



## KPMG Purchase Order Terms and Conditions

### 1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Terms:-

- "Agreement"** means the agreement between the Supplier and KPMG for the Goods and/or Services incorporating these Terms and the appendices, together with the Purchase Order ;
- "Anti Bribery Law"** means all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption in any jurisdiction relevant to the Parties and the Goods, Services and/or Deliverables, including the Bribery Act 2010;
- "Business Day"** means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
- "Charges"** means the charges payable by KPMG for the supply of the Goods, Deliverables and performance of the Services as set out in the Purchase Order;
- "Commencement Date"** means the date set out in the Purchase Order;
- "Deliverables"** means all documents, products and materials developed by the Supplier or its Representatives in performing the Services, in any form or media;
- "Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights and all similar or equivalent rights or forms of protection in any part of the world, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights;
- "IT and Data Security Requirements"** means KPMG's IT and data security requirements appended to the Purchase Order, as may be amended from time to time;
- "KPMG"** means KPMG LLP (OC 301540) with its registered office at 15 Canada Square, London, E14 5GL;
- "KPMG Materials"** means all materials, equipment and tools, drawings, specifications and data supplied by KPMG to the Supplier;
- "KPMG Policies"** means the policies of KPMG which relate to the provision of the Goods, Services and/or Deliverables (as applicable), including those set out at Appendix 1;
- "Purchase Order"** means the purchase order applicable to KPMG's order for the Goods, Services and/or Deliverables;
- "Member Firm"** means a member firm of KPMG International Co-Operative that is either: (i) a signatory to the KPMG International Co-Operative membership agreement; (ii) a firm to which membership benefits are sub-licensed by a member firm of KPMG International Co-Operative; (iii) any subsidiary or affiliate owned in whole or in part by any of the firms described in (i) and (ii); and/or (iv) a Transitional affiliate of any of the above firms described in (i) to (iii). "Transitional affiliate" shall mean any unrelated legal entity that has entered into an agreement to become part of, or affiliated with, a Member Firm, provided that such Transitional affiliate has entered into an agreement with a Member Firm of KPMG International Co-Operative that relates to transitional support, (provided, however, that no entity may be a Transitional affiliate for more than 12 months);
- "Restricted Entity"** means an entity from which KPMG's and/or any Member Firms' receipt of the Goods, Services and/or Deliverables would violate, or cause it to be likely to violate: (i) independence rules of any applicable

regulatory authority of KPMG and/or any Member Firm who receives the Goods, Services and/or Deliverables; or (ii) any applicable regulations relating to the professional ethics or independence of auditors, including permissibility of payment and/or receipt of referral fees, and any other legal or regulatory requirements related to the independence of auditors; means the services set out in the Purchase Order and the Supplier's obligations under the Agreement; and means the supplier identified in the Purchase Order.

**"Services"**

**"Supplier"**

1.2 In the Agreement, references to:-

- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a company shall include any company, corporation or other body corporate and a partnership (whether a limited liability partnership or otherwise), wherever and however incorporated or established;
- 1.2.3 the singular shall include the plural and vice versa (unless the context otherwise requires); and
- 1.2.4 a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any sub-ordinate legislation made under it.

1.3 A reference to writing or written does not include e-mail unless stated to the contrary in this Agreement.

1.4 Any obligation in the Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.5 Any phrase introduced by the terms including, include, in particular or any similar expression shall be for illustrative purposes only and shall not limit the sense of the words preceding those terms.

1.6 If there is any conflict or inconsistency between the documents forming the Agreement, the documents shall have priority in the following order:-

- 1.6.1 the Purchase Order;
- 1.6.2 these Terms; and
- 1.6.3 any other appendix.

### 2. SUPPLY OF SERVICES

2.1 The Supplier shall, from the Commencement Date and for the duration of the Agreement, provide the Services in accordance with the Agreement.

2.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order and time for performance of the Services by the Supplier is of the essence.

2.3 In providing the Services, the Supplier shall:-

- 2.3.1 co-operate with KPMG and comply with all instructions of KPMG;
- 2.3.2 perform the Services with reasonable care and skill in accordance with generally recognised commercial practices and standards in the industry for similar services;
- 2.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them;

