

**IT IS HEREBY AGREED AS FOLLOWS:**

**1 DEFINITIONS & INTERPRETATION**

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

**Background IPR** means any Intellectual Property Rights relevant to, or used in, the provision of the Services and/or to the Outputs under the Contract that is:

- (a) licensed to, controlled or owned by any Party prior to the date of commencement of these Conditions; and/or
- (b) generated by a Party independently of the Contract; and/or
- (c) generated by CPIIS in the delivery of the Services which relates to the generic use of CPIIS equipment and/or related research and scale-up methodologies (as distinct from the Customer's proprietary processes and procedures);

**Change of Control** 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;

**Commencement Date** means the date for the start of the provision of the Services that is specified in the Proposal;

**Conditions** means these terms and conditions for the supply of Services by CPIIS;

**Confidential Information** means the existence and terms of any Proposal, 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 the Contract incorporating these Conditions is disclosed to or made available by either Party to: the other Party or the other Party's Representatives; or (where applicable) to any company within the other Party's Group; or to any other person at the request of the other Party as recipient; or any information of which the other Party becomes aware or which comes into the other Party's control or knowledge as a result of entering into the Contract 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 the disclosing Party or the disclosing Party's business 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 receiving Party, by its Representatives, by the Personnel or by any company within the receiving Party's Group, of such information in breach of these Conditions); and/or
- (b) either party can establish to the reasonable satisfaction of the other party that the information was known to them before the date of the Contract 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 the disclosing Party, 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;

**Contract** means, as the context requires,

- (a) the legally binding agreement between CPIIS and the Customer made up of the Proposal, these Conditions, any Specification and Customer's acceptance of the Proposal whether made in writing (subject always to Condition 18.1) or through receiving the Services, whichever occurs first); or
- (b) any written agreement between CPIIS and the Customer that incorporates these Conditions within a schedule to such written agreement;

**CPIIS** means CPI Innovation Services Limited (CRN 05735040) whose registered office is at Wilton Centre, Wilton, Redcar, TS10 4RF;

**CPIIS Representative** means CPIIS's representative named in the Proposal who will be first point of contact in relation to the Services, or in the absence of any specified person, CPIIS's internal solicitor and contracts manager;

**Customer** means the party contracting with CPIIS under the Contract;

**Data Protection Laws** 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;

**Good Industry Practice** means the exercise of that degree of skill and diligence which, as at the relevant time, would reasonably and ordinarily be expected from a reputable provider of the Services complying with all applicable laws and regulatory codes of practice in the same type of undertaking and under the same or similar circumstances and observations;

**Group** 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;

**Intellectual Property Rights** means all patents, trademarks, 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 trademarks or other intellectual or industrial property rights, look and feel in any graphical user interface in the Outputs, and all know-how, methodologies, techniques, knowledge recipes, trade secrets, tools, designs or works whether subsisting in the United Kingdom or anywhere else in the World;

**Key Person** means any individual Personnel named in the Proposal;

**Outputs** means all research, designs, records, reports, documents, papers, drawings, diagrams, discs, transparencies, photos, graphics, logos, text, typographical arrangements, coding, software, formulas, samples, prototypes and all other materials or items in whatever form, including but not limited to physical items, hard copies and electronic forms, prepared and/or produced by CPIIS in the provision of the Services and any other material to the extent that it reproduces, contains, embodies, or is made according to, the Customer's Confidential Information;

**Personnel** means any Representative of CPIIS who is used to provide the Services, including any Key Persons;

**Premises** means the location(s) for the provision of the Services as specified in the Proposal;

**Price** means the price payable for the Services as specified in the Proposal;

**Project** means the project described in the Proposal that relates to the Services;

**Proposal** means CPIIS' written offer to provide the Services, which shall incorporate these Conditions;

**Representative** 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;

**Services** means those consultancy services specified to be provided by CPIIS in the Proposal that relates to the Services;

**Specification** means any agreed specification and/or timetable and/or schedule of works against which CPIIS has given a quotation for the supply of Services, and/or which is attached to or incorporated in the Proposal that relates to the Services;

**Term** means the period during which the Services are to be supplied as set out in the Proposal, starting on the Commencement Date;

**Termination Date** means the date of termination of the Term in respect of the Services under any Proposal, 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 clauses, 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 CPIIS in these Conditions shall include all members of CPIIS's Group who, subject always to Condition 16, shall be entitled to use and rely upon these Conditions.

