

## NATIONAL GAS

### STANDARD TERMS FOR THE PURCHASE OF DELIVERABLES

#### DEFINITIONS AND INTERPRETATION

1.1 In the Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the following meanings:

**Applicable Law:** any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance, standard, code, rule (including any rule of court), directives or requirements of the UK Parliament, any of its devolved administrations, or other Relevant Authority, or any applicable judgment of a relevant court (in each case as may be amended after the date of the Contract, and together with any new Applicable Law after the date of the Contract);

**Business Day:** any day except Saturday, Sunday or a public holiday in England and Wales;

**Client:** the National Gas Group Member identified in the Purchase Order;

**Client Background IPR:** any IPR owned by or licensed to a Client Party before the date of the Contract and/or arising on or after such date except in connection with the Deliverables;

**Client Data** means any data, documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium supplied to the Supplier (or any Supplier Party) by or on behalf of the Client or a Client Party, or which the Supplier (or any Supplier Party) is required to collect, generate, process, store or transmit pursuant to the Contract (or otherwise receives in connection with providing the Deliverables), including all modifications, additions and developments made to any of those items;

**Client Information Systems** is defined in condition 7.2;

**Client IPR:** is defined in condition 8.1(a);

**Client Part(y)(ies):** the Client, each Client Group member and any party which ceases to be a Client Group member during the Term;

**Client Policy Requirements:** those policies of the Client that are notified in writing to the Supplier from time to time, including the "Supplier Code of Conduct";

**Client Premises:** any Client Party's premises where any Deliverables are provided;

**Conditions:** these Standard Terms for the Purchase of Deliverables;

**Confidential Information:** is defined in condition 11.1;

**Construction Act:** means the Housing Grants, Construction and Regeneration Act 1996

**Construction Contract:** shall have the definition given to it in section 104 of the Construction Act.

**Contract:** is defined in condition 2.1;

**Control:** in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and **Controls** and **Controlled** will be construed accordingly

**Controller:** has the meaning given under applicable Data Protection Law;

**Data Protection Law:** means any Applicable Law (or any other relevant law) relating to the processing, privacy, and use of Personal Data, as applicable to the Parties, including:

- (a) in the United Kingdom:
  - (i) the UK GDPR (as defined in the Data Protection Act 2018) and the Data Protection Act 2018, and/or any supplementary or replacement laws and regulation; and/or
  - (ii) the Privacy and Electronic Communications (EC Directive) Regulations 2003, and any laws or regulations implementing Directive 2002/58/EC (**e-Privacy Directive**);
- (b) in member states of the European Union (EU): the General Data Protection Regulation (EU) 2016/679 (**GDPR**) and the e-Privacy Directive, and all relevant EU and EEA member state laws or regulations giving effect to or corresponding with any of them;
- (c) any other laws relating to the processing, privacy and use of Personal Data in any other territory as applicable to any Party; and
- (d) any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority (as defined in the GDPR);

**Day:** a calendar day;

**Deliverables:** the provision of the Services and/or the Goods (as applicable) and all ancillary obligations under the Contract;

**Deliverables IPR** is defined in condition 8.1(a);

**Delivery:** the delivery of the Goods to the Delivery Location which shall be deemed to have occurred as described at condition 4.6;

**Delivery Location:** the location stipulated by the Client;

**End Date:** the date of expiry or termination of the Contract;

**Force Majeure Event:** (a) an act of God; (b) war, (c) insurrection, riot, civil commotion, act or threat of terrorism; (d) lightning, earthquake, fire, flood,

storm or extreme weather condition; or (e) any other event or circumstance to the extent it is beyond the reasonable control of the relevant Party excluding any strikes or industrial action relating to the Supplier's staff;

**Good Industry Practice:** using standards, practices and operating procedures conforming to Applicable Law and exercising that degree of skill, diligence, care, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider engaged in a similar type of undertaking;

**Goods:** any goods described in the Purchase Order or otherwise agreed in writing between the Parties;

**Group:** in respect of a person, means all of its parent undertakings or subsidiary undertakings from time to time (each term as defined in section 1162 Companies Act 2006) and any subsidiary undertakings of any such parent undertakings from time to time;