- 2.3.4 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 2.3.5 hold all KPMG Materials in safe custody at its own risk, maintain the KPMG Materials in good condition until returned to KPMG, and not dispose or use the KPMG Materials other than in accordance with KPMG's written instructions or authorisation.
- 2.4 The Supplier warrants and represents on an ongoing basis that:
- 2.4.1 the Services will be performed in such a way as not to cause any fault or malfunction in any systems or software of KPMG and so as not to cause any interruption to the business processes of KPMG (other than any agreed and unavoidable interruption which is required in order to perform the Services in accordance with the Agreement);
- 2.4.2 it will not introduce any viruses onto KPMG's systems while performing the Services; and
- 2.4.3 if any software is being provided to KPMG as part of the Services, that:
- (a) the software and the media on which it is delivered will be free from viruses and other malicious code;
- (b) the media on which the software is delivered will be free from defects; and
- (c) it has not included or used any open source software or any libraries or code licensed from time to time under the General Public Licence (as those terms are defined by the Open Source Initiative or the Free Software Foundation) or anything similar in, or in the development of, the software, nor does the software operate in such a way that is it compiled with or linked to any of the foregoing.
3. **SUPPLY OF GOODS**
- 3.1 The Supplier shall ensure the Goods and/or Deliverables:
- 3.1.1 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by KPMG and, in this respect, KPMG relies on the Supplier's skill and judgment; and
- 3.1.2 be free from defects in design, materials and workmanship and remain so for 12 months after delivery.
- 3.2 The Supplier shall ensure that:
- 3.2.1 the Goods and/or Deliverables are properly packed and secured in such a manner as to ensure they reach their destination in good condition; and
- 3.2.2 each delivery of the Goods and/or Deliverables is accompanied by a delivery note which shows the date of the delivery, the type and quantity, storage instructions (if any) and, if delivered by instalments, the outstanding balance remaining to be delivered.
- 3.3 The Supplier shall deliver the Goods and/or Deliverables:
- 3.3.1 on any date and to the location specified in the Purchase Order (or as otherwise agreed between the Parties). Time shall be of the essence; and
- 3.3.2 during KPMG's normal hours of business on a Business Day, or as instructed by KPMG.
- 3.4 Delivery of the Goods and/or Deliverables shall be completed on the completion of unloading at the delivery location in accordance with Clause 3.3.1.
- 3.5 The Supplier shall not deliver the Goods and/or Deliverables in instalments without KPMG's prior written consent. If it is agreed the Goods and/or Deliverables may be delivered by instalments, each instalment shall be invoiced and paid for separately. Failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle KPMG to the remedies set out in Clause 6.
4. **GOODS, SERVICES AND DELIVERABLES**
- 4.1 The Supplier shall:
- 4.1.1 ensure that the Goods, Services and/or Deliverables conform with all descriptions and specifications set out in the Purchase Order and are fit for any purpose made known by KPMG;
- 4.1.2 obtain and at all times maintain all necessary licences and consents to provide the Goods, Services and/or Deliverables, and comply with all applicable laws and regulations; and
- 4.1.3 observe all KPMG Policies, health and safety rules and regulations and any other security requirements which are notified to it by KPMG.
5. **ACCEPTANCE**
- 5.1 KPMG shall not be deemed to have accepted any Goods, Deliverables or Services until it has had a reasonable opportunity to inspect and test the work undertaken.
- 5.2 KPMG shall be entitled to inspect, review, test and/or re-test the Goods, Services and/or the Deliverables to ensure compliance with the requirements of this Agreement ("**Acceptance Tests**").
- 5.3 KPMG shall be deemed to have accepted the Goods, Services and/or Deliverables as and when such items have passed the Acceptance Tests. KPMG shall confirm acceptance as soon as possible following acceptance.
- 5.4 If any Acceptance Tests are not passed, the failures that cause the relevant test to be failed ("**Defects**") shall be documented by KPMG and presented to the Supplier for discussion as to how best to rectify the Defects. The Supplier shall promptly rectify any Defects at no additional cost to KPMG so as to ensure that the Goods, Services and/or Deliverables (as the case may be) pass the Acceptance Tests on a retest.
- 5.5 If the retest demonstrates that the affected Goods, Services, and/or Deliverables still do not pass the Acceptance Tests, KPMG may, by written notice to the Supplier, elect at its sole option:
- 5.5.1 to fix (without affecting its other rights and remedies) a new date for the carrying out of further tests and all costs of any retest shall be borne by the Supplier; and/or
- 5.5.2 exercise one or more of the rights in Clause 6.
- 5.6 If KPMG fails to issue either notice of acceptance or rejection of the Goods, Services, and/or Deliverables within 14 days of the date on which any second or further round of Acceptance Tests are concluded and notice of the results has been provided to KPMG, KPMG shall be deemed to have accepted the relevant Goods, Services and/or Deliverables (as the case may be).
- 5.7 Title in the Goods and/or Deliverables shall pass to KPMG on the earlier of: (i) delivery to KPMG or (ii) payment for the same by KPMG.

