Contractors.

8 Confidentiality

8.1 For the purposes of this clause 8 “Confidential Information” means all non-public information obtained by the Supplier/Contractor from the Employer or any other department or office of the Government and which is either designated in writing as confidential or which would be regarded as confidential by a reasonable business person.

8.2 Save as provided in clause 8.3 the Supplier/Contractor agrees not to disclose any Confidential Information to any third party.

8.3 The Supplier/Contractor may disclose Confidential Information without breaching these terms and conditions:

8.3.1 with the prior written approval of the Employer;

8.3.2 to such of its employees, agents, sub-Supplier/Contractors or professional advisers as need to know it for the purpose of discharging the Supplier/Contractor’s obligations to the Employer under the Contract provided that such employees, agents, sub-Supplier/Contractors or professional advisers are subject to obligations of confidentiality corresponding to those which bind the Supplier/Contractor;

8.3.3 if ordered to do so by a court or other regulatory Authority.

8.4 The Supplier/Contractor shall effect and maintain adequate security measures to safeguard Confidential Information from unauthorised access, use copying or dissemination.

8.5 Except with the prior consent in writing of the Employer, the Supplier/Contractor shall not:

8.5.1 communicate with representatives of the general or technical press, radio, television or other communications media, with regard to the existence or subject matter of the Contract; or

8.5.2 make use of the Contract or any Confidential Information otherwise than for the purposes of carrying out the Goods/Services.

8.6 The Supplier/Contractor’s obligations contained in this clause 8 shall continue to apply after termination of the Contract.

9 Data Protection

9.1 In this clause references to “personal data”, “data subjects”, “data controller” and “data processor” are as defined in the Data Protection Act 1998 (“DPA”).

9.2 If the Supplier/Contractor is a data controller it agrees not to disclose any Confidential Information to any third party.

9.3 The Supplier/Contractor shall comply with all relevant provisions of the DPA and do nothing which causes, or
may cause, the Employer to be in breach of its obligations under the DPA. In particular, to the extent that the Supplier/Contractor acts as a data processor in respect of any personal data pursuant to the Contract the Supplier/Contractor shall only process such personal data to the extent necessary to enable it to provide the Goods/Services.

9.4 Where the Supplier/Contractor is required to collect any personal data on behalf of the Employer it shall ensure that it provides the data subjects from whom the personal data are collected with a fair processing notice in a form to be agreed with the Employer.

9.5 The Supplier/Contractor warrants that it has appropriate technical and organisational procedures in place to protect any personal data it is processing as part of the Goods/Services against any unauthorised or unlawful processing and against any accidental disclosure, loss, destruction or damage and undertakes to maintain such measures during the course of the Contract. The Supplier/Contractor shall also take all reasonable steps to ensure the suitability of its staff having access to any such personal data.

9.6 Upon receipt of written notice from the Employer and at reasonable intervals the Supplier/Contractor shall:

9.6.1 allow the Employer’s personnel access to any premises owned or controlled by it to enable the Employer to inspect its procedures referred to in clause 9.5;

9.6.2 prepare a report for the Employer detailing the technical and organisational measures it has in place to protect the personal data it is processing as part of the Goods/Services.

9.7 When requested by the Employer the Supplier/Contractor shall at its own expense promptly assist the Employer to comply with any subject access request the Employer receives pursuant to section 7 of the DPA.

9.8 The Supplier/Contractor shall not transfer any personal data it is processing as part of the Goods/Services outside the European Economic Area unless authorised in writing to do so by the Employer.

9.9 Upon the termination of the Contract for any reason the Supplier/Contractor shall, unless notified otherwise by the Employer or required by law, immediately cease any processing of personal data on the Employer’s behalf and as requested by the Employer destroy or provide the Employer with a copy of that personal data on suitable media.

9.10 The Supplier/Contractor shall promptly carry out any request from the Employer requiring it to amend, transfer or delete any personal data being processed by the Supplier/Contractor as part of the Goods/Services.

9.11 The Supplier/Contractor indemnifies the Employer against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Employer by any person in respect of the DPA or equivalent applicable legislation in any other country which claims would not have arisen but for some act, omission, misrepresentation non-compliance or negligence on the part of the Supplier/Contractor or its employees, consultants, agents or sub-Supplier/Contractors.

