

## BPA Standard Conditions for Provision of Professional Services

### 1. Definitions and interpretation

1.1 In these BPA Standard Conditions For Provision of Professional Services ("**Conditions**"), the following terms have the following meanings:

<b>BPA</b>	British Pipeline Agency Limited trading as BPA and shall include its transferees, successors and assigns.
<b>Client</b>	the firm, person or company to whom the Services are provided.
<b>Contract</b>	the contract between BPA and the Client for the supply of the Services incorporating these Conditions, the Proposal and any other supplemental terms and conditions agreed in writing between BPA and the Client.
<b>Proposal</b>	the written proposal submitted by BPA in response to a Client request.
<b>Services</b>	any services to be provided by BPA under the Contract.
<b>Working Day</b>	a day other than a Saturday, Sunday or public holiday in England.

1.2 In these Conditions:

- 1.2.1 any term indicating gender includes any gender;
- 1.2.2 any term indicating the singular includes the plural and vice versa;
- 1.2.3 a reference to a party shall include that party's successors and permitted assigns;
- 1.2.4 a reference to a "person" includes a natural person, corporate body and unincorporated body;
- 1.2.5 any words following the terms "including", "include", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition or phrase preceding those terms;
- 1.2.6 any reference to a clause is a reference to such clause of these Conditions; and
- 1.2.7 any reference to a statute or statutory provision includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation made under it.

1.3 Clause headings are for ease of reference only and shall not affect the interpretation of these Conditions.

### 2. Contract documents

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any reference to the Client's terms and conditions is of no effect and the Client agrees that its terms and conditions do not apply and are not incorporated into the Contract.

2.2 The Proposal is open for acceptance by the Client for sixty days from the date of submission of the Proposal.

### 3. Parties' obligations

3.1 BPA shall exercise reasonable skill and care in the discharge of its duties under the Contract.

3.2 The Client shall:

- 3.2.1 provide BPA with reasonable access at reasonable times to the Client's premises or any site which the BPA is required to attend for the purpose of providing the Services; and
- 3.2.2 provide such information as BPA may reasonably request for the carrying out of the Services.

3.3 The Client acknowledges that BPA shall be entitled to rely on any information provided to BPA by the Client as being correct.

### 4. Liabilities and indemnities

4.1 Subject to clauses 4.2, 4.3, 4.4 and 4.6, BPA's total liability in respect of all matters arising out of, under or in connection with the Contract shall not exceed a sum equal to the maximum Contract value, excluding VAT. This limit on BPA's liability

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shall apply however that liability arises, including, without limitation, a liability arising by breach of contract, tort (including, without limitation, negligence), breach of statutory duty, misrepresentation, restitution or otherwise.

- 4.2 BPA's liability arising out of pollution shall be limited to the extent that such pollution is the result of a sudden identifiable unintentioned and unexpected event. BPA shall have no liability whatsoever for any liabilities associated with gradual seepage pollution.
- 4.3 BPA's liability in respect of any allegedly defective or negligently or incorrectly performed Services shall be limited to the necessary reperformance at BPA's expense of any Services proven to be defective or to have been negligently or incorrectly performed, up to a maximum of the Contract value excluding VAT.
- 4.4 In no circumstances shall BPA be liable in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise howsoever, and whatever the cause thereof, for any loss of normal business and profit or any loss which may be regarded as consequential, special or indirect.
- 4.5 The Client shall indemnify and hold harmless BPA from and against all liabilities, costs, expenses, damages, losses and proceedings (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation, interest and penalties) suffered or incurred by BPA as a result of or in connection with:
- 4.5.1 injury or illness to or death of any person whatsoever arising out of or in connection with BPA's performance of the Contract; and
- 4.5.2 loss of or damage to any property whatsoever arising out of or in connection with BPA's performance of the Contract,
- except to the extent that the same is due to any act or neglect of BPA.
- 4.6 Nothing in this clause 4 is intended to limit or exclude BPA's liability for death or personal injury caused by BPA's negligence or for any other matter in respect of which the law provides that liability cannot be limited or excluded.

