

## TERMS AND CONDITIONS FOR THE SUPPLY OF FLEX SERVICES

### THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY)

#### 1. INTERPRETATION

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

**Affected Party:** has the meaning set out in clause 11.2.

**Affiliate:** includes, in relation to the Supplier, each and any subsidiary or holding company of the Supplier and each and any subsidiary of a holding company of the Supplier.

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

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with the SLA and clause 5 of the Conditions (Charges and payment).

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 13.4.

**Contract:** the contract between the Supplier and the Customer for the supply of Services, incorporating the SLA and these Conditions.

**Contract Year:** a 12 month period commencing with the date of the SLA or any anniversary of it.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Consumption Based Commission:** such element of the Charges as may be agreed in the SLA relating to commission payable to the Supplier based upon the energy consumed by the Customer under the applicable Energy Contracts.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Costs Savings Commission:** such element of the Charges as may be agreed in the SLA relating to commission payable to the Supplier upon achieving energy price benchmarks.

**Customer:** the person or firm who purchases Services from the Supplier.

**Customer Default:** has the meaning set out in clause 4.2.

**Customer Personal Data:** any Personal Data which the Supplier processes in connection with the Contract, in the capacity of a processor on behalf of the Customer.

**Day-Ahead Market:** the financial market where market participants purchase and sell electric energy at financially binding day-ahead prices for the following day.

#### Data Protection Legislation:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- (b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Supplier is subject, which relates to the protection of personal data.

**Deliverables:** the documents produced by the Supplier for the Customer in relation to the Services in any form.

**Energy Contract:** an energy contract as defined in the SLA.

**Energy Supplier:** an energy supplier as defined in the SLA.

**Fixed Fee:** such element of the Charges as may be agreed in the SLA to be paid by the Customer to the Supplier on a monthly basis.

**Flex Services:** advisory and consultancy services relating to the flexible purchasing and/or selling of energy subject to the terms of a relevant Energy Contract (whether on the Day-Ahead Market or annually, seasonally, quarterly, monthly, or other agreed periods, as may be agreed with the Customer from time to time) and/or the procuring of energy contracts in relation to the same.

**Force Majeure Event:** has the meaning set out in clause 11.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Premises:** has the meaning set out in clause 4.1(c).

**Restricted Person:** any firm, company or person employed or engaged by the Supplier during the term of this Contract, who has been engaged in the provision of the Services or the management of this agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement and who could materially damage the interests of the Supplier if they were involved in any capacity in any business concern which competes with the business of the Supplier.

**Scope of Services:** the description of the Services to be provided by the Supplier to the Customer as set out in the SLA and/or as otherwise agreed between the parties in writing.

**Service Level Agreement / SLA:** the agreement entered into between the Supplier and the Customer detailing the Services to be provided by the Supplier.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer in accordance with the Scope of Services.

**Supplier:** NGP Utilities Limited registered in England and Wales with company number 09380706.

**Software:** the online software applications provided by the Supplier in the provision of the Services, including but not limited to the Website.

**Supplier Materials:** has the meaning set out in clause 4.1(h).

**Term:** the duration of the Contract as set out in the SLA subject to termination in accordance with the other provisions of the Contract.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

**Website:** the document made available to the Customer by the Supplier online through a customer portal for the purpose of providing hedging reports at <https://app.flexer.energy> or such other web address notified by the Supplier to the Customer from time to time.

1.2 Interpretation:

- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:

- (i) is a reference to it as amended, extended or re-enacted from time to time; and
- (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to writing or written includes emails but not faxes.

## 2. BASIS OF CONTRACT

- 2.1 These Conditions apply to all contracts formed as a result of the Supplier accepting any request by the Customer for the provision of Flex Services based on any proposal or quotation provided by the Supplier including all Contracts formed by virtue of an SLA signed by both parties in accordance with clause 2.3.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.3 An SLA that is signed by the Customer constitutes an offer by the Customer to purchase the Services in accordance with these Conditions and the offer shall only be deemed to be accepted when the Supplier issues to the Customer an SLA signed by the Supplier, at which point, and on which date, the Contract shall come into existence.
- 2.4 Any proposal, quotation or draft SLA provided to the Customer by the Supplier shall not constitute an offer and is only valid for a period of 30 Business Days from its date of issue.
- 2.5 Any proposals provided to the Customer containing indicative energy market prices do not constitute a contract and the rates are not guaranteed. Energy market prices are only guaranteed once a contract has been agreed between the Customer and the rates have been confirmed and secured by the Customer's Energy Supplier.
- 2.6 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

## 3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Scope of Services in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the SLA or otherwise by the Supplier in writing, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Scope of Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using such care and skill as the Customer could reasonably expect from a skilled and experienced person engaged in the same type of services under similar circumstances or conditions operating in accordance with good industry practice.

