

# **RWE Renewables UK**

## **General Conditions of Contract for Professional Services**

Version	4.0
Date	July 2020
Document Control	Procurement

## Contents

1	Definitions and Interpretation	1
2	Obligations of the Consultant	3
3	Provisions of Services	5
4	Obligations of the Employer	6
5	Health and Safety	6
6	Termination	9
7	Force Majeure	10
8	Variations	10
9	Fees and Expenses	10
10	VAT	10
11	Invoicing and Payment	10
12	Tax and Other Liabilities	11
13	Conflict of Interest	11
14	Assignment	11
15	Confidentiality	12
16	Exclusion of Agency or Partnership	12
17	Governing Law and Jurisdiction	13
18	Ownership of Results	13
19	Third Party Rights	13
20	Remedies for Late Delivery or Non-Performance	13
21	Indemnity and Liabilities	14
22	Insurance	14
23	Entire Agreement	14
24	Warranties	14
25	Notices	15
26	System Access	16

## 1 Definitions and interpretation

1.1 In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

<b>"Affiliate"</b>	means any holding company or subsidiary of a Party or any company which is a subsidiary of the holding company of such Party and the expressions "holding company" and "subsidiary" shall have the meanings respectively ascribed thereto by Section 1159 of the Companies Act 2006 as amended.
<b>"Applicable Law"</b>	means all laws, legally enforceable and applicable regulations, orders, rules, judgments, directives, embodied in law and in force from time to time applicable to a Party and relevant to the Contract.
<b>"Business Day"</b>	means a day (other than a Saturday, Sunday or a public holiday in England) when the banks in London are open for business.
<b>"Consultant"</b>	means the entity identified as such in the Purchase Order.
<b>"Consultant's Contact"</b>	means all or any one of the individuals identified as such within the Purchase Order
<b>"Contract"</b>	means the contract comprising the Purchase Order and these general terms and conditions.
<b>"Contract Period"</b>	means the period up to the Scheduled Completion date during which Services will be provided as set out in the Purchase Order.
<b>"Deliverables"</b>	means all documents, products and materials developed by the Consultant or its agents, sub-consultants and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
<b>"Employer"</b>	the company from within the RWE Group which is named as the contracting entity in the Purchase Order..
<b>"Employer Materials"</b>	has the meaning given in clause 3.2(e).
<b>"Employer's Contact"</b>	means all or any one of the individuals identified within the Purchase Order.
<b>"Expenses"</b>	has the meaning given in clause 9.2.

<b>"Fee"</b>	has the meaning given in clause 9.1.
<b>"Force Majeure"</b>	means fire, flood, earthquake, explosion, other natural physical disaster, riot, war, invasion, act of foreign enemies, hostilities, acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, strikes or any other circumstance beyond the reasonable control of a Party.
<b>"Good Industry Practice"</b>	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the provisions of consultancy or professional support services of a type similar to those to be provided pursuant to the Contract.
<b>"RWE Group"</b>	RWE Aktiengesellschaft and its subsidiaries with "subsidiary" having the meaning ascribed to such term in Section 1159 of the Companies Act 2006.
<b>"RWE Group Policy Document"</b>	any relevant rules, policies or standard techniques used by the RWE Group including without limitation the provisions of the Employer's Sustainability Schedule attached as an appendix to the Purchase Order, the relevant Employer's health and safety requirements for working on the Employer's sites, the Employer's Code of Conduct and such other policies as the Employer may notify to the Contractor from time to time, copies of which shall be available for inspection at the Employer's offices.
<b>"Intellectual Property Rights"</b>	means all trade marks, service marks, trade names, logos get-up, patents inventions, registered and unregistered design rights, copyrights and neighbouring rights, semi-conductor topography rights, database rights, know-how (being confidential industrial and commercial information and techniques in any form including field notes, data collected, drawings, formulae, test results, reports, project reports and testing procedures, shop practices, instructions and training manuals, tables of operating conditions, specifications, tables, lists, show-how and advertising copy) and all other similar proprietary rights which may subsist in any part of the world including where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations.
<b>"Letter of Reliance"</b>	has the meaning given in clause 14.3.