- 5.8 Risk in the Goods and/or Deliverables shall only pass to KPMG as and when they have been delivered up to KPMG and KPMG has inspected and accepted the same.
6. **KPMG'S REMEDIES**
- 6.1 If the Supplier fails to deliver the Goods and/or Deliverables and/or perform the Services in accordance with this Agreement, KPMG shall, without limiting its other rights and remedies, have one or more of the following rights:
- 6.1.1 to reject the Goods, Services, and/or Deliverables (in whole or part) as not being in conformity with this Agreement and to return them to the Supplier, at the Supplier's own risk and expense. In which event KPMG may terminate this Agreement for irremediable, material breach on the part of the Supplier and the Supplier shall (without affecting any of KPMG's other rights and remedies) immediately refund to KPMG all Charges previously paid to the Supplier;
- 6.1.2 to require the Supplier to repair or replace the rejected Goods and/or Deliverables, re-perform the affected Services, or to provide a full refund of the price of the rejected Goods, Services and/or Deliverables (if paid);
- 6.1.3 to accept the Goods, Services, and/or Deliverables subject to a reduction in the Charges, such reduction to be reasonable when taking into account the circumstances. If the Parties cannot agree a reduction within 14 days of KPMG's notice, KPMG shall be entitled to reject the Goods, Services, and/or Deliverables in accordance with Clause 6.1.1; or
- 6.1.4 to arrange for a third party to supply the affected Goods, Services and/or Deliverables and recover from the Supplier any costs incurred by KPMG in obtaining those substitute goods and/or services;
- 6.1.5 where KPMG has paid in advance for Goods which have not been delivered by the Supplier, or Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; and
- 6.1.6 to claim damages for any additional costs, loss or expenses incurred by KPMG which are in any way attributable to the Supplier's failure.
- 6.2 The terms of this Agreement shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.3 KPMG's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.
7. **KPMG'S OBLIGATIONS**
- 7.1 KPMG shall provide the Supplier with reasonable access at reasonable times to those premises required for the performance of the Services and such assistance and information as the Supplier may reasonably request and KPMG considers reasonably necessary for the purpose of performing this Agreement.
8. **CHARGES AND PAYMENT**
- 8.1 The Charges shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods, Deliverables and/or performance of the Services and shall be invoiced at the intervals set out in the Purchase Order. Each invoice shall include such supporting information required by KPMG to verify the accuracy of the invoice and comply with the invoicing requirements in the Purchase Order.
- 8.2 KPMG shall pay the undisputed invoiced amounts within 30 days of receiving the relevant invoice.
- 8.3 If KPMG disputes any element of an invoice issued by the Supplier, the Supplier shall issue a credit note for that invoice and raise a revised invoice for the undisputed element. KPMG shall pay the revised invoice in accordance with this Agreement.
- 8.4 If KPMG fails to pay any undisputed amount due under the Agreement (other than due to a bona fide dispute as to payment), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4% per cent per annum above the base rate for the time being of Barclays Bank Plc, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 8.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow KPMG to inspect such records at all reasonable times on request for the term of the Agreement and 2 years after its termination or expiry.
- 8.6 To issue an invoice to KPMG, the supplier shall ensure that the invoice:
- 8.6.1 is uploaded to the P2P System;
- 8.6.2 quotes the relevant and valid KPMG purchase order number;
- 8.6.3 is issued in accordance with the terms of the Purchase Order; and
- 8.6.4 includes details of the Goods, Deliverables and/or Services, the total cost and where applicable, a summary of time for which the invoice is being raised and the relevant hourly rates.
9. **INTELLECTUAL PROPERTY RIGHTS**
- 9.1 In respect of the Goods and any goods that are transferred to KPMG as part of the Services under this Agreement, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full, clear and unencumbered title to all such items, and that at the date of delivery of such items to KPMG, it will have full and unrestricted rights to sell and transfer such items to KPMG.
- 9.2 The Supplier assigns (by way of both present and future rights) to KPMG, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the output of the Services (including any Deliverables) in each case with effect from their creation.
- 9.3 If the Supplier needs to use any of the Intellectual Property Rights assigned to KPMG in the performance of the Agreement and/or which belong to KPMG, KPMG grants to the Supplier a non-exclusive, non-transferable, royalty free and revocable licence to use such Intellectual Property Rights solely in order to perform the Agreement. Any licence granted under this Clause shall automatically terminate when the Agreement terminates/expires.
- 9.4 The Supplier shall procure irrevocable waivers of any moral rights in the output of the Services (including the Deliverables) to which any individual is now, or may be at any future time, entitled.
- 9.5 If in performing the Services the Supplier uses any Intellectual Property Rights owned by itself or a third party (other than KPMG) and/or the use of Goods and/or Deliverables will require the use of any Intellectual Property Rights owned by itself or a third party, the Supplier shall grant to KPMG or shall procure for it a perpetual, non-exclusive, royalty free, transferable licence to use, develop, support or maintain such Intellectual Property Rights in order to enable KPMG to secure the full benefit of the Goods, Services, Deliverables and the rights assigned to it under this Clause. This shall include for the completion and use of the output of the Services and for the purposes of providing services to its clients.
- 9.6 The Supplier shall indemnify and keep KPMG indemnified from and against any and all losses, costs, expenses, claims

