



RWE Renewables - Terms and Conditions for Minor Services North America (Last updated 21.10.2019)

SCOPE

This document applies to RWE Renewables. Therefore, where the document refers to 'RWE' it means RWE Renewables.

DEFINITIONS

"Company" means RWE Renewables, and/or its subsidiaries and affiliates (as identified on the Order);

"Conditions" means these terms and conditions;

"Contract" means any contract between the Company and the Seller for Services, which in the absence of any other agreement shall be comprised of the Order, the Specifications and these Terms and Conditions;

"Contractor" means the person, firm, company including subsidiaries to which the Company's Order is addressed and sent;

"Due Date" means the date stated in the Order for delivery of the services;

"Effective Date" is the date of the Contract as specified on the Order.

"Order" means the Order issued to the Seller by or on behalf of the Company;

"Personnel" means all officers, affiliates, partners, employees, agents, independent contractors and subcontractors of either CONTRACTOR or COMPANY, as specified.

"Rate Schedule" means the list of rates for services submitted by the Contractor and accepted by Company, forming a part of the Contract documents.

"Services" means the specific set of Services to be performed by Contractor, as specified on the Order or on the Specifications, if applicable.

"Specifications" means the Company's specifications or stipulations for the Services notified in writing to the Seller.

1. Services.

1. Conflicts of Interest. CONTRACTOR shall not perform, or enter into any agreement to perform, services for any other person, corporation or entity, except with the prior written consent of COMPANY, if the performance of the services could result in a conflict with CONTRACTOR's obligations under this Agreement.

2. Standard of Care. CONTRACTOR is knowledgeable and experienced in providing technical consulting services comparable to the Services. CONTRACTOR represents to COMPANY that the Services shall be performed in a manner consistent with the standards of care, diligence and skill ordinarily exercised by other professional CONTRACTORS under similar circumstances in accordance with customarily accepted good and sound professional practices. Unless otherwise agreed in the Specifications or the Order, the Contractor will provide all materials, tools and facilities to complete the Services.

3. Change Orders. At any time after execution of this Agreement, Company may order changes in to Services consisting of additions, deletions, and revisions within the general scope of services being performed by Contractor under this Agreement and/or any applicable Specifications. Whenever a change in the scope and/or time for performance of services occurs, or if Company has notified Contractor of a change, Contractor shall submit to Company within a reasonable time an estimate of the changes in cost and/or schedule, with supporting calculations and pricing.

2. Compensation by COMPANY

1. Fees and Charges. CONTRACTOR will be compensated and reimbursed for its Services by COMPANY according to the Rate Schedule, or at the rates identified on the Order.

2. Invoice Submittal. Each invoice shall set forth and request payment for all sums payable to CONTRACTOR for all

portions of the work completed by the CONTRACTOR at that point. The invoices shall include, without limitation, the respective order number, a description of the Services performed, detailed charges for labor, including time and hourly rates, and reimbursement expenses, itemized separately and supported by appropriate documentation, and shall be signed by the representative of CONTRACTOR preparing the same.

3. Disputes. In the event of a dispute regarding payment, CONTRACTOR shall remain obligated to and shall, at COMPANY's option, continue to perform the Services. However, CONTRACTOR shall have the right to terminate this Agreement in connection with a payment dispute upon thirty (30) days prior notice to COMPANY if any payment dispute is not resolved within thirty (30) days of COMPANY's receipt of CONTRACTOR's invoice. If COMPANY objects to any portion of an invoice, COMPANY shall so notify CONTRACTOR and CONTRACTOR shall be paid that portion of the invoice not in dispute, pending resolution of disputes concerning other charges.

4. Late Payment. If COMPANY fails to pay CONTRACTOR within thirty (30) days after invoices are submitted, COMPANY agrees CONTRACTOR shall have the right to charge interest at the lower of ten percent (10%) per annum or the maximum allowable by law. If COMPANY fails to pay undisputed amounts within sixty (60) days of receipt of such invoice, it will be considered a default in payment and a material breach of this Agreement. Upon written notice, the duties, obligations, and responsibilities of CONTRACTOR under this Agreement may be suspended or terminated at CONTRACTOR's sole option.