<b>"Party"</b>	means the Employer or the Consultant (as the context requires) and "Parties" shall be construed accordingly.
<b>"Purchase Order"</b>	means the letter issued by the Employer to the Consultant setting out details of the Services which are to be provided by the Consultant to the Employer.
<b>"Safety Incident"</b>	means an accident, incident or near-miss, whether or not death or personal injury or other property damage is caused.
<b>"Serious Incident"</b>	means a fatal accident; or an accident involving a serious injury, such as an amputation, fracture, electrical shock or burn, loss of sight (temporary or permanent), or any injury resulting in admittance to hospital for more than 24 hours.
<b>"Scheduled Completion Date"</b>	the date specified in the Purchase Order as the date by which the Services must be completed, as such date may be varied in accordance with these terms and conditions.
<b>"Services"</b>	means the consultancy and/or professional services to be provided by the Consultant under the terms of the Contract following the acceptance of the Contract by the Consultant, the scope of such Services to be set out in detail in the Purchase Order.
<b>"Site"</b>	means the area described as such in the Purchase Order.
<b>"Site Specific Risk Assessment and Method Statement"</b>	the risk assessment and method statement to be completed by the Consultant's Contact (or such other person as may be notified to the Employer) with regards to Services and detailing the manner in which the Services are to be performed.
<b>"Staff"</b>	any of the Consultant's employees, agents, sub-consultants or suppliers engaged in the carrying out of the Services.
<b>"Term"</b>	means the duration of the Contract as set out in the Purchase Order.

1.2 In these terms and conditions, unless the context otherwise requires words in the singular include the plural and vice versa and a reference to a person includes a reference to a body corporate and to an unincorporated body of persons

## **2. Obligations of the Consultant**

2.1 The Consultant shall using reasonable skill and care at all times during the period of the Contract:

- (a) comply with all Applicable Law, rules, guidelines and codes of practice applicable to the performance of the Services;
  - (b) ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Services
  - (c) carry out all risk assessments and ensure safe organisation and implementation of the Services that would ordinarily be expected to be carried out by a provider of services similar to those required under the Contract acting in accordance with Good Industry Practice
  - (d) comply, and procure that its Staff comply, with the RWE Group Policy Document;
  - (e) faithfully and diligently perform those duties and exercise such powers consistent with them which are from time to time necessary in connection with the provision of the Services;
  - (f) ensure that the Services are supervised at all times by a competent person; and
  - (g) obey, and procure that its Staff obey, all lawful and reasonable directions of the Employer.
- 2.2 The Consultant shall, if requested, upon reasonable notice and during normal office hours, being 08:30 until 17:00 on each and every Business Day, attend such meetings at the Employer's premises (or such other place as may be agreed) as may be reasonably required by the Employer in furtherance of or to monitor progress of the Services.
- 2.3 Unless expressly permitted by the Employer in the Purchase Order, the Consultant shall perform the Services personally and shall not sub-contract or delegate any of the Services or the preparation of any proposals to any third party without the Employer's prior written consent.
- 2.4 Before entering into any sub-contract, whether provided for in the Contract or not, the Employer shall be given an adequate opportunity to review the form of sub-contract, the choice of sub-consultant, the part of the Services included in the sub-contract and any other relevant details requested by the Employer.
- 2.5 The Consultant shall be responsible for all work, acts, omissions and defaults of any sub-consultant as fully as if they were work, acts, omissions or defaults of the Consultant.
- 2.6 While the Consultant shall be entitled to adopt its own general method of working, the Consultant shall comply with any reasonable requests of the Employer in relation to the provision of the Services. The Consultant shall, as reasonably required by the Employer, work and co-operate with the personnel and/or other consultants of the Employer in relation to the provision of the Services.
- 2.7 The Consultant shall submit to the Employer for approval interim Deliverables and recommendations on the Services and related information in such form and at such times as is set out in the Purchase Order or as may be reasonably required by the Employer. Prior to completion of the Services the Consultant shall submit to the Employer the final Deliverables for approval in such form as is set out in the Purchase Order or as may otherwise be agreed with the Employer.

