

## PROCESS SERVICES TERMS & CONDITIONS

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (**Conditions**) and the Order Process Summary.

**Background Information:** means:

- (a) all technical know-how and information known to the parties at the date of the Process Services Agreement of a confidential nature and not in the public domain;
- (b) all Intellectual Property Rights owned by or licensed to the parties at the date of the Process Services Agreement; and
- (c) during the life of the Process Services Agreement, all technical know-how and information of a confidential nature (prior to it coming into the public domain) and Intellectual Property Rights owned by or licensed to the parties which is not Foreground Information.

**Commencement Date:** the start date of the Order Process specified in the Order Process Summary.

**Consultancy Services:** any and all work and services provided or undertaken in relation to the Order Process by NHE (other than Process Services) relating to the Order Process.

**Customer:** means the customer identified in the Order Process Summary.

**Customer's Equipment:** any equipment, systems or facilities provided by the Customer and used directly or indirectly in the supply of the Process Services.

**Customer's Works:** any works and/or obligations to be undertaken by the Customer specified in the Process Plan.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Deliverables:** all Documents, products and materials developed by NHE or its agents, subcontractors, consultants and employees in relation to the Process Services in any form, including computer programs, data, reports and specifications (including drafts) or any other deliverables specified in the Process Plan.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**In-put Material:** all Documents, information and materials provided by the Customer relating to the Process Services, including extraction process and production specifications, computer programs, data, reports and other materials (including any such materials specified in the Process Plan).

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Minimum Amount:** means the minimum quantity or value (as appropriate) of Process Services identified in the Order Process Summary (if any).

**NHE:** means New Holland Extraction Limited (registered number 4850511) whose registered office is at The Counting House, 13 Nelson Street, Hull, East Yorkshire HU1 1XE.

**NHE's Equipment:** any plant and equipment, including tools, systems or facilities, provided by NHE or its subcontractors and used directly or indirectly in the supply of the Process Services.

**NHE's Premises:** NHE's processing plant situated at Unit 2, Morgan Way, New Holland Business Park, New Holland, North Lincolnshire DN19 7PZ.

**Order Process:** the toll extraction processing project/order to be undertaken for the Customer, as described in the Order Process Summary.

**Order Process Summary:** the document of that name issued by NHE to the Customer in relation to the Order Process, as referred to in these Conditions (or if there is more than one such document relating to the same Order Process, the most recently issued version shall be deemed to apply).

**Pre-existing Materials:** all Documents, information and materials provided by NHE relating to the Process Services which existed prior to the commencement of the Process Services Agreement.

**Process:** refers to the toll extraction process from Raw Material in accordance with the Process Plan.

**Process Plan:** the plan describing the Process in the form described or attached to the Order Process Summary, which shall be subject to amendment as envisaged in clause 3.2.

**Process Services:** the toll extraction processing services to be provided by NHE at NHE's Premises, together with any associated Consultancy Services and any other services which NHE provides or agrees to provide to the Customer under the Process Services Agreement.

**Process Services Agreement:** means the Order Process Summary and these Conditions.

**Raw Material:** consignments of raw material to be supplied by the Customer to NHE conforming to the Raw Material Specification for the purposes of the Process Services to be undertaken by NHE.

**Raw Material Specification:** the specifications relating to Raw Material specified in the Order Process Summary (as such specifications may be amended by agreement in writing between the parties from time to time).

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Clause and section headings shall not affect the interpretation of the Process Services Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.6 A reference to **writing** or **written** includes e-mail (subject to