### 5. Force majeure

- 5.1 Subject to clause 5.5, neither party shall be responsible for any failure to perform or delay in performing any of its obligations under the Contract where and to the extent that such failure or delay arises out of acts, events, omissions or accidents outside the reasonable control of the party ("**Force Majeure Event**") including but not limited to: acts of God, acts of the public enemy, acts of the government in either its sovereign or proprietary capacity, fires, floods, epidemics, quarantine restrictions, terrorist actions, strikes and labour disputes.
- 5.2 In order to rely on this clause, the affected party shall promptly upon becoming aware of a Force Majeure Event notify the other party of the occurrence and shall subsequently give particulars to a reasonable level of detail to the other party of the facts or circumstances giving rise to such Force Majeure Event within five Working Days of becoming aware of the occurrence and thereafter in respect of successive occurrences and shall demonstrate that it has and is taking reasonable measures to mitigate the impact of such Force Majeure Event.
- 5.3 Upon conclusion of a Force Majeure Event the affected party shall immediately notify the other party and resume performance of any obligation under the Contract which had been prevented or delayed by the Force Majeure Event.
- 5.4 In the event of a Force Majeure Event continuing for fourteen days or more, the parties shall consult and agree upon a course of action, which may include the termination of the Contract.
- 5.5 The occurrence of a Force Majeure Event shall not relieve the Client of its obligations to make payment to BPA in accordance with the Contract.

### 6. Taxes

- 6.1 All prices exclude value added tax (VAT) and other taxes and levies (such as withholding taxes), which shall additionally be payable by the Client as required by the tax authorities.

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### 7. Expenses

- 7.1 Business expenses properly incurred in the pursuance of the Contract will be invoiced at the actual cost incurred by BPA. Class of travel and hotel accommodation where appropriate, will be for the Client's prior approval. In general BPA staff will fly economy for all travel under 5 hours and business class for all travel over 5 hours.

### 8. Rates

- 8.1 Rates quoted will be applicable to mobilisation time and transit time to site. UK rates are based on a 7.5 hour working day, 37.5 hour working week. Day rates quoted for overseas assignments are for all days ex UK, and include for up to 10 hours/day irrespective of the actual number of hours worked.

### 9. Payment

- 9.1 Unless milestone payments are agreed in advance, BPA will invoice generally in Sterling (unless pricing in other currency has been separately agreed) on a monthly basis together with all supporting documentation, and invoices are to be paid within thirty days of receipt of invoice. Payment shall be made to: National Westminster Bank Ltd, 9 Bank Court, Hemel Hempstead, Hertfordshire, HP1 1BT. United Kingdom. Account Number 06707890.
- 9.2 Where a sum properly due to BPA is not paid in full in accordance with the Contract, BPA may suspend performance of any or all of its obligations under the Contract upon giving the Client at least seven days' written notice. In the event of suspension, the Client shall pay BPA a reasonable amount in respect of the costs and expenses reasonably incurred by BPA as a result of the exercise of its right to suspend performance.
- 9.3 If the Client fails to make any payment due to BPA under the Contract by the due date for payment, BPA shall charge interest on the overdue amount at the rate of 8% per annum above the prevailing Bank of England base rate. Such interest shall accrue on a daily basis from the due date for payment until the date of actual payment of the overdue amount, whether before or after judgment.

### 10. Overseas assignments

- 10.1 Overseas placements for staff will be on 3-month rotation, and rates for these longer-term assignments will be separately agreed as required. The Client will facilitate and cover associated costs for the provision of necessary visas/work permits/residency permits etc. as required and will also provide all in-country logistics support, lodging and transportation, unless separately agreed.

### 11. Variations

- 11.1 Variations to the agreed scope of Services and the basis for reimbursement shall be agreed in advance in writing by the parties.

### 12. Assignment and sub-contracting

- 12.1 Neither party shall be entitled to assign the benefit of the Contract without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 12.2 BPA shall not sub-contract any part of the Services without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed.

### 13. Confidentiality

- 13.1 BPA will exercise proper prudence in preserving the confidentiality of any information provided for the purposes of carrying out the Services. All such information provided by the Client or results gained or derived by BPA in the course of the Services will be treated by BPA as being commercially confidential and will not be divulged to third parties without written consent.
- 13.2 The obligation not to divulge such confidential information to a third party shall not apply to BPA's professional advisers or to information which:

13.2.1 is part of the public domain otherwise than in consequence of a breach by BPA of its obligations under this clause 13;

13.2.2 was in BPA's possession prior to entry into the Contract;

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13.2.3 was received from third parties having the right to disclose such information; or

13.2.4 BPA is obliged to disclose by law or to submit to any court, arbitrator, agency, trust, department, inspectorate, minister, ministry, regulator, exchange, listing authority, official or public or statutory person (whether autonomous or not) having jurisdiction in relation to a matter contemplated by the Contract.

### 14. Intellectual property

14.1 Title to, access to, copyright in, the right to possession of, and the free right of use of all things created under or arising from the Services shall vest with the Client immediately on the date of commencement of the Services or creation of the article or document. The Client shall have the sole right to seek patents of any item or idea arising out of the Services. The Client may, at its sole discretion, give BPA a written release of any item or idea.

