

## CPI TERMS AND CONDITIONS FOR PURCHASE OF CONSULTANCY SERVICES

### 1 DEFINITIONS & INTERPRETATION

1.1 In these Conditions the following expressions shall have the following meanings unless inconsistent with the context:

<b>Change of Control</b>	means a change in the ability to direct the affairs of another person, whether through the ownership of shares; or the power to appoint directors to the board of a company; or through management contracts; or otherwise;
<b>Commencement Date</b>	means the date for the start of the provision of the Services that is specified in the Order;
<b>Conditions</b>	means these terms and conditions for the purchase of Services;
<b>Confidential Information</b>	means the existence and terms of any Order, Specification or Contract and any and all information (whether recorded or supplied in permanent or transitory form) which has been, is now or at any time after the date of these Conditions is disclosed to or made available by CPI or CPI's Group to: the Consultancy Provider or its Representatives; or (where applicable) to any company within the Consultancy Provider's Group; or to any other person at the request of the Consultancy Provider as recipient; or any information of which the Consultancy Provider becomes aware or which comes into the Consultancy Provider's control or knowledge as a result of entering into these Conditions or of providing the Services which is of a technical, commercial or financial nature (including software in various stages of development in human or machine readable form, research information, methodologies, knowledge, data, know-how, formulae, processes, designs, drawings, specifications, models, diagrams, flow charts, marketing and development plans, business plans, intellectual property rights, customer information, customer lists, actual or prospective sales contacts, photographs and samples) and which relates to CPI or CPI's business or that of its Group or (where applicable) to the End Customer or its business or that of its Group but shall not include information which:-  (a) is accessible from public sources or is or becomes generally available to third parties (other than as a result of disclosures by the Consultancy Provider, by its Representatives, by the Personnel or by any company within the Consultancy Provider's Group, of such information in breach of these Conditions); and/or  (b) the Consultancy Provider can establish to the reasonable satisfaction of the other party that the information was known to the Consultancy Provider before the date of these Conditions and that it was not under any obligation of confidence in respect of the relevant information; and/or  (c) becomes lawfully available to the recipient from a source other than CPI or the End Customer, which source is not bound by any obligation of confidentiality to another party in relation to such information; and/or  (d) was required to be disclosed by law or by the rules or directions of any court or any authority;
<b>Consultancy Provider</b>	means the legal person providing the Services to CPI under these Conditions;
<b>Contract</b>	means, as the context requires, the legally binding agreement between CPI and the Consultancy Provider made up of either:  (a) in a tender situation - the Order, these Conditions, and any Specification; or  (b) in a non-tender situation - the Order, these Conditions, any Specification and the Consultancy Provider's acceptance of the Order whether made in writing or through providing the Services, whichever occurs first); or  (c) any written agreement between CPI and the Consultancy Provider that incorporates these Conditions within a schedule to such written agreement;
<b>CPI</b>	means the Centre for Process Innovation Limited (Company Number 05002194) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF or where so specified in the Contract, such other member of Centre for Process Innovation Limited's Group that is contracting with the Consultancy Provider;
<b>CPI Representative</b>	means CPI's Representative named in the Order who will be first point of contact in relation to the Services, or in the absence of any specified person, CPI's Head of Legal;
<b>Data Protection Laws</b>	means the EU Data Protection Directive 95/46/EC as implemented in the appropriate local territories of the European Union until 25 May 2018 and the General Data Protection Regulation (EU) 2016/679 ("GDPR") on and from 25 May 2018 (as amended and superseded from time to time), and/or all applicable laws, rules, regulations, regulatory guidance, regulatory requirements from time to time, in each case in each jurisdiction where the Services are delivered in relation to data privacy;
<b>End Customer</b>	where applicable, means the customer of CPI in connection with whom the Services are to be provided as specified in the Order;
<b>End Date</b>	means the date by which the provision of the Services is to be complete as specified in the Order or as is subsequently agreed between CPI and the Consultancy Provider;
<b>Good Industry Practice</b>	means the exercise of that degree of skill, diligence, prudence and foresight which, as at the relevant time, would reasonably and ordinarily be expected from a skilled and experienced provider of the Services and complying with all applicable laws and codes of practice in the same type of undertaking and under the same or similar circumstances and observations;