- 2.8 Where the standard of the Deliverables is expressly defined in the Purchase Order, and in the event that the Employer does not approve any Deliverables to be submitted by the Consultant pursuant to clause 2.7, whether interim or final, as it reasonably believes that the Deliverables do not conform or comply with such standard the Employer shall have the option, at its absolute discretion to either:
- (a) exercise its rights under clause 20.1; or
  - (b) to not pay the Consultant that element of the Fee related to the production of such Deliverables; or
  - (c) agree a reduced price for the Deliverables with the Consultant taking into account their failure to comply with the required standard.
- 2.9 The Consultant shall keep written records of all communications related to each Contract including all relevant communications between the Employer, the Consultant and any third parties. The Consultant shall take and retain minutes of all meetings relating to the Contract and shall provide these records of communication as reasonably requested by the Employer.
- 2.10 When providing the Services the Consultant must not do or omit to do anything which may, in the sole opinion of the Employer, bring the Employer's name, or the name of any company within the RWE Group, into disrepute or damage its reputation, goodwill or business interests.

### **3. Provision of Services**

- 3.1 The Consultant shall provide all Staff for the provision of the Services. The Consultant shall ensure that no relationship of Employer and employee is created as between the Employer and any Staff.
- 3.2 The Consultant warrants and undertakes as follows:
- (a) that it shall provide the Services by the Scheduled Completion Date in accordance with the terms of the Contract, Site Specific Risk Assessment and Method Statement and Applicable Law;
  - (b) that it shall provide any goods and any other tools and equipment necessary to properly and efficiently provide the Services;
  - (c) that the Services will be performed with reasonable skill and care and in accordance with Good Industry Practice;
  - (d) that the Services will conform with all descriptions and specifications set out in the Purchase Order and that the Services and any Deliverables shall be fit for any purpose expressly or impliedly made known to the Consultant by the Employer;
  - (e) that it shall hold all materials, equipment and tools, drawings, specifications and data supplied by the Employer to the Consultant ("**Employer Materials**") in safe custody at its own risk, maintain the Employer Materials in good condition until returned to the Employer, and not dispose or use the Employer Materials other than in accordance with the Employer's written instructions or authorisation; and
  - (f) that it and all its Staff have the skill and expertise required to carry out the provision of the Services to the standards required in the Contract.
- 3.3 The Consultant shall ensure that the Staff comply with the Employer's local security arrangements including the right to search. The Consultant shall ensure that the

Staff carry out their duties so as to cause minimum disruption to the Employer's business operations.

- 3.4 Unless otherwise agreed between the Parties in writing, the Consultant shall be entitled to rely upon any survey, report or other document prepared by or on behalf of the Employer and which the Employer provides to the Consultant, as a furnished item under the Contract, regarding any such matter relating to the Contract. Whilst the Employer does not warrant the accuracy or completeness of any such surveys, reports or other documents so provided to the Consultant, it is acknowledged and agreed that the Consultant shall not be liable to the Employer for any defect or failure in the Services to the extent that such defect or failure is caused by or attributable to any inaccuracy or incompleteness of the surveys, reports or other documents provided to the Consultant.
- 3.5 If the Consultant does not already have in place an occupational pension scheme that allows all eligible employees and earnings at or above the National Insurance lower earnings level to join within 12 months of starting work for it, or if the Consultant is not an exempt employer under the provisions of the Welfare Reform and Pensions Act 1999 (the "**Act**"), the Consultant shall provide to the Employer such evidence as the Employer may reasonably require that the Consultant has arranged for its relevant employees as defined in the Act to have access to a stakeholder pension scheme in accordance with the Act and the Stakeholder Pension Scheme Regulations 2000.
- 3.6 There will be no contract between the Employer and any of the Consultant's third party workers, and the Consultant will be responsible, at its cost, for all vetting and auditing of its third party workers (including but not limited to checking identities, c.v's, references, qualifications, DBS records, ISA checks, FSA compliance, rights to work in UK, driving licenses, etc). The Consultant will indemnify the Employer and the RWE Group against any loss, liability, damage, expense, claim, fine, demand, proceeding, charge, expense, claim, fine, demand, proceeding, charge, expense or cost suffered or incurred by it (and/or the RWE Group) as a result of any breach by the Consultant of its obligations under this clause.

#### **4. Obligations of the Employer**

- 4.1 The Employer shall pay the Fees and Expenses to the Consultant.
- 4.2 Throughout the period of the Contract the Employer shall:
- (a) afford the Consultant such access, but not exclusive access to such parts of the Site as the Consultant may reasonably require to provide the Services under the Contract;
  - (b) advise the Consultant of the rules and regulations which are then in force for the conduct of personnel at the Site;
  - (c) make available appropriate personnel to liaise with the Consultant; and
  - (d) inform the Consultant of any defects in the Consultant's performance of the Contract in providing the Services within a reasonable period after such defects come to the attention of the Employer.