**Insolvent:** where a Party: (a) gives notice under section 84 Insolvency Act 1986 of, or proposes or passes a resolution for, its winding up; (b) has a winding-up order made or a notice of striking off filed in respect of it, has an administration order or has a notice of appointment of an administrator filed in respect of it at any court, or applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; (c) proposes, makes or is subject to: (i) a company voluntary arrangement; (ii) a composition with its creditors generally; (iii) an application to a court of competent jurisdiction for protection from its creditors generally; or (iv) a scheme of arrangement under Part 26 Companies Act 2006, or 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 any of its creditors; (d) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income, ceases to trade; or (e) is the subject of anything analogous to any of the foregoing under the laws of any applicable jurisdiction;

**Invoice:** is defined in condition 9.1;

**IPR:** all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know how, registered trademarks, domain names, registered designs, models, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the UK and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

**Liability:** Losses arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any obligations under the Contract;

**Losses:** costs (including legal costs) on a full indemnity basis and costs of enforcement, expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, proceedings and judgments, including without limitation, the costs of de-installation and re-installation of the Deliverables and associated costs and expenses whether direct or indirect;

**National Gas Group Member** means National Gas Transmission PLC (Co. No. 2006000), National Gas Metering Limited (Co. No. 3705992)

**Notice:** a written notice given under condition 0 and to **Notify** means to serve a Notice;

**Ofgem:** the Office of Gas and Electricity Markets;

**Party:** the Client or the Supplier, together being the **Parties**;

**Permitted Purposes:** a Party performing its obligations and exercising its rights under the Contract, or receiving the benefit of the other Party's performance of its obligations (including in respect of the Client, any use of the Deliverables it deems appropriate);

**Personal Data:** has the meaning given under applicable Data Protection Law;

**Prices:** the prices set out in the Purchase Order;

**Process (including Processed, Processes and Processing):** has the meaning given under applicable Data Protection Law;

**Prohibited Act:** (a) the offering, promising, giving, accepting or soliciting of an advantage, reward or gratuity as an inducement for an action in connection with the Deliverables which is illegal, unethical or a breach of trust; (b) abusing any entrusted power for private gain in connection with the Contract or any other contract with the Client; (c) the establishment of accounting practices and corporate entity structures that implicitly or explicitly result in tax evasion or facilitate tax evasion as defined in the Criminal Finance Act 2017; (d) engaging in any activity, practice or conduct outside the UK that would, if carried out in the UK, constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 (e) failing to comply with Relevant Laws, any act or thing which constitutes or may constitute an offence under Relevant Laws or cause any Client Party to breach any Relevant Laws.

**Purchase Order:** the Client's written order for the purchase of Deliverables from the Supplier;

**Relevant Authority:** any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, officer or public or statutory person of the Government of the UK (including, without limitation, Ofgem and the Information Commissioner's Office);

**Relevant Laws:** Applicable Laws relating to (a) anti-bribery and/or anti-corruption, including the Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977; (b) anti-slavery, compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015; (c) anti-tax evasion (including the Criminal Finance Act 2017);

**Replacement Supplier:** any person that provides goods or services in replacement of any of the Deliverables;

**Services:** any services described in the Purchase Order or otherwise agreed in writing between the Parties;

**Specification:** any written specifications for the relevant Deliverables referred to in the Purchase Order;

**Supplier:** the supplier identified in the Purchase Order;

**Supplier Background IPR:** any IPR owned by or licenced to the Supplier before the date of the Contract and/or which arises (or in the case of a licence commences) on or after such date other than in the course of or in connection with the Deliverables;

**Supplier Equipment:** any equipment, tools or other tangible items used any Supplier Party to provide the Deliverables;

**Supplier Party:** the Supplier, any sub-contractor of the Supplier of any tier and any Supplier Personnel;

**Supplier Personnel:** any officer or employee engaged by a Supplier Party who assists in providing the Deliverables;

**Term:** is defined in condition 2.3; and

**Warranty Period:** the twelve (12) months following the satisfactory completion of the Deliverables or satisfactory delivery of the Goods (whichever is the later) or as otherwise stated in the Specification.

1.2 In these Conditions unless the context otherwise requires, references to:

- (a) a Condition is to a particular condition of these Conditions;
- (b) any statute or statutory provision will include any related subordinate legislation, and such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced from time to time;
- (c) the singular include the plural and vice versa;
- (d) a **person** includes a natural person, corporate, statutory, governmental or unincorporated body (whether or not having separate legal personality);
- (e) a **company** shall include any company, corporation or other body corporate, whenever and however incorporated or established; and
- (f) a **Party** or the **Parties** include a reference to its or their successors and permitted assigns.