	and other liabilities incurred by KPMG as a result of any claim that the use by KPMG of the Goods, Deliverables, the Services and/or Intellectual Property Rights for which the Supplier has secured or granted a licence in accordance with this Clause, infringes the rights of a third party.		<b>Data Breach</b> ", <b>Supervisory Authority</b> ", <b>Process/Processing/Processed</b> " and <b>Data Protection Impact Assessments</b> " shall have the same meaning as in the GDPR.
9.7	Any use of the name and/or logo of KPMG is subject to the prior written consent of KPMG and compliance with the relevant KPMG guidelines.	11.2	With respect to any Personal Data that KPMG transfers or makes available to Supplier to provide the Goods, Services and/or Deliverables, KPMG warrants that KPMG's Processing, including the transfer to Supplier, of the Personal Data is carried out in accordance with Data Protection Law.
9.8	All KPMG Materials are the exclusive property of KPMG.		
10.	<b>CONFIDENTIALITY AND DATA SECURITY</b>	11.3	Without limiting Supplier's obligation to comply with the GDPR, Supplier, in its capacity as a Data Processor of Personal Data, will:
10.1	Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, unless permitted by Clause 10.2. No Party shall use any other Party's confidential information for any purpose other than to perform the Agreement and/or in the case of KPMG only, in order for KPMG to obtain the full benefit of this Agreement.	11.3.1	Process Personal Data only on documented instructions from KPMG, including in regard to the transfer of Personal Data to a third country or an international organisation, unless required to do so by European Union or Member State law to which Supplier is subject. In such case, Supplier will inform KPMG of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
10.2	Each Party may disclose the other Party's confidential information:-		
	10.2.1 to its employees, officers, representatives or advisers who need to know such information to carry out the Party's obligations under the Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this Clause 10; and	11.3.2	take all reasonable steps to ensure the reliability of staff having access to Personal Data and ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
	10.2.2 as may be required by law, court order or any governmental or regulatory authority.	11.3.3	implement technical and organisational security measures as provided by Data Protection Law (including pursuant to Article 32 of the GDPR) or KPMG under the Agreement necessary to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing;
10.3	KPMG may disclose the Supplier's confidential information to other parties which facilitate the administration of KPMG's business or support KPMG's infrastructure, KPMG shall be responsible for preserving the confidentiality of such confidential information.	11.3.4	not engage another party to Process Personal Data ("Sub-processors") without notifying KPMG and obtaining KPMG's prior written authorisation (not to be unreasonably withheld or delayed). If such authorisation is granted, the Supplier shall ensure:
10.4	The Supplier shall only use data supplied to it by or on behalf of KPMG for the purposes of performing the Services and shall not alter or delete it without KPMG's consent. The Supplier shall comply with any IT and Data Security Requirements set out in Appendix 2 or as otherwise notified to it by KPMG from time to time.	(a)	such Sub-processor's Processing of such Personal Data is carried out exclusively from a territory that is deemed to provide an adequate level of protection under Data Protection Law or where such Processing is otherwise deemed to be subject to adequate levels of protection under Data Protection Law;
10.5	The Supplier shall indemnify and keep KPMG indemnified from and against any and all losses, costs, expenses, claims and other liabilities incurred by KPMG as a result of any breach of Clause 10.1 and 10.4 by the Supplier.	(b)	the written contract under which such Sub-processor processes such Personal Data is not less onerous than this Clause 11.
10.6	The Supplier shall, at any time on the request of KPMG, return all confidential information and/or data to KPMG and/or permanently delete the same (where possible) from its systems, including any back up copies and provide written confirmation to KPMG that it has done so.		
11.	<b>DATA PROTECTION</b>		
11.1	The following definitions shall apply within this Clause 11:		
	11.1.1 "Data Protection Law" means any law, rule, regulation, decree, statute, or other enactment, order, mandate or resolution, applicable to Supplier or KPMG, relating to data security, data protection and/or privacy, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data ("GDPR"), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted; and		The Supplier will provide KPMG with an up to date list of relevant Sub-processors on request and shall remain fully liable to KPMG for acts and omissions of the Supplier's Sub-processors.
	11.1.2 "Data Processor", "Data Controller", "Personal Data", "Data Subject", "Personal	11.3.5	taking into account the nature of the Processing, assist KPMG by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of KPMG's obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Law (including Chapter III of the GDPR);
		11.3.6	provide reasonable assistance so as to enable KPMG to ensure compliance with any obligations it may have in respect of Data Security, Personal Data Breach notification, Data