#### **5. Health and Safety**

- 5.1 The Employer shall provide the Consultant with all relevant information in the Employer's possession in relation to the Site necessary for the performance of the Services.



- 5.2 The Employer does not warrant the adequacy, accuracy or sufficiency of the information provided to the Consultant pursuant to clause 5.1. The Consultant shall take all necessary steps to secure all necessary information for undertaking the Services at the Site in accordance with the Contract and for checking the adequacy, accuracy and sufficiency of the information provided to the Consultant by the Employer.
- 5.3 No later than five (5) Business Days, or such other period as stated within the Purchase Order, prior to the commencement of the Services at the Site the Consultant's Contact (or such other person as may be notified to the Employer) shall provide to the Employer's Contact the Site Specific Risk Assessment and Method Statement for carrying out the Services.
- 5.4 The Employer's Contact shall check the Site Specific Risk Assessment and Method Statement to ensure that appropriate hazards and risks have been addressed and, once so satisfied, shall confirm this to the Consultant. The reviewing of the Site Specific Risk Assessment and Method Statement by the Employer's Contact shall not in any way relieve the Consultant of its obligations under the Contract or of its duty to check that all appropriate hazards and risks identified at the Site have been addressed.
- 5.5 The Consultant shall, if requested, provide the Employer with such evidence as may be reasonably required to demonstrate that it has a good safety track record and a commitment to maintaining high levels of safety performance standards.
- 5.6 The Consultant shall not permit access to the Site by any third party without permission of the Employer or the Site owner(s). The Consultant shall be responsible for ensuring that any sub-consultants do not enter any other part of the Site and that they make use only of such roads, routes and facilities as the Employer may from time to time authorise. The Consultant shall, and shall procure its sub-consultants (if any) shall, keep records of all acts and things done in the provision of the Services (including but not limited to all monitoring and testing procedures and other measures taken to ensure the safety of the Services) and at the Employer's request shall make them available for inspection and/or provide copies to the Employer.
- 5.7 The Consultant shall have in place an accident reporting procedure in compliance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, and shall report all accidents, incidents or near-misses (whether or not death or personal injury or other damage is caused) to the Employer so the Employer can make full and accurate notifications as it is required to do so by law. The Consultant shall make notifications of any Serious Incident as soon as is possible, and in the case of any other accident, incident or near-miss, shall make notification no later than 10.00 am on the Business Day immediately following the incident taking place.
- 5.8 The Consultant shall have in place an accident investigation procedure to deal with all Serious Incidents. Copies of all Serious Incident investigation reports shall be supplied by the Consultant to the Employer promptly following the conclusion of the investigation.
- 5.9 The Consultant shall immediately notify the Employer if any Site where Services are being, or have been, provided by the Consultant is the subject of a visit or inspection by a regulatory body or the subject of any enquiry made in writing. The Consultant shall provide the Employer with all details of that visit, inspection or

- enquiry and promptly provide the Employer with copies of all related correspondence.
- 5.10 The Employer may stop all or any part of the Services if it believes the working processes being used breach the requirements of this condition, are unsafe or pose a risk to persons or property.
- 5.11 The Consultant shall notify the Employer immediately following receipt of any prosecution, improvement notice, written warning or other correspondence received from the Health & Safety Executive, the Environment Agency, any local authority or the police which relates to any Safety Incidents involving services of the same or a similar type to those provided under the Contract or provided by the Consultant.
- 5.12 Where necessary, the Consultant shall in connection with the Services provide and maintain at his own cost all lights, guards, fencing and watching when or required for the carrying out of the Services or for safety and convenience of third parties.
- 5.13 Where access to the Site is granted to the Consultant by the Employer for the carrying out of the Services, the Consultant shall carry out the Services to minimise any nuisance and/or noise caused to any adjoining landowners, third parties or any other party with an interest in or access over the Site.
- 5.14 Where appropriate, the Consultant shall ensure that the Site is restored to the physical condition in which it was found on the commencement date of the Contract.
- 5.15 The Consultant, at its own cost, shall provide its Staff with training and all necessary safety equipment to ensure that they are qualified and able to perform the Services safely. Without prejudice to the generality of the foregoing, the Consultant shall ensure that:
- (a) all equipment and other tools are in a good and serviceable condition;
  - (b) Staff are suitably skilled and experienced and are trained in the use of all tools and equipment needed to perform the Services;
  - (c) it has put procedures in place to ensure that Staff are able to understand and comply with oral and written instructions given by the Employer, which relate to health and safety; and
  - (d) it has put in place suitable precautions to prevent contact or injury.
- 5.16 The Consultant shall be responsible for ensuring that it provides safe systems of work for all activities performed under the Contract.
- 5.17 If, in providing the Services, the Consultant undertakes any work on the Employer's premises the Consultant shall be subject to the RWE Group Policy Document and shall abide by any Site safety and security regulations as are in force at the time which will be provided by the Employer when applicable or on request.
- 5.18 Where it is necessary for the Consultant to visit the Employer's premises or the Site for the purpose of providing the Services or otherwise discharging its obligations under the Contract, the Employer shall procure such rights of access as the Consultant may reasonably require that shall be subject at all times to such safety and security regulations as are in force at the time.
- 5.19 The Consultant shall ensure that it is familiar with the arrangements for access to Site. The Consultant shall also inform itself to the extent of facilities, car parking