<b>Group</b>	in relation to a party, means any subsidiary and holding company of that party and any subsidiary of such holding company from time to time;
<b>Intellectual Property Rights</b>	means all patents, trade marks, service marks, registered designs or any applications for any of the foregoing, copyright (including in any text, computer coding, algorithms, applets, or in any other constituent elements of the Outputs), design right, database rights, topographical rights, unregistered trade marks or other intellectual or industrial property rights, look and feel in any graphical user interface in the Outputs, and all know-how whether subsisting in the United Kingdom or anywhere else in the World;
<b>Key Person</b>	means any individual Personnel named in the Order;
<b>Month</b>	means a calendar month;
<b>NDA</b>	means CPI's standard non-disclosure agreement from time to time in the form provided to the Consultancy Provider;
<b>Notice Period</b>	means the notice period for CPI to terminate the Contract for convenience shown in the Order, or in the absence of such period being shown in the Order, 30 days' prior notice;
<b>Order</b>	means CPI's written instruction to the Consultancy Provider to purchase the Services, which may be in a purchase order, and/or may in appropriate circumstances be set out in a tender award letter and related tender documentation, and/or in a letter of appointment, and which shall incorporate these Conditions;
<b>Outputs</b>	means all documents, products and materials developed by the Consultancy Provider in the provision of the Services in any form or media including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts), and any other materials to the extent that it produces, contains, embodies, or is made according to, CPI's Confidential Information;
<b>Personnel</b>	means any Representative of the Consultancy Provider who is used to provide the Services, including any Key Persons;
<b>Premises</b>	means the location(s) for the provision of the Services as specified in the Order;
<b>Price</b>	means the price payable for the Services as specified in the Order;
<b>Project</b>	means the project described in the Order;
<b>Representative</b>	in relation to any party, means any professional adviser, director, officer, partner, employee or sole trader forming part of that party, and includes any individual seconded to work for it;
<b>Restricted Period</b>	where applicable, means the period during which certain agreed restrictions will apply to the Consultancy Provider under Condition 14, as specified in the Order, or in the absence of such period being shown in the Order, 6 months from the End Date or Termination Date of the Contract;
<b>Services</b>	means those consultancy services specified to be provided by the Consultancy Provider in the Order;
<b>Specification</b>	means any agreed specification and/or timetable and/or schedule of works against which the Consultancy Provider has given a quotation for the Services, and/or which is attached to or incorporated in the Order;
<b>Term</b>	means the period starting on the Commencement Date and ending on the End Date or Termination Date (whichever is the earlier);
<b>Termination Date</b>	means the date of termination of the Term in respect of the Services under any Order, howsoever arising;

- 1.2 References to any statute or statutory provision shall include any subordinate legislation made under it, and any subsequent legislation that adds to or replaces it.
- 1.3 The descriptive headings to conditions, schedules and paragraphs are inserted for convenience only, have no legal effect and shall be ignored in the interpretation of these Conditions.
- 1.4 Words importing the singular include the plural and vice versa, words importing a gender include every gender and reference to persons include an individual, company, corporation, firm, partnership, unincorporated association or body of persons.
- 1.5 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.
- 1.6 Any reference to a "day" shall mean a period of 24 hours running from midnight to midnight, reference to a "working day" shall mean Monday to Friday inclusive but excluding bank holidays and references to times of the day are to London time (UK) on the applicable date.
- 1.7 All references to CPI in these Conditions shall include all members of CPI's Group who, in accordance with Condition 25, shall be entitled to use and rely upon these Conditions. Because CPI is publicly funded and has restrictions upon the activities it is permitted to carry out under the terms of its public funding and its company articles, it acts as a central asset holder for and on behalf of the members of CPI's Group, and accordingly, the Consultancy Provider acknowledges and agrees that it is reasonable that all members of CPI's Group shall be entitled to recover any losses resulting from a breach of these Conditions as if it was an original party to these Conditions.

## 2. BASIS OF PURCHASE

- 2.1 These Conditions apply to the Contract to the entire exclusion of any other terms or Conditions that the Consultancy Provider seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by CPI to purchase the Services from the Consultancy Provider in accordance with these Conditions. The Order shall be deemed to be accepted on the earlier of
- 2.2.1 the Consultancy Provider issuing written acceptance (including by email) of the Order; or
- 2.2.2 any act by the Consultancy Provider consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence.

2.3 No variation of the Contract shall be binding unless agreed in writing between the authorised Representatives of CPI and the Consultancy Provider.

### 3. CONSULTANCY PROVIDER'S OBLIGATIONS

3.1 During the Term the Consultancy Provider shall provide the Services to CPI in accordance with the commercial terms specified in the relevant Order and subject to these Conditions.

3.2 The Consultancy Provider shall:

3.2.1 co-operate with CPI in all matters relating to the Services, and, subject to Condition 24.2, ensure that its Personnel comply with the instructions of CPI;

3.2.2 perform the Services with all due skill, care, and diligence including Good Industry Practice (prevailing as at the relevant time) and in accordance with its own established internal procedures;

3.2.3 use Personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Consultancy Provider's obligations are fulfilled in accordance with this Contract, whilst ensuring the continuity of Personnel delivering the Services throughout the Term and taking into account CPI's representations when replacing any Key Person;

3.2.4 commit all such resources as are reasonably necessary to ensure that the Services are provided in accordance with the provisions of the Order and any Specification;

3.2.5 use good quality goods, materials, standards and techniques, and ensure that the Outputs, and all goods and materials supplied and used in the Services will be free from defects in workmanship, installation and design;

3.2.6 at all times ensure, to the reasonable satisfaction of CPI, the proper performance of the Services by the Consultancy Provider in accordance with the Specification;

3.2.7 report to CPI on the provision and performance of the Services as reasonably required by CPI and to promptly notify CPI of any substantive comments or any complaints made by the End Customer to the Consultancy Provider;

3.2.8 provide all equipment, tools and vehicles and such other items as are required to provide the Services except where it has been agreed in writing that CPI will provide such items;

3.2.9 when appropriate make suggestions to CPI regarding enhancements to the provision of the Services;

3.2.10 not do anything which would be likely to prejudice the reputation of CPI and/or where applicable, of the End Customer; and

3.2.11 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations, providing evidence of its compliance as may be reasonably required by CPI.