14.2 BPA shall take all reasonable measures necessary to assist the Client to acquire and protect the foregoing rights.

### 15. Termination

15.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving notice to the other party if:

15.1.1 the other party commits a material breach of the Contract and fails to remedy that breach within a period of seven days after being notified in writing to do so;

15.1.2 the other party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

15.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling 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 with one or more other companies or solvent reconstruction;

15.1.4 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party, other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of the other party;

15.1.5 (being an individual) the other party is the subject of a bankruptcy petition or order;

15.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets;

15.1.7 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the other party;

15.1.8 (being a company) a floating charge holder over the other party's assets has become entitled to appoint or has appointed an administrative receiver;

15.1.9 a person becomes entitled to appoint a receiver, or a receiver is appointed, over the other party's assets; or

15.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events listed in clause 15.1.2 to clause 15.1.9 inclusive.

15.2 Following termination under clause 15.1 (or under any other clause where this clause 15.2 is stated to apply), the Client shall pay BPA for any Services already properly delivered or provided in accordance with the Contract.

### 16. Non-solicitation

16.1 In order to protect BPA's legitimate business interests, the Client covenants with BPA that it shall not, and shall not attempt to:

16.1.1 solicit or entice away from the employment or service of BPA; or

16.1.2 employ or engage or otherwise facilitate the employment or engagement of,

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any person employed or engaged by BPA in relation to the management or performance of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement (other than by means of an advertising campaign open to all-comers and not specifically targeted at such persons).

16.2 The Client shall be bound by the covenant set out in clause 16.1 for a period of six months after the date of completion of the Services or six months after the termination of the Contract.

16.3 If the Client commits any breach of clause 16.1, the Client shall pay to BPA on demand a sum equal to one year's basic salary or the annual fee that was payable by BPA to the person in question, plus the recruitment costs incurred by BPA in replacing such person.

### 17. Notices

17.1 Any notice to be given under the Contract shall be in writing and shall be:

17.1.1 delivered by hand or sent by first class post to the other party's registered office address, or such other address as may be notified by that party in writing; or

17.1.2 sent by email to the email address of the person to whom the notice is addressed.

17.2 Notices shall be deemed to have been received:

17.2.1 if delivered by hand, on the date and at the time of delivery, as evidenced by a signed delivery receipt;

17.2.2 if sent by first class post, at 9:00am on the second Working Day after the date of posting; and

17.2.3 if sent by email, on the date and at the time of sending.

### 18. No partnership

18.1 Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

### 19. Disputes and governing law

19.1 Either party may give notice at any time of its intention to refer any dispute arising under the Contract to adjudication. Any adjudication shall be governed by the Scheme for Construction Contracts (England & Wales) Regulations 1998 (as amended) and the adjudicator nominating body is the Royal Institution of Chartered Surveyors.

19.2 Subject to clause 19.1, if there is any dispute between the Client and BPA under or in relation to the Contract, each party shall give serious consideration to any request by the other to resolve the dispute through negotiation or mediation.

19.3 Subject to clauses 19.1 and 19.2, any dispute between the Client and BPA under or in relation to the Contract shall be determined by litigation subject to the exclusive jurisdiction of the English courts, provided that nothing shall limit the right of either party to take proceedings in any other court of competent jurisdiction for the purposes of enforcing a judgment of the English courts.

19.4 The Contract shall be governed by and construed in accordance with English law.

### 20. Severance

20.1 If any court or other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted or modified to the extent necessary to make it valid, legal and enforceable, and the validity and enforceability of the other provisions of the Contract shall not be affected.

### 21. No waiver

21.1 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall 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 shall preclude or restrict the further exercise of that or any other right or remedy.

5-7 Alexandra Road  
Hemel Hempstead  
Herts HP2 5BS. UK

Tel: 44 (0)1442 242200  
Fax: 44 (0)1442 214077  
business@bpa.co.uk  
www.bpa.co.uk



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### **22. Third party rights**

22.1 A person who is not a party to the Contract shall not have any rights to enforce its terms.

### **23. Entire agreement**

23.1 The Contract constitutes the entire agreement and understanding between the parties in relation to its subject matter and supersedes all previous agreements (whether written or oral) between the parties relating thereto. The Client acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any written or oral statement, representation, misrepresentation, assurance or warranty (whether express or implied) other than as expressly set out in the Contract.

23.2 No amendment to these Conditions shall be valid unless agreed in writing and signed by both parties.

### **24. Language**

24.1 All documentation, correspondence and other communication required as part of the Contract will be in English unless otherwise agreed.