

## **1. Definitions and Interpretation**

- 1.1 In these Conditions, unless the context otherwise requires:
- the words set out in the table at condition 66 (*Defined Terms*) have the meanings set out in that table.
  - a reference to a statute or statutory provision includes:
    - any orders, regulations, codes of practice, instruments or other subordinate legislation made under it; and
    - any statute or statutory provision as enacted, re-enacted, consolidated or amended either before or during the Term.
  - the use of the singular includes the plural and vice versa and use of any gender includes all genders.
  - any reference to person includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having legal personality).
  - the use of including and similar expressions does not limit the generality of any preceding words.

## **2. Contract Formation**

- 2.1 Any Affiliate of RWE AG may be named in and raise an Order. An Order is an offer by RWE to purchase the Services from the Contractor
- 2.2 The Contractor accepts RWE's offer either by: a) expressly giving to RWE written notice of acceptance (including returning a signed Order); or b) impliedly by fulfilling the Order in whole or part and in each case within 14 days of the date of the Order or longer if expressly agreed in writing by RWE (**Accept, Acceptance**).
- 2.3 On Acceptance, a contract is made between RWE and the Contractor which is comprised of and subject to the contents of the Order and these Conditions (**Contract**).
- 2.4 Subject to condition 7 (*Change and Variation*), unless expressly set out in an Order, these Conditions prevail over any other terms and conditions, any Contractor quotes or proposals or any other communication relating to the Services.
- 2.5 If there is an inconsistency between any content of the Order and these Conditions, the Order prevails.

## **3. Non-Exclusivity**

- 3.1 The appointment of the Contractor is not exclusive and nothing in the Contract gives or is deemed to give the Contractor exclusive rights to supply any Services to RWE or its Affiliates.

## **4. Term**

- 4.1 The Contract comes into effect on the Commencement Date and (unless terminated at an earlier date under the Conditions) terminates automatically once all obligations under the Contract are fulfilled (**Term**).

## **5. Contract Management**

- 5.1 The Contractor appoints and notifies RWE of the contact details of a Contractor Representative who is the Contractor's principal contact with RWE in relation to the Contract and who directs and controls the overall performance of the Services for and on behalf of the Contractor. Such person or any replacement notified to RWE from time to time has full authority and competence to act on behalf of the Contractor for all purposes of the Contract.
- 5.2 The Contractor, if requested, upon reasonable notice and during normal office hours on business days attends such meetings at RWE's premises (or such other place as may be agreed) as is reasonably required by RWE from time to time

to review the Services. Any such review is without prejudice to rights and obligations under the Contract.

- 5.3 The Contractor Representative:
- attends at, takes and retains minutes of all meetings relating to the Contract;
  - keeps written records of all communications relating to the Contract including all relevant communications between RWE, the Contractor and any third parties; and
  - distributes these minutes and/or records of communication as reasonably requested by RWE.

## **6. RWE Representative**

- 6.1 If RWE appoints a person to act as an RWE Representative, RWE notifies the Contractor and the Contractor proceeds in accordance with any decisions made and instructions given by RWE's Representative PROVIDED THAT any such decision and/or instruction is consistent with this Contract.
- 6.2 RWE may appoint any person to act in replacement of any RWE Representative and notifies the Contractor of any change.

## **7. Change and Variation**

- 7.1 RWE may in writing request a change to these Conditions, an Order or the Specification in each case at any time prior to the Target Completion Date.
- 7.2 Where a change is requested and is not material, the change is made with no adjustment to Fees or Target Completion Date unless otherwise agreed between the Parties.
- 7.3 Where a change is requested and is material, the Parties seek to agree any necessary changes in the Fees or Target Completion Date.
- 7.4 If the Parties are unable to agree any material change, RWE may instruct the Contractor in writing to implement the change and the Contractor may recover its reasonable costs incurred in implementing the change subject to the production on request of documentary evidence of such cost and subject always to a cap of no more than a sum equivalent to 50% of the Fee that would have been payable had there been no change unless RWE otherwise agrees.
- 7.5 If the Parties are unable to agree a material change and RWE does not instruct the Contractor in writing to implement the change, a Party may escalate the matter for resolution under condition 50 (*Escalation*) and if no agreement is reached via escalation, RWE may elect either not to implement the change or instead, to terminate the Contract on the basis of no fault of either Party.
- 7.6 Subject to this condition 7, no variation of this Contract or any part of it is valid unless in writing, expressed to be a variation of this Contract and signed by authorised representatives for and on behalf of each Party.

## **8. Obligations of the Contractor**

- 8.1 The Contractor at all times during the Term:
- complies with all Applicable Law, rules, guidelines, quality and safety standards and codes of practice applicable to the supply of the Services;
  - performs the Services with reasonable skill, expertise, care and diligence and in accordance with Good Industry Practice;
  - ensures 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;
  - carries out all risk assessments and ensures safe organisation and implementation of the supply of the Services;
  - complies with all of RWE's health and safety requirements supplied to the Contractor (if any);
  - provides all Staff for the provision of the Services and competently supervises them at all times.

- 8.2 The Contractor must not act (or omit to act) so as to, in the sole opinion of RWE, bring RWE's name or the name of any RWE Affiliate into disrepute or damage their respective reputation(s), goodwill or business interests.
- 8.3 The Contractor, at its own cost, supplies its Staff with training and all necessary equipment including safety equipment.
- 8.4 The Contractor provides safe systems of work for all activities performed under the Contract.

## 9. Method of working

- 9.1 The Contractor adopts its own general method of working.
- 9.2 The Contractor complies with any reasonable requests of RWE in relation to the provision of the Services and co-operates with RWE Personnel.

## 10. Provision of Services

- 10.1 The Contractor:
- supplies the Services as set out in the Order and the Services shall comply with the Specification, Applicable Law and the Conditions;
  - procures that any Results are fit for any purpose expressly made known to the Contractor by RWE in the Contract;
  - supplies any goods and any other tools and equipment necessary to properly and efficiently supply the Services;
  - if the Order appoints the Contractor as a contractor or a designer under the CDM Regulations or where the CDM Regulations otherwise apply to the Services, the Contractor warrants that it is competent to carry out the relevant requirements of the CDM Regulations, that it has allocated adequate resources to enable it to carry out such requirements and that it will comply with the CDM Regulations.
- 10.2 The Services and the Results shall not infringe RWE IPR or IPR of any third party.

## 11. Progress

- 11.1 The Contractor submits progress reports as required by RWE and attends review meetings.
- 11.2 The Contractor notifies RWE without delay if any circumstances arise which could delay performance of the Services and states the measures being taken to mitigate such delay.

## 12. Delivery

- 12.1 When stated in the Order, on request of RWE or otherwise as and when they become available during the performance of the Services, the Contractor submits to RWE the Results in draft for review and comment.
- 12.2 Any inspection, endorsement, review or comment (or any omission to inspect, review or endorse) by or on behalf of RWE is without prejudice to any rights or obligations under this Contract.
- 12.3 On or before the Target Completion Date, the Contractor submits the final Results to RWE in such form as is set out in the Specification or otherwise requested by RWE or if none is so stated or requested, in a reasonably appropriate form.

## 13. Remedies for Late Delivery

- 13.1 Without prejudice to any rights or obligations of a Party under the Contract or at law, on each occasion when the Contractor fails to perform the Services by the Target Completion Date, RWE may elect to suspend payments or cease to pay and cease to be liable to pay any sum due and payable for the delayed Services and the Contractor remedies immediately any delay in performing the Services in accordance with the terms of the Contract at its own cost.
- 13.2 In the event that the Contractor fails to remedy delay in the supply of the Services, RWE may recover and the Contractor pays RWE the direct Loss which RWE incurs as a result of that delay including:

- the additional costs incurred by RWE in obtaining replacement Services either from its own resources or from a third party;
- the value of any payments contractually due and payable to third parties because RWE relied on the Contractor performing the Services on or before the Target Completion Date.

13.3 In the event the failure to deliver or delay is not remedied on before the expiry of twenty-eight (28) days of the Target Completion Date (or such other extended time of delay as RWE may elect and notify), terminate the Contract on written notice for Contractor Default.