## **2. DELIVERY OF SERVICES**

- 2.1 During the Term CPIIS shall provide the Services to the Customer in accordance with the commercial terms specified in the relevant Proposal and subject to these Conditions on the basis set out in Condition 18.1.
- 2.2 Subject to Condition 2.7, CPIIS hereby warrants that it shall use its commercially reasonable endeavours to:
  - 2.2.1 carry out the Project and provide the Services in accordance with the Specification within the Term;
  - 2.2.2 discharge its obligations under these Conditions in accordance with Good Industry Practice;
  - 2.2.3 procure that the Personnel will dedicate sufficient time and energy to ensure that the Services are provided in a timely and efficient manner and in material compliance with the Specification;
  - 2.2.5 subject always to Condition 12.2, comply (and will procure that the Personnel shall comply) with the Customer's reasonable instructions in relation to, without limitation, such matters as the priority to be given to each element of the Services, and co-ordination with the Customer's

operational requirements or the manner in which the Services are provided;

- 2.2.6 unless otherwise agreed in writing with the Customer, only use its own employees as Personnel, using its commercially reasonable endeavours (but without creating any obligation of exclusivity) to ensure the continuity of Personnel delivering the Services throughout the Term, and shall liaise with the Customer and take into account the Customer's representations when replacing any Key Person;
- 2.2.7 report to the Customer on the provision and performance of the Services as reasonably required by the Customer;
- 2.2.8 in performing its obligations under these Conditions, comply with all relevant statutory requirements and regulations and all codes of conduct (whether voluntary or otherwise) in force at the time of performance of such obligations;
- 2.3 To the fullest extent permitted by law, the warranties contained in Condition 2.2 supersede, exclude and extinguish all other warranties, conditions, representations, assurances, guarantees, liabilities or obligations whatsoever (whether, express, implied, statutory or otherwise) in relation to the Services and/or the Outputs other than those expressly set out in these Conditions. In particular, but without limitation to the foregoing, unless otherwise expressly stated in the Proposal:
  - 2.3.1 CPIIS does not warrant that the Services or the Outputs will achieve any particular outcome, result or deliverables; and
  - 2.3.2 the Customer acknowledges and agrees that where the Services are experimental and/or developmental in nature, CPIIS cannot and does not warrant the successful performance of such Services or the delivery of Services and/or of the Outputs by any set date. In such circumstances CPIIS shall use its reasonable endeavours to deliver the Services and/or the Outputs by relevant target due dates set out in the Proposal, but due to the experimental and/or developmental nature of the Services, the time for delivery of the Services and/or the Outputs is not of the essence, and shall not be made of the essence by notice; and
  - 2.3.3 the Customer acknowledges and agrees that where the Services involve measurement and/or analytical activity, where the Personnel have properly carried out any such measurements and/or correctly carried out any analysis, CPIIS cannot and does not warrant that such measurements or such analysis thereof will be useful or will provide any solution to any particular problem or issue that the Customer wishes to analyse or resolve.
- 2.4 Where any of the Services are to be delivered at any Premises belonging to or within the control of the Customer, the Customer shall ensure that the Personnel are fully conversant with, the Customer's safety, health and environment policies and complete and follow all relevant method statements and risk assessments compliant with such policies, and CPIIS shall procure that the Personnel follow all such policies and take all reasonable other precautions as are necessary to protect their own health and safety, and that of the Customer's personnel, and of the public.
- 2.5 Whilst the Personnel are at any Premises belonging to or within the control of the Customer, the Customer shall provide to the Personnel appropriate safety and protective equipment for the task to be performed. Without prejudice to the foregoing, where the nature of the duties to be performed makes the wearing of protective equipment, clothing or footwear necessary or appropriate, the Customer 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, and CPIIS shall procure that the Personnel make appropriate use thereof.
- 2.6 The time for performance of the Services shall not be of the essence.
- 2.7 For the avoidance of doubt, CPIIS shall not be liable for any delay in performance or any failure in delivery of the Services and/or Outputs which is due in whole or in part to any:
- 2.7.1 failure of any equipment that is owned or controlled by the Customer; and/ or
- 2.7.2 faults or defects in any materials supplied by the Customer; and/or
- 2.7.3 problems with the Customer's processes that are being measured and/or analysed; and/or
- 2.7.3 breach by the Customer of any of its obligations under Condition 3.
- 3. THE CUSTOMER'S OBLIGATIONS**
- 3.1 During the Term the Customer shall:-
- 3.1.1 provide CPIIS and the Personnel with such information in its possession concerning the Project that CPIIS and the Personnel reasonably require to enable them to perform the Services;
- 3.1.2 provide the Personnel with any specific resources or equipment that it is specified to provide in the Proposal (if any) but solely for use during the Term in the Project;
- 3.1.3 arrange reasonable access to any "pre-requisites" for the delivery of the services specified in the Proposal (if any);