3.3 Whilst at the Premises or otherwise performing the Services, the Consultancy Provider shall procure that the Personnel are fully conversant with, and fully compliant with, CPI's and/or where applicable, with the End Customer's safety, health and environment policies and complete and follow all relevant method statements and risk assessments compliant with such policies, and that the Personnel take all such other precautions as are necessary to protect their own health and safety, and that of CPI's personnel and/or where applicable, of the End Customer's personnel, and of the public. Where the nature of the duties to be performed makes the wearing of protective equipment, clothing or footwear necessary or appropriate, the Consultancy Provider shall provide such protective equipment, clothing or footwear at its own expense and shall require those performing the Services to wear such protective equipment, clothing or footwear.

3.4 CPI reserves the right to require the removal from the Services of any one or more Personnel who, in the reasonable opinion of CPI:

3.4.1 is or is deemed to be guilty of unprofessional conduct or of negligence; and/or

3.4.2 is not medically fit to perform the Services or provides a risk to health of those with whom that person may come into contact during work on these Conditions.

3.5 Any Personnel removed in accordance with Condition 3.4 shall be replaced promptly by a qualified replacement, in such time as is acceptable to CPI and at no extra cost to CPI. In the case of management or other specialist staff who are employed in a senior capacity by the Consultancy Provider, written approval of the replacement shall first be obtained from CPI. CPI shall in no circumstances be liable to the Consultancy Provider in respect of the consequences of any such removal or ensuing claims.

3.6 Unless it has been specifically authorised to do so by CPI in writing, the Consultancy Provider shall not and shall procure that the Personnel do not:

3.6.1 have any authority to incur any expenditure in the name of or for the account of CPI; or

3.6.2 hold themselves out as having authority to bind CPI.

3.7 The time for performance of the Services shall be of the essence.

3.8 If the Services or any part of them are not performed on or by the relevant agreed date in accordance with these Conditions then, without prejudice to any other remedy it may have, CPI shall be entitled to procure the provision of any particular part of the Services which the Consultancy Provider has failed to perform from a third party and credit the reasonable cost of engaging a third party against the Price payable for the Services. Before engaging a third party, CPI shall give the Consultancy Provider at least 7 days' notice of its intention to engage a third party to perform any part of the Services which have not been performed on or by the relevant agreed date.

#### **4. CPI'S OBLIGATIONS**

4.1 During the Term CPI shall:

- 4.1.1 provide the Consultancy Provider and the Personnel with such information in its possession concerning the Project that the Consultancy Provider and the Personnel reasonably require to enable them to perform the Services;
- 4.1.2 provide the Personnel with any specific resources or equipment that it has agreed to provide in the Order (if any) but solely for use during the Term and for the purposes of the Project;
- 4.1.3 arrange reasonable access to any requirements the Consultancy Provider has in order to perform the Services, subject to these requirements being specified in the Order; and
- 4.1.4 arrange reasonable access for the Consultancy Provider and the Personnel to the Premises to perform the Services as required.

#### **5. PRICE AND PAYMENT**

- 5.1 On the last working day of each Month during the Term the Consultancy Provider shall submit to CPI a VAT invoice which shall set out details of the Services provided and the Price payable during that Month, as calculated in accordance with the relevant Price mechanism set out in the Order, and including where applicable copies of all timesheets signed by CPI's Representative named in the Order and on the basis and frequency specified in the Order.
- 5.2 Following receipt of an invoice submitted by the Consultancy Provider under Condition 5.1, CPI shall verify that it has been properly submitted in a timely fashion, and where it is correct, in consideration of the provision of the Services, CPI shall pay the invoice within 30 days of such verification. Where CPI fails to verify an invoice in a timely fashion and there is an undue delay in verifying an invoice, the invoice shall be regarded as valid and undisputed after a reasonable time has passed. Where there are errors in the invoice, including if the quantity of Services actually delivered to CPI by the Consultancy Provider during that Month differs from that charged on the invoice, CPI shall notify the Consultancy Provider of the error, and the Consultancy Provider shall issue a credit note for any wrongly invoiced excess, or re-issue a corrected invoice (at the Consultancy Provider's discretion), promptly notifying CPI in writing of the steps they have taken, and payment of any corrected invoice shall be made by CPI within 30 days of the date the corrected invoice was validated by CPI.
- 5.3 CPI will accept no variation in the Price nor extra charges for the delivery of the Services unless such variation to the Price or such extra charges for the delivery of the Services has been expressly agreed in writing in advance of being incurred by an authorised Representative of CPI.
- 5.4 CPI shall be entitled to deduct from the Price (and any other sums) due to the Consultancy Provider any sums that the Consultancy Provider may owe to CPI at any time.
- 5.5 If any undisputed sum properly due from CPI to the Consultancy Provider is not paid on the due date then interest shall accrue and be payable on any such sum at the rate of one per cent per annum above the business base rate of Barclays Bank plc from time to time, apportioned on a daily basis, until payment in full of the overdue sum and whether before or after judgment.
- 5.6 Late payment shall not constitute a material breach within the meaning of Conditions 9.2.9 and 9.2.10 nor shall it entitle the Consultancy Provider to terminate the Contract under common law principles.