## 14. Defects

- 14.1 The Contractor is responsible for any Defects in the Services and/or the Results.
- 14.2 Without prejudice to any rights or obligations of a Party under the Contract or at law, RWE may, by notice in writing to the Contractor notify the Contractor of a Defect (**Defect Notice**) PROVIDING THAT the Defect occurred or can reasonably be deemed to have occurred within the Guarantee Period.
- 14.3 On the issue of a Defect Notice, the Contractor within the period set out in the Defect Notice or if none as soon as reasonably practicable repeats, replaces or repairs the Defective Services PROVIDED THAT if the Contractor repeats, repairs or replaces the Services, the repeated, repaired or replacement services:
- must not diminish or curtail any of the required functions, features, facilities or the performance of the Services; and
  - must comply with the warranties, standards and obligations contained in this Contract and RWE has the same rights in respect of them.
- 14.4 If a Defect is not replaced or repaired in accordance with condition 14.4 b), the Contractor immediately on request:
- reduces, refunds and/or credits the Fee paid or payable by RWE to the Contractor in respect of any Defective Services; and
  - pays RWE wasted costs and any additional expenditure reasonably incurred by RWE in obtaining either:
    - repeat or replacement services the same as or similar to the Defective Services; or
    - repairs to the Defective Services, in each case whether by using its own resources or from a third party; and
  - any sums contractually due and payable to third parties because RWE relied on the Contractor supplying the Services without Defect.

14.5 A further Guarantee Period for any repeated, repaired or replaced Services commences on the date of Delivery of the repaired or replaced Services.

## 15. Site Conditions

- 15.1 The Contractor inspects and examines and/or is deemed to have inspected and examined the Site and its surroundings and all information available in connection with them and to have fully acquainted and satisfied itself so far as is practicable before Acceptance as to the conditions of the Site and generally to have obtained for itself all necessary information as to risks, contingencies and all other circumstances which may influence or affect the supply of the Services.
- 15.2 The Contractor may not make any claim for loss, expense and/or time to complete the Services arising from the Contractor's failure to do so or from the Contractor's interpretation of any inspection or information.

## 16. Reliance on RWE Information

- 16.1 RWE may, on request and without prejudice to any rights or obligations under the Contract or at law, supply the Contractor with information in RWE's possession in relation to the Site and that RWE considers is necessary for the supply of the Services.
- 16.2 RWE does not warrant the adequacy, accuracy or sufficiency of any information supplied by or on behalf of RWE
- 16.3 The Contractor takes all necessary steps to obtain all necessary information for undertaking the supply of the Services at the Site in accordance with the Contract and for checking the adequacy, accuracy and sufficiency of the information it obtains including any supplied by or on behalf of RWE.
- 16.4 The Contractor promptly notifies RWE if it considers that information supplied by or on behalf of RWE is insufficient or if there are any material inconsistencies or inaccuracies in any of it.

## 17. Contractor Staff

- 17.1 The Contractor ensures Staff are suitably qualified, competent, skilled and experienced and are trained and able to deliver and supply the Services safely and in compliance with this Contract.
- 17.2 In all respects the relationship of the Contractor to RWE is that of an independent contractor providing services to RWE and neither the Contractor nor its Personnel are or are deemed to be employees of RWE.
- 17.3 The Contractor makes appropriate PAYE deductions for tax and national insurance contributions from the remuneration which the Contractor, as an employer, pays to Staff.
- 17.4 Prior to any Staff supplying Services, the Contractor, to the extent lawful, ensures that each member of Staff has satisfied any checks or vetting requirements which may be appropriate according to Good Industry Practice or which are reasonably notified by RWE to the Contractor. Such vetting requirements include for example: checking identities, rights to work in the UK, references, qualifications, records and checks from the Disclosure and Barring Service, FCA compliance, NIS Regulations compliance and driving licences. The Contractor keeps records of such checks and shows the records to RWE if RWE asks to see them.
- 17.5 The Contractor ensures that all Personnel:
- (a) comply with RWE local security arrangements including the right to be searched and to be tested for drugs and/or alcohol; and
  - (b) carry out their duties so as to cause minimum disruption to RWE business operations.
- 17.6 The Contractor removes or procures removal from Site any individual when instructed to do so if any person is deemed unsafe or unqualified or otherwise not competent to be on Site and the Contractor is responsible for any consequent costs.
- 17.7 The Contractor indemnifies RWE and RWE Affiliates on a full indemnity basis against any Loss suffered or incurred by RWE and RWE Affiliates as a result of any failure by the Contractor and/or its Staff to comply with the obligations under this condition or any associated Applicable Law.
- 17.8 Any breach of this condition is a material breach and entitles RWE to terminate this Contract for Contractor Default.

## 18. Obligations of RWE

- 18.1 Throughout the Term, RWE makes available any RWE Representative or other appropriate Personnel to liaise with the Contractor and provide such information and give such decisions within a reasonable time as may be properly requested by the Contractor and reasonably required to enable the Contractor to perform the Services in accordance with this Contract.

## 19. Fees

- 19.1 In consideration for the supply of the Services, RWE pays the Fees in the amounts, at the rate and/or at the frequency set out in the Order.
- 19.2 The Fees exclude VAT but are inclusive of all other matters including insurance and other delivery and supply costs and take account of all cost and/or expenses associated with the supply of the Services and compliance with all obligations under this Contract including subsistence, travel, accommodation, supply of equipment or tools, materials and activities required to supply the Services and payment of Contractor Personnel (including salaries, wages, bonuses and other emoluments, statutory charges and levies, pension provisions, overtime or payments for working unsociable hours).

## 20. Invoicing

- 20.1 Invoices must show date, invoice number, Contractor name and address, VAT breakdown, Order number, Fees and the Contractor supplies all other information or supporting documentation that RWE may reasonably require.
- 20.2 The Contractor sends invoices at the time, in the format and to the address as stated in the Order or if none is so stated, as required by RWE.
- 20.3 RWE pays invoices within thirty (30) days from date of receipt. If RWE disputes an invoice, RWE may withhold payment of the disputed amount until resolution.
- 20.4 If payment is not made on undisputed amounts when due, the Contractor may charge interest at 3% per annum above the base rate of HSBC Bank plc accruing daily and compounded monthly on all unpaid and undisputed amounts, which the Contractor agrees is a substantial remedy for late payment of any amount payable for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 20.5 Any sum payable under this Contract for a taxable supply is exclusive of VAT payable on it and the recipient of the supply shall pay an amount equal to such VAT in addition to any such sum on receipt of a valid VAT invoice from a supplying Party.
- 20.6 RWE may on notice at any time set off any Contractor liability to RWE or to an RWE Affiliate against any liability that RWE or an RWE Affiliate may owe to the Contractor in relation to this Contract.
- 20.7 Any payment does not affect a Party's rights or obligations under this Contract.

## 21. Records of work

- 21.1 If Fees are calculated by applying rates set out in the Order or otherwise agreed between the Parties, the Contractor maintains time sheets in units of time worked by its Staff in the form specified by RWE from time to time to verify time worked on the Services. Such time sheets are available for inspection by or copied and submitted to RWE as required by RWE.

## 22. Tax and other Liabilities

- 22.1 The Contractor is responsible for any tax (including income tax) liabilities and National Insurance or similar contributions required by statutory authorities to be made in respect of any payments due and payable or paid by RWE to the Contractor under the Contract.
- 22.2 The Contractor indemnifies RWE in respect of any claims that may be made by the relevant authorities against RWE in respect of any Loss and/or:
- a) any tax (including income tax and including penalties and interest charges); and
  - b) National Insurance or similar contributions in each case relating to the supply of the Services by or on behalf of the Contractor under this Contract and/or any payments made by RWE to the Contractor under the Contract.

## 23. Insurance

23.1 Without prejudice to any rights or obligations of a Party under the Contract or at law, the Contractor takes out and maintains in force for the Term and for the period of time over which the Contractor has continuing liabilities under this Contract, with reputable and substantial insurers with a UK branch, the following insurances, to be evidenced by certificates of insurance made available to RWE within seven (7) days of request:

- a) employer's liability insurance in the amount of at least five million pounds GB sterling (£5,000,000) for any one occurrence or the amount required by Applicable Law, whichever is higher;
- b) public liability insurance including against liability to third parties for any death or personal injury and loss of or damage to any physical property arising out of or in connection with the carrying out of the Services in the amount of at least ten million pounds GB sterling (£10,000,000) for any one occurrence;
- c) professional indemnity insurance in the amount of at least five million pounds GB sterling (£5,000,000) for any one occurrence;
- d) such other insurances as Applicable Law requires.

23.2 The Contractor ensures that the professional indemnity policy shall remain in force for a period of 6 years from termination or earlier expiry of the Term.

23.3 Deductibles applying under any insurance are for the Contractor's account where such deductibles relate to Loss for which the Contractor is responsible under the Contract.

23.4 The Contractor gives to RWE (and procures that its Personnel gives) all such reasonable assistance and necessary information and documentation for the purpose of making or processing claims under the insurances.