10 Accounts

10.1 The Supplier/Contractor shall keep full and proper accounts, records and vouchers relating to all payments made to it by the Employer including in respect of any expenditure reimbursed by the Employer.

10.2 The Supplier/Contractor shall ensure that such accounts, records and vouchers are retained by it for a period of six years after completion of the Goods/Services or termination of the Contract (whichever is later).

10.3 The Supplier/Contractor shall permit the Employer, acting by its employees or an independent auditor, on request and at all reasonable times to examine all such accounts, records and vouchers at the offices of the Supplier/Contractor or at such other places as the Employer shall reasonably direct, and to take copies of such accounts, records and vouchers and the Supplier/Contractor shall provide the Employer or its independent auditor with such explanations relating to those documents as the Employer may request.

11 Recovery Of sums Due And Set Off

11.1 Whenever under the Contract any sum of money shall be due from the Supplier/Contractor to the Employer such sum may be deducted from any amount then due, or which at any time thereafter may become due, to the Supplier/Contractor under the Contract, any other agreement or arrangement between the Employer and the Supplier/Contractor.

11.2 Any over-payment by the Employer to the Supplier/Contractor whether in respect of the Price or VAT shall be a sum of money recoverable from the Supplier/Contractor pursuant to clause 12.1.

12 Supplier/Contractor’s Indemnities

12.1 Subject to clause 12.3 and the financial limit of clause 12.4 the Supplier/Contractor indemnifies and shall hold the Employer harmless from all claims and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) suffered or incurred by the Employer arising out of or in connection with:

12.1.1 any breach by the Supplier/Contractor of the warranties contained in clauses 2.1, 9.2 or 9.5 of these terms and conditions;

12.1.2 the Supplier/Contractor’s negligence or breach of statutory duty;

12.1.3 any misrepresentation (including fraudulent misrepresentation) made by the Supplier/Contractor;

12.1.4 any claim made against the Employer by a third party arising out of or in connection with the provision of the Goods/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/Contractor, its employees, agents or subcontractors.

12.2 The indemnities given to the Employer in clause 12.1 are additional to those contained in clauses 6.4 (infringement of third party intellectual property rights), 7.8 (loss of or damage to Employer’s Property) and 9.11 (data protection) of these terms and conditions.

12.3 Nothing in the Contract shall operate to exclude or limit the Supplier/Contractor’s liability for:

12.3.1 death or personal injury caused by the negligence or breach of statutory duty of the Supplier/Contractor, its employees, agents or sub-Supplier/Contractors; or

12.3.2 fraud, fraudulent misrepresentation or deceit; or

12.3.3 any other liability which cannot be excluded or limited under an applicable law.

12.4 Subject to clause 12.3 the Supplier/Contractor’s aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with the Contract or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall not exceed £2,000,000 or twice the contract value, whichever is greater.

12.5 If any third party makes a claim, or notifies an intention to make a claim against the Employer which may reasonably be considered likely to give rise to a liability under one of the indemnities given to the Employer by the Supplier/Contractor the Employer shall:

12.5.1 as soon as reasonably practicable, give written notice of the claim to the Supplier/Contractor, specifying the nature of the claim in reasonable detail;

12.5.2 not make any admission of liability, agreement or compromise in relation to the claim without the prior written consent of the Supplier/Contractor (such consent not to be unreasonably withheld or delayed);

12.5.3 give the Supplier/Contractor and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Employer, so as to enable the Supplier/Contractor and its professional advisers to examine them and to take copies (at the Supplier/Contractor’s expense) for the purpose of assessing the claim.

12.6 Nothing in this clause 12 shall restrict or limit the Employer’s general obligation at law to mitigate any loss it may suffer or incur as a result of an event leading to a claim under any of the indemnities provided by the Supplier/Contractor.

13 Supplier/Contractor’s Insurance

13.1 During the term of the Contract and for a period of at least three months after it ends for whatever reason

13.2 Without prejudice to the generality of clause 13.1 the Supplier/Contractor shall maintain in force with a reputable insurance company or companies a policy or policies of insurance providing an adequate level of cover in respect of all liabilities which may be incurred by the Supplier/Contractor arising out of the Contract.