etc available to it at the Site. The Consultant is responsible for ensuring that it and any third parties are familiar with the boundaries of the Site and do not enter any adjacent area without obtaining prior permission.

- 5.20 The Consultant shall comply with any quality and safety standards as may be specified by the Employer in the specification and subsequent Contract and with any appropriate codes of practice that may be notified to it by the Employer by means of the provision of a copy thereof.
- 5.21 The Consultant shall afford to the Employer such rights of audit and inspection of records and premises as may reasonably be required for the Employer to verify that the Consultant is complying with the provisions of this clause 5.
- 5.22 As between the Consultant and the Employer the Consultant shall not be entitled to rely upon any survey, report or other document prepared by, or on behalf of, the Employer regarding any such matter as is referred to in this clause 5 and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. To the fullest extent permitted by law the Employer shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, therein contained.

## 6. Termination

- 6.1 Without prejudice to any other rights it may have, either Party (the "**non-defaulting party**") may by notice in writing immediately terminate the Contract if the other Party (the "**defaulting party**"):
- (a) is in material breach of any of the terms of the Contract and which in the case of a breach capable of remedy is not remedied by the defaulting party within seven (7) Business Days of receipt of a notice from the non-defaulting party specifying the breach and requiring its remedy;
  - (b) is incompetent, guilty of gross misconduct or is negligent in discharging its obligations under the Contract;
  - (c) fails or refuses to carry out any obligations properly required of it under the Contract; or
  - (d) is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger), becomes insolvent or is unable to pay its debts as they become due, makes a general assignment, arrangement or composition with or for the benefit of its creditors, institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under bankruptcy or insolvency law or other similar law affecting creditors' rights or a petition is presented for its winding-up or liquidation (which is not withdrawn, dismissed, discharged, stayed or restrained within thirty (30) days of its institution or presentation), has a resolution passed for its winding-up or liquidation, seeks or becomes subject to the appointment of an administrator, administrative receiver, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for substantially all of its assets, has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets.

6.2 Either Party may at any time, by giving one calendar month's notice in writing to the other Party, terminate the Contract for any reason whatsoever.

## **7. Force Majeure**

7.1 Neither Party shall be liable for any failure or delay in discharging its obligations under the Contract to the extent that such failure or delay is due to Force Majeure provided always that the affected Party shall notify the other Party as soon as is reasonably practicable that it is affected by Force Majeure and shall provide reasonable details of the circumstances giving rise to the Force Majeure event. Each Party shall use all reasonable endeavours to minimise any delay in the performance of its obligations arising from Force Majeure.

## **8. Variations**

8.1 No variations to the Contract shall be effective unless made in writing and signed by or on behalf of both Parties.

## **9. Fees and Expenses**

9.1 The fees and prices for the Contract shall be set out in the Purchase Order (the "**Fee**").

9.2 Subject to the limitations and rates set out in the Purchase Order, the Employer shall reimburse the reasonable out of pocket expenses incurred by the Consultant in performing the Services including the cost of local accommodation and transport for the Consultant whilst they are located outside of reasonable travelling distance of their home location (the "**Expenses**"). Expenses shall be reimbursed at cost with no mark-up or handling charge, subject to reasonable substantiation and evidenced by receipts. Any such claims shall be subject to prior written approval of the Employer's Contact.