## 24. Exclusion of Limits and Liability

24.1 Without prejudice to any rights or obligations of a Party under the Contract or at law, each Party informs the other of any Default under the Contract and affords the other a reasonable opportunity to correct such Default.

24.2 No Party excludes or limits liability for:

- a) death or personal injury caused by its negligence or the negligence of its Personnel;
- b) fraud or fraudulent misrepresentation;
- c) breach of section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- d) any breach of this Contract that results from the wilful act or omission of a Party or its Personnel; or
- e) any liability which cannot by law be excluded or limited.

24.3 Subject to condition 24.2, neither Party is liable to the other or to any other person for loss of direct or indirect profits or other economic or financial loss including business, contracts, revenues, goodwill, production, anticipated savings, indirect or consequential loss.

24.4 Subject to conditions 24.2 and 24.3 (and excluding any debt or liability for any indemnity which is expressed to have its own maximum aggregate debt or liability), the Contractor's liability under the Contract (excluding its liability to repair or replace a Defect) does not exceed in aggregate the greater of:

- a) £500,000; or
- b) a sum equal to double the Fees for each Contract

SAVE THAT where any Contractor liability relates to an event which is insurable under the insurances required under this Contract, such maximum liability extends to the value of the minimum insured amount required as set out in condition 23 (*Insurance*).

24.5 Subject to condition 24.2 and 24.3, RWE's liability under the Contract (excluding its liability to pay the Fees due and

payable for Services Delivered and not cancelled or rejected and further excluding any debt or liability relating to an indemnity which is expressed to have its own maximum aggregate debt or liability) does not exceed the sum of five hundred thousand pounds GB sterling (£500,000).

24.6 Nothing in this Contract restricts or limits a Party's obligation to take such steps as it is reasonably practicable to do so to mitigate a Loss which it may suffer or incur and seek to claim under this Contract by way of an indemnity or otherwise.

## 25. Force Majeure

25.1 Subject to condition 25.2, neither Party is deemed to be in breach of the Contract or otherwise be liable to the other by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that such delay or non-performance is caused by an Event of Force Majeure.

25.2 The Party affected by the Event of Force Majeure immediately gives the other Party written notice of the nature and extent of the Event of Force Majeure and, subject to condition 7 (*Change and Variation*), takes such steps as are reasonably practicable in all the circumstances to prevent, mitigate and reduce to a minimum the adverse effect of any Event of Force Majeure.

25.3 If:

- a) a written notice in relation to an Event of Force Majeure is not withdrawn within one (1) month or such other longer period of time as RWE may determine; or
- b) Loss is incurred by RWE which exceeds in aggregate a sum equal to 50% of the Fees which would otherwise be due and payable under the Contract for the Term but for any disruption or suspension by an Event of Force Majeure (or any higher sum as RWE may determine), then RWE may on written notice terminate the Contract on a no fault basis with immediate effect.

25.4 Unless terminated under condition 25.3, when the Event of Force Majeure ceases, each Party, in consultation with each other, takes such steps as are reasonably practicable in all the circumstances to resume normal performance of their respective obligations under the Contract.

## 26. Termination at will

26.1 RWE may terminate the Contract at will at any time by giving the Contractor written notice.

## 27. Termination for Default

27.1 Without prejudice to any rights or obligations of a Party under the Contract or at law, a Party (**Non-Defaulting Party**) may terminate the Contract immediately (unless otherwise stated) by notice in writing to the other Party (**Defaulting Party**) if the Defaulting Party or any of its Personnel:

- a) commits a material breach of the Contract and remains in material breach not less than thirty (30) days after being notified in writing of such breach and being requested to rectify it;
- b) is in material breach of the Contract and, in the reasonable opinion of the Non-Defaulting Party, the breach is not capable of remedy;
- c) is in persistent breach of any of the obligations under the Contract (whether or not such breaches are material in nature or are capable of being remedied or have been remedied at any time previously by the Defaulting Party). A persistent breach occurs where a Defaulting Party or its Personnel is in breach of any of its obligations (whether it is the same obligation or not) three (3) times in any six (6) month period or the Term (whichever is shorter);
- d) fails to pay any undisputed amount due under this Contract on the due date for payment and remains in default not less than thirty (30) days after being notified

in writing to make such payment (and such amount remains not in dispute);

- e) passes a resolution or a petition is filed or an order is made for or in connection with the winding up of the Defaulting Party (otherwise than for the purpose of solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations under the Contract of the Defaulting Party) or the Defaulting Party becomes subject to an administration order or an administrator, receiver or administrative receiver is appointed of all or part of the Defaulting Party's undertaking and assets;
  - f) suspends, ceases or threatens to suspend or cease to carry on its business or a substantial part of it or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - g) 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 the sole purpose of a scheme for a solvent amalgamation or solvent reconstruction where the resulting entity assumes all of the obligations under the Contract of the Defaulting Party);
  - h) has a creditor or encumbrancer attach or take possession of or it becomes subject to a distress, execution, sequestration or other such process in relation to the whole or any part of its assets and such attachment or process is not discharged within fourteen days;
  - i) has an application made in court or an order is made in relation to it for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it;
  - j) has a floating charge holder over its assets become entitled to appoint or has appointed an administrative receiver;
  - k) has a person become entitled to appoint a receiver over its assets or a receiver is appointed over its assets
  - l) becomes insolvent (within the meaning of the Insolvency Act 1986) or makes or proposes to make any arrangement or composition with its creditors;
  - m) suffers any analogous event to those set out in conditions e) to l) in any other jurisdiction.
- 27.2 If a right to terminate the Contract accrues to RWE pursuant to conditions e) to m) inclusive, RWE may, at its absolute discretion, give the option to any relevant receiver or administrator of carrying out the obligations of the Contractor as an agent on behalf of the Contractor, subject to the provision by the receiver or administrator of a guarantee or performance bond or other satisfactory security in the terms required by RWE for the performance of the Contractor's obligations and to guarantee any sums payable to RWE in relation to the Contract or to any breach of it.
- 27.3 RWE may terminate the Contract if the Contractor:
- a) suffers a deterioration of its financial position to such an extent that in the opinion of RWE the capability of the Contractor adequately to fulfil its obligations under the Contract is placed in jeopardy;
  - b) or its Personnel refuses or neglects to comply with any reasonable and lawful directions of RWE;
  - c) or its Personnel commits any misconduct, negligence, fraud or other dishonesty or acts (or fails to act) in any manner which in the opinion of RWE:
    - i) brings or is likely to bring its Personnel, the Contractor, RWE or any RWE Affiliate into disrepute; or
    - ii) harms the name of or is adversely prejudicial to the interests of RWE or any RWE Affiliate; or

iii) affects the ability of the Contractor or any of its Personnel to supply the Services.

- d) an event occurs where an express right to terminate accrues as set out in these Conditions.

27.4 Where the Contractor is in Default because the Contractor has demonstrably, is or has been involved in unlawful restrictions of competition at RWE's expense, then in addition and/or instead of the remedy available to RWE under condition 14 (*Defects*) RWE may immediately on written notice either rescind or terminate the Contract. In the event of rescission, the relevant Applicable Law applies.

27.5 Where RWE may terminate the Contract, RWE may instead terminate the Contract in respect of part only of the Services and in which case, the Contract continues in respect of the supply of the remaining Services.

27.6 Any rights to terminate under this Contract are without prejudice to any other rights a Party may have at law to terminate the Contract or to accept any breach of this Contract as having brought the Contract to an end (including, where relevant, a right to claim repudiatory damages).

## 28. Consequences of Termination

28.1 Upon expiry and/or earlier termination of the Contract for any reason, the Contractor takes immediate steps to bring the Services to an end in an orderly manner and with all reasonable speed and economy and will deliver to RWE all the Results paid for to the date of expiry and/or termination (whether in the course of preparation or completed), all Materials and Confidential Information and the Contractor revokes all IT and physical access authorisations granted to Contractor's Personnel and prevents any further use.

28.2 If the Contractor fails to do so, then RWE may, without prejudice to its other rights or remedies, enter the Contractor's premises or those of its Personnel and take possession of them. Until they have been returned or delivered, the Contractor is solely responsible for their safe keeping and may not use them for any purpose not connected with the Contract.

28.3 Expiry or earlier termination of the Contract will not:

- a) affect any rights or liabilities accrued as at the date of expiry or earlier termination
- b) prejudice other rights or remedies (under these conditions or otherwise); or
- c) affect the coming into force or the continuation in force of any provisions which expressly or by implication are intended to come into force or continue in force on or after the termination or expiry

28.4 On expiry or earlier termination of the Contract, RWE pays to the Contractor the value of the Fees properly due and payable under the Contract for Results delivered and Services completed (and in each case not cancelled or rejected) on or before the date of expiry or termination (to the extent not already paid to the Contractor).