## 4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
  - (a) ensure that all energy data provided to the Supplier is complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services;
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office

- accommodation and other facilities (**Premises**) as reasonably required by the Supplier for the provision of the Services;
  - (d) take all necessary precautions to protect the health and safety and security of the Supplier's personnel whilst they are at the Premises;
  - (e) immediately inform the Supplier if there is any change in the Premises, circumstances and/or business, which is likely to cause a material impact upon the provision of the Services;
  - (f) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
  - (i) comply with any additional obligations as set out in the Scope of Services.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 5. CHARGES AND PAYMENT

- 5.1 In consideration for the Services, the Customer agrees to pay the Supplier the Charges in accordance with the payment terms of the SLA and this Condition 5.
- 5.2 Where the Customer has agreed to pay the Supplier Consumption Based Commission, such Consumption Based Commission:
  - (a) is included within any Energy Suppliers' proposals presented to the Customer by the Supplier;
  - (b) is included within the energy unit rate (kWh) in the Energy Contract;
  - (c) is paid to NGP directly by the relevant Energy Supplier;
  - (d) will not be invoiced directly by the Supplier to the Customer; and
  - (e) is variable, dependent on the volume of energy unit (kWh) consumed by the Customer under the relevant Energy Contract.
- 5.3 Where the Customer has agreed to pay the Supplier a Fixed Fee and/or Costs Savings Commission, the Supplier shall invoice the Customer monthly in arrears for any such Fixed Fee and/or Costs Savings Commission.
- 5.4 The Customer shall pay any invoice submitted by the Supplier:
  - (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 5.5 All amounts payable by the Customer under any such invoice are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If by the due date for payment, the Customer fails to make a payment due to the Supplier under an invoice raised pursuant to this Contract, then, without limiting the Supplier's remedies under the Contract, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 All amounts due under any invoice raised under this Contract shall be paid in full by the without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2 Subject to the Customer paying the Charges in accordance with clause 5, the restrictions set out in this clause 6 and the other terms and conditions of the Contract, the Supplier grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Customer to use the Software during the Term solely for the Customer's internal business operations.
- 6.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - facilitates illegal activity;
  - depicts sexually explicit images;
  - promotes unlawful violence;
  - is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 6.4 The Customer shall not:
- except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:
    - attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
    - attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - access all or any part of Software in order to build a product or service which competes with the Software; or
  - use the Software to provide services to third parties; or
  - subject to clause 13.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party; or

- attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this clause 6; or
  - introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.
- 6.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 6.6 The rights provided under this clause 6 are granted to the Customer only, and shall not be considered granted to any Affiliate of the Customer.
- 6.7 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Software. Except as expressly stated herein, the Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software.
- 6.8 The Supplier confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.
- 6.9 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.10 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.9.
- 6.11 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## 7. DATA PROTECTION

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 7.3 The Customer acknowledges that the Supplier, once authorised to do so by the Customer (by signing the SLA), may, for the purpose of providing the Services as set out in the Scope of Services and for the duration of the Term and for a reasonable period thereafter as necessary to allow the Supplier to comply with the terms of the Contract:
- gather the Customer's data (both commercial and incidental personal data (such as Customer contact details) as the case may be) from the Customer; and
  - share the Customer's data (both commercial and incidental personal data) with its Affiliates.
- 7.4 Without prejudice to the generality of clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier and/or lawful collection of the Customer Personal Data by the Supplier on behalf of the Customer for the duration and purposes of the Contract.
- 7.5 Without prejudice to the generality of clause 7.1, the Supplier shall, in relation to any Customer Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- process that Customer Personal Data only on the documented written instructions of the Customer which are set out in the Proposal and Order unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Personal Data, the Supplier

shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless the Domestic Law or EU Law prohibits the Supplier from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Customer Personal Data are obliged to keep the Customer Personal Data confidential.
  - (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (e) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
  - (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Contract unless required by the Data Protection Legislation to store the Customer Personal Data; and
  - (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 7.
- 7.6 The Customer hereby provides its prior, general authorisation for the Supplier to:
- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
    - (i) shall ensure that the terms on which it appoints such processors comply with Data Protection Legislation, and are consistent with the obligations imposed on the Supplier in this clause 7;
    - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
    - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Legislation, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
  - (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with the Data Protection Legislation. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection

clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

- 7.7 The Supplier may, at any time on not less than 30 days' notice, revise this clause 7 by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct (Amended Terms). Such Amended Terms shall apply when replaced by attachment to this agreement, but only in respect of such matters which are within the scope of the Amended Terms.
- 8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
  - 8.2 Nothing in this clause 8 shall limit the Customer's payment obligations under the Contract.
  - 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
    - (a) death or personal injury caused by negligence; or
    - (b) fraud or fraudulent misrepresentation.
  - 8.4 Subject to clause 8.3 (Liabilities which cannot legally be limited), the Supplier's total aggregate liability to the Customer for in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with performance or contemplated performance of the Contract shall not exceed:
    - (a) the total amount of the Fixed Fee that is due and payable to the Supplier in the Contract Year in which the liability arises; or
    - (b) where no Fixed Fee has been agreed, the total amount of Consumption Based Commission due and payable to the Supplier in the Contract Year in which the liability arises; or
    - (c) where no Fixed Fee or Consumption Based Commission has been agreed, the total amount to the Costs Savings Commission due and payable to the Supplier in the Contract Year in which the liability arises.
  - 8.5 Subject to clause 8.2 (No limitation of customer's payment obligations) and clause 8.3 (Liabilities which cannot legally be limited), this clause 8.5 sets out the types of loss that are wholly excluded:
    - (a) loss of profits
    - (b) loss of sales or business.
    - (c) loss of agreements or contracts.
    - (d) loss of anticipated savings.
    - (e) loss of use or corruption of software, data or information.
    - (f) loss of or damage to goodwill; and
    - (g) indirect or consequential loss.
  - 8.6 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
  - 8.7 This clause 8 shall survive termination of the Contract.
- 9. TERMINATION**
- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
    - (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy

that breach within 30 days of that party being notified in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 9.2 Non-payment of the Charges shall be deemed to be a material breach of the Contract.
- 9.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
  - (b) there is a change of Control of the Customer.
- 9.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
  - (b) the Customer becomes subject to any of the events listed in clause 9.1(c), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
  - (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.1(b).

## 10. CONSEQUENCES OF TERMINATION

- 10.1 On termination or expiry of the Contract:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Charges for Services supplied and/or Costs Savings Commission but for which no invoice has been submitted, the Supplier shall be entitled to submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 11. FORCE MAJEURE

- 11.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
  - (b) epidemic or pandemic;
  - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

- (d) nuclear, chemical or biological contamination or sonic boom;
  - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - (f) collapse of buildings, fire, explosion or accident;
  - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
  - (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
  - (i) interruption or failure of utility service.
- 11.2 Provided it has complied with clause 11.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 11.3 The corresponding obligations of the other party will be suspended, and the time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 11.4 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 14 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
  - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 11.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, the party not affected by the Force Majeure Event may terminate this agreement by giving 14 days' written notice to the Affected Party.

## 12. NON-SOLICITATION

- 12.1 In order to protect the legitimate business interests of the Supplier, the Customer (for itself and as agent for its Affiliates) covenants with the Supplier that it shall not (and shall procure that no Affiliate shall) (except with the prior written consent of the Supplier):
- (a) attempt to solicit or entice away; or
  - (b) solicit or entice away, from the employment or service of the Supplier the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the Supplier.
- 12.2 The Customer shall be bound by the covenant set out in clause 12.1 during the term of the Contract, and for a period of 12 months after termination or expiry of the Contract.
- 12.3 If the Customer commits any breach of this clause 12, the Customer shall, on demand, pay to the Supplier a sum equal to one year's basic salary or the annual fee that was payable by the Supplier to the Restricted Person plus the recruitment costs incurred by the Supplier in replacing such person. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of the Supplier in performance.

## 13. GENERAL

- 13.1 **Assignment and other dealings.**
- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 13.2 Confidentiality.**
- (a) 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, except as permitted by clause 13.2(b).
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 13.3 Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 13.4 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.5 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.6 Severance** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 13.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.7 Notices.**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the SLA.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 13.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 13.8 Third party rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 13.9 Agency & Partnership.**
- (a) The Supplier is an independent energy consultant and nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided in the Services.
- (b) Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 13.10 Rights and remedies.** Except as expressly provided in the Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 13.11 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 13.12 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.