1.3 In these Conditions, headings shall not affect the interpretation of these Conditions and any words following the words include, includes, including, in particular or any similar words or expressions will be construed without limitation and will not limit the meaning of the words preceding them.

## CONTRACT FORMATION, COMMENCEMENT AND TERM

2.1 A contract for the supply of Deliverables by the Supplier will be formed upon the Client issuing the Purchase Order. The contract comprises the following (**Contract**) (and any conflict, shall be resolved in this order):

- (a) these Conditions;
- (b) the Purchase Order (and any Specification); and
- (c) if it is referred to in the Purchase Order only, the Supplier's quotation.

2.2 The Contract constitutes the entire agreement and understanding of the Parties in respect of its subject matter (and supersedes any previous agreement in respect of the same), notwithstanding anything to the contrary in any standard terms and conditions of the Supplier or in any quotation, advice, note, invoice, acknowledgement, letter or any other documents issued or sent by the Supplier.

2.3 The Contract shall commence on the date of the Purchase Order and shall continue until satisfactory completion of the Deliverables, subject to earlier termination in accordance with the Contract (**Term**).

2.4 The Contract does not confer any exclusivity on the Supplier.

## DELIVERABLES

3.1 The Supplier shall provide the Deliverables in accordance with:

- (a) the Specification, the other terms of the Contract and any reasonable instructions of the Client from time to time;
- (b) Good Industry Practice, Applicable Law, any permissions, consents or approvals required from a third party, and so as to ensure that the Deliverables are fit for any purpose expressly or impliedly made known by the Client to the Supplier; and
- (c) any programme and/or time for delivery referred to in the Purchase Order or as the Client specifies in writing.

3.2 The Supplier shall:

- (a) comply with the Client Policy Requirements in relation to the contract and the provision of the Deliverables;
- (b) provide (or procure the provision of) the Deliverables in cooperation with, and minimising disruption to all Client Parties, and not by its act or omission cause a Client Party to lose any licence or consent required to carry on its business, or otherwise embarrass any Client Party or bring them into disrepute;
- (c) promptly provide all information and assistance in relation to the Deliverables reasonably requested by the Client; and
- (d) allocate sufficient resources and Supplier Personnel to provide the Deliverables, using efficient business processes.

3.3 Supplier Equipment shall remain at the Supplier's sole risk, including when on Client Premises.

3.4 Time for provision of the Deliverables will be of the essence. Where Delivery or completion of the Deliverables is late, liquidated damages shall be payable in accordance with the rate set out in the Purchase Order; where no rate is set out in the Purchase Order the Client may recover common law damages. For the avoidance of doubt where the Client prevents Delivery or completion it shall grant a reasonable extension of time to the relevant date for Delivery or completion.

3.5 The Supplier shall indemnify the Client against any Liability in connection with a breach of this condition 3.

## THE GOODS & SERVICES

4.1 The Supplier shall ensure that Goods:

- (a) are new and are of satisfactory quality within the meaning of the Sale of Goods Act 1979, are fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication and shall remain so for the Warranty Period;
- (b) correspond with their description and meet the Specification, and are free from defects in design, materials and workmanship;
- (c) comply with all Applicable Laws, and are so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- (d) are delivered DDP in accordance with Incoterms © 2020

4.2 The Client may Notify the Supplier at any time before Delivery of the Goods or completion of the Deliverables varying the quantity or type of the Goods and/or Deliverables, the Delivery/completion date or address, or the Specification. If any such variation results in an increase or decrease in the Supplier's costs of performing, or the time required for performance of, the Contract there shall be an equitable adjustment to the price, Delivery programme or both such adjustment shall, insofar as reasonably ascertainable, be in accordance with any breakdown of Prices.

4.3 Unless stipulated by the Purchase Order, the Supplier may not deliver the Goods by separate instalments. The Client may exercise its rights and remedies (whether under these Conditions or otherwise) in respect of the relevant instalment or the whole Contract.

4.4 The Client will be entitled to inspect and test the Deliverables at any time before Delivery and/or completion. The Supplier shall permit the Client, its officers, employees, agents and sub-contractors to enter upon the Supplier's premises, and shall procure permission for such persons to enter upon any relevant third party premises, to carry out such inspection and testing and shall provide the Client with all facilities reasonably required. If, following such inspection or testing, the Client gives written notice to the Supplier that it is not satisfied that the Deliverables will comply with the Contract, the Supplier shall take all steps necessary to ensure compliance. No such inspection or testing will reduce or otherwise affect the Supplier's obligations under the Contract.