#### **6. VARIATION OF SERVICES, SPECIFICATIONS OR WORKS**

- 6.1 At any time during the Term, subject always to the following provisions of this Condition 6, CPI shall be permitted to vary any details of the Services and/or Specification and/or Outputs required under any Contract, including extending or temporarily suspending any delivery timetables, by serving at least 7 days' prior written notice on the Consultancy Provider.
- 6.2 Following receipt of a variation notice from CPI under Condition 6.1, the Consultancy Provider shall promptly notify CPI of any reasonable change in the costs or timescales the Consultancy Provider would incur as a result of such proposed variation, providing supporting evidence where so requested by CPI, and CPI shall then notify the Consultancy Provider that either:
  - 6.2.1 CPI accepts the Consultancy Provider's change in costs and wishes to proceed with the proposed variation to the Contract; or
  - 6.2.2 CPI does not accept the Consultancy Provider's change in costs and does not wish to proceed with the proposed variation to the Contract, and that the Contract shall continue in its current form without variation.
- 6.3 Until such time as the Consultancy Provider has received CPI's final notification about any proposed variation under Condition 6.2 it shall continue to perform the Contract continue in its current form without variation.

#### **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 The Consultancy Provider shall promptly disclose and shall procure that the Personnel promptly disclose to CPI's Representative full details of all Outputs created in the course of the provision of the Services in writing and in any format reasonably requested by CPI from time to time.
- 7.2 Unless otherwise agreed in writing, the Intellectual Property Rights in any Outputs arising from the performance of the Services shall vest in CPI absolutely, but for the avoidance of doubt, any Intellectual Property Rights created by the Consultancy Provider and/or the Personnel which are created outside of the performance of the Services and which do not relate to the Project, or which are owned by the Consultancy Provider or its licensors prior to the date of these Conditions and are used in the Project, will remain the property of the Consultancy Provider or its licensors (as applicable). To the extent that any Intellectual Property Rights in any Outputs do not vest in CPI for any reason set out in this Condition 7.2, the Consultancy Provider grants to CPI (or shall procure for CPI from its relevant licensor) a non-exclusive, unrestricted, perpetual, royalty free, irrevocable licence to use such Intellectual Property Rights in the Outputs.
- 7.3 Ownership of all Intellectual Property Rights in the Specification (where the Specification is given to the Consultancy Provider by CPI) shall remain at all times with CPI (or with CPI's licensors as applicable), and where the Specification has been created by the Consultancy Provider for CPI as an Output of any Services, ownership of that Specification shall vest in and remain at all times with CPI. The Consultancy Provider

shall hold such Specification as CPI's Confidential Information and shall not be permitted to make any further use of it outside of the Contract (either on its own behalf or on behalf of any other person) nor to disclose it to any third party.

7.4 The Consultancy Provider shall promptly disclose and shall procure that the Employees promptly disclose to CPI's Representative full details of all Outputs created in the course of the provision of the Services.

7.5 The Consultancy Provider assigns and shall procure that each of the Personnel assigns to CPI (including, to the extent necessary and permissible, by way of current assignment of future rights) the copyright and other Intellectual Property Rights in the Outputs which are created by the Consultancy Provider and/or the Personnel in the performance of the Services or which relate to the Project.

7.6 The Consultancy Provider shall, and shall procure that the Personnel shall:

7.6.1 keep all Outputs confidential;

7.6.2 whenever requested to do so by CPI and in any event on the termination of the applicable Contract, promptly to deliver to CPI all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Outputs and the process of their creation which are in its possession, custody or power;

7.6.3 not register nor attempt to register any of the Intellectual Property Rights in the Outputs, unless instructed in writing to do so by CPI; and

7.6.4 promptly upon demand by CPI, from time to time, execute all such documents and do all acts as CPI believes are reasonably necessary to confirm that, subject to Condition 7.2, absolute title in all Intellectual Property Rights in the Outputs vests in CPI, and until such time as legal assignment in any jurisdiction is legally perfected and completed ("Completion"), the Consultancy Provider hereby grants to CPI a fully paid up, royalty free, perpetual, exclusive, unrestricted, sub-licensable licence of all such Intellectual Property Rights in the Outputs, until Completion.

7.7 The Consultancy Provider warrants to CPI that:

7.7.1 it has not given and will not give permission to any third party to use any of the Outputs, nor any of the Intellectual Property Rights in the Outputs;

7.7.2 it is unaware of any use by any third party of any of the Outputs or Intellectual Property Rights in the Outputs; and

7.7.3 the use of the Outputs or the Intellectual Property Rights in the Outputs by CPI will not infringe the rights of any third party.

7.8 The Consultancy Provider shall procure that each of the Personnel waives any moral rights in the Outputs to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Outputs or other materials, infringes the Consultancy Provider's moral rights.

7.9 The Consultancy Provider acknowledges that no further remuneration or compensation other than that provided for in these Conditions is or may become due to the Consultancy Provider in respect of the performance of its obligations under this Condition 7.