- 3.1.4 subject to Condition 2.4, arrange reasonable access for CPIIS and the Personnel to any Premises belonging to or within the control of the Customer where the Services are to be performed, in order for the Personnel to perform such Services;
- 3.1.5 subject always to Condition 12.1, permit the Personnel in the performance of the Services to identify themselves as "a contractor working with the Customer";
- 3.1.6 where appropriate, 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 CPIIS;
- 3.1.7 comply with all other obligations on the Customer set out in these Conditions.
- 3.2 CPIIS may, in its sole discretion, permit Representatives of the Customer to attend CPIIS' Premises for the sole purpose of observing the delivery of the Services, on such dates and at such times as the Parties may agree in writing, but for the avoidance of doubt, the Customer and its Representatives shall not be permitted to participate in any work or other activity at CPIIS' Premises.
- 3.3 The Customer shall ensure that any Representative of the Customer who attends CPIIS' Premises follows all instructions and site rules of CPIIS.
- 3.4 The Customer shall indemnify and keep indemnified in full, CPIIS against all costs, losses, liabilities and claims arising out of any act or omission by the Customer's Representatives while on CPIIS' Premises.
- 4. PRICE AND PAYMENT**
- 4.1 The price to be paid by the Customer for the provision of the Services and of any Outputs under the Project is set out in the Proposal and CPIIS shall invoice the Customer at the times or intervals stipulated in the relevant Proposal.
- 4.2 Unless otherwise stated, the price stated in the Proposal excludes VAT or other applicable sales tax or duty of any kind, which (if applicable) shall be added to CPIIS' invoices at the applicable rate.
- 4.3 The Customer shall pay the full amount of each properly payable invoice submitted by CPIIS within thirty (30) calendar days of receipt of the invoice. Time for payment is of the essence. The Customer shall not be entitled to set off any amount owing to the Customer by CPIIS on any account.
- 4.4 If the Customer fails to pay by the due date any amount which is properly payable under the Contract:
- 4.4.1 CPIIS shall be entitled to serve written notice on the Customer requiring the Customer to remedy the failure within ten (10) Business Days from the date of such notice. If the Customer fails to pay within ten (10) Business Days of the said notice, then CPIIS shall be entitled in its absolute discretion to either suspend the provision of all Services and of all Outputs until such time as all outstanding amounts have been paid, or terminate the Contract immediately; and
- 4.4.2 irrespective of whether CPIIS elects to suspend or terminate the Contract in accordance with Condition 4.4.1 above, the Customer shall pay CPIIS interest on the overdue amount from the due date for payment until payment is made in full at a rate equal to four (4%) per cent above the base rate of Barclays Bank PLC as at the due date.
- 4.5 In the event of any bona fide dispute regarding any invoice or other request for payment, the Customer shall immediately notify CPIIS thereof in writing and the parties shall attempt promptly and in good faith to resolve any dispute regarding amounts owed. Disputed portions of payments shall be set aside until resolved, but undisputed amounts shall be paid on the due date. In the event that disputed portions are agreed by the Customer and CPIIS or otherwise determined in accordance with the Contract as being payable, the customer shall pay CPIIS interest on such amounts from the due date for payment until payment is made in full at the rate set out in Condition 4.4.2 above.
- 4.6 Payments shall be deemed not to have been made until they have been received by CPIIS in full in cleared funds in pounds sterling, unless otherwise agreed in advance with CPIIS in writing.
- 5. CONFIDENTIAL INFORMATION**
- 5.1 Subject to Condition 5.7, CPIIS and the Customer each undertake to, and to procure that its respective Representatives and all Personnel shall:
- 5.1.1 keep secret and maintain confidential the Confidential Information of the other Party; and
- 5.1.2 use Confidential Information of the other Party only in connection with the provision of the Services and in particular not use any such Confidential Information to obtain a commercial, trading or any other advantage; and
- 5.1.3 subject to Condition 5.10 upon demand:-
- (a) procure the return of all items and copies of all or any such Confidential Information to its owner; and
- (b) expunge all such Confidential Information from any computer, word processor or other similar device into which it was programmed; and
- (c) destroy all notes, analyses or memoranda containing or referring to such Confidential Information; and
- (d) if so required, furnish a certificate of a director of the relevant Party confirming that to the best of his or her knowledge, information and belief, having made all proper enquiries, the provisions of this Condition 5.1 have been complied with.
- 5.2 To secure the confidentiality attaching to the Confidential Information of the other Party, each Party shall:-
- 5.2.1 keep separate all Confidential Information of the other Party and all information generated by them based on Confidential Information of the other Party from all other documents and records of the Consultancy Provider;
- 5.2.2 not use, copy, photocopy, reproduce, transform or store any of the other Party's Confidential Information in an externally accessible computer or transmit it in any form or by any means whatsoever outside of its usual place of business;
- 5.2.3 at the request of the other Party made at any time, promptly deliver up to the other Party all documents and