4.5 The Supplier shall ensure that the Goods are packaged and carried in a manner consistent with any instructions detailed within the Specification, and in any event so as to reach the Delivery Location undamaged and in good condition, and using packaging that is suitable for storage, in each case as the Supplier's cost.

4.6 The Supplier shall deliver the Goods to the Delivery Location on the date and at such time of day as specified by the Client, or where no time is specified, during the Client's working hours as confirmed by the Client. The Supplier shall be responsible for offloading the Goods from the delivery vehicle in accordance with any applicable Client site procedures and Delivery of the Goods will be deemed to have occurred when the Goods have been off-loaded and stored at the delivery location stipulated by the Client.

4.7 The Supplier shall ensure that the Goods:

- (a) are legibly marked in accordance with the Specification and also be legibly marked with the applicable batch number/code (meaning a number/code that identifies the goods from the same production run);
- (b) are not marked with any name, badge or mark used by the Client or any Client Party (unless expressly requested otherwise), and are clearly and permanently marked with the manufacturer's name, trademark or distinguishing mark unless otherwise required as part of the Specification; and

- (c) where the Supplier is not the manufacturer, without infringing third parties rights, clearly and permanently marked as having been supplied by the Supplier to the Client.
- 4.8 Title in the Goods or any part thereof shall pass to the Client on Delivery or on payment by the Client (whichever is earlier) but the risk of damage or loss of the Goods shall pass to the Client on Delivery. The passing of title shall not prejudice the Client's right to reject defective Goods or any other rights of the Client under the Contract or Applicable Law.
- 4.9 The Supplier shall transfer title in the Goods to the Client with full title guarantee, free of all charges, liens, mortgages and encumbrances.
- 4.10 Where title in any of the Goods passes to the Client before Delivery, the Supplier shall ensure (at no cost to the Client) that such Goods:
- (a) shall be clearly identified and marked by the Supplier as being the property of the Client clearly displaying the name of the Client or in such manner as the Client may require;
  - (b) are stored separately from any other goods of any third party in such a way that they remain readily identifiable as the Client's property; and
  - (c) are at all times maintained in satisfactory condition.

#### WARRANTY PERIOD

- 5.1 If during the Warranty Period any of the Deliverables do not conform with the Contract, the Client may (without prejudice to conditions 5.2, 5.4 and any other rights under the Contract or at law) Notify the Supplier of the same, and the Supplier shall (at its cost) and at the Client's option either:
- (a) promptly, within not more than eight (8) Days (or as specified in the Client's Notice) repair or replace (and collect) the relevant Deliverables, and/or as applicable re-perform the relevant Deliverables; or
  - (b) provide a refund proportionate to the value of the Prices in respect of the relevant Deliverables, promptly, and in any event within a period of 30 days from receipt of the Client's Notice.
- 5.2 Without prejudice to its other rights and remedies the Client shall be entitled to recover from the Supplier all Liability incurred in remedying such Deliverables (and provided the steps taken by the Client are in accordance with Good Industry Practice, such steps shall not affect or reduce the Supplier's liability under condition 5.1).
- 5.3 The Supplier shall provide all Deliverables with the benefit of any manufacturer's guarantees, warranties and indemnities relating to the Deliverables. Where any such guarantees, warranties and indemnities may not be assigned the Supplier shall hold them on trust for the Client and shall enforce them in accordance with any reasonable directions notified by the Client from time to time to the Supplier.
- 5.4 A breach of this condition 0 by the Supplier (or any Supplier Party) will be a material breach of the Contract.
- 5.5 This condition 0 shall apply to any repaired, re-performed or replacement Deliverables and in each case a new Warranty Period shall apply to the relevant repaired, re-performed or replacement Deliverables.

#### SUPPLIER PERSONNEL AND CLIENT POLICY REQUIREMENTS

- 6.1 The Supplier shall ensure all Supplier Personnel are:
- (a) appropriately qualified, trained and experienced; and
  - (b) vetted in accordance with the Client Policy Requirements.
- 6.2 If the Client reasonably believes that any Supplier Personnel are unsuitable to undertake work in respect of the Contract, it may refuse to admit the personnel to Client Premises, and/or direct the Supplier not to use the personnel in providing the Deliverables.