7.10 In the event that the Consultancy Provider is subject to a claim from any Personnel under Section 40 of the Patents Act 1977 (or under any similar statutory provision which may replace or supplement Section 40 of the Patents Act 1977 in the future), the Consultancy Provider acknowledges and agrees that it is the applicable employer of the Personnel, and agrees that it shall not join CPI as a party to any such claim, nor purport to pass responsibility to CPI for any sums that may be payable to such Personnel, nor seek to recover any such sums from CPI.

7.11 In the event that any claim or challenge is brought or threatened by any third party against the Consultancy Provider and/or any Personnel in relation to any Intellectual Property Rights in or connected with the Outputs, the Consultancy Provider shall immediately notify CPI with full details, and the Consultancy Provider shall liaise with CPI in the conduct of its defence (at the Consultancy Provider's own cost) and shall not take any steps which in CPI's opinion would affect CPI's position in relation to its ownership of the Intellectual Property Rights in the Outputs.

## **8. CONFIDENTIAL INFORMATION**

8.1 The Consultancy Provider undertakes to, and to procure that its Representatives and all Personnel shall keep in strict confidence all Confidential Information disclosed to it by CPI or CPI's Group, and shall use Confidential Information only in connection with provision of the Services. The Consultancy Provider shall not use any Confidential Information to obtain a commercial, trading or any other advantage.

8.2 The Consultancy Provider shall only disclose Confidential Information to Personnel who need to know it for the purpose of discharging the Consultancy Provider's obligations under the Contract, and shall ensure that such Personnel comply with the obligations set out in this Condition 8 as though they were a party to the Contract.

8.3 The Consultancy Provider may also disclose such of the Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. Unless prohibited by law, the Consultancy Provider shall promptly notify CPI if any Confidential Information is required to be disclosed and seek CPI's approval regarding the manner of such disclosure and the content or, at CPI's expense, co-operate with any reasonable action which it may elect to take to challenge the validity of such requirement.

8.4 The duties of confidentiality set out in this Condition 8 shall survive the Contract for the period of 5 years from the End Date or Termination Date.

8.5 The parties agree that in respect of Confidential Information protected by any executed NDA, the provisions of this Condition 8 shall not apply, and shall not supersede, supplement nor replace the provisions of any executed NDA in respect of that Confidential Information, and that this Condition 8 shall only apply to any such Confidential Information to the extent that such Confidential Information is not already protected by any executed NDA in place between the parties.

## **9. TERM AND TERMINATION**

9.1 The Term shall be deemed to have commenced on the Commencement Date and shall continue until the End Date unless terminated earlier in accordance with these Conditions or as otherwise permitted in the Contract.

- 9.2 CPI may terminate the Contract with immediate effect and with no liability to make any payment to the Consultancy Provider other than in respect of amounts accrued prior to the Termination Date in the event that:
- 9.2.1 an order is made or a resolution is passed for the winding up of the Consultancy Provider or circumstances arise which entitle a Court of competent jurisdiction to make a winding-up order of the Consultancy Provider; or an order is made for the appointment of an administrator to manage the affairs, business and property of the Consultancy Provider or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Consultancy Provider or notice of intention to appoint an administrator is given by the Consultancy Provider or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
  - 9.2.2 a receiver is appointed of any of the Consultancy Provider's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Consultancy Provider or if any other person takes possession of or sells the other party's assets; or
  - 9.2.3 the Consultancy Provider makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
  - 9.2.4 the Consultancy Provider 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, or is reasonably considered to be unable to pay its debts when they fall due as defined in 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 the foregoing apply; or
  - 9.2.5 a creditor or encumbrancer of the Consultancy Provider 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 14 days; or
  - 9.2.6 the Consultancy Provider ceases, or threatens to cease, to carry on business; or
  - 9.2.7 any action or occurrence analogous to the provisions of Conditions 9.2.1 to 9.2.6 occurs in respect of the Consultancy Provider in any jurisdiction; or
  - 9.2.8 the termination rights in Condition 24.2 relating to Change of Control are exercised by CPI; or
  - 9.2.9 the Consultancy Provider is in material breach of these Conditions and such breach is not capable of remedy; or
  - 9.2.10 the Consultancy Provider is in material breach of these Conditions and such breach is capable of remedy, but the breach has not been remedied within 7 days of issue of a written notice by CPI to the Consultancy Provider specifying the breach and requiring remedy; or
  - 9.2.11 any of the provisions of Regulation 73(1) of the Public Contracts Regulations apply.
- 9.3 CPI shall be entitled to terminate the Contract for convenience at any time by serving written notice of termination on the Consultancy Provider under the Notice Period.
- 9.4 On the Termination Date (or as otherwise agreed by CPI in writing) the Consultancy Provider shall:
- 9.4.1 immediately vacate the Premises and return all CPI resources and/or equipment made available by CPI under Condition 4.1 for the provision of the Services, in each case in the Condition in which it was originally occupied or received, and promptly making good to CPI's satisfaction, acting reasonably, any damage caused whilst in the Consultancy Provider's occupation or possession; and
  - 9.4.2 immediately deliver to CPI all copies of the Outputs, documents, books, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of any member of CPI's Group or their business contacts, any keys, and any other property of any member of CPI's Group, which is in its possession or under its control; and
  - 9.4.3 irretrievably delete any information relating to the business of any member of CPI's Group stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its possession or under its control outside the premises of CPI; and
  - 9.4.4 provide a signed statement that it has complied fully with its obligations under this Condition 9.4.
- 9.5 In addition to this Condition 9.5, the provisions of Conditions 3.2, 3.6, 3.8, 5.4, 7, 8 in accordance with 8.4, 9.4, 10, 11, 12, 14, 16, 18, 20, 21, 22, 24, 25, 26 and 29 shall survive termination of the Contract, howsoever arising.
- 10. INDEMNITY**
- 10.1 The Consultancy Provider hereby indemnifies CPI in full and holds CPI indemnified in full and harmless from all costs, claims, liabilities, expenses and or losses awarded against, incurred, paid or suffered by, CPI as a result of or in connection with:
- 10.1.1 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Outputs or the Services; or
  - 10.1.2 any breach by the Consultancy Provider of Condition 7; or
  - 10.1.3 any breach by the Consultancy Provider of Condition 8.