13.2.1 employers’ liability insurance with a limit of at least £5 million per claim; and

13.2.2 public liability insurance with a limit of at least £2 million per claim; and

13.2.3 professional indemnity insurance with a limit of at least £2 million for claims arising from a single event or series of related events in a single calendar year.

13.3 On the Employer’s written request the Supplier/Contractor shall promptly provide the Employer with copies of the policy certificates, renewal receipts and details of the cover provided in respect of the insurance policies referred to in clauses 13.1 and 13.2.

13.4 The Supplier/Contractor shall ensure that any of its consultants, agents or sub-contractors also maintain adequate insurance having regard to their obligations under the Contract.

13.5 The Supplier/Contractor shall notify the Employer if any insurance policy referred to in clause 13.1 or 13.2 is (or will be) cancelled or its terms are (or will be) subject to any material change.

13.6 None of the Supplier/Contractor’s liabilities under the Contract shall be deemed to be released or limited by the Supplier/Contractor taking out the insurance policies referred to in clause 13.1 or 13.2.

14 Prevention of Bribery

14.1 In this clause

14.1.1 “Bribery Act” means the Bribery Act 2010;

14.1.2 “Prohibited Act” means any of the following:

14.1.2.1 to directly or indirectly offer, promise or give any person working for or engaged by the Employer a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity or (ii) reward that person for improper performance of a relevant function or activity; or

14.1.2.2 to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; or
committing any offence (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Employer; or (iv) defrauding, attempting to defraud or conspiring to defraud the Employer.

14.2 The Supplier/Contractor:
14.2.1 shall procure that any of its employees, consultants, agents, or sub-Supplier/Contractors shall not commit a Prohibited Act in connection with the Contract.
14.2.2 warrants, represents and undertakes to the Employer that it is not aware of any financial or other advantage being given to any person working for or engaged by the Employer, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Employer before execution of this Contract.

14.3 The Supplier/Contractor shall:
14.3.1 if requested, provide the Employer with any reasonable assistance to enable the Employer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
14.3.2 if so required by the Employer within 20 Working Days of the Commencement Date, and annually thereafter, certify to the Employer in writing compliance with this clause 16 by the Supplier/Contractor and all persons associated with it or other persons who are supplying goods or Goods/Services in connection with this Contract. The Supplier/Contractor shall provide such supporting evidence of compliance as the Employer may reasonably request.

14.4 The Supplier/Contractor shall have and maintain an anti-bribery policy (which shall be disclosed to the Employer on request) to prevent it and any of its employees, consultants, agents or sub-Supplier/Contractors from committing a Prohibited Act and shall enforce it where appropriate.

14.5 If any breach of clause 14.2 is suspected or known, the Supplier/Contractor must notify the Employer immediately.

14.6 If the Supplier/Contractor notifies the Employer that it suspects or knows that there may be a breach of clause 14.2, the Supplier/Contractor must respond promptly to the Employer's enquiries, co-operate with any investigation, and allow the Employer to audit books, records and any other relevant documentation. This obligation shall continue for three years following the expiry or termination of this Contract.

14.7 A breach of clause 14.2 shall be a Material Default for the purposes of this Contract.

15 Conflict Of Interest

15.1 In carrying out its obligations under the Contract the Supplier/Contractor shall ensure that no conflict of interest arises which will or will be likely to prejudice its independence and objectivity or otherwise detrimentally affect the Supplier/Contractor’s ability to perform the Contract or cause embarrassment to the Employer.

15.2 Upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) the Supplier/Contractor shall immediately notify the Employer in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Employer may reasonably require.

15.3 Where the Employer is of the reasonable opinion that a conflict of interest notified to it under clause 15.2 is capable of being ameliorated by the Supplier/Contractor the Employer may require the Supplier/Contractor to take such reasonable steps as will, in the Employer’s opinion, avoid or remove the conflict.

15.4 The Employer may terminate the Contract immediately by notice in writing to the Supplier/Contractor and recover from the Supplier/Contractor the amount of any losses incurred by the Employer arising from such termination if:
15.4.1 the Supplier/Contractor fails to comply with the requirements notified to the Supplier/Contractor by the Employer in accordance with clause 15.3; or
15.4.2 in the reasonable opinion of the Employer, it is not possible to avoid or remove the conflict of interest, or
15.4.3 in the reasonable opinion of the Employer a conflict of interest existed at the time of the award of the Contract to the Supplier/Contractor which the Supplier/Contractor should reasonably have discovered with the application of due diligence and ought to have disclosed to the Employer as required by the tender documents pertaining to it.