#### ACCESS TO PREMISES AND SYSTEMS

- 7.1 Neither the Supplier nor any Supplier Personnel shall be entitled to access the Client Premises or any part of the Client Premises without the Client's prior written consent. The Supplier shall ensure that, at all times, any Supplier Personnel attending Client Premises comply with Client Policy Requirements and on site regulations specified by the Client, including, without limitation, a verification check on the Supplier Personnel's identity, and confirmation of their legal right to work.
- 7.2 Subject to condition 7.3, neither the Supplier nor any Supplier Personnel shall access the Client's information systems, including without limitation, intranet, email, document management systems, operational management systems, cloud hosting sites or any other systems processing information which is confidential to the Client (**Client Information Systems**), or have access to any financial, commercial or other confidential data or personal data not already publicly available relating to the Client, its employees, customers or suppliers.
- 7.3 If access to Client Information Systems is required in order to provide any services or Deliverables, the Supplier shall inform the Client in writing of this fact and shall not access the Client Information Systems until the Client provides its written consent and the Supplier has fully complied with the Client Policy Requirements.

#### INTELLECTUAL PROPERTY RIGHTS & OBSOLESCENCE

- 8.1 For the purposes of the Contract, IPR shall be owned as follows:

- (a) the Client shall own Client Background IPR and any IPR in Client Data (together being **Client IPR**), and any IPR which comes into existence in the course of providing the Deliverables (**Deliverables IPR**), and such rights shall vest in the Client absolutely from the time of their creation;
  - (b) the Supplier shall own Supplier Background IPR, and such rights shall vest in the Supplier absolutely from the time of their creation.
- 8.2 The Supplier shall (and procure that each Supplier Party shall) grant to the Client and each Client Party, a perpetual, irrevocable, non-exclusive, worldwide, royalty-free licence to use, copy, translate and amend Supplier Background IPR (and Deliverables IPR, to the extent condition 8.1 is not effective to assign legal title to the Client) for the Permitted Purposes, in each case in any software, documentation, spreadsheets, data or other materials provided to the Client or Client Party by or on behalf of the Supplier (or any other Supplier Party) in the course of providing the Deliverables including the right to grant sub-licences to Client Parties on equivalent terms.
- 8.3 Except to the extent that an infringement arises directly from a Client Party modifying the relevant IPR without the other Party's written consent the Supplier shall indemnify each Client Party and/or Replacement Supplier against any Liability, in each case arising out of or in connection with any claim that the use by that party of all or any part of the Deliverables, Deliverables IPR and/or Supplier Background IPR infringes the IPR of that third party or of another person.
- 8.4 The Supplier shall notify the Client in writing if the Goods become obsolete or are out of manufacturer support.

#### PRICE AND PAYMENT

- 9.1 Subject to the Supplier performing its obligations under the Contract and providing an invoice which complies with conditions 9.3 and 9.4 (**Invoice**), the Client shall pay the Prices to the Supplier.
- 9.2 The Supplier shall provide an Invoice for the Deliverables upon final completion/delivery of the Deliverables obligations (unless otherwise stated in the Purchase Order).
- 9.3 The Supplier shall create and submit invoices in accordance with the Client's online purchase to pay system, or any replacement system notified by the Client from time to time.
- 9.4 The Supplier shall submit sufficient details in accordance with condition 9.3 to ensure each invoice is a valid VAT invoice and contains the following information (and such supporting information as the Client reasonably requires):
- (a) the Supplier's name and address; and
  - (b) the Purchase Order number, the total of the Prices and the basis of calculation, and a brief description of the Deliverables provided.
- 9.5 Subject to conditions 9.6 and 9.10, each Invoice (plus applicable VAT) will be payable by the Client on or before the date forty-two (42) Days following the date the Client receives the Invoice in accordance with the instructions on the Purchase Order, by BACS transfer to the Supplier's nominated UK bank account.
- 9.6 Notwithstanding receiving an Invoice, the Client may (without limiting its other rights or remedies) suspend payment of the Prices to the extent provision of the Deliverables is disrupted.
- 9.7 Pending resolution of any dispute or query the Client may withhold the disputed or queried payment, but shall pay the remaining part.
- 9.8 Payment made by or on the Client's behalf will not constitute acceptance by the Client of any Deliverables or prejudice any rights or remedies of the Client.
- 9.9 Unless otherwise stated, Prices exclude VAT, which, subject to a valid VAT invoice will be payable at the rate prescribed by Applicable Law.
- 9.10 The Client may set off any liability of the Supplier to the Client against any liability of the Client to the Supplier under the Contract or any other contract between any Client Party and the Supplier.
- 9.11 A Party may charge interest on any sum due but not paid on or before the due date on a daily basis at 5% per annum above the Barclays Bank plc base lending rate from time to time from the due date until the date of payment (being a substantial remedy regarding the Late Payment of Commercial Debts (Interest) Act 1998).
- 9.12 Where this Contract is a Construction Contract the following provisions shall also apply.
- (a) Where the duration of the works is to be more than 45 days, invoicing shall be upon completion of the Deliverables unless other invoice trigger points are set out on the Purchase Order.
  - (b) The due date for payment shall be 5 working days after the date of a receipt of a valid invoice ("**Payment Due Date**"). The final date for payment shall be the date set out in clause 9.5 ("**Final Payment Date**").
  - (c) The Client shall give a payment notice no later than 5 days after the Payment Due Date.
  - (d) The Client may give a notice under section 111(3) of the Construction Act no later than 2 working days prior to Final Payment Date.