- other material in their possession, custody or control (or of any of their Representatives pursuant to Condition 5.2.4) that bear or incorporate any part or parts of the other Party's Confidential Information;
- 5.2.4 undertake to permit access to the other Party's Confidential Information only to those Representatives who reasonably need access to such Confidential Information for the purpose of the provision of the Services, and on the conditions that such Representatives shall have:
- (a) entered into legally binding confidentiality obligations with them on terms at least equivalent to the restrictions on the use of Confidential Information as set out in these Conditions; and
  - (b) been informed of the other Party's interest in the Confidential Information and the terms of these Conditions, and instructed to treat the Confidential Information as secret and confidential in accordance with the provisions of these Conditions.
- 5.3 Each Party warrants to the other that it shall be responsible for the enforcement of the confidentiality obligations and that it shall procure that all of its Representatives given access to the other Party's Confidential Information under Condition 5.2.4 shall comply with the provisions of these Conditions.
- 5.4 Nothing contained in these Conditions shall prevent either Party from imparting the other Party's Confidential Information which it or any company in its Group may be obliged to disclose or make available:
- 5.4.1 under any applicable rule of law or other governmental regulation of the United Kingdom or any other competent jurisdiction; or
  - 5.4.2 in connection with proceedings before a court of competent jurisdiction in relation to these Conditions or under any court order;
- provided that such Party shall promptly notify the other if any Confidential Information is required or requested to be disclosed and, so far as it is permitted by law, seek the other party's approval regarding the manner of such disclosure and the content of any announcement or, at the other party's expense, co-operate with any reasonable action which it may elect to take to challenge the validity of such requirement.
- 5.5 If any proceedings are commenced or action taken which could result in the other Party's Confidential Information having to be disclosed, the affected Party shall immediately notify the other Party of such proceedings or action in writing and shall take all available steps to resist or avoid such proceedings or action (including all steps that the other Party may reasonably request) and keep the other Party fully and promptly informed of all matters and developments relating to such proceedings. If the affected Party is obliged to disclose the other Party's Confidential Information to any third party, such disclosure will only be made to such third party and the affected Party will disclose only the minimum amount of information consistent with satisfying its obligation to such person. Prior to making any such disclosure, the affected Party will give written notice to CPIIS of the information it proposes to disclose containing a copy of the proposed disclosure and confirmation that its legal advisers' opinion is that such disclosure is required and the affected Party will take into account any reasonable comments the other Party may have in relation to the contents of the proposed disclosure.
- 5.6 The duties of confidentiality set out in this Condition 5 shall survive termination of each respective Contract for the longer of a period either of five years from the date of its termination, or any period over five years from the date of its termination that is specified in the Proposal.
- 5.7 The parties agree that in respect of Confidential Information protected by any executed NDA, the provisions of this Condition 5 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 5 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.
- 5.8 The Customer acknowledges that CPIIS and CPIIS' Group is part of the UK Government's High Value Manufacturing Catapult (a national centre of excellence for the process and chemicals industries), which is part publically funded and which therefore has public responsibilities to provide services on an open access basis to a wide range of businesses across the UK, and accordingly the Customer acknowledges that CPIIS and CPIIS' Group, may prior to, during, or after the Term, provide a wide range of services (including services that are similar or identical to the Services), or which relate to processes, technologies and/or products similar to and/or competing with those of the Customer, to third parties, including to third parties who may be competitors of the Customer, and that CPIIS and/or members of CPIIS' Group may also from time to time carry out work on their own account in relation to processes, technologies and/or products similar to and/or competing with those of the Customer, and the Customer agrees that nothing in these Conditions shall prevent CPIIS and/or any member of CPIIS' Group from doing so, provided that all of the obligations under Conditions 5 and 7 are adhered to by CPIIS.