	Protection Impact Assessments, and engaging in other consultations, pursuant to Data Protection Law (including Articles 32 to 36 of the GDPR taking into account the nature of Processing and the information available to Supplier);		claims, and will cooperate with a view to settling them amicably in a timely fashion.
11.3.7	at the choice of KPMG, promptly delete or return all the Personal Data to KPMG after the end of the provision of Services relating to Processing or termination of the Agreement, and delete existing copies unless Applicable Laws require storage of Personal Data, in which case Supplier shall cease all processing of the Personal Data other than as required by Data Protection Law and ensure the confidentiality and security of the Personal Data retained in accordance with this Clause 11 and Data Protection Law and delete the Personal Data upon expiry of the time period specified by Applicable Laws;	11.10	The Supplier shall indemnify and keep KPMG indemnified from and against any and all losses, costs, expenses, claims and other liabilities incurred by KPMG as a result of any breach of this Clause 11.
11.3.8	without limiting any of KPMG's existing audit rights under the Agreement, make available to KPMG all information necessary to demonstrate compliance with Data Protection Law (including the obligations laid down in Articles 28 and 30 of the GDPR) and allow for and contribute to audits, including inspections, conducted by KPMG or another auditor mandated by KPMG; and	12.	<b>ANTI-BRIBERY</b>
11.3.9	promptly inform KPMG if, in its opinion, any instruction infringes Data Protection Law.	12.1	Both Parties shall comply with all Applicable Bribery Law. Neither Party shall place the other in breach of the Applicable Bribery Law.
11.4	The Supplier will notify KPMG without undue delay, and in any event within one Business Day, upon becoming aware of an actual or reasonably suspected Personal Data Breach. The notification shall at least specify:	12.2	Both Parties shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Applicable Bribery Law, and will enforce them where appropriate. Where requested, both Parties shall promptly answer reasonable enquiries relating to those policies and procedures.
11.4.1	the time, date and location of the Personal Data Breach and a description of the nature of the Personal Data Breach, including, where possible, the categories and approximate number of Data Subjects concerned and approximate type and number of Personal Data records concerned;	12.3	The Supplier shall promptly report to KPMG any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.
11.4.2	where possible, a description of the likely consequences of the Personal Data Breach; and	12.4	The Supplier shall ensure that any of the Supplier's personnel who perform Services or provide Goods and/or Deliverables 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 Supplier in this Clause (" <b>Applicable Bribery Terms</b> "). The Supplier shall be responsible for the observance and performance by the Supplier's personnel of the Applicable Bribery Terms, and shall be directly liable to KPMG for any breach by such persons of any of the Applicable Bribery Terms.
11.4.3	measures taken and/or to be taken to mitigate the consequences of the Personal Data Breach	12.5	Breach of this Clause shall be deemed a material breach and not capable of remedy.
11.5	Supplier will notify KPMG promptly of any:	12.6	For the purpose of this Clause, the defined terms shall have the meaning under the Applicable Bribery Law. In the event of any conflict or inconsistency between the Bribery Act 2010 and other Applicable Bribery Laws, the Bribery Act 2010 shall prevail.
11.5.1	legally binding request for disclosure of the Personal Data by a law enforcement authority unless such notification is prohibited by law;	12.7	In order to determine the Supplier's compliance with this Clause, KPMG shall have the right to inspect the Supplier's records such as travel and entertainment expenses and other disbursements incurred on behalf of KPMG or in the course of delivering the Services or providing any Goods or Deliverables.
11.5.2	request received directly from a Data Subject relating to KPMG's or Supplier's Processing of Personal Data; or	13.	<b>LIABILITY</b>
11.5.3	request or inquiry from a Supervisory Authority relating to Supplier's Processing of Personal Data.	13.1	Nothing in the Agreement shall limit or exclude the liability of either Party for:-
11.6	Where KPMG faces an actual or potential claim arising out of or related to the breach of any Data Protection Law concerning the Services, Supplier will promptly provide all materials and information requested by KPMG that is relevant to the defence of such claim and the underlying circumstances concerning the claim.	13.1.1	death or personal injury resulting from its negligence;
11.7	Supplier and KPMG will each comply with their respective obligations as Data Processor and Data Controller under Data Protection Law.	13.1.2	fraud or fraudulent misrepresentation;
11.8	The subject matter and duration of the Processing, the nature and purpose of the Processing, and the type of Personal Data and categories of Data Subjects are set out in Appendix 4.	13.1.3	any indemnities within the Agreement;
11.9	In the event of a dispute or claim brought by a Data Subject or a Supervisory Authority concerning the processing of the Personal Data against either or both of the parties, the parties will inform each other promptly about any such disputes or	13.1.4	breach of any obligations of confidentiality owed to the other Party;
		13.1.5	breach of any obligations under Clause 12; and/or
		13.1.6	the deliberate default or wilful misconduct of that Party.
		13.2	Subject to Clause 13.1:-
		13.2.1	neither Party shall be liable, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any special, indirect or consequential damage or loss arising in connection with the Agreement;