## GDPR AND INFORMATION SECURITY

- 10.1 Both Parties shall comply with Data Protection Law and shall keep all Client data safe and secure. The Supplier shall immediately notify the Client of any actual or potential data breach.

## CONFIDENTIALITY

- 11.1 **Confidential Information** means, subject to condition 11.4 and condition 0, the terms of the Contract (and any related discussions or documents) and any information (whether written, oral, in electronic form or in any other media) disclosed in connection with the Contract whether before, on or after the date of the Contract.
- 11.2 Each Party shall, subject to conditions 11.3 and 11.4: (a) keep the other Party's Confidential Information secret and only disclose it as permitted by this condition 0; (b) use the other Party's Confidential Information solely for the Permitted Purposes; and (c) keep the Confidential Information safe and secure using security measures reflecting Good Industry Practice and at least as stringent as it uses to protect its own confidential information.
- 11.3 Confidential Information may be disclosed:
- (a) subject to condition 0 by either Party to its professional advisers and/or any related party for Permitted Purposes, provided that the Party procures that the recipient will not do or omit to do anything which would constitute a breach by the Party of this condition 0;
  - (b) by either Party to the extent required by Applicable Law or by any Relevant Authority, including in relation to the Client, as required by the Environmental Information Regulations 2004 (having, where reasonably possible, given Notice to, and consulted with, the other before such disclosure);
  - (c) by the Client to any Relevant Authority or auditor, Replacement Supplier, pursuant to any licence granted under condition 8.2 and/or to any potential buyer of the Client's business (whether in whole or part) and its nominated advisors.
- 11.4 Each Party's obligations under this condition will not extend to Confidential Information (except for information referred to in condition 11.3(b)) which:
- (a) the other Party agrees in writing is not confidential; or
  - (b) at the time of disclosure was in the public domain, or the disclosing Party can reasonably prove comes from a third party who is free to make it available to the recipient.
- 11.5 The Supplier shall not use the Client's names, logos or trade marks on any of its products or services, or publicise the existence or terms of the Contract without the Client's prior written consent.
- 11.6 The Client shall be entitled to use any of the Supplier's names, logos or trade marks on any of its products or services, and/or publicise the existence or terms of the Contract.

## LIABILITY AND INSURANCE

- 12.1 The Client's maximum aggregate Liability shall be limited to 100% of the aggregate Prices under the Contract.
- 12.2 The Supplier shall maintain in force insurance policies during the Term and in respect of those insurances provided on a 'claims made' basis for 6 years after completion of the Deliverables (or if applicable, the date of termination of the Contract), being such policies as required by Applicable Law, and the higher of the amount set out below and the amount set out in the Purchase Order:
- (a) employers' liability insurance in respect of Supplier Personnel of at least five million pounds (£5m) per occurrence or series of occurrences arising from any one event or the minimum required by Applicable Law (if greater);
  - (b) general third party liability (including product liability) insurance with a combined bodily injury and property damage limit of at least five million pounds (£5m) per occurrence or series of occurrences arising from any one event; and
  - (c) where the Deliverables include the provision of any advice, design, specification or professional services professional indemnity insurance with a limit of at least one million pounds (£1m) per claim and in the annual aggregate.
- 12.3 The Supplier shall, in relation to each of the required insurances:
- (a) effect such insurance with underwriters whose security rating meets the minimum criteria of A- as assessed by Standard and Poor's (or an equivalent rating by AM Best);
  - (b) comply with all requirements of the relevant insurers, and Notify the Client as soon as reasonably practicable if it is (or may be) unable to comply, with any insurance requirement or if a required insurance is cancelled or materially changes;
  - (c) pay all premiums due and bear all excesses, deductibles and/or franchises;
  - (d) with the exception of professional indemnity insurance, ensure that all required insurances contain an indemnity to principal clause; and
  - (e) provide evidence of insurance to the Client within ten (10) Days of its request, and on the renewal anniversary of each insurance.