9.3 Subject to any limitations set out in the Purchase Order, the Employer shall reimburse reasonable third party costs incurred by the Consultant in performing the Services. Any such third party costs shall be reimbursed at cost with no mark-up or handling charge, subject to reasonable substantiation and evidenced by receipts. Any such claims shall be subject to prior written approval of the Employer's Contact.

## **10. VAT**

10.1 All Fees are exclusive of any Value Added Tax ("**VAT**") which may be payable thereon and the Employer shall where applicable pay VAT to the Consultant at the rate for the time being and from time to time properly chargeable in respect of the provision of the Services on submission of a valid VAT invoice.

## **11. Invoicing and Payment**

11.1 Unless otherwise agreed in the Purchase Order, where the Contract has a duration of less than 2 (two) calendar months the Consultant shall be entitled to submit one invoice on completion of the Services.

11.2 In the absence of payment terms coverage in the Purchase Order the Consultant shall be entitled to submit one invoice on completion of the Services.

11.3 A pro-forma invoice shall be sent, by email, to the Employer's Contact for pre-approval five (5) Business Days before the valid VAT invoice is to be submitted. This draft invoice shall be reviewed and, subject to the draft invoice being as per clause 11.4, approved for submission by the Employer's Contact. On receipt of

this approval the Consultant shall issue to the Employer's Accounts Payable department a valid VAT invoice for the Fees and Expenses.

11.4 The Consultant shall ensure that:

- (a) invoices are sent to the Accounts Payable address specified in the Purchase Order;
- (b) invoices are addressed to the legal entity specified in the Purchase Order;
- (c) invoices quote the correct purchase order number; and
- (d) all invoices contain sufficient detail to enable the Employer to verify the charges made.

11.5 The final date for the payment of the invoice by the Employer shall be the number of calendar days as expressed in the Purchase Order after receipt by the Employer of a valid VAT invoice submitted in accordance with clause 11.4 for the amount due. The Employer shall be entitled to return any invoices which have not been submitted in accordance with clauses 11.3 and 11.4.

11.6 Save where there is a bona fide dispute in relation to an invoice, the Consultant shall be entitled to charge interest on all late payments at the rate of 3% above the base lending rate of Barclays Bank plc from time to time.

## **12. Tax and Other Liabilities**

12.1 It is hereby agreed and declared by the Parties that in all respects the relationship of the Consultant to the Employer shall be that of an independent consultant providing services to the Employer and is not an employee of the Employer.

12.2 The Consultant shall be responsible for any income tax liabilities and National Insurance or similar contributions in respect of the payments made to it under the Contract and the Consultant hereby indemnifies the Employer in respect of any claims that may be made by the relevant authorities against the Employer in respect of income tax (including penalties and interest charges) and indemnifies the Employer (to the extent permitted by law) in respect of any claims that may be made by the relevant authorities against the Employer in respect of National Insurance or similar contributions relating to the Services provided by the Consultant hereunder.

## **13. Conflict of Interest**

13.1 The Consultant shall inform the Employer at once if the Consultant is approached by any third party to carry out any work in relation to another project which, if accepted by the Consultant, is reasonably likely to lead to a conflict of interest arising and the Consultant shall (subject always to third party confidentiality restrictions) notify the Employer of the actual or potential conflict of interest and the Consultant shall take such steps as are reasonably required by the Employer to ensure that the conflict of interest is properly addressed.

## **14. Assignment**

14.1 The Consultant shall not assign novate or otherwise transfer any or all of its rights or obligations under the Contract without the Employer's prior written consent.

14.2 The Employer may assign the benefit of the Contract to another part of the RWE Group provided always that the Employer shall remain primarily liable to the Consultant for the payment of any outstanding Fees and Expenses.

14.3 Upon request from the Employer the Consultant shall enter into a letter of reliance in a form to be agreed between the Parties (the "**Letter of Reliance**") pursuant to which any identified third party is able to rely upon any report or other Deliverables that form part of and are generated by the Consultant as part of the Services (the "**Report**") as if the Report was originally commissioned by or on behalf of the third party. The Consultant shall not be entitled to any payment related to the provision and execution of the Letter of Reliance.