16 Non Discrimination, Equality

16.1 In providing the Goods/Services the Supplier/Contractor shall, and shall procure that its employees, consultants, agents or subcontractors shall:
16.1.1 not unlawfully discriminate either directly or indirectly or by way of victimisation or harassment within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in age, disability, gender reassignment, marriage and civil partnerships, pregnancy, paternity and maternity, race, religion or belief, sex or sexual orientation or otherwise) and shall take all reasonable steps to ensure that its employees, consultants, agents or subcontractors similarly do not unlawfully discriminate;
16.1.2 Without prejudice to the generality of clause 16.1.1, not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and all other relevant legislation and any statutory modification or re-enactment of such legislation;

16.1.3 Where in connection with the Contract, the Supplier/Contractor, its agents or subcontractors, or its staff are required to carry out work on the Employer’s Premises or alongside the Employer’s employees on any other premises, comply with the Employer’s own employment policy and codes of practice relating to equality and diversity in the workplace, copies of which are available on request.

16.1.4 In the event that the Supplier/Contractor enters into any subcontract or linked agreement in connection with the Contract or any aspect of the Goods/Services provided under it, impose equality and diversity obligations on its subcontractors and other associates in terms substantially similar to those contained in the Contract;

16.2 Should the Supplier/Contractor or any of its employees, consultants, agents or sub-contractors breach any part of clause 16.1 the Employer shall be entitled to terminate the Contract with immediate effect by notice in writing to the Supplier/Contractor.

17 Sustainable Procurement

17.1 The Supplier/Contractor shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Goods/Services. Without prejudice to the generality of the foregoing, the Supplier/Contractor shall promptly provide all such information regarding the environmental impact of the Goods/Services as may reasonably be requested by the Employer.

17.2 All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) where possible, be produced on recycled paper waste and shall be used on both sides.

17.3 The Supplier/Contractor shall, when working at the Employer’s Premises, provide the Goods/Services in accordance with the Employer’s environmental policy which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the use of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

17.4 The Supplier/Contractor shall meet all reasonable requests by the Employer for information evidencing compliance with the provisions of this clause 17 by the Supplier/Contractor.

18 Monitoring And Management Information

18.1 Where requested by the Employer, the Supplier/Contractor shall supply to the Employer and such information and advice relating to the management of the Contract as the Employer may require.

18.2 The information and advice referred to in clause 18.1 may include, but is not limited to, the following: Line Item Amount, Invoice Line Description, Invoice Line Number, Currency Code, Order Date, VAT Inclusion Flag, VAT Rate, List Price, Number of Items, Unit of Purchase Quantity, Price per Unit, Supplier Service Code, Service description and/or name, UNSPSC Code, Taxonomy Code and/or Name, Geographical, Project Code, Project description, Project Start Date, Project Delivery Date (Estimate and Actual), Total project cost and Project Stage.

18.3 The information referred to in clause 18.1 shall be supplied in such form and within such timescales as the Employer may reasonably require.

18.4 The Supplier/Contractor agrees that the Employer may provide BIS or other Government department with information relating to the Goods/Services procured and any payments made under the Contract.

18.5 Upon receipt of the information supplied by the Supplier/Contractor in response to a request under clause 18.1 or receipt of information provided by the Employer to BIS under clause 18.4 the Employer and the Supplier/Contractor hereby consent to BIS:

18.5.1 Storing and analysing the information and producing statistics; and

18.5.2 Sharing the information or any statistics produced using the information, with any other Contracting Authority.

18.6 In the event that BIS shares the information provided under clause 18.1 or 18.3 in accordance with clause 18.5.2, any Contracting Authority (as defined in regulation 3 of the Public Contracts Regulations 2006) receiving the information shall be informed of the confidential nature of that information and shall be requested not to disclose it to any body who is not a Contracting Authority (unless required by law).

18.7 The Employer may make changes to the type of information which the Supplier/Contractor is required to supply and shall give the Supplier/Contractor at least one calendar month’s written notice of any such changes.