## EXPIRY AND TERMINATION

- 13.1 If the Supplier: (a) commits an irremediable material breach of the Contract; (b) commits a material breach of the Contract which is remediable, but is not remedied within fourteen (14) Days of the Client's Notice detailing the breach and requiring it to be remedied; or (c) is Insolvent, the Client may terminate the Contract immediately by Notice to the Supplier.
- 13.2 The Client may terminate the Contract for convenience immediately by twenty (20) Days' Notice to the Supplier at any time, subject to paying the Supplier fair and reasonable compensation for work-in-progress, excluding loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
- 13.3 Expiry or termination of the Contract shall not affect:
- (a) conditions 0, 0, 0, 7.1, 0, 0, 0, 0 and 0 which shall continue in force, together with any other provisions which expressly or impliedly continue to have effect after the End Date; and
  - (b) any accrued rights or liabilities as at the End Date.
- 13.4 With effect from the End Date, the Supplier shall:
- (a) repay to the Client any Prices paid in advance in respect of Deliverables not provided by the Supplier as at the End Date;
  - (b) if requested to do so by the Client, destroy or permanently erase all documents and all records (in any media) held by it or on its behalf that use, concern or are based on any of the Client's Confidential Information (except for information the Supplier must retain to comply with any Applicable Law, or for insurance, accounting or taxation purposes); and
  - (c) for a reasonable period provide such assistance, information and advice as the Client reasonably requires to enable the Client to ensure a smooth transition of the supply of the Deliverables to the Client or any Replacement Supplier.

## FORCE MAJEURE

- 14.1 A Party will not be in breach of the Contract or be liable to the other Party for a failure or delay in performance to the extent arising due to a Force Majeure Event.
- 14.2 If a Force Majeure Event affects the Supplier, it shall:
- (a) promptly upon becoming aware of the Force Majeure Event Notify the Client giving details of the nature, extent and anticipated duration and impact of the Force Majeure Event; and
  - (b) use reasonable endeavours to mitigate the effects of the Force Majeure Event.
- 14.3 Unless otherwise agreed in writing between the Parties, if a Force Majeure Event which relieves a Party from liability under condition 14.1 continues for a period of more than thirty (30) Days, the Client may terminate the Contract by giving Notice to the Supplier.

## PROHIBITED ACTS

- 15.1 The Supplier warrants that in relation to the Contract each Supplier Party:
- (a) has not and shall not commit a Prohibited Act;
  - (b) shall comply with Relevant Laws, and maintain and comply with policies and procedures to ensure compliance with Relevant Laws and the Client Policy Requirements; and
  - (c) shall not engage in any activity, practice or conduct which constitutes an offence under Relevant Laws (or would do so if carried out in the UK).
- 15.2 If the Supplier becomes aware of or suspects any Supplier Party has committed or attempted to commit a Prohibited Act, it shall take action to stop it, and shall immediately Notify the Client.
- 15.3 If the Client has reasonable grounds to believe that there has been a breach of this condition 0, the Supplier shall comply with any reasonable request of the Client in investigating such breach including, without limitation, giving access to the Supplier's premises and records.
- 15.4 The Client may terminate the Contract immediately by giving Notice to the Supplier if the Supplier is in breach of condition 15.1.
- 15.5 The Supplier shall indemnify all Client Parties against any Liability arising from or relating to the Supplier's breach of this condition 0.