**11. INSURANCE**

- 11.1 During the Term and for a period of six years after the End Date or Termination Date, the Consultancy Provider shall insure against its liabilities arising out of or in connection with the performance of the Services, including:
- 11.1.1 employers' liability insurance for no less than £5,000,000 (five million pounds) in respect of any one incident;
  - 11.1.2 public liability insurance for no less than £5,000,000 (five million pounds) in respect of any one incident; and
  - 11.1.3 professional indemnity insurance for no less than £2,000,000 (two million pounds) in respect of any one incident.
- 11.2 The Consultancy Provider shall promptly at CPI's request provide both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 11.3 If the Consultancy Provider shall fail to comply in any respect with the provisions of this Condition 11, CPI shall be entitled (but not obliged) to arrange the insurance cover required by this Condition 11, the cost of which the Consultancy Provider shall promptly reimburse to CPI upon demand.

**PLEASE NOTE EACH OF THE FOLLOWING IMPORTANT PROVISIONS OF CONDITION 12**

**12. LIMITATION OF LIABILITY**

- 12.1 Neither party excludes or limits liability to the other party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation nor where liability cannot be excluded or limited as a matter of law (e.g. breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982).
- 12.2 Subject to Condition 12.1 above, CPI's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, arising in connection with the performance or contemplated performance of any Contract shall be limited to a maximum of the total Price payable in respect of the Services under the Contract which have given rise to the claim or liability.
- 12.3 Subject to CPI paying all undisputed invoices that have been properly issued for Services that have actually been delivered under the Contract, and to Condition 12.1, CPI shall not be liable to the Consultancy Provider for any:
- 12.3.1 loss of profit, (whether direct or indirect); and/or
  - 12.3.2 loss of business; and/or
  - 12.3.3 loss of business opportunity; and/or
  - 12.3.4 depletion of good-will; and/or
  - 12.3.5 loss or corruption of data, or the costs and consequences of any data restoration; and/or
  - 12.3.6 costs of loans, borrowing and/or of temporary financing; and/or
  - 12.3.7 additional staffing costs; and/or
  - 12.3.8 costs, expenses or other claims for any type of special, indirect or consequential loss or compensation (including loss or damage suffered as a result of an action brought by a third party);

whatsoever and howsoever caused which arises out of or in connection with these Conditions and/or any Contract, even if such loss was reasonably foreseeable or CPI had been advised of the possibility of the Consultancy Provider incurring the same.

**13. COMPLIANCE WITH ANTI-BRIBERY AND CORRUPTION AND ANTI-SLAVERY LAWS**

- 13.1 The Consultancy Provider shall procure that all Personnel shall:
- 13.1.1 comply with all applicable laws, statutes, regulations and codes from time to time in force relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and
  - 13.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
  - 13.1.3 comply with CPI's anti-bribery and anti-corruption policies in force from time to time, a copy of which shall be provided to the Consultancy Provider and to any Personnel upon written request and, where provided, any anti-bribery and anti-corruption policies of the End Customer; and
  - 13.1.4 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
  - 13.1.5 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity or conduct were carried out in the UK; and
  - 13.1.6 maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement; and
  - 13.1.7 notify CPI as soon as practicable of any breach of any of the undertakings contained within this Condition of which it becomes aware;

13.2 The Consultancy Provider shall, upon request by CPI from time to time, promptly confirm in writing that it has complied with its undertakings under Condition 13.1, and shall promptly and fully provide any information reasonably requested by CPI in support of such compliance.

13.3 For the avoidance of doubt, any breach by the Consultancy Provider of this Condition 13 shall be deemed to be a breach which is not capable of remedy for the purposes of Condition 9.2.9.

#### **14. NON-SOLICITATION**

14.1 The Consultancy Provider covenants with CPI that the Consultancy Provider shall not, and shall procure that the Personnel shall not at any time during the Term and the Restricted Period directly or indirectly:

14.1.1 solicit or entice away or seek to entice away or employ or procure to be employed any person who is or has been an employee of CPI during the Term;

14.1.2 employ or procure to be employed any former employees of CPI who have been employed by CPI in the 12 months prior to the End Date or Termination Date and who have had direct dealings with clients of CPI;

14.1.3 solicit or entice away or seek to entice away from doing business with CPI any person, firm, company or organisation, including the End Customer, who throughout the Term was a customer of CPI.