19 Health And Safety

19.1 While on the Employer’s Premises the Supplier/Contractor shall comply with any health and safety measures implemented by the Employer in respect of persons working on the Employer’s Premises.

19.2 The Supplier/Contractor shall:

19.2.1 Notify the Employer immediately in the event of any incident occurring in the provision of the Goods/Services on the Employer’s Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

19.2.2 Take all necessary measures to comply with the requirements of the Health And Safety At Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which
may apply to those of its employees, consultants, agents or sub-Supplier/Contractors that provide the Goods/Services.

19.2.3 ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Employer on request.

20 Force Majeure

20.1 In this clause a “Force Majeure Event” means any of the following:

20.1.1 acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;

20.1.2 epidemic or pandemic;

20.1.3 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;

20.1.4 terrorist attack, civil war, civil commotion or riots;

20.2 Either Party, provided that it adheres to the provisions of clause 20.3 shall not be in breach of the Contract nor liable for any failure or delay in performance of any of its obligations under the Contract (and, subject to clause 20.4 the time for that Party’s performance of its obligations shall be extended accordingly) arising from or attributable to a Force Majeure Event.

20.3 If either Party is subject to a Force Majeure Event it shall not be in breach of the Contract provided that:

20.3.1 it promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;

20.3.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and

20.3.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

20.4 If the Force Majeure Event prevails for a continuous period of more than three months, either Party may terminate the Contract by giving 10 Working Days’ written notice to the other. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of either Party in respect of any breach of the Contract occurring prior to such termination.

21 Cancellation Of The Contract By the Employer

21.1 The Employer shall be entitled to terminate the Contract, or to terminate the provision of any part of the Goods/Services, by giving to the Supplier/Contractor not less than one calendar months’ notice in writing to that effect. Once it has given such notice, the Employer may extend the period of notice at any time before it expires, subject to agreement on the level of Goods/Services to be provided by the Supplier/Contractor during the period of extension.

22 Termination for Breach

22.1 If:

22.1.1 the Supplier/Contractor commits a Material Default; or

22.1.2 the Supplier/Contractor commits a breach of contract which is not capable of being remedied; or

22.1.3 the Supplier/Contractor commits a breach of contract which is capable of being remedied but which it has failed to remedy within 10 Working Days of receipt of a notice from the Employer requiring that breach to be remedied; or

22.1.4 the Supplier/Contractor commits repeated breaches of its obligations under this Contract (whether of the same or different obligations and regardless of whether these breaches are cured), the cumulative effect of which is a Material Default; or

22.1.5 the Supplier/Contractor fails to pay any amount due to the Employer under the Contract on the due date for payment and remains in default more than 10 Working Days after being required in writing to make such payment;

then without prejudice to any other rights that have accrued under the Contract or any other rights or remedies it may have the Employer may by giving written notice to the Supplier/Contractor immediately terminate all or part of this Contract. Such termination by the Employer will be without liability to the Supplier/Contractor.

23 Non-Breach Termination

23.1 If:

23.1.1 the Supplier/Contractor 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) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) 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) had any partner to whom any of the foregoing apply; or

23.1.2 the Supplier/Contractor 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 other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier/Contractor with one or more other companies or the solvent reconstruction of the Supplier/Contractor;

23.1.3 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/Contractor other than for the sole purpose of a scheme for a solvent
amalgamation of the Supplier/Contractor with one or more other companies or the solvent reconstruction of the Supplier/Contractor; or

23.1.4 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/Contractor; or

23.1.5 a floating charge holder over the Supplier/Contractor’s assets has become entitled to appoint or has appointed an administrative receiver; or

23.1.6 a person becomes entitled to appoint a receiver or a receiver is appointed over the Contactor’s assets; or

23.1.7 the Supplier/Contractor, being an individual, is the subject of a bankruptcy petition or order, dies or by reason of illness or incapacity is incapable of managing their own affairs; or

23.1.8 a creditor or encumbrancer of the Supplier/Contractor 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 the Supplier/Contractor’s assets and such attachment or process is not discharged within 10 Working Days; or

23.1.9 the Supplier/Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

23.1.10 the Supplier/Contractor undergoes a change of control, where “control” has the meaning given in section 416 of the Income and Corporation Taxes Act 1988; or

23.1.11 any event occurs, or proceeding is taken with respect to the Supplier/Contractor in any jurisdiction to which the Supplier/Contractor is subject that has an effect equivalent or similar to any of the events mentioned in clauses 23.1.1 to 23.1.10 inclusive

then without prejudice to any other rights that have accrued under the Contract or any other rights or remedies it may have the Employer may by giving written notice to the Supplier/Contractor immediately terminate all or part of this Contract. Such termination by the Employer will be without liability to the Supplier/Contractor.