## **15. Confidentiality**

15.1 Subject to the provisions of clause 15.2 each Party (a "**Recipient**") agrees to treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person (other than professional advisers, Affiliates or those to whom the Services have been sub-contracted pursuant to clause 2.3 ("**Permitted Persons**") in each case who have a need to know in relation to the provision of the Services) or make use of or permit to be made use of (other than in furtherance of the Contract) any of the commercial terms of the Contract, any information or secrets relating to the other Party's technology, technical processes, business affairs or finances or any such information or, as the case may be, secrets, relating to a supplier, Employer or client of such other Party.

15.2 The obligations of confidentiality referred to in clause 15.1 shall not apply to any information or secret which:

- (a) is in the unrestricted possession of the Recipient prior to the start of the Contract or subsequently comes into the unrestricted possession of the Recipient;
- (b) becomes available to the general public; or
- (c) is independently made available as a matter of right to the Recipient by a third party without obligations of secrecy, provided such a third party did not acquire such information confidentially, and the Recipient is aware thereof; or
- (d) either Party is required by law or regulation to disclose.

15.3 The Consultant shall ensure that all Permitted Persons are made aware of the confidential nature of any Confidential Information disclosed to them and are bound by obligations of confidentiality no less onerous than those contained herein. The Consultant shall be liable for any disclosure of any Confidential Information by Permitted Persons.

15.4 The obligations of the Parties under this clause 15 shall survive the expiry or the termination of the Contract for a period of two (2) years.

15.5 The Consultant shall not advertise or publicly announce that it is undertaking work for the Employer without the Employer's prior written consent, such consent not to be unreasonably withheld or delayed.

## **16. Exclusion of Agency or Partnership**

16.1 Nothing in the Contract shall constitute or be deemed to constitute or effect a partnership or trust between the Parties nor to constitute the Consultant as agent of the Employer or otherwise entitle the Consultant to have authority to bind the Employer in respect of any matter.

16.2 The Consultant shall not hold itself out as agent of the Employer nor pledge the credit of the Employer nor sign any documents, enter into any agreement or make any promise on behalf of the Employer.

## **17. Governing Law and Jurisdiction**

17.1 The Contract shall be governed by and construed in all respects in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English courts to resolve any dispute arising in relation to it.

## **18. Ownership of Results**

18.1 The Consultant hereby agrees that any Intellectual Property Rights arising from or created during the course of providing the Services or carrying out the Contract including any Deliverables shall vest in the Employer and the Consultant hereby assigns the same to the Employer absolutely.

18.2 The Consultant hereby grants to the Employer a perpetual, non-exclusive, world-wide, assignable and royalty free licence to use any Intellectual Property Rights owned by or licensed to the Consultant and that were in existence prior to the date that the Contract came into force and which are necessary to enable the Employer to exploit the Deliverables or product of the Contract.

18.3 The Consultant hereby agrees to indemnify and keep indemnified the Employer in respect of any loss or damage suffered by the Employer in relation to any claim, action or proceeding brought by a third party alleging that any use by the Employer of any Intellectual Property Rights assigned or licensed to the Employer under clauses 18.1 and 18.2 infringes that third party's intellectual Property Rights.

18.4 The Consultant shall obtain waivers of all moral rights in the products, including any Deliverables of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

18.5 The Consultant shall, promptly at the Employer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Employer may from time to time require for the purpose of securing for the Employer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights licensed or assigned to the Employer in accordance with clauses 18.1 and 18.2.

18.6 All Employer Materials are the exclusive property of the Employer.

## **19. Third Party Rights**

19.1 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## **20. Remedies for Late Delivery or Non-Performance**

20.1 Without prejudice to any other right or remedy the Employer may have, on each occasion when the Consultant fails to perform a material aspect of the Services in accordance with clause 3.2 by the Scheduled Completion Date or for the purposes of any draft or interim Deliverable such date as specified in the Contract, the Employer shall be entitled (at its sole discretion) either to:

- (a) charge to the Consultant the costs, losses or expenses which the Employer incurs as a result of that failure including, but not limited to, the costs incurred by the Employer in obtaining Services from a third party and any

payments contractually due to third parties as a result of the non-performance of the Services; or

- (b) require the Consultant to remedy immediately any failure to perform Services in accordance with the terms of the Contract at its own cost (in which case the Consultant shall also be liable to the Employer for any payments contractually due to third parties as a result of the non-performance of the Services).