## RECORDS AND AUDITS

- 16.1 The Supplier shall maintain accurate and auditable records relevant to the Contract, calculation of the Prices and the provision of the Deliverables in accordance with Good Industry Practice until six years after the End Date, or such longer period as required by Applicable Law.
- 16.2 During such period the Supplier shall:
- (a) promptly on request from time to time, provide copies of any records to the Client and allow the records to be copied to or examined or inspected by the Client and any Relevant Authority or Replacement Supplier; and
  - (b) permit Client Parties and Relevant Authorities access on demand during normal business hours to the Supplier premises and to any Supplier Personnel, systems and relevant records as may be reasonably required in order to: (i) fulfil any request of a Relevant Authority or to allow the Client to comply with Applicable Law; (ii) confirm that each Supplier Party is complying with the Client Policy

Requirements, the Contract and Applicable Laws; and/or confirm that the Supplier's systems protect the confidentiality and security of data.

## NOTICES

- 17.1 Subject to condition 17.2, any notice or other communication given under or in connection with the Contract must be in writing and:
- (a) sent to the relevant Party's address by delivery service providing proof of delivery, in which case service shall be deemed to have occurred at 9.00 a.m. on the second Day after the date of posting;
  - (b) personally delivered to or left at the relevant Party's address, in which case service shall be deemed to have occurred at the time the notice or communication is delivered to or left at that Party's address if between 9am – 5pm on a Business Day (and if not, at 9am the next Business Day); or
  - (c) sent by e-mail to the relevant Party's e-mail address, in which case service shall be deemed to have occurred at the time of sending, except that if an automatic electronic notification is received by the sender informing the sender that the e-mail has not been delivered to the recipient or that the recipient is out of the office, that e-mail will be deemed not to have been served.

The address, e-mail address and representative for the Client will be specified in the Purchase Order or otherwise Notified to the Supplier.

- 17.2 This condition 17 will not apply to the service of any document in relation to legal proceedings or any Notice under condition 0 or 0. Such documents shall be addressed by post to, "National Gas General Counsel, National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA."

## GENERAL

- 18.1 **Disputes:** representatives of the Parties shall attempt to resolve any dispute in relation to the Contract by negotiation, failing which the Parties may attempt to settle it by mediation in accordance with a reputable mediation and alternative dispute resolution body's procedure (e.g. CEDR). Where this Contract is a Construction Contract, either Party may adjudicate at any time.
- 18.2 **Inadequacy of Damages:** without prejudice to the Client's other rights or remedies, the Supplier acknowledges that damages alone would not be an adequate remedy for any breach of the Contract by the Supplier. Accordingly, the Client shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of the Contract.
- 18.3 **No Waiver:** failure to exercise a right or remedy under the Contract or the law shall not constitute a waiver of the right or remedy or other rights or remedies. Any waiver of any right or remedy will only be valid if written and signed by the Party giving it and only for the purpose for which it was given.
- 18.4 **No Variation:** a variation to the Contract will not have effect unless it is agreed in writing.
- 18.5 **No Agency:** nothing in the Contract is intended to or shall create a partnership, relationship of principal and agent, or joint venture between the Parties, or authorise a Party to bind the other Party.
- 18.6 **Third Party Rights:** the Client enters into the Contract for its own benefit and for the benefit of Client Parties, each of whom shall be entitled to enforce the terms of the Contract. No other person or third party shall have rights to enforce the terms of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 18.7 **Assignment and Sub-Contracting:** The Client may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under the Contract to any Client Party. For the avoidance of doubt, the Supplier is liable and responsible for all of its subcontractors and shall be responsible for passing on the requirements for these terms.
- 18.8 **Costs:** each Party shall bear its own costs in performing the Contract. The Prices are the only monies payable to the Supplier, and are inclusive of all costs and expenses incurred by the Supplier including tariffs, duties, travel, accommodation and subsistence.
- 18.9 **Invalidity:** if any Contract term is found by any court to be illegal, or unenforceable, such term will be deemed to be severed from the Contract, and the remainder of the Contract which will continue in full force and effect.
- 18.10 **Remedies not Exclusive:** the Client's rights and remedies under the Contract are not exclusive of any rights provided by law.
- 18.11 **Joint and Several Liability:** if the Supplier is a joint venture, consortium or other grouping, these persons shall be jointly and severally liable to the Client for performing the Contract;
- 18.12 **Further Assurance:** each Party shall at its own cost execute all such documents and take all steps as the other Party reasonably requests from time to time in order to give full effect to the Contract;
- 18.13 **Governing Law and Jurisdiction:** the Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction to determine any dispute relating to the same.