28.5 Save to the extent expressly set out in condition 28.6, RWE has no liability to the Contractor for any other sums including any loss of profit, loss of contracts, loss of revenue, loss of anticipated profits any indirect or consequential losses arising out of or in connection with expiry or termination.

28.6 Where RWE terminates this Contract at will or where the Contractor terminates the Contract for an RWE Default, RWE pays to the Contractor, to the extent not already paid under condition 28.4:

- a) the Fees pro rata for any work in progress Services capable of Delivery and/or Delivered as at the date of termination; and
- b) for any cost or expense already contractually committed to and directly incurred by the Contractor on the reasonable expectation that the Contract would not terminate prior to the expiry of its Term, in each case PROVIDED THAT the Contractor provides

on request documentary evidence of such cost and expense and PROVIDED FURTHER THAT RWE does not pay to the Contractor any sum that exceeds 90% of the value of the Fees for the balance of the Term which would have been due and payable had the Contract not terminated early.

28.7 Where RWE terminates for Contractor Default, RWE may recover from the Contractor to the extent not already recovered, the sums set out at condition 14.6 (*Defects*)

28.8 Where either Party terminates this Contract where there is an express contractual right to do so for no Default of a Party and there is no termination at will, then, save to the extent set out in condition 28.4, there is no further liability from one Party to another for the balance of the Term.

28.9 In any of the circumstances in this Contract in which RWE may terminate the Contract, RWE may instead terminate the Contract in respect of part only of the Services and the Contract continues in respect of the remaining supply.

28.10 The exercise or failure to exercise any rights to terminate this Contract is without prejudice to any other or future rights that a Party may have in the Contract or at law to terminate the Contract or to accept any breach of this Contract as having brought the Contract to an end (including, where relevant, a right to claim repudiatory damages).

## 29. TUPE

Each Party acknowledges and agrees that the supply of Services is expected to constitute activities carried out in connection with single specific events or to be tasks of short term duration and without a dedicated work force and as such their commencement or cessation do not constitute relevant transfers pursuant to TUPE.

## 30. Adequacy of Damages

The Contractor acknowledges and agrees that damages alone may not be an adequate remedy for any breach of this Contract. Accordingly, RWE may invoke the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the Contract.

## 31. Confidentiality

31.1 Except as and to the extent expressly permitted in condition 32 (*IPR*) and 33 (*Ownership of Results*), each Party treats as strictly confidential and does not use or disclose to any third party any Confidential Information.

31.2 The restriction in condition 31.1 does not apply to the extent a Party discloses or uses Confidential Information.

- a) to or via its Permitted Persons so as to perform and comply with its obligations and/or exercise its rights under this Contract PROVIDED THAT it does so on a confidential basis;
- b) as required by Applicable Law or any securities exchange or regulatory or governmental body to which it is subject wherever situated PROVIDED THAT it does so on a confidential basis;
- c) in communication with its professional advisers, auditors and bankers PROVIDED THAT it does so on a confidential basis;
- d) which has come into the public domain through no fault of that Party;
- e) which was previously disclosed to it without any obligation of confidence; or
- f) to which the other Party has given its consent in writing PROVIDED THAT it does so on a confidential basis.

31.3 Each Party ensures 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 in this Contract.

31.4 Each Party is primarily liable for any onward disclosure of any Confidential Information by Permitted Persons.

31.5 The obligations of the Parties under this condition 31 survive the expiry or earlier termination of the Term for a period of two (2) years.

31.6 Neither Party advertises or publicly announces the existence of this Contract or its subject matter without the other Party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

31.7 Each Party defends and indemnifies the other from and against any Losses incurred as a result of or in connection with a breach by a Party, its Affiliates or its Personnel of this condition.

31.8 A breach of this condition is a material breach and/or a breach of a material obligation and a Party accrues a right to terminate this Contract for Default.

## 32. IPR

### 32.1 Background IPR

- a) Any Intellectual Property Rights existing prior to the Commencement Date or developed independently of the Services (**Background IPR**) belongs to the Party or third party owning such rights.

### 32.2 RWE Background IPR Licence

- a) All Intellectual Property Rights in all Materials and other information, documents, materials or other items supplied by or on behalf of RWE (or a third party (**Third Party IPR**)) to the Contractor or used by or on behalf of the Contractor in the supply of the Services (other than Contractor Tools) are at all times and shall remain the exclusive property of RWE and/or the relevant third party and such items are treated as strictly confidential and are held by the Contractor in safe custody at its own risk and maintained and kept in good condition by the Contractor until returned to RWE at RWE's request and are not disposed of, used, published or disclosed by the Contractor or its Staff other than in accordance with RWE's written instructions or to the extent as is strictly necessary so that the Contractor and its Staff may perform the relevant obligations of this Contract and in any event in accordance with condition 31 (*Confidentiality*).
- b) Subject to conditions 32.2 c) and d), RWE hereby grants to the Contractor, for the Term, a royalty free, non-transferable, non-exclusive right and licence to use and copy RWE Background IPR and shall procure a similar licence in relation to any relevant Third Party IPR for the purposes only of the performance of the Contractor's obligations under this Contract.
- c) The Contractor may disclose the RWE Background IPR and Third Party IPR only to its Personnel under obligations of confidentiality and use it in each case only to the extent it is necessary to do so for the performance of its obligations under this Contract.
- d) The Contractor acknowledges that the licence granted by RWE to use, copy, disclose or exploit any of RWE's Background IPR or Third Party IPR in condition 32.2 b) automatically terminates immediately upon the expiry or earlier termination of this Contract. All goodwill in respect of RWE's Background IPR or Third Party IPR shall remain with RWE and the third party respectively at all times.

### 32.3 Developed IPR

- a) Any rights in Intellectual Property which are not in existence prior to the Commencement Date and which arise solely and directly out of the supply of Services (**Developed IPR**) belong to RWE.
- b) The Contractor obtains waivers of all moral rights in any IPR which is vested in RWE as Developed IPR including any Results in each case to which any individual is now or may be at any future time entitled under Applicable Law.
- c) The Contractor, promptly at RWE's request, does (or procures to be done) all such further acts and things and

executes at the Contractor's expense any assignments, assurances, deeds, documents reasonably required to give effect to such vesting of the Developed IPR in RWE and to assist RWE in enforcing such rights as RWE may from time to time require for the purpose of securing for RWE the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights licensed, vested or assigned to RWE in accordance with this condition.

### 32.4 Developed IPR License

- a) RWE grants and/or procures the grant to the Contractor for the Term, an irrevocable, non-transferable, non-assignable, fully paid up, royalty free, non-exclusive right and licence to use the Developed IPR to the extent required fully and completely to comply with its obligations under this Contract and for no other reason.

### 33. Ownership of Results

33.1 All Results are and become the property of RWE and are delivered to RWE upon the completion of the relevant Services or otherwise on request.

33.2 The Contractor grants and/or procures the grant to RWE of a perpetual, irrevocable, assignable, fully paid up, royalty free, transferable and capable of sub-license, non-exclusive right and licence to use Contractor Background IPR and all Contractor Tools in each case that the Contractor embeds in or supplies with any Results or that are otherwise used in connection with the Services to the extent required for RWE and its Affiliates to fully and completely use, enjoy and commercially exploit the Results (**Licence**).

33.3 Subject to condition 33.4, the Licence includes the right to:

- a) access, store, use, reproduce, copy, modify, develop derivative works, share, distribute, display, perform (including publicly and/or digitally), display (including publicly) and transmit the Results in any media;
- b) license, sublicense, transfer or assign its right and licence in the Results.

33.4 The Licence permits use and access to such Results by Permitted Persons in each case PROVIDED THAT such Permitted Persons are only permitted to use and have access to Contractor Background IPR and all Contractor Tools for the purposes of their relationship with RWE or RWE Affiliates alone and not for any other use.

33.5 The Contractor warrants that it has full and unrestricted right and power to grant or procure the grant of the Licence to RWE.

33.6 The Contractor warrants to RWE that it has made all reasonable and prudent enquiries and efforts to obtain from all persons performing the Services a valid and irrevocable waiver of all such persons' statutory and/or moral rights in the Results.

### 34. IPR Infringement

34.1 Any IPR infringement by a Party or its Personnel is a material breach or a breach of a material obligation of these Conditions and the non-infringing Party accrues a right to terminate for Default.