13.2.2	KPMG's liability is limited to 100% of the Charges paid and payable by KPMG under this Agreement in the 12 months prior to the liability arising; and		Party with one or more other companies, or
13.2.3	the Supplier's liability is limited to: (a) £2million in respect of damage to tangible property only, and (b) otherwise the greater of £100,000 and 125% of the Charges paid and payable under this Agreement.		(b) the solvent reconstruction of that other Party;
13.3	The Supplier accepts that the controls, benefits, rights, licences and indemnities granted to KPMG under the Agreement are also granted to each Member Firm and that any loss suffered by the KPMG or a Member Firm as a result of any action or omission under the Agreement shall be deemed to be a loss of KPMG and recoverable from the Supplier under the Agreement (subject to the agreed exclusions and limits on liability).		14.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party, other than for:-  (a) the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies; or  (b) the solvent reconstruction of that other Party;
13.4	The Supplier shall take out and maintain the following insurance policies and provide evidence that it has done the same and paid all premiums as and when requested by KPMG:		14.2.6 an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other Party;
13.4.1	Employers Liability insurance: limit of at least £5m per claim/occurrence;		14.2.7 a floating charge holder over the assets of that other Party has become entitled to appoint, or has appointed, an administrative receiver;
13.4.2	Public and Products Liability insurance: limit of at least £10million per claim/occurrence and at least £10million in the annual aggregate for Products liability; and		14.2.8 a person becomes entitled to appoint a receiver over the assets of the other Party, or a receiver is appointed over the assets of the other Party;
13.4.3	Professional Indemnity insurance: limit of at least £2m per claim.		14.2.9 any event occurs, or proceeding is taken, with respect to the other Party, in any jurisdiction to which it is subject, that has an effect equivalent or similar to any of the events mentioned in Clause 14.2.3 to Clause 14.2.4(a); and/or
14.	<b>TERMINATION</b>		14.2.10 the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
14.1	KPMG may terminate the Agreement for convenience by giving the Supplier not less than 30 days' notice in writing.		14.3 If:
14.2	Without affecting any other rights or remedies the Parties may have, either Party may terminate the Agreement immediately by giving written notice to the other if:-	14.3	14.3.1 there is a change in Control (as defined in section 574 of the Capital Allowances Act 2001) of the Supplier or a member of its group and Control is acquired or proposed to be acquired (directly or indirectly) in a single transaction or series of related transactions by a Restricted Entity; or
14.2.1	the other Party commits a material breach of the Agreement and, if such a breach is remediable, fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or		14.3.2 all or substantially all of the assets of the Supplier or any member of its group are acquired or proposed to be acquired by a Restricted Entity; or
14.2.2	the other Party repeatedly breaches the Agreement (whether of the same or different contractual provisions) in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention, or ability, to perform the Agreement; or		14.3.3 the Supplier becomes a Restricted Entity; or
14.2.3	the other Party:  (a) suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due or admits inability to pay its debts;  (b) being a company, is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or  (c) being a natural person, is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986;		14.3.4 the Supplier is merged or proposed to be merged with or into a Restricted Entity;
14.2.4	the other Party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for:-  (a) the sole purpose of a scheme for a solvent amalgamation of that other		then the Supplier shall provide KPMG with no less than 90 days' prior written notice (or to the extent that the Supplier is prohibited from providing such notice by law, the maximum amount of notice permissible by law) of such event (" <b>Change Event</b> "). At any time following the date on which (i) the Supplier's written notice is received; (ii) KPMG otherwise becomes aware that a Change Event will take place; or (iii) the Change Event takes place, KPMG may terminate this Agreement with immediate effect in its sole discretion by giving the Supplier written notice. If this Agreement is terminated under this Clause, the Supplier shall cease to provide the Services unless, in KPMG's sole discretion, KPMG requests otherwise in writing.

15. **CONSEQUENCES OF TERMINATION**
- 15.1 On termination of the Agreement for any reason, the Supplier shall comply with any specific termination activities identified in the Purchase Order and, in any event, immediately deliver to KPMG or destroy (on the instruction of KPMG):
- 15.1.1 any and all KPMG Materials;
- 15.1.2 all copies of confidential information and data provided by or on behalf of KPMG for the Agreement; and
- 15.1.3 all information, data and specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to KPMG (to the extent that they have not already done so under the other terms of the Agreement).
- 15.2 If any Charges have been paid in advance for Goods, Services and/or Deliverables not provided by the Supplier as at the termination date, the Supplier shall promptly repay to KPMG all such monies.
- 15.3 The Supplier shall provide access to KPMG and any replacement supplier for up to 12 months after the expiry or termination of the Agreement to such information relating to the Goods, Services and/or Deliverables as remains in the Supplier's possession or control and such members of the Supplier's team as have been involved in the performance of the Services and who are still employed by the Supplier. This assistance shall be provided free of charge if the Agreement is terminated under Clause 14.2 and, in all other cases, at fees to be agreed by the Parties.
- 15.4 On any termination or expiry of the Agreement the accrued rights and liabilities of the Parties as at termination, and all Clauses which are expressly or by implication to survive termination or expiry, shall survive and continue.
- 15.5 The Supplier shall confirm to KPMG in writing that it has complied with clause 15.1.
16. **GENERAL**
- 16.1 Neither Party shall be liable for any delay or failure in performing its obligations under the Agreement as a result of reasons beyond its reasonable control provided that it informs the other Party as soon as possible of the event and takes all reasonable steps to resume performance of its obligations as soon as possible and to mitigate the effects of the unforeseen event.
- 16.2 Neither Party may assign, novate, transfer or subcontract any of its rights, benefits or obligations under the Agreement without the prior written consent of the other Party, provided that KPMG may assign, novate, transfer or subcontract its rights and obligations under the Agreement to another member of its group.
- 16.3 Failure to exercise, or any delay in exercising, any right or remedy under the Agreement, or at law or equity, shall not be a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 16.4 If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal and enforceable.
- 16.5 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, make any party the agent of another Party, nor authorise any Party to enter into commitments for or on behalf of the other Party.
- 16.6 Each Party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, and/or procure the execution and delivery of all documents and doing of all such things as required to give effect to the Agreement and the transactions contemplated by it.
- 16.7 A notice required to be given under the Agreement shall be in writing and shall be:-
- 16.7.1 delivered personally; or
- 16.7.2 sent by pre-paid first class post or recorded delivery; or
- 16.7.3 sent by commercial courier;
- to the Party required to receive the notice at its address set out in the Purchase Order marked for the attention of the persons set out in the Purchase Order.
- 16.8 A notice shall be deemed duly received: (i) if delivered personally, when left at the address and for the contact referred to in Clause 16.8; or (ii) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or (iii) if delivered by commercial courier, on the date and at the time the courier's delivery receipt is signed.
- 16.9 The Agreement is the entire agreement between the Parties, superseding all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to the subject matter.
- 16.10 A variation of the Agreement shall not be effective unless in writing and signed by both Parties (and their authorised representatives).
- 16.11 Only the Parties shall have any rights under or in connection with the Agreement.
- 16.12 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