- 5.9 The Customer acknowledges that, for the avoidance of doubt, the use of any technology or of any Background IPR by CPIIS in performing the Services or in creating (or which may be referred to in) any Outputs shall not expressly or impliedly create any licence of such technology or of such Background Intellectual Property Rights to the Customer.
- 5.10 CPIIS shall at all times be entitled to retain one copy of all Confidential Information and of any Outputs solely for legal record purposes (including but not limited to retaining all original laboratory records and technical area logs).
- 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, the Customer shall be permitted to request to vary any details of the Services and/or Specification and/or Outputs required under any Contract, by serving at least thirty days' prior written notice on CPIIS.
- 6.2 Following receipt of a variation notice from the Customer under Condition 6.1, CPIIS shall notify the Customer whether it is commercially and or technically able to accommodate such a variation and of any reasonable change in the costs that CPIIS would incur as a result of such proposed variation, and where CPIIS indicates that such a variation would be possible, the Customer shall then notify CPIIS that either:
- 6.2.1 the Customer accepts CPIIS's change in costs and wishes to proceed with the proposed variation to the Contract, with a schedule being added to the Proposal to reflect any agreed changes in the details of the Services and/or Specification and/or Outputs, and to the Price; or
  - 6.2.2 the Customer does not accept CPIIS'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 CPIIS has received the Customer'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 CPIIS shall promptly disclose and shall procure that the Personnel promptly disclose to the Customer full details of all Outputs created in the course of the provision of the Services in the format made available to CPIIS from time to time by the Customer.
  - 7.2 Subject to Condition 7.3, the Intellectual Property Rights in any Outputs shall vest in the Customer absolutely.
  - 7.3 CPIIS shall upon request assign, and shall procure that each of the Personnel assigns, to the Customer the Intellectual Property Rights in the Outputs which are created by CPIIS and/or the Personnel in the performance of the Services or which relate to the Project, but all Background IPR shall remain the property of CPIIS and/or of the Personnel and/or of their licensors as applicable. Nothing in the Contract shall prevent CPIIS from freely using or making use outside of the Project of any knowledge, experience or know-how developed by CPIIS in the course of providing the Services which is not an Output.
  - 7.4 CPIIS shall, and shall procure that the Personnel shall:
    - 7.4.1 keep all Outputs confidential;
    - 7.4.2 whenever requested to do so by the Customer and in any event on the termination of the applicable Contract, subject always to Condition 5.10, promptly to deliver to the Customer 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;
    - 7.4.3 not register nor attempt to register any of the Intellectual Property Rights in the Outputs, unless instructed in writing to do so by the Customer; and
    - 7.4.4 upon request by the Customer, at the Customer's cost, execute all such documents and do all acts as are reasonably commercially necessary to confirm that, subject always to Condition 7.5, ownership in all Intellectual Property Rights in the Outputs vests in the Customer.
  - 7.5 CPIIS cannot and does not warrant that the Outputs created do not infringe the Intellectual Property Rights of third parties as CPIIS does not make professional enquiries into third party Intellectual Property and does not carry out patent landscaping work. It is the Customer's responsibility to carry out its own investigations in relation to such matters and to satisfy itself before making use of any Outputs.
  - 7.6 In the event that any claim or attack is brought or threatened by any third party against CPIIS and/or any Personnel in relation to any Intellectual Property Rights in or connected with the Outputs, CPIIS shall notify the Customer with full details, and CPIIS shall liaise with the Customer in the conduct of its defence.
  - 7.7 In respect of the Contract, each Party grants to the other Party a non-exclusive, royalty-free licence to use any of its Background IPR for the purpose of the provision of the Services under the relevant Proposal only, but not for any other purposes including not for commercial exploitation.
  - 7.8 For the avoidance of doubt, no licences or other rights in respect of any Background IPR or of any other Intellectual Property Rights are granted or implied by these Conditions except for those that are expressly set out in these Conditions.
- ## **8. TERM AND TERMINATION**
- 8.1 The Term shall be deemed to have commenced on the Commencement Date and shall continue for such period set out in the relevant Proposal or Contract unless terminated earlier in accordance with these Conditions or as otherwise permitted in the Contract.
  - 8.2 Either Party may (at its sole discretion) terminate the Contract with immediate effect in the event that:

- 8.2.1 an order is made or a resolution is passed for the winding up of the other Party or circumstances arise which entitle a Court of competent jurisdiction to make a winding-up order of the other Party; or an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party or notice of intention to appoint an administrator is given by the other Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- 8.2.2 a receiver is appointed of any of the other Party'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 other Party or if any other person takes possession of or sells the other party's assets; or
- 8.2.3 the other Party 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
- 8.2.4 the other Party 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
- 8.2.5 any distraint is levied against the other Party or its property by any person; or
- 8.2.6 the other Party ceases, or threatens to cease, to carry on business; or
- 8.2.7 any action or occurrence analogous to the provisions of Conditions 8.2.1 to 8.2.6 occurs in respect of the other Party in any jurisdiction; or
- 8.2.8 the other Party is in breach of these Conditions and such breach is not capable of remedy; or
- 8.2.9 the other Party is in breach of these Conditions and such breach is capable of remedy, but the breach has not been remedied within 30 days of issue of a written notice to such Party by the non-breaching Party specifying the breach and requiring remedy.

## **9. OBLIGATIONS UPON TERMINATION**

- 9.1 On the Termination Date CPIIS shall:
  - 9.1.1 where the Premises are owned by or are in the control of the Customer, vacate the Premises and return all the Customer's resources and/or equipment made available by the Customer under Condition 3.1 for the provision of the Services; and
  - 9.1.2 deliver to the Customer all copies of the Outputs that the Customer has paid for, documents, books, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of any member of the Customer's Group or their business contacts, any keys, and any other property of any member of the Customer's Group, which is in its possession or under its control;
- 9.2 The provisions of Conditions 3, 4, 5, 7, 8, 9, 11, 13, 14, 15, 16, 17, 20, 21, 24, 25, 26 and 27 shall, in respect of the Services that were being provided and any related Confidential Information and/or Intellectual Property, survive termination of the provision of any Services under a Proposal, and the termination of any relevant Contract, howsoever arising.

## **10. INSURANCE**

- 10.1 CPIIS will insure against its liabilities arising out of or in connection with the performance of the Services, including:
  - 10.1.1 employers' liability insurance for no less than £5,000,000 (five million pounds) in respect of any one incident unlimited in any 12 month period;
  - 10.1.2 public liability insurance for no less than £5,000,000 (five million pounds) in respect of any one incident unlimited in any 12 month period; and

- 10.1.3 professional indemnity insurance for no less than £2,000,000 (two million pounds) in respect of any one incident unlimited in any 12 month period.

**PLEASE NOTE EACH OF THE FOLLOWING IMPORTANT PROVISIONS OF CONDITION 11**

**11. LIMITATION OF LIABILITY**

- 11.1 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).
- 11.2 Subject to Condition 11.1 above, CPIIS'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 greater of:
- 11.2.1 the total Price payable in respect of the Services under the Contract which have given rise to the claim or liability; or
- 11.2.1 such sum as CPIIS is reasonably able to actually recover from its insurers in respect of such claim or liability under any relevant policy of insurance that it has in force.
- 11.3 CPIIS shall not be liable to the Customer for any:
- 11.3.1 loss of profit, (whether direct or indirect); and/or
- 11.3.2 loss of business; and/or
- 11.3.3 loss of business opportunity; and/or
- 11.3.4 depletion of good-will; and/or
- 11.3.5 loss or corruption of data, or the costs and consequences of any data restoration; and/or
- 11.3.6 costs of loans, borrowing and/or of temporary financing; and/or
- 11.3.7 additional staffing costs; and/or
- 11.3.8 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 CPIIS had been advised of the possibility of the Customer incurring the same.

**12. STATUS**

- 12.1 The relationship of CPIIS to the Customer will be that of independent contractor and nothing in these Conditions shall render it or any Personnel or Representative as an employee, agent or partner of the Customer, and CPIIS shall not hold itself out as such, and shall procure that no Personnel or Representative hold themselves out as such.
- 12.2 For the avoidance of doubt, the Customer shall not have day-to-day control over the Personnel, which shall at all times remain with CPIIS.
- 12.3 Each Contract made incorporating these Conditions constitutes a contract for the provision of Services and accordingly, CPIIS shall be fully responsible for all Personnel.