### 35. IPR Indemnity

35.1 The Contractor indemnifies the Indemnified Parties in full and on demand from and against all Loss suffered or incurred by an Indemnified Party by reason of:

- (a) any use by the Contractor or its Personnel of any RWE Background IPR or Developed IPR or the Results or other IPR belonging to or licensed to an Indemnified Party other than to the extent expressly licensed in this Contract; or
- (b) any claim, action or litigation in respect of any alleged or actual infringement of any Third Party IPR which

arises directly or indirectly from the possession or use of any Results or Services or any part of any Results or Services (**Third Party IPR Claim**).

35.2 Each Party notifies the other of any alleged Third Party IPR Claim immediately upon becoming aware of any such claim.

35.3 RWE does not make any admission as to liability or agree to any settlement of or compromise any Third Party IPR Claim without the prior written consent of the Contractor which consent shall not be unreasonably withheld, conditioned or delayed.

35.4 The Contractor may, on its written request and at its own expense and on providing adequate security to RWE for any liability under this indemnity, have the conduct of or settle all negotiations and litigation arising from any Third Party IPR Claim and RWE shall, at the Contractor's request and expense, give the Contractor reasonable assistance in connection with those negotiations and litigation.

35.5 If any Third Party IPR Claim is made or in the Contractor's reasonable opinion is likely to be made against it or RWE and without prejudice to any rights or remedies RWE may have, the Contractor promptly and at its own expense either:

- a) procures for RWE and/or any RWE Affiliate the right to continue using the Results (or any part of them) and/or the Services in accordance with this Contract; or
- b) modifies or replaces the infringing Results or Services (or any part of them) so as to avoid the infringement or alleged infringement and as if they were Defective and so as to comply with condition 14.4; or
- c) pay to RWE all sums as set out at conditions 14.4 as if the Services were Defective.

### 36. Letter of Reliance

36.1 Upon request from RWE, the Contractor provides a letter of reliance in a form to be agreed between the Parties (**Letter of Reliance**) pursuant to which any identified third party is able to rely upon any Results or extract from them (**Report**) as if the Report was originally commissioned by or on behalf of the third party. The Contractor may not claim or charge any payment related to the provision and execution of the Letter of Reliance.

### 37. Business Continuity

37.1 The Contractor has in place and reviews regularly a suitable business continuity plan in relation to general day-to-day service disruptions and disaster recovery affecting either the Contractor's or RWE's business in each case relevant to the Contractor's obligations under this Contract and which, when implemented, seeks to prevent, remove, reduce or mitigate any risk associated with a service disruption and/or disaster.

37.2 The Contractor, on request, shares its business continuity plan with RWE and, without prejudice to a Party's rights or obligations under the Contract, takes account of any comments RWE may have on it relating to the Contractor's obligations under this Contract.

37.3 In the event of a business interruption or disaster, the Contractor implements its business continuity and/or disaster recovery plan and keeps RWE informed of its implementation.

### 38. System Access

38.1 Where the Contractor, either before the Commencement Date or during the Term from time to time completes a self-declaration form relating to information security and critical infrastructure protection (such as the RWE Conditions of Information Security and Data Protection (BID)), the Contractor warrants that its answers are and shall remain true and accurate. Any breach of this warranty or false declaration is a material breach of the contract and RWE may terminate for Contractor Default.

38.2 During and in the course of furnishing the Services, the Contractor does not access and does not permit any person

to access RWE's computing systems without RWE's express, prior, written authorisation;

- 38.3 Where authorised by RWE in advance, RWE may provide the Contractor with remote access to its computing systems.
- 38.4 Where RWE provides such access, the Contractor employs anti-virus procedures and complies with IT policies and procedures that align with RWE security requirements, details of which the Contractor obtains from RWE on or before Acceptance.
- 38.5 The Contractor uses any such authorised access or remote access only to provide the Services and any such access must be through RWE agreed security gateways and/or firewalls.
- 38.6 RWE may terminate the Contractor's access to RWE's systems at any time on notice to the Contractor. Except if and to the extent expressly necessary for providing the Services or any other servicing or support expressly authorised in writing by RWE, in no event does the Contractor or its Personnel disable or interfere in whole or in part with RWE's software, hardware, systems or data owned, utilised or held by or on behalf of RWE without the prior written permission of RWE, whether or not the disablement is in connection with any dispute between the Parties or otherwise.
- 38.7 RWE may monitor, record and analyse any Contractor access to or data stored on RWE's systems at any time without notice to the Contractor.
- 38.8 The Contractor consents to this monitoring, recording and analysis and the Contractor ensures that all persons obtaining access to RWE's systems through the Contractor are advised of and, to the extent required by law, consent to this monitoring and recording.
- 38.9 The Contractor prevents unauthorised access to RWE's systems through the Contractor's systems.
- 38.10 The Contractor ensures that any computer used by or on behalf of Contractor Personnel to remotely access RWE's systems will not simultaneously access the Internet or any other third party network while logged on to RWE's systems.
- 38.11 Access to RWE's systems may involve access to software or other technology licensed from third parties. The Contractor complies with all obligations, restrictions or other conditions applicable to that software and technology.
- 38.12 The Contractor does not transmit nor permit the transmission of any unlawful, discriminatory, threatening, libellous, defamatory, obscene, scandalous, inflammatory, pornographic or profane material through RWE's systems.
- 38.13 The Contractor does not remove from RWE's systems or retain a copy of any data or information obtained from or as a result of access to RWE's systems unless that removal or retention is reasonably necessary to supply the Services and PROVIDED THAT such removal or retention is otherwise in accordance with this Contract.
- 38.14 The Contractor immediately notifies RWE of any actual or threatened security breach in or unauthorised access to RWE's systems or any other event which compromises the ability of the Contractor to comply with IT or data confidentiality or security obligations in this Contract in any way.
- 38.15 The Contractor understands that a breach of this provision could cause substantial harm to RWE and to numerous third parties having business relationships with RWE and as such any loss or harm so suffered constitutes direct loss.
- 38.16 Any breach of this condition is a material breach and RWE may terminate this Contract for Contractor Default.

### 39. Cyber Security

- 39.1 RWE may issue from time to time and the Contractor on request completes self-declaration forms or questionnaires and supplies corresponding evidence supporting responses

relating to information security, cyber security and critical infrastructure protection (such as the RWE Conditions of Information Security and Data Protection Questionnaire and where relevant, the Data Protection Agreement and the RWE supplier security policy (20230801\_Cyber\_Security\_Standards\_for\_Supplier\_final.pdf) (RWE Supplier Security Policy)).

- 39.2 The Contractor warrants that each of the statements set out in any response to any such declaration or questionnaire issued on or before the Commencement Date or otherwise from time to time by or on behalf of RWE are and remain true and accurate.
- 39.3 The Contractor further acknowledges that RWE is induced and enters into this Contract in reliance upon these statements.
- 39.4 Any breach of this warranty or false declaration is a material breach of the contract and RWE may rescind and/or terminate for Contractor Default.
- 39.5 The Contractor acknowledges RWE's right to check and verify the Contractor's compliance with the requirements of the RWE Supplier Security Policy pursuant to condition 49 (Audit).
- 39.6 The Contractor informs its Personnel deployed in connection with the provision of the Services about the requirements and obligations in the RWE Supplier Security Policy and procures their compliance with it.
- 39.7 The Contractor procures that any contract or arrangement that it has with its Personnel, including third party sub-contractors in relation to this Contract imposes the same obligations on them as is set out in this condition and allows RWE access to inspect, assess and audit as set out in condition 49 (Audit).
- 39.8 In the event that at any time RWE identifies any non-compliance in the Contractor or its Personnel's compliance with the RWE Supplier Security Policy, the Contractor promptly submits suitable rectification and/or risk mitigation plans and corrective measures to RWE and implements them. The Contractor updates and keeps RWE updated as to the implementation.
- 39.9 The Contractor appoints a dedicated Contractor representative with sufficient experience and expertise to effectively handle security issues as named in the RWE Requirements with any changes notified to RWE as soon as is reasonably practicable from time to time (Contractor Security Representative)
- 39.10 The Contractor notifies RWE of and shares security-related information about unusual/malicious activity that may relate to or affect the supply of Services and or its other obligations under this Contract so that the Client has early warning of potential attacks. This includes log files and relates to aspects such as:
- (c) user/system activity (e.g., unexpected logins or changes in user privileges);
  - (d) unauthorised changes to critical and/or sensitive information;
  - (e) malicious data/network traffic.
- 39.11 The Contractor promptly informs RWE of any suspected or actual security incidents, events and/or vulnerabilities or increased risk of potential violation of any cyber security including in its supply chain to the RWE computer security incident response team (**CSIRT**) at csirt@rwe.com.
- 39.12 The Contractor provides assistance in the event of an actual or threatened or suspected security incident including cooperation and coordination with and between the responsible security specialists of the Parties.
- 39.13 RWE expressly reserves its rights to apply Conditions

48(Records) 49 (Audit) to assess the Contractor's compliance with this condition and the RWE Supplier Security Policy.