3. CONTRACTOR STATUS

1. Independent Contractor. CONTRACTOR is and will perform Services under this Agreement as an independent contractor and as such shall have and maintain complete control over and be responsible for all of its Personnel and operations. Neither CONTRACTOR nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or subcontractor of COMPANY. This Agreement shall not be deemed to create any form of business organization between CONTRACTOR and/or COMPANY nor is either granted any right or authority to assume or create any obligation or responsibility on behalf of the other.

2. Personnel. CONTRACTOR represents that all Personnel of CONTRACTOR will and shall be required to abide by the terms and provisions of this Agreement, including, without limit, the requirement of confidentiality as provided in Section 8 below. The Contractor, shall upon request of the Company remove from the Services any person employed by the Contractor who engages in misconduct, incompetence or negligence.

4. Responsibilities of CONTRACTOR.

1. Coordination of Services. COMPANY may, from time to time, schedule and coordinate CONTRACTOR's Services in conjunction with the work of others, and CONTRACTOR agrees to exercise reasonable efforts to comply with the scheduling and coordination.

2. Laws and Regulations. CONTRACTOR represents and certifies that in the performance of the Services it will comply with all material and applicable statutes, rules, regulations and orders of the United States and of any state or political subdivision including, without limit, licensing and certification requirements, environmental laws, health and safety laws, worker health and safety laws and laws pertaining to labor wages, hours and other conditions of employment in effect at the time the Services are being performed.

3. Records and Audit. CONTRACTOR shall maintain all cost, expense, payroll and related financial records and accounts pertaining to Services performed by CONTRACTOR under this Agreement (the "Records") for a period of at least two years after final payment under this Agreement. COMPANY shall have the right to audit, copy and inspect the Records at all reasonable times during the course of the Services and for the two year period.

5. Term.

1. Term. The term of this Agreement shall commence on the date of full and final execution hereof and shall continue until completion of the work to the satisfaction of COMPANY has been achieved, unless otherwise terminated pursuant to the terms of this Agreement.

2. Termination for Convenience. COMPANY may terminate this Agreement effective upon delivery of written notice to CONTRACTOR ("Termination") for its convenience prior to the completion of the Services. CONTRACTOR shall be compensated by COMPANY for all services performed to date of termination and for reasonable and necessary termination costs and non-cancelable commitments entered into prior to the date of Termination. In no event shall CONTRACTOR be entitled to profits on Services not performed due to Termination.

3. Termination for Default. COMPANY may terminate this Agreement for Default in the event of failure to make timely progress, non-performance or breach by CONTRACTOR of this Agreement, or in the event of insolvency, bankruptcy or receivership of CONTRACTOR, effective upon written notice to CONTRACTOR. COMPANY may contract with others for performance of the Services in the event of Termination under this paragraph, and CONTRACTOR shall reimburse COMPANY for any additional costs incurred by COMPANY as a result of the default. Payment of any additional costs shall not relieve CONTRACTOR of any other liability it may have in connection with the Services.

4. Delivery of Materials. Upon receipt of notice of Termination for any reason, CONTRACTOR shall immediately deliver to COMPANY all Materials as defined in subparagraph 8.1. 1), 8.1 (3) and 8.3 below, held or used by CONTRACTOR in connection with the Services, except those Materials, if any, owned by CONTRACTOR or supplied by CONTRACTOR at CONTRACTOR's own cost, or required by law or industry standards to be maintained by CONTRACTOR. If, at the time of Termination further sums are due CONTRACTOR, CONTRACTOR shall not be entitled to the sums until all Materials required to be delivered to COMPANY are delivered to COMPANY.

5. Survival. Upon receipt of notice of Termination for any reason, CONTRACTOR shall promptly cease all Services, except for additional Services that COMPANY may, in its discretion, reasonably request CONTRACTOR to perform. These terms shall govern any additional services.