## APPENDIX 1 – KPMG POLICIES

### PART 1 – SUPPLIER CODE OF CONDUCT

At KPMG, we believe that Corporate Responsibility (CR) and Diversity and Inclusion are at the heart of all great organisations. We are committed to our communities, acting as responsible corporate citizens and aim to lead by example. We focus on the following key areas:



- Acting in a transparent and inclusive manner to ensure access to our organisation for diverse and under-represented suppliers.



- Ensuring our recruitment suppliers attract a diverse talent pool, reflecting the best candidates, irrespective of gender, race, faith, age, disability, socio-economic status or sexual orientation.



- Reducing environmental impact in our supply chain, with active support for the aims and activities of CDP ([www.cdp.net](http://www.cdp.net)) in measurement and disclosure.
- Working as a Principal Partner to the Living Wage Foundation to champion the Living Wage campaign ([www.livingwage.org.uk](http://www.livingwage.org.uk)) in our own operations and with our wider supplier community.

We believe that by working together with suppliers we will add value to our organisations, contribute to local community development and deliver the change required to meet sustainability challenges. Reducing environmental impacts will yield benefits in a future where resources are scarce, and successful businesses will need to draw on the full range of diverse talent to deliver the innovation necessary to prosper. We further believe that the Living Wage can lead to a more motivated workforce and that our links with schools and local communities can realise social mobility benefits through improved access to our organisation.

We therefore want our suppliers to:

- Embed corporate responsibility and inclusion and diversity within their workplace policies and practices.
- Support us in our efforts to reduce environmental impacts, work with a diverse supplier base and provide access to a broad talent pool, including requests for non-commercially sensitive information sharing.
- Work with their own suppliers to ensure these values and practices are cascaded along the supply chain, including ensuring full compliance to the Modern Slavery Act 2015.

We are proud to be supporters of the United Nations Global Compact ([www.unglobalcompact.org](http://www.unglobalcompact.org)) and are committed to its principles of working towards the vision of a more sustainable and inclusive global economy. The Compact informs our Supplier Code of Conduct and we require our suppliers to adopt its principles, underpinned by commitments to business conduct, labour conditions and human rights and environment.

The Compact also resonates with the KPMG Values – the guiding principles of ethical behaviour which KPMG adopts and requires our people to adhere to, including support for positive reform within our industry.

We therefore expect all suppliers to:

- Act with integrity, constantly striving to uphold the highest standards of ethical practice.
- Adhere to all applicable laws and regulations.
- Avoid any conflicts of interest and never participate in improper practices such as bribery or corruption.
- Abide by the same high standards and practices in relation to eradicating modern slavery and human trafficking, including (i) not using slave labour, illegal child labour or force labour, (ii) ensuring that all terms of employment are voluntary and (iii) adhering to local laws in respect of minimum age requirements, wages, overtime and working hours.



## PART 2 - BUSINESS CONTINUITY

1. The Supplier shall ensure that it has an effective business continuity management (BCM) programme that supports delivery of agreed service levels in the event of a major incident.
2. The programme has to have the Supplier's executive level support and be based on a sound business impact analysis of all critical services' provision.
3. It should include crisis management and business recovery capabilities and risk impact mitigation measures. The Supplier's BCM programme needs to integrate with KPMG's business continuity management and as such, be available to on-site auditing and joint exercising by KPMG business continuity representatives.
4. In assessing the adequacy of the BCM programme KPMG's evaluation may include examination of the following elements:
  - 4.1 evidence of executive level support (ideally a BCM policy);
  - 4.2 business impact analysis identifying critical processes, their impacts of failure and an assessment of the likelihood of such failures;
  - 4.3 crisis management strategy, including response organisation, capabilities and communication strategy;
  - 4.4 business recovery strategy, including "worst case" scenario planning;
  - 4.5 mitigation measures in place to limit both risks and impacts associated with threats to service delivery;
  - 4.6 BCM programme testing including outcomes and evidence;
  - 4.7 on-site audit; and
  - 4.8 joint exercises.