**13. NOTICES**

- 13.1 Any notice or other communication given or made under these Conditions shall be in writing and may be sent by email, save in respect of a notice of termination which shall be served under the provisions of Condition 13.2 below. Without affecting the validity of the original notice or communication sent by email, the party who sends such email may, in addition and at its sole discretion, send a paper copy of such communication to the recipient under Condition 13.2.
- 13.2 Any such notice or other communication shall be sent to the address for service set out in the Proposal, or where the Proposal is silent on such matters, to the relevant

parties' registered office and, if so addressed, shall be deemed to have been duly given or made as follows:-

- 13.2.1 if sent by personal delivery, upon delivery at the address of the relevant party;
- 13.2.2 if sent by first class post, two working days after the date of posting.
- 13.3 If any notice or other communication would otherwise be deemed to be given or made after 5:00 pm on any working day, such notice or other communication shall be deemed to be given or made at 9:00 am on the next following working day.
- 14. COMPLIANCE WITH ANTI-BRIBERY AND CORRUPTION AND ANTI-SLAVERY LAWS**
- 14.1 The Customer shall procure that all Employees shall:
- 14.1.1 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
- 14.1.2 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
- 14.1.3 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 Supplier and to any Employees upon written request and, where provided, any anti-bribery and anti-corruption policies of the End Customer; and
- 14.1.4 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
- 14.1.5 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;
- 14.1.6 maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement; and
- 14.1.7 notify CPIIS as soon as practicable of any breach of any of the undertakings contained within this Condition of which it becomes aware.
- 14.2 The Supplier shall, upon request by CPIIS from time to time, promptly confirm in writing that it has complied with its undertakings under Condition 14.1, and shall promptly and fully provide any information reasonably requested by CPIIS in support of such compliance.
- 14.3 For the avoidance of doubt, any breach by the Supplier of this Condition 14 shall be deemed to be a material breach which is not capable of remedy for the purpose of Condition 8.2.8.

**15. ANTI-FACILITATION OF TAX**

- 15.1 The Customer 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 14 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 Customer) and to ensure compliance with Condition 15.1(a);
- d) promptly report to CPIIS 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 CPIIS, certify to CPIIS in writing signed by an officer of the Consultancy Provider, compliance with this Condition 15 by the Consultancy Provider and all persons associated with it under Condition 15.2. The Consultancy Provider shall provide such supporting evidence of compliance as CPIIS may reasonably request.
- 15.2 The Customer shall ensure that any person associated with the Customer 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 Customer in this Condition 15 (Relevant Terms). The Customer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to CPIIS for any breach by such persons of any of the Relevant Terms.
- 15.3 Breach of this Condition 15 shall be deemed a material breach under Condition 8.2.8.
- 15.4 For the purposes of Condition 15, 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 Customer includes but is not limited to any subcontractor of the Customer.
- 16. IMPACT**
- 16.1 The Customer acknowledges that CPIIS' parent company, Centre for Process Innovation Limited ("CPI"), is generally required by their Funder(s) to demonstrate their impact and the Customer agrees to comply with all reasonable requests made by CPIIS to provide such information (not including Confidential Information) as CPIIS may reasonably require to address the requirements placed on it and/or CPI. 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.
- 17. DATA PROTECTION LEGISLATION**
- 17.1 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.
- 17.2 The Customer 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 CPIIS in breach of the Data Protection Laws.
- 17.3 Insofar as the Customer Processes Personal Data for CPIIS as a Data Processor, the Customer shall:
- 17.4 Without prejudice to the generality of Condition 17.1, the Customer shall, in relation to any Personal Data processed in connection with the performance by CPIIS of its obligations under this agreement:
- 17.4.1 process the Personal Data solely on the documented instructions of CPIIS, for the purposes of providing the Services;
- 17.4.2 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;
- 17.4.3 take all measures required by Article 32 of the GDPR and/or any CPIIS policies to ensure the security of the Personal Data;
- 17.4.4 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;
- 17.4.5 not transfer the Personal Data to any country outside the European Economic Area (EEA) without the prior written consent of CPIIS;
- 17.4.6 not permit any third party to Process the Personal Data without the prior written consent of CPIIS, such consent to be subject to the Customer meeting the conditions set out in Article 28 (2) and (4) of the GDPR;
- 17.4.7 promptly notify CPIIS 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;
- 17.4.8 immediately upon becoming aware, and in any case within 24 hours, notify CPIIS of any Personal Data Breach, such notice to include all information reasonably required by CPIIS to comply with its obligations under the Data Protection Laws;
- 17.4.9 permit CPIIS, on reasonable prior notice, to inspect and audit the facilities and systems used by the Customer to Process the Personal Data, the technical and organisational measures used by the Customer to ensure the security of the Personal Data and any and all records maintained by the Customer relating to that Processing;
- 17.4.10 provide any assistance reasonably requested by CPIIS in relation to (i) any communication received under Condition 17.4.7, as well as any similar communication received by CPIIS directly; (ii) any Personal Data Breach, including by taking any appropriate technical and organisational measures reasonably requested by CPIIS; and (iii) any data protection impact assessments and prior consultations required under Articles 35 and 36 GDPR;
- 17.4.11 cease Processing the Personal Data immediately upon the termination or expiry of these Terms and at CPIIS' option either return, or securely delete the Personal Data.
- 17.5 Further information in relation to the nature and purpose of Processing, the type of Personal Data Processed and the obligations of CPIIS can be found in CPIIS' Privacy policy (available <https://www.uk-cpi.com/legal/privacy/>).
- 18. CONTRACT FORMATION AND ENTIRE AGREEMENT**
- 18.1 These Conditions are the only basis upon which CPIIS shall contract for the provision of the Services, and all Services supplied by CPIIS to the Customer shall be upon the terms and conditions contained in these Conditions, to the exclusion of all other terms and conditions which the Customer purports to apply under any purchase order, acknowledgement or acceptance of an Proposal, terms and conditions of purchase, or other document tendered to CPIIS or otherwise generally applied by the Customer to the provision of Services.
- 18.2 Without prejudice to Condition 18.1, and subject to Condition 5.7, each 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.
- 18.3 Nothing in this Condition 18 shall limit or exclude either party's liability for fraud or for fraudulent misrepresentation.
- 19. FORCE MAJEURE**
- 19.1 Save in respect of Conditions 4 and 5, neither party shall be liable for any delay in performing or failure to perform any of its obligations under these Conditions if such delay or failure results from events or circumstances outside its reasonable control and which it could not have taken reasonable steps to avoid or to mitigate. Such delay or failure shall not constitute a breach of these Conditions where notified to the other party as soon as reasonably practicable and the time for performance shall be extended by a period equivalent to that during which performance is so prevented, for a period of up to one month.
- 20. SUCCESSORS AND ASSIGNS**
- 20.1 Each Contract shall be binding upon, and ensure for the benefit of, the parties' successors in title.
- 21. VARIATIONS**