6. Indemnification.

1. Indemnification. CONTRACTOR agrees to release, indemnify, defend and hold harmless COMPANY, and its Personnel, against all claims, damages, demands, liens, claims of lien, losses, actions or liability of any kind which may be imposed on them, including, without limit, reasonable attorneys' fees and litigation costs arising out of or connected with (i) any negligent acts, errors or omissions or willful misconduct of CONTRACTOR or its officers, affiliates, partners, employees, agents, subcontractors and vendors in performing the Services or (ii) damage to any property or injury to or death of any persons resulting from any negligent acts, errors or omissions or willful misconduct of CONTRACTOR or its officers, affiliates, partners, employees, agents, subcontractors and vendors.

7. Insurance.

CONTRACTOR shall maintain in full force, at no additional charge to COMPANY, such insurance policies as are appropriate and adequate for its liabilities under the Contract, or if applicable, the specific insurance requirements listed in the Specifications.

8. Confidentiality and Reports.

1. Confidentiality. CONTRACTOR hereby agrees that, in order to protect COMPANY's business interests, the Services shall be performed, and communications and Materials (as defined in subparagraph 8(a)(1)) shall be handled in accordance with the following:

(1) All books, records, photographs, slides, materials, new data, boring logs, laboratory reports, calculations, estimates, documents, communications, notes, proposals, reports, scopes of work or related responses, whether in written or any other form ("Materials"), which are either generated by CONTRACTOR or furnished to CONTRACTOR by COMPANY or others shall be considered (unless specifically marked otherwise by COMPANY) as confidential.

(2) CONTRACTOR agrees that only those Personnel directly engaged in the Services shall have access to the Materials and Records.

(3) All Materials prepared or developed by or for CONTRACTOR pursuant to this Agreement shall become the property of COMPANY upon the termination of this Agreement and upon the termination of this Agreement or at an earlier time as COMPANY requests, CONTRACTOR agrees to deliver to COMPANY any Materials received or generated in the performance of this Agreement. CONTRACTOR may retain a record copy (including portions of samples) of all Materials in a controlled access file accessible only to those CONTRACTOR employees directly engaged in the Services, and will not display, reveal or disclose the contents of the Materials so retained to others without COMPANY's prior written authorization.

(4) CONTRACTOR agrees to obtain the same assurances as to confidentiality and non-disclosure required under this section from all persons or entities which may be called upon to assist CONTRACTOR in providing the Services specified under this Agreement, including, but not limited to, subcontractors working under CONTRACTOR's direction.

2. Communication of Information. At any time requested by COMPANY, CONTRACTOR shall furnish to COMPANY reports of the results of the Services performed under this Agreement. The reports shall be in the number of copies and form and cover the subject matters requested by COMPANY.

3. Exclusive Property. All Materials developed, supplied or submitted to COMPANY in accordance with this Agreement are the sole and exclusive property of COMPANY and it retains the unilateral and unrestricted right to use the Materials and reports in any way the Company deems necessary.

4. Survival. The Provisions of this Section 8 shall survive the expiration of this Agreement and the termination or completion of the Services.

9. Notices.

All notices and demands which any Party is required or desires to give to any other shall be given in writing by personal delivery or by express courier service or certified mail, return receipt requested, to the address on the Order, provided that if any party gives notice of a change of name or address, notices to that party shall thereafter be given as demanded in that notice. All notices and demands given by personal delivery or by express courier service shall be effective upon receipt by the party to whom a notice or a demand is being given. All notices given by mail shall be effective on the third business day after mailing.

10. Attorneys' Fees.

In the event of any litigation involving this Agreement to enforce any provisions of this Agreement, to enforce any remedy available upon default under this Agreement or to obtain a declaration of rights under this Agreement, the prevailing party shall be entitled to recover from the other attorneys' fees and costs as may be reasonably incurred, including the costs of reasonable investigation, preparation and professional or expert consultation incurred by reason of the litigation.