39.14 The Contractor maintains an appropriate, documented change management process and, without prejudice to either Party's rights and/or obligations, notifies RWE in writing prior to any change that may affect the Services or any other compliance with its obligations under this Contract including:

- (f) material changes to Contractor's technical infrastructure (e.g., major upgrades to operating systems or application software or significant reconfiguration of systems)
- (g) relocation of the contractor's technical infrastructure to another geographic region or jurisdiction
- (h) Contractor processing of information in a new geographic region or jurisdiction
- (i) material reconfiguration of Contractor's Services.

39.15 Unless and to the extent prohibited by law, the Contractor immediately informs RWE if it is requested by third parties to grant access to information (including sensitive information) and/or information systems and/or networks of RWE.

39.16 The Contractor indemnifies RWE and its Affiliates against all Loss incurred or suffered by RWE and/or RWE Affiliates as a result of a breach by the Contractor or the Contractor's Personnel of this condition.

39.17 Any breach of this condition is a material breach and RWE may terminate this Contract for Contractor Default.

#### 40. Code of Conduct

39.11 RWE and its Affiliates are committed to the RWE Code of Conduct (**RWE Code of Conduct**) set out at <https://www.group.rwe/en/the-group/compliance/code-of-conduct/>.

39.2 RWE expects the Contractor to accept the Principles of Conduct contained in the RWE Code of Conduct as a basis of co-operation between the Parties.

#### 40 Human Rights

40.1 RWE expects the Contractor to commit to support and implement (and procure that Contractor Personnel support and implement) the principles on human rights, labour relations, environmental protection and combatting of corruption which are established within the framework of the 'The United Nations Global Compact Initiative' ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

40.2 RWE and its Affiliates are committed to its corporate policy on human rights and applies the Human Rights Supplier Contract Appendix to all contracts entered into by RWE and Affiliates <https://www.rwe.com/en/products-and-services/supplier-portal/general-conditions> (**Human Rights Appendix**).

40.3 RWE expects the Contractor to and the Contractor agrees to:

40.3.1 accept and comply with the principles and obligations contained in the Human Rights Appendix and, in particular, commit to support and implement the principles on human rights, labour relations and environmental protections in its own business and towards its own supply chain; and

40.3.2 operate and maintain throughout the Term suitable policies and procedures to comply with and prevent the infringement of the fundamental principles and rights and obligations referred to in condition 40.1 and 40.2 by the Contractor or any of its Personnel.

40.4 In order to assess and determine the risk for human rights,

labour relations and environmental protection associated with the supply chain, RWE may from time to time submit and the Contractor promptly replies to any RWE questionnaire regarding typical risk areas and preventive and remedial actions required within the Contractor's business.

40.5 The Contractor warrants that each of the statements set out in its responses to any such questionnaire are true and accurate and that the Contractor operates consistently with the Human Rights Appendix.

40.6 The Contractor further acknowledges that RWE is induced and enters into this Contract in reliance upon these statements.

40.7 The Contractor promptly informs RWE of any incident, violation of or increased risk of potential violation of any human rights principle in its supply chain and RWE expressly reserves its rights to apply Conditions 48 (Records) and 49 (Audit) to assess the Contractor's compliance with this condition and the Human Rights Appendix.

#### 41. Employer Responsibility

40.1 Contractor complies and procures that its Personnel comply with all Applicable Law relating to labour or employment law including discrimination, equality, minimum wage, employee health, safety and welfare and Contractor will allow to its Personnel all their rights at law.

40.2 The Contractor warrants that all its Personnel performing its obligations under this Contract have all necessary rights to work and/or work permits.

40.3 Without prejudice to the general obligations above or otherwise to comply with Applicable Law including data protection in relation to its Personnel, the Contractor warrants that it:

- a) has effective procedures to verify the age of employees at the time they are recruited;
- b) keeps adequate age documents of employees, such as ID copies and personnel records;
- c) complies with local legal requirements in relation to the minimum age of employees;
- d) employs employees under the age of 18 only on non-hazardous or daytime work;
- e) allows employees to leave the place of work after working hours;
- f) treats all employees in a humane manner, including not subjecting a worker to physical or verbal abuse;
- g) treats all employees in an acceptable manner in relation to their personal documents, including not requiring employees to lodge deposits or original documents such as ID papers and training certificates;
- h) treats all employees in an appropriate manner over access to and from the place of work;
- i) ensures that all employment is voluntary; and
- j) procures compliance with the Working Time Regulations 1998.

#### 42. Modern Slavery

41.1 The Contractor, to the best of its knowledge warrants, represents and undertakes that:

- a) neither the Contractor nor any of its Personnel has:
  - i) committed an offence under the Modern Slavery Act 2015 (MSA Offence); or
  - ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015, or;
  - iii) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- b) it complies with the Modern Slavery Act 2015 and the associated obligations under this Contract;

- c) it notifies RWE immediately in writing if it becomes aware or has reason to believe that it or any of its Personnel have breached or potentially breached any modern slavery associated obligations under this Contract, such notice to set out full details of the circumstances concerning the breach or potential breach of Contractor's obligations.

### 43. Code of Conduct and Employer Responsibility Infringements

- 42.1 If RWE or the Contractor becomes aware of a potential or actual breach by the Contractor or its Personnel of its corporate responsibility requirements referred to in condition 39 (*Code of Conduct*), 40 (*Human Rights*) or the employer responsibility requirements of condition 41 (*Employer Responsibility*) or 42 (*Modern Slavery*), then each Party notifies the other of the breach or potential breach and the Contractor takes steps to rectify the breach or potential breach.
- 42.2 Where the Contractor is given adequate opportunity to address the potential breach or to remediate the actual breach and has in either case, in RWE's opinion failed to do so, the Contractor is in material breach of this Contract and RWE accrues a right to terminate this Contract for Contractor Default.
- 42.3 The Contractor indemnifies RWE from and against:
- a) all Losses (including loss of reputation and goodwill) directly or indirectly suffered or incurred, claimed from or awarded against RWE and/or any of its Affiliates in consequence of any breach of the corporate responsibilities in condition 39 (*Code of Conduct*) or 40 (*Human Rights*) or the employer responsibility requirements of condition 41 (*Employer Responsibility*) or 42 (*Modern Slavery*) or any breach of related Applicable Law; and
  - b) any Loss (including any fine or other penalty imposed and reasonable costs incurred in defending any claim) in the event either RWE or any of its Affiliates is held liable for any breach of the Lieferkettensorgfaltspflichtengesetz (LkSG) which is attributable to wilful or negligent misconduct of the Contractor, in particular by not observing the obligations arising under the Human Rights Appendix.

### 44. Combating Corruption

- 43.1 The Contractor undertakes to not, directly or indirectly in relation to any person: give or receive, offer or ask for any payment or benefit that constitutes undue financial or other advantage of any kind.
- 43.2 The Contractor complies with all Applicable Law relating to anti-bribery and anti-corruption and the Contractor ensures that neither the Contractor nor the Contractor's Staff engage in any activity, practice or conduct which constitutes an offence under such Applicable Law.
- 43.3 The Contractor indemnifies RWE and RWE Affiliates for and against all Loss incurred or suffered by RWE and/or RWE Affiliates as a result of a breach by the Contractor or the Contractor's Staff of this condition.
- 43.4 Any breach of this condition is a material breach and RWE may terminate this Contract for Contractor Default.

### 45. Sanctions

- 44.1 The Contractor warrants that neither the Contractor nor any of the Contractor's Affiliates nor, to the best of the Contractor's knowledge, any of the Contractor's directors or officers is:
- c) a person against whom Sanctions have been imposed;
  - d) owned or controlled by a person against whom Sanctions have been imposed;
  - e) located in or has been registered in or has its registered office in a country or territory against which Sanctions

applicable to itself or its Government have been imposed (currently including but not limited to Cuba, Iran, North Korea, Syria, the Crimea region and the so-called People's Republic of Donetsk and Luhansk).