## **21. Indemnity and Liabilities**

- 21.1 Each Party (the "**Party Liable**") shall be liable for any death or personal injury caused by the negligence of the Party Liable and the Party Liable shall indemnify and keep indemnified the other Party against any actions, suits, claims, demands, costs, charges or expenses which may be brought against or incurred by the other Party in respect of any such death or personal injury. The liability of the Party Liable under this clause 21.1 shall not be limited or restricted in any way and the provisions of clause 21.3 shall not apply to this clause.
- 21.2 Subject to clause 21.3, the Consultant shall indemnify the Employer in respect of all loss or damage occurring to any property and against all actions, suits, claims, demands, costs, charges or expenses resulting from any failure by the Consultant to provide the Services in accordance with the Contract or from any tort, negligence or breach of statutory duty on the part of the Consultant.
- 21.3 The total aggregate liability of either Party under the Contract shall not exceed shall not exceed £100,000.00 (one hundred thousand) or the total value of the Contract, whichever is the greater.

## **22. Insurance**

- 22.1 The Consultant shall throughout each Contract Period take out and maintain at its cost the following insurances in respect of its activities under the Contract:
  - (a) professional indemnity;
  - (b) third party liability; and
  - (c) employers' liability;for a sum not less than £2 million for any one occurrence but unlimited number of occurrences but £5 million for employers' liability being the statutory minimum required.
- 22.2 The Consultant shall ensure that the professional indemnity policy shall remain in force for a period of 6 years from termination or earlier expiry of the Contract.
- 22.3 The Consultant shall promptly produce a copy of any of the insurance policy or policies for inspection should the Employer so require.

## **23. Entire Agreement**

- 23.1 These terms and conditions and the Purchase Order shall represent the entire agreement between the Parties in relation to its subject matter and supersedes any prior written or oral agreement between them in relation to such subject matter.

## **24. Warranties**

- 24.1 Each Party represents and warrants to the other that as at the date of the Contract:



- (a) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation;
- (b) it has the power to execute and deliver the Contract and to perform its obligations under the Contract and has taken all necessary action to authorise that execution, delivery and performance;
- (c) the execution, delivery and performance referred to in clause 24.1(b) do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) its obligations under the Contract constitute its legal, valid and binding obligations enforceable in accordance with their respective terms;
- (e) it is not relying upon any representations of the other Party other than those expressly set out in the Contract;
- (f) it has negotiated, entered into and executed the Contract as principal (and not as agent or in any other capacity, fiduciary or otherwise).

## **25. Notices**

- 25.1 Save as otherwise provided in the Contract, any notice or other written communication to be given or made in respect of the Contract by one Party to the other Party shall be given or made in writing to the other at the address or email address or facsimile number that the other Party shall specify in the Purchase Order or notify to the other Party from time to time or, if no address has been so specified or notified, at the other Party's registered office.
- 25.2 The address, fax number and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection the Contract shall be as stated in the Purchase Order or any substitute address, fax number, email address or department or officer as the Party may notify to the other Party, by not less than five (5) Business Days' notice.
- 25.3 Any communication or document made or delivered by one Party to another under or in connection with the Contract will only be effective:
- (a) if delivered by hand, on the Business Day of delivery or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
  - (b) if sent by first class post, on the second Business Day after the day of posting or, if sent from one country to another, on the fifth Business Day after the day of posting;
  - (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 18:00 hours on a Business Day or otherwise on the first Business Day after transmission; and
  - (d) if sent by email, on the day of receipt if received before 18:00 hours on a Business Day; or otherwise on the first Business Day after receipt.

## **26. System Access**

- 26.1 During and in the course of furnishing the Services, the Consultant shall: (i) not access, and shall not permit anyone to access, the Employer's computing systems without the Employer's express written authorisation; (ii) employ anti-virus procedures when appropriate; (iii) comply with the Employer's information security policies and procedures; (iv) ensure that it has in place a plan approved by the Employer in relation to ensuring business continuity both in relation to general day-to-day service disruptions and disaster recovery affecting either the Consultant's, the Employer's or the RWE Group's business.
- 26.2 Where authorised by the Employer in advance, the Employer may provide the Consultant with remote access to its computing systems. Where the Employer provides such access the Consultant will comply with the Employer's IT policies and procedures, including those relating to access to its systems (which will be provided on request).
- 26.3 The Consultant shall use any remote access only to provide Services. The Employer may terminate the Consultant's access to the Employer's systems at any time without notice to the Consultant. The Consultant shall immediately notify the Employer of any actual or threatened security breach in or unauthorised access to the Employer's systems.