24 Transfer Of Goods/Services And TUPE

24.1 Where following the performance or termination of the Contract the Employer intends to acquire Goods/Services similar to the Goods/Services either by performing them itself or by the appointment of a replacement Supplier/Contractor (assuming it does not successfully tender for the work) shall use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the Employer.

24.2 The Supplier/Contractor shall co-operate fully during the transition period and provide full access to all non-confidential data, documents, manuals, working instructions, reports or other information which the Employer considers it necessary to see.

24.3 In addition to the legal obligation to provide “employee liability information” under regulation 11 of TUPE the Supplier/Contractor will, in respect of any person at that time employed by it and assigned to the economic grouping of employees working on the Contract, provide the Employer with information equivalent to employee liability information whenever requested to do so in writing by the Employer (provided that the Employer shall not make such a request more than once in any 6 month period).

25 Dispute Resolution

25.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute. If necessary such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of the Supplier/Contractor and the Employer’s Head of Procurement.

25.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

25.3 If the dispute cannot be resolved by the Parties pursuant to clause 25.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 25.5 unless the Employer considers that the dispute is not suitable for resolution by mediation or the Supplier/Contractor does not agree to mediation.

25.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier/Contractor (and its employees, consultants, agents or sub-Supplier/Contractors) shall comply fully with the requirements of the Contract at all times.

25.5 The procedure for mediation is as follows:

25.5.1 a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties. If they are unable to agree upon a Mediator within 10 Working Days after a nomination of a Mediator by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the nomination or within 10 Working Days of discovering that the nominated Mediator is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.

25.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with the appointed Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
25.5.3 Unless otherwise agreed in writing, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence, save that details of the settlement may be given to any Central Government department without the permission of the Supplier/Contractor, and without prejudice to the rights of the Parties in any future proceedings.

25.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

25.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

25.5.6 If the Parties fail to reach agreement in the structured negotiations within 45 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties in writing, then any dispute or difference between them may be referred to the Courts.

26 Service Of Notices

26.1 All notices required to be given by either Party to the other under the Contract shall be in writing and shall be delivered personally, or sent by fax, pre-paid first-class post or recorded delivery or by commercial courier to the address of the receiving Party set out in the Contract or as otherwise specified by the relevant Party by notice in writing to the other Party.

26.2 Any notice shall be deemed to have been duly received:

26.2.1 if delivered personally, when left at the address referred to in the Contract or Notice; or

26.2.2 if sent by fax, on transmission to the correct fax number; or

26.2.3 if sent by pre-paid first-class post or recorded delivery, at 9.00 a.m. on the second Working Day after posting; or

26.2.4 if delivered by commercial courier, on the date and at the time that the courier’s delivery receipt is signed.

26.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

27 Amendments And Variation

27.1 No amendment or variation of the Contract shall be valid unless it is in writing and signed by the Employer and the Supplier/Contractor.

28 Waiver

28.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the specific circumstances for which it is given.

28.2 No failure or delay by either Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

29 Severability

29.1 If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Contract which shall remain in full force and effect.

29.2 The Parties agree, in the circumstances referred to in clause 29.1, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the Parties under any invalid or unenforceable provision of the Contract shall be suspended whilst an attempt at such substitution is made.

30 No Partnership Or Agency

30.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, nor authorise either party to make or enter into any commitments for or on behalf of the other party.

31 Contracts (Rights Of Third Parties) Act 1999

31.1 A person who is not a Party to the Contract shall not have any rights under or in connection with it.

32 Entire Agreement

32.1 The Contract constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.

32.2 Each Party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.

32.3 Nothing in this clause 35 shall limit or exclude any liability for fraud.

32.4 In the event of any conflict or inconsistency between these terms and conditions and any specific terms of the Contract the latter shall prevail.

33 Law And Jurisdiction

33.1 The Contract shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the courts of England.