- 44.2 The Contractor complies and procures that its Affiliates and Personnel comply with all Sanctions and export control requirements applicable to it and its business activities relating to this Contract.
- 44.3 The Contractor shall not and procures that its Affiliates and Personnel shall not in each case sell, supply or transfer items received from RWE to third parties if this results in the Contractor or RWE or any RWE Affiliates violating any applicable Sanctions or export control regulations.
- 44.4 The Contractor shall not act or omit to act and procures that its Affiliates and Personnel shall not act or omit to act in each case so as to result in RWE or any RWE Affiliates violating any Sanctions or export control regulations.
- 44.5 The Contractor immediately informs RWE in writing if the Contractor becomes aware of any event or matter which may result in a violation of Sanctions or export control regulations by the Contractor, its Affiliates or Personnel or by RWE, its Affiliates or Personnel relating to the Contract.
- 44.6 The Contractor indemnifies RWE and RWE Affiliates against all Loss incurred or suffered by RWE and/or RWE Affiliates as a result of a breach by the Contractor, its Affiliates or Personnel this condition or relevant Applicable Law.
- 44.7 Any breach of this condition is a material breach and RWE may terminate this contract for Contractor Default.

### 46. Data Protection

- 45.1 Each Party acknowledges that it acts in a capacity of data controller and may disclose to each other personal data which is limited in scope to contact details and qualifications of respective Personnel who will be managing or engaged in the performance of this Contract.
- 45.2 The personal data so shared is to be used only for the purpose of satisfying each Party's respective obligations and receiving respective benefits under this Contract and only during the Term or to continue to receive the benefit of rights and enforce remedies that extend beyond the Term.
- 45.3 Each Party ensures that the nature of the data and purpose of data sharing and use set out in condition 45.2 is a permitted use of its Personnel's personal data as set out and published in its respective privacy notice.
- 45.4 Each Party complies with and procures compliance with obligations imposed on data controllers contained within data protection related Applicable Law in force from time to time, including publishing and complying with respective privacy notices.
- 45.5 Neither Party processes personal data on behalf of the other Party nor appoints a third party processor to process such personal data.
- 45.6 Neither Party exports personal data outside of the UK (unless to the EEA) or outside of the EEA unless to the USA and/or to any Affiliate to which corporate binding rules apply as described in and which satisfy the requirements set out in UK data protection Applicable Law.
- 45.7 Each Party warrants that it has in place and maintains and applies appropriate technical and organisational measures, processes and procedures to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of personal data.
- 45.8 On expiry or earlier termination of the Contract, each Party securely returns to the other or destroys all personal data shared and/or in a Party's possession or control.
- 45.9 Each Party indemnifies and keeps the other Party and its Affiliates fully indemnified immediately on demand against any Loss (including loss of reputation and goodwill) directly or indirectly suffered or incurred as a result of a breach of this condition or any breach of the UK data protection related

Applicable Law in force from time to time by the indemnifying Party, its Affiliates or Personnel.

45.10 Each Party's respective maximum liability and/or debt to each other under this condition is the sum of one million pounds GB sterling (£1,000,000) in aggregate.

45.11 Any breach of this condition is a material breach and entitles a non-defaulting Party to terminate this Contract for Default.

#### 47. Warranties

46.1 The Contractor warrants that:

- a) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation;
- b) it has legal capacity to enter into this Contract and ability to supply the Services and perform its obligations under this Contract and has taken all necessary action to authorise that execution, delivery and performance;
- c) the entering into and/or fulfilment of this Contract does not violate, conflict, breach or contravene any Applicable Law or constitutional requirement or 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) it is not relying upon any representation of RWE or its Affiliates other than those expressly set out in the Contract;
- e) it has negotiated, entered into and executed the Contract as principal and not as agent or in any other capacity, fiduciary or otherwise.
- f) it has and will maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract and in respect of the Services;
- g) it will deliver good marketable title free from encumbrances on all Results supplied;
- h) it will pass on the benefit to RWE of all relevant third parties' warranties or guarantees to RWE in relation to the Services.

#### 48. Records

47.1 The Contractor, during the Term, maintains such records relating to the Services as may be necessary to trace the supply chain and to demonstrate compliance with its obligations under this Contract including correct invoicing, information and cyber security, obligations of confidentiality, human rights protections and data protection and keeps them for as long as Applicable Law requires and/or permits.

#### 49. Audit

48.1 RWE and its auditors may access and enter the premises of the Contractor and those premises of its Personnel during normal working hours upon giving reasonable notice as appropriate in the circumstances and inspect and/or audit all matters (including all records) relating to the supply of the Services and compliance by the Contractor and/or its Personnel with the terms of this Contract and with any Applicable Law in relation to the supply of the Services including its operations, facilities, working conditions, procedures and systems.

#### 50. Conflict of Interest

49.1 The Contractor:

- a) informs RWE at once if the Contractor is approached by any third party to carry out any work which, if accepted by the Contractor, is reasonably likely to lead to a conflict of interest; and
- b) (subject always to third party confidentiality restrictions) notifies RWE of the actual or potential conflict of interest; and

- c) the Contractor takes such steps as are reasonably required by RWE to ensure that the conflict of interest is prevented and/or otherwise appropriately addressed.

#### 51. Third Party Rights

51.1 Subject to condition 52 (*Group Benefit*), a person who is not a Party to this Contract may not enforce this Contract under the Contract (Rights of Third Parties) Act 1999.

#### 52. Group Benefit

52.1 To the extent to which any Services provided pursuant to this Contract are for the benefit of an RWE Affiliate, that Affiliate may enforce the Contract subject to and in accordance with its terms and the provisions of the Contracts (Rights of Third Parties) Act 1999.

52.2 Any Loss that is suffered by any Affiliate as a result of a breach of the Contract or any tort or statutory duty in relation to it is recoverable by RWE as a Loss and is not and is not deemed to be an indirect or consequential loss merely because the loss is suffered by an Affiliate.

#### 53. Notices

53.1 Any notice to be given under this Contract shall be in writing and in each case shall be delivered personally or sent by recorded delivery to the postal addresses set out in the Order or as otherwise notified. A Party may, on notice, change such addresses.

53.2 A notice is served at the time of delivery if delivered personally or 3 business days after posting in the case of a postal address in the United Kingdom and 5 business days after posting for any other address.

#### 54. Subcontracting

54.1 The Contractor does not subcontract any of its obligations under the Contract or change subcontractors without RWE's prior written consent or to the extent set out in an Order.

54.2 Any appointment of a subcontractor does not affect the Contractor's obligations and liabilities.

54.3 The Contractor is primarily liable for any act or omission of its Personnel

#### 55. Assignment

55.1 Subject to condition 55.2, neither Party assigns, novates or otherwise transfers any of its rights and/or obligations under the Contract without the other Party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

55.2 RWE may assign the benefit of the Contract to any other RWE Affiliate

#### 56. Waiver

56.1 No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law constitutes a waiver of that or any other right or remedy, nor does it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy precludes or restricts the further exercise of that or any other right or remedy.

56.2 No act or omission of either Party is or is deemed to be a waiver or release of a right or remedy unless expressly notified in writing.

#### 57. Cumulative Remedies

57.1 The rights, powers and remedies conferred on any Party by the Contract and the remedies available to any Party are cumulative and are additional to any right, power or remedy which it may have under Applicable Law unless otherwise stated in the Contract.

#### 58. Costs and Expenses

58.1 Each Party bears its own costs and expenses incurred in the preparation, execution and implementation of the Contract.

dispute, claim or matter arising under or relating to this Contract (including its subject matter, formation and any non-contractual disputes and claims).

## 59. No Partnership

59.1 Nothing in the Contract creates or is deemed to create a partnership, association, joint venture, trust or other co-operative entity between the Parties nor to constitute the Contractor as agent of RWE or otherwise entitle the Contractor to have authority to bind RWE or any RWE Affiliate in respect of any matter.

## 60. Entire Agreement

60.1 The Contract sets out the entire agreement and understanding between the Parties in respect of the subject matter of the Contract.

60.2 Each Party acknowledges that it has entered into the Contract in reliance only upon the representations, warranties and promises specifically contained or incorporated in the Contract and, save as expressly set out in the Contract, neither Party has any liability in respect of any representation, warranty or promise made prior to the Commencement Date unless it was made fraudulently.

## 61. Severance

61.1 To the extent that any Condition or part of this Contract is found by any court or competent authority to be invalid, unlawful or unenforceable, that condition shall not affect the enforceability of the remainder of the Contract.

61.2 If any condition of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the condition were amended or deleted, the condition in question applies with such modification(s) as may be necessary to make it valid and enforceable to achieve the original commercial intent of the condition unless any other amendment is agreed between the Parties under condition 7 (*Change and Variation*).

## 62. Language

62.1 The language of this Contract is English and all notices, documents, correspondence and any other information exchanged between the Parties in relation to it is in English unless agreed otherwise between the Parties in writing.

## 63. Counterparts

63.1 The Order may be executed in any number of counterparts, each of which when executed constitutes a duplicate original. All the counterparts, together with the Conditions, constitute one contract.