14.2 The parties in all respects consider the restrictions contained in this Condition 14 reasonable.

14.3 Notwithstanding Condition 20, the provisions of Conditions 14.1.1, 14.1.2 and 14.1.3 are separate and severable and shall be construed and be capable of enforcement accordingly.

#### **15. NOTICES**

15.1 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 Condition, and shall be delivered personally or sent by prepaid first class post or other next working day delivery service or by commercial courier. Any notice or other communication may also be sent by email, save in respect of a notice of termination.

15.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 15.1; if sent by prepaid first class post or other next working day delivery service, at 9.00am 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 fax or email, one business day after transmission.

15.3 The provisions of this Condition 15 shall not apply to the service of any proceedings or other documents in any legal action.

#### **16. CONTRACT FORMATION AND ENTIRE AGREEMENT**

16.1 Without affecting Condition 2, and subject to Condition 8.5, the Contract constitutes the entire and only agreement and understanding between the parties at the Commencement Date in connection with the provision of the relevant Services under that Contract.

#### **17. FORCE MAJEURE**

17.1 Neither party shall be in breach of the Contract nor be liable for delay in performance, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstances or cause beyond its reasonable control ("Force Majeure Event").

17.2 The Consultancy Provider shall use its 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 Consultancy Provider's performance of its obligations for a continuous period of more than 30 days, CPI may terminate the Contract immediately by giving written notice to the Consultancy Provider.

#### **18. SUCCESSORS AND ASSIGNS / SUB-CONTRACTING**

18.1 Each Contract shall be binding upon and shall benefit the parties' successors in title.

18.2 The Consultancy Provider shall not assign or novate all or any part of the benefit of, or its rights or benefits under, any Contract incorporating these Conditions without the prior written consent, not to be unreasonably withheld, of CPI. Any rights which are the subject of a purported assignment in breach of this Condition 18 shall be unenforceable unless and until the breach is rectified.

18.3 The Consultancy Provider shall not sub-contract any of its obligations under any Contract incorporating these Conditions without the prior written consent, not to be unreasonably withheld, of CPI, and in such circumstances where CPI's consent under this Condition 18.3 is granted, the Consultancy Provider agrees that it shall be fully liable to CPI for all acts and / or omissions of the permitted sub-contractor as if such acts and / or omissions were the Consultancy Provider's own, and shall ensure that it pays such sub-contractor within 30 days of the Consultancy Provider verifying the validity of such sub-contractor's invoice in a timely fashion.

#### **19. VAT**

19.1 All payments to be made pursuant to these Conditions shall (save where otherwise specifically stated) be exclusive of Value Added Tax (if applicable). Any Value Added Tax chargeable in respect of the matters giving rise to such payments shall be added to the amount of, and paid in addition to, them.

#### **20. ANTI-FACILITATION OF TAX**

20.1 The Consultancy Provider shall:



- a) not engage in any activity, practice or conduct which would constitute either:
  - (i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017 ("CFA"); or
  - (ii) a foreign tax evasion facilitation offence under section 46(1) of the CFA;
- b) comply with the Anti-Bribery and Corruption and Anti-Slavery Laws referred to in Condition 13 as may be updated from time to time;
- c) have and shall maintain in place throughout the term of this agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Consultancy Provider) and to ensure compliance with Condition 20.1(a);
- d) promptly report to CPI any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the CFA, in connection with the performance of this agreement;
- e) within 3 months of the date of any request by CPI, certify to CPI in writing signed by an officer of the Consultancy Provider, compliance with this Condition 20 by the Consultancy Provider and all persons associated with it under Condition 20.2. The Consultancy Provider shall provide such supporting evidence of compliance as CPI may reasonably request.

20.2 The Consultancy Provider shall ensure that any person associated with the Consultancy Provider who is performing services and/or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultancy Provider in this Condition 20 (Relevant Terms). The Consultancy Provider shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to CPI for any breach by such persons of any of the Relevant Terms.

20.3 Breach of this Condition 20 shall be deemed a material breach under Condition 9.2.9.

20.4 For the purposes of Condition 20, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the CFA and a person associated with the Consultancy Provider includes but is not limited to any subcontractor of the Consultancy Provider.

## 21. SEVERABILITY

21.1 If any wording in any provision of a Contract and/or of these Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such wording shall be deemed removed from the relevant provision, and the invalidity or unenforceability of such wording shall not affect the remainder of that provision, nor the remainder of the relevant Contract and/or of these Conditions, and the remaining wording of such provision and all other provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

## 22. WAIVERS AND RELEASES

22.1 The rights, powers and remedies conferred on the parties in these Conditions are cumulative and are additional to, and not exclusive of, any rights, powers and remedies provided by law or otherwise available it.

22.2 No delay or omission on the part of any party to these Conditions in exercising any right, power or remedy provided by law or under these Conditions shall impair such right, power or remedy or operate as waiver thereof.

22.3 The single or partial exercise of any right, power or remedy provided by law or under these Conditions shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

22.4 Except as specifically provided in these Conditions, no waiver of any provision of these Conditions shall in any event be effective unless the same shall be in writing, and then such waiver shall be effective only in the specific instance, for the purpose for which the same is given, and such waiver shall not operate as a waiver of any future application of such provision.