11. General Provisions.

1. Entire Agreement. This Agreement contains the entire agreement regarding the subject matter of this Agreement and supersedes all prior understandings and agreements, whether oral or in writing, regarding the subject matter of this Agreement.

2. Choice of Law. This Agreement shall be governed by the laws of the State of Texas.

3. Severability. If any term, covenant, condition or provision of this Agreement, or their application to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the Parties shall renegotiate the unenforceable or invalid terms so as to effect the intent of this Agreement, and the remainder of the provisions of this Agreement, or their application to any person or circumstance, shall remain in full force and effect.

4. Waiver of Covenants, Conditions or Remedies. Waiver by one Party of performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver of any other covenant or condition under this Agreement.

5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together will constitute one and the same instrument.

6. Amendment. This Agreement may be amended at any time by the written agreement of COMPANY and CONTRACTOR. All amendments, changes, revisions and discharges of this Agreement shall be binding upon the Parties despite any lack of legal consideration, as long as it shall be in writing and executed by the Parties.

7. Further Acts. Each Party agrees to perform any further acts and to execute, acknowledge and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

8. Anti-Corruption. CONTRACTOR and its Personnel shall not offer, give or agree to give to any person, or request or accept or agree to accept from any person (whether for itself or on behalf of another person, and either directly or indirectly), any gift or payment,

consideration or benefit of any kind which constitutes an illegal or corrupt practice ("Anti-Corruption Obligation"). The CONTRACTOR shall at once disclose in writing to COMPANY the details of any breach of this Anti-Corruption Obligation. This is an ongoing obligation imposed on the CONTRACTOR. The CONTRACTOR shall

- a. At all times act in strict compliance with the Anti-Corruption Obligation; and
- b. In a suitable fashion instruct and monitor its directors, managers, employees, agents, consultants or other persons working on its behalf to ensure their compliance with the Anti-Corruption Obligation; and
- c. Make clear, in its dealings on behalf of COMPANY that it is acting in accordance with the Anti-Corruption Obligation and the anti-corruption laws in force."

The CONTRACTOR further declares that neither the CONTRACTOR itself nor its directors, managers, employees, agents, consultants or other persons working on its behalf are in a permanent business relationship or in any other close relationship, in particular of a personal nature, with officials, public servants or employees of authorities and governments in those countries in which the CONTRACTOR is to operate in accordance with this Agreement.

9. Tax Clause. Should the subject matter of this Agreement at any time be subject to an official investigation or preliminary proceedings (including, but not limited to, tax, criminal or regulatory inquiries), the CONTRACTOR shall immediately, at the request of the COMPANY, provide a written declaration stating whether, to what extent, when, to which tax authority and under which file number the CONTRACTOR has accounted for the compensation received under the terms of this Agreement. At the request of COMPANY, the CONTRACTOR shall further provide a written declaration of a competent tax auditor confirming that the compensation received has been properly accounted for in the CONTRACTOR's tax return. Wherever it is impossible for the CONTRACTOR to meet this obligation in justified individual cases, the CONTRACTOR shall name the tax auditor that is competent to give confirmation or further information.

10. Assignment and Subcontracting. Contractor acknowledges that Company has entered into this Agreement in reliance upon the particular reputation and expertise of Contractor. Without the prior written approval of COMPANY, Contractor shall not assign any of its rights under this Agreement, including, but not limited to, its claim to payment of remuneration and/or the agreed commission, to any third party. Further, without the prior written approval of Company, the Contractor may not employ subcontractors to perform any significant portion of services.

11. Order of priority. The contract shall be comprised of and any conflict resolved in the following order: the Order, Terms and Conditions, the Specifications and the Rate Schedule.

12. Disputes. If any dispute arises out of or relates to this Agreement, or the breach thereof, and the dispute cannot be settled through direct discussions by the representatives of the Parties, the Parties agree then to submit the matter to mediation before having recourse to a judicial forum. No written or oral representation made during the course of any settlement negotiations or mediation shall be deemed a party admission.