## APPENDIX 2 – IT AND DATA SECURITY REQUIREMENTS

1. Unless required by law or for professional compliance purposes, the Supplier will not (without KPMG's prior consent):
  - a. use KPMG data for any collateral purpose, or
  - b. transfer data between group entities or other third parties.
2. The Supplier must have in place commercially available:
  - a. perimeter traffic filter controls (network firewalls) and
  - b. up-to-date anti-malware protection on all PCs and servers
3. The supplier will ensure that all access to KPMG data is:
  - a. provided through documented, and
  - b. authenticated through technical controls to prevent access from unauthorised individuals.
4. The Supplier will prohibit the sharing and recycling of unique IDs and user accounts.
5. The Supplier will ensure that accounts with administrative privileges are strictly controlled, and that activities in relation to KPMG data access and the logon/logoff of such accounts are audited for failure and success events.
6. The Supplier will have a documented Joiners / Movers / Leavers process that will ensure prompt removal of access rights from individuals no longer having a need to access KPMG data.
7. The Supplier must have a procedure for guaranteeing confidentiality and no sharing of passwords.
8. The Supplier will require its account passwords to consist of at least 8 characters, including upper and lower case letters and numbers.
9. The Supplier will support encrypted transmissions of KPMG data across untrusted networks (e.g., the Internet) using industry standard (non-deprecated) encryption systems in all circumstances.
10. The Supplier's premises must have reasonable physical access controls in place that will restrict unauthorised individuals from accessing the zones where KPMG data is being processed. IT and infrastructure rooms must have additional access restrictions in place and a documented process to grant and review this level of restricted access.
11. The Supplier will put in place:
  - a. secure erasure or secure destruction measures for electronic media, and
  - b. paper shredding measures or secure bins for disposal of hardcopy information.
12. The Supplier will ensure Data Security policies and appropriate confidentiality undertakings form part of employment contracts for staff and service contracts for contractors/suppliers and will ensure that these obligations are passed down the supply chain whenever KPMG data is accessed, stored, or processed.
13. The Supplier will provide mandatory training to all staff on privacy, confidentiality and data security.
14. The Supplier will notify KPMG upon discovery (as soon as possible, and in all cases within 48 hours) of any data loss or security breach.
15. In the event of a data breach, the Supplier shall fully cooperate with KPMG to investigate and remediate the breach, cooperate with any supervisory authorities and law enforcement, and assist with any regulatory notifications as required.
16. The Supplier must have a Business Continuity Policy in place and be able to reconstruct quickly data in the state prior to loss and damage.
17. The Supplier will ensure that all KPMG data, backup media and server copies are only transferred outside the EEA area to countries deemed by the EU Commission to provide equivalent protection, or otherwise comply with the Privacy Shield onward transfer requirements.
18. The Supplier will implement data protection by design in all applicable systems that store, transmit or process KPMG data.
19. The Supplier will ensure that data processing should be set up so that it can help KPMG respond to and fulfil data subject requests (e.g., with respect to their right to data portability, right of access, right to rectification, right to erasure, right to restriction of processing, right to object to processing, and right to not be subjected to automated profiling).
20. At the request of KPMG, the Supplier shall make available to KPMG all information necessary to demonstrate the Supplier's compliance with its data processing obligations.

## APPENDIX 3 - DATA PROCESSING DETAILS

1 **Subject-matter of Processing:**

*The subject matter of the Processing of the Personal Data is set out in the Agreement.*

2 **Duration of the Processing:**

*The duration of the Processing of the Personal Data is set out in the Agreement.*

3 **Nature and purpose of the Processing:**

*Supplier will process Personal Data for the purposes of providing the Services to KPMG in accordance with the Agreement.*

4 **Categories of Personal Data:**

*Data relating to Data Subjects provided to the Supplier in the course of the Services, by (or at the direction of) KPMG, another third party or by Data Subjects. Examples of Personal Data may include contact details, personal details such as gender and date of birth, financial details, employment and educational details, family, lifestyle and social circumstances. Personal Data may also concern special categories of data such as racial or ethnic origin, political opinions, religious or other beliefs, trade union membership, physical or mental health details.*

5 **Categories of Data Subjects:**

*Data Subjects include the individuals about whom data is provided to the Supplier in the course of the Services, by (or at the direction of) KPMG, another third party or by Data Subjects. The Personal Data transferred may concern the following categories of Data Subjects and may arise out of prospective, historic or existing relationships between KPMG and:*

- *Partners, employees and other workers;*
- *Clients and customers;*
- *Advisors, consultants, other professional experts;*
- *Affiliates, business partners (including suppliers), associates and contacts made in the course of KPMG's business; and*
- *Any other data subjects who have a relationship with (i) to (iv) above.*

6 **Locations of Processing:**

*United Kingdom*