## 23. SET-OFF

23.1 Any sums credited by or due from CPI to the Consultancy Provider may, at any time and from time to time without notice, be applied to and/or set off against any liabilities or obligations of the Consultancy Provider to CPI, whether absolute or contingent, due or to become due, direct or indirect, whether under any Contract or otherwise.

## 24. CHANGE OF CONTROL

24.1 If at any time whilst any Contract is in force there is a Change of Control of the Consultancy Provider, the Consultancy Provider shall notify CPI within 14 days of the Change of Control having occurred.

24.2 Where CPI believes in its sole discretion that the continuation of the Contract would, as a result of the Change of Control, adversely affect CPI's commercial interest, CPI shall have the right to terminate the Contract forthwith by giving notice to the Consultancy Provider, such notice to be served during a period of 90 calendar days from the date on which the notification from the Consultancy Provider of the Change of Control is served (for the avoidance of doubt, whether served within the correct period, or served late). After such time CPI's rights to terminate due to a Change of Control under this Condition 24 shall lapse.

24.3 For the avoidance of doubt, failure to notify a Change of Control under Condition 24.1 shall be deemed to be a breach which is not capable of remedy for the purposes of Condition 9.2.9.

## 25. IMPACT

25.1 The Consultancy Provider acknowledges that CPI is generally required by their Funder(s) to demonstrate their impact and the Consultancy Provider agrees to comply with all reasonable requests made by CPI to provide such information (not including Confidential Information) as CPI may reasonably require to address the requirements placed on it. Such information may include (in relation to the Services), but shall not be limited to, effects, changes or benefits to the economy, society, public policy or services, health and the environment.

## **26. DATA PROTECTION LEGISLATION**

26.1 In this Condition:

The expressions "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Personal Data Breach" and "Process" have the meanings given to them in the Data Protection Laws.

26.2 The Supplier shall duly observe all its obligations under the Data Protection Laws which arise in connection with the provision of the Services under these Terms and not do anything which puts CPI in breach of the Data Protection Laws.

26.3 Insofar as the Consultancy Provider Processes Personal Data for CPI as a Data Processor, the Consultancy Provider shall:

- 26.3.1 process the Personal Data solely on the documented instructions of CPI, for the purposes of providing the Services;
- 26.3.2 process only the types of Personal Data, relating to the categories of Data Subjects, and in the manner required to deliver the Services, and in the manner agreed by the parties;
- 26.3.4 take all measures required by Article 32 of the GDPR and/or any CPI policies to ensure the security of the Personal Data;
- 26.3.5 take reasonable steps to ensure the reliability of any staff who may have access to the Personal Data, and their treatment of the Personal Data as confidential;
- 26.3.6 not transfer the Personal Data to any country outside the European Economic Area (EEA) without the prior written consent of CPI;
- 26.3.7 not permit any third party to Process the Personal Data without the prior written consent of CPI, such consent to be subject to the Consultancy Provider meeting the Conditions set out in Article 28 (2) and (4) of the GDPR;
- 26.3.8 promptly notify CPI of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from a supervisory authority) relating to either party's obligations under the Data Protection Laws in respect of the Personal Data;
- 26.3.9 immediately upon becoming aware, and in any case within 24 hours, notify CPI of any Personal Data Breach, such notice to include all information reasonably required by CPI to comply with its obligations under the Data Protection Laws;
- 26.3.10 permit CPI, on reasonable prior notice, to inspect and audit the facilities and systems used by the Consultancy Provider to Process the Personal Data, the technical and organisational measures used by the Consultancy Provider to ensure the security of the Personal Data and any and all records maintained by the Consultancy Provider relating to that Processing;
- 26.3.11 provide any assistance reasonably requested by CPI in relation to (i) any communication received under Condition 26.3.8, as well as any similar communication received by CPI directly; (ii) any Personal Data Breach, including by taking any appropriate technical and organisational measures reasonably requested by CPI; and (iii) any data protection impact assessments and prior consultations required under Articles 35 and 36 GDPR;
- 26.3.12 cease Processing the Personal Data immediately upon the termination or expiry of these Terms and at CPI's option either return, or securely delete the Personal Data.

26.4 Further information in relation to the nature and purpose of Processing, the type of Personal Data Processed and the obligations of CPI can be found in CPI's Privacy Policy (available <https://www.uk-cpi.com/legal/privacy/>).

## **27. PARTNERSHIP**

27.1 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.

27.2 For the avoidance of doubt, CPI shall not have day-to-day control over the Personnel, which shall at all times remain with the Consultancy Provider.

## **28. THIRD PARTY RIGHTS**

28.1 With the exception of the members of CPI's Group, a person who is not a party to the Contract shall not have any rights to enforce its terms.

28.2 All rights conferred under the terms of the Contract may be enforced by any member of CPI's Group that is relying upon them.

## **29. GOVERNING LAW AND JURISDICTION**

29.1 These Conditions and each Contract incorporating them shall be governed by and construed in accordance with the law of England.

29.2 The parties submit to the exclusive jurisdiction of the English courts.