- 21.1 Subject to Condition 6, no purported alteration to or variation of any provision of these Conditions shall be effective unless it is in writing, refers specifically to these Conditions and is duly executed by an authorised signatory of each Party.
- 22. VAT**
- 22.1 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 by the Customer in addition to them.
- 23. SEVERABILITY**
- 23.1 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.
- 24. WAIVERS AND RELEASES**
- 24.1 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.
- 24.2 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.
- 24.3 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.
- 24.4 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.
- 25. SET-OFF**
- 25.1 Any sums credited by or due from the Customer to CPIIS may, at any time and from time to time without notice, be applied to and/or set off against any liabilities or obligations of CPIIS to the Customer, whether absolute or contingent, due or to become due, direct or indirect, whether under any Contract or otherwise.
- 26. THIRD PARTY RIGHTS**
- 26.1 Subject to Condition 26.2 a person who is not a party to any Contract incorporating these Conditions has no right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of that Contract but this shall not affect any right or remedy of a third party which exists or is available apart from that Act.
- 26.2 All rights conferred under these Conditions on CPIIS (or the Contract made pursuant to these Conditions) may be enforced by any member of CPIIS's Group that seeks to rely upon them.
- 27. GOVERNING LAW AND JURISDICTION**
- 27.1 These Conditions and each Contract incorporating them shall be governed by and construed in accordance with the law of England.
- 27.2 In the event of a dispute between the parties, CPIIS shall (at its sole discretion) decide whether to have the matter finally resolved under Conditions 27.3 and 27.4. In all other circumstances the parties submit to the exclusive jurisdiction of the English courts.
- 27.3 All disputes arising out of or in connection with these Conditions (or any Contract made pursuant to these Conditions), which are referred to arbitration under Condition 27.2, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- 27.4 It is agreed that in relation to any dispute referred to arbitration under Condition 27.2:
- 27.4.1 the tribunal shall include at least one arbitrator who is an expert in the purchasing and use of the Services that are in dispute; and
- 27.4.2 the place of arbitration shall be Newcastle-upon-Tyne, England; and
- 27.4.3 the language of arbitration shall be English; and
- 27.4.4 each party shall bear the costs of arbitration as directed by the arbitrators.