63.2 Transmission of an executed counterpart of the Order including an electronically signed counterpart (but for the avoidance of doubt not just a signature page) by e-mail (in PDF, JPEG or other agreed format) or by any other RWE designated electronic signature and/or delivery process takes effect as delivery of an executed counterpart of the Order. Any such electronic signature is as conclusive of each Party's respective intentions to be bound by this Contract as if signed by hand by each Party's respective authorised representative.

63.3 No counterpart is effective until each Party executes and delivers at least one counterpart as described in condition 63.2.

## 64. Escalation

64.1 If a dispute arises out of or in connection with the Contract, the Contractor and RWE notify each other and seek to resolve the dispute through negotiations between the Contractor's and RWE's respective representatives who have the authority to settle it.

## 65. Governing Law

65.1 English and Welsh law applies exclusively to this Contract and each Party agrees to irrevocably submit to the exclusive jurisdiction of the English and Welsh courts as regards any

## 66. Defined Terms

**Accept (Acceptance)** : has the meaning set out at condition 2.2

**Affiliate** : with respect to a person means an entity (including any individual, corporation, partnership, limited liability company, association or trust) controlling, controlled by or under common control with that person.

**Applicable Law** : All English and Welsh law, statute or regulation in force at the Commencement Date and during the Term which relates to this Contract, the Services and the Site (including those relating to health and safety).

**Background IPR** : has the meaning set out at condition 32.1

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

**CDM Regulations** : Construction (Design and Management) Regulations 2015 and the related Approved Code of Practice together with any guidance requirements issued from time to time by the Health and Safety Executive.

**Commencement Date** : the date of Acceptance or the date specified in the Order.

**Conditions (Condition, condition)** : these conditions of contract.

**Confidential Information** : information received or obtained as a result of entering into or performing the Contract which relates to the provisions or subject matter of the Contract or the negotiations relating to the Contract and including: the Order, these Conditions, any information relating to a Party's technology, technical processes, business or financial or other affairs or customers or suppliers or those of a Party's Affiliates, any Materials or any other material of a confidential nature (either marked as such or which, by its nature, can reasonably be considered to be confidential) in each case which a Party (or its Personnel or Affiliates) receives from the other Party (or its Personnel or Affiliates) or any other person acting on a Party's behalf or which is either expressly or impliedly or otherwise gleaned by a Party, its Affiliates or Personnel.

**Contract** : has the meaning set out at condition 2.3.

**Contractor** : the entity which is named as the supplier of the Services in the Order.

**Contractor Representative** : the competent person employed by and nominated by the Contractor who is authorised to act on behalf of and bind the Contractor under the Contract and who is notified to RWE from time to time.

**Contractor Tools** : excluding Results, means any: knowledge, techniques, procedures, routines and methods including all IPR in each of them; and that in each case are pre-existing as of the Commencement Date; and which have been developed by the Contractor or its Personnel in the Contractor's regular course of business and used by the Contractor in the provision of the Services and not just for the purpose of the supply the Services under this Contract.

**Default** : a breach of contract, tort (including negligence) or breach of statutory duty.

**Defect (Defective)** : defects, discrepancies, errors or omissions in the design, materials or workmanship of Results and/or Services (other than a design made, furnished or specified by RWE and for which the Contractor has in writing disclaimed responsibility); or Results or Services which do not comply with the Contract, the Order, Applicable Law, the Specification or any condition.

**Delivery** : performance of the Services and or delivery of the Results and **Deliver** and **Delivered** is construed accordingly.

**Event of Force Majeure** : Act of God, explosion, lightning, tempest, flood, fire, terrorism, war, hostilities, act of public enemy, invasion, revolution or riot or any event which arises from a cause beyond a Party's reasonable control and which is not reasonably foreseeable as at the Commencement Date PROVIDED THAT the following are not Events of Force Majeure: (i) a strike by or lockout

or other industrial dispute or trade dispute involving the Contractor or any of its Personnel; or (ii) non-supply of equipment, materials or machinery by any supplier to the Contractor; or (iii) the Contractor's failure to hire suitably qualified Personnel or labour; or (iv) mechanical or electrical breakdown or failure of equipment, machinery or plant owned by or supplied to the Contractor. Covid 19 pandemic is itself not or is not deemed to be an event of force majeure because it is foreseeable as of the Commencement Date. Measures to address Covid 19 are included in the Contract. If measures required to address Covid 19 materially change after the Commencement Date, that change could constitute an Event of Force Majeure. Any other pandemic not associated with or derived from Covid 19 is an Event of Force Majeure.

**Fee(s)** : the price or the rates for the supply of the Services in the amounts and payable at the frequency as set out in the Order.

**Good Industry Practice** : the exercise of that degree of skill, diligence, prudence and foresight which is reasonably and ordinarily expected to be exercised by an appropriately skilled, competent and professional operator of the appropriate discipline(s) engaged and experienced in the provision of services of a similar type, nature and complexity to the Services including design and under the same or similar circumstances as are anticipated by this Contract.

**Guarantee Period** : a minimum of twenty-four (24) months from Delivery or longer period if expressly stated in the Order or Specification.

**Indemnified Party**: RWE, any RWE Affiliate and any of their respective Personnel.

**Intellectual Property Rights (IPR)**: means all trade-marks, service marks, trade names, logos get-up, patents, patentable rights inventions, registered and unregistered design rights, copyrights and neighbouring rights, semi-conductor topography rights, utility models, data and 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 intellectual and industry property and proprietary rights existing under the laws of any country (whether or not any are registered or registrable) and all pending applications for and right to apply for or register in the same (present, future and contingent) and including all renewals, extensions, revivals and all related accrued rights of action.

**Loss**: all loss or damage occurring to any property or injury or death to person and/or costs (including wasted cost), loss liabilities, debt, charges or expenses (including reasonable legal and other professional costs) incurred by a Party or any Indemnified Party including in relation to any actions, suits, fines, penalties, claims or demands.

**Materials** : RWE or RWE Affiliate Confidential Information, IPR including Background IPR, specifications, drawings, sketches, models, prototypes, samples, tools, designs, technical information or data or other proprietary information (whether written, oral or otherwise and including personal data).

**NIS Regulations** : Network and Information Systems Regulations 2018.

**Order** : means the letter, purchase order, order or other written communication issued by RWE to the Contractor setting out details of the Services which are to be supplied by the Contractor to RWE, described as an order or purchase order and referring to these Conditions (and **Ordered** is construed accordingly).

**Party, Parties** : together or severally as the context requires RWE and the Contractor.

**Permitted Persons** : means a Party's Personnel or Personnel of a Party's Affiliate in each case who are directly involved in the provision of or receiving the benefit of the Services and in relation to RWE also includes: a\_ any third party collaborating with RWE and/or any of its Affiliates; and/or b) any relevant statutory authority.

**Personnel** : means, in relation to a person, its employees, staff, officers, agents, contractors, sub-contractors, representatives or workers and in relation to the Contractor, the Staff.

**Results** : all deliverables, results, documents, products and materials developed by the Contractor or its Personnel as part of or in relation to the Services in any form or media, including studies, drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**RWE** : the legal entity named as the contracting buying entity in the Order which is an Affiliate of RWE AG operating and registered within the UK.

**RWE AG** : RWE Aktiengesellschaft, (registered with the commercial register of the Local Court Essen under HRB 14525) whose registered office is at RWE Platz 1, 45141 Essen, Germany.

**RWE Representative** : all or any one of the individuals identified as such on the Order or as otherwise notified to the Contractor.

**Sanctions**: any economic or financial sanctions or trade embargoes implemented, administered or enforced by the European Union (EU), its member states, the United Kingdom, the United Nations Security Council or the United States of America, unless they or compliance with them constitutes a violation of any applicable blocking law.

**Services** : the services which are as described in the Order including services which may be required in order to Deliver the Results.

**Site** : the site or sites at or about which the Services are required and as set out in the Order or subsequently agreed in writing between the Parties.

**Specification** : the user requirements and specification for each of the Results and the Services, details of which are set out or identified in the Order.

**Staff** : all personnel used by the Contractor to perform the Services (including all employees, workers, sub-contractors (and any employee, agent or independent contractor of such sub-contractors)).

**Target Completion Date** : the date specified in the Order as the date by which the Services must be completed as such date may be varied in accordance with the conditions.

**Term** : has the meaning set out at condition 4.1.

**TUPE** : the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**Writing** : messages sent or received via post with a manuscript signature, a SAP order signed with electronic signature or a SAP order without electronic signature and emails where emails are sent to at least two addresses notified by a Party and where out of office or similar rejection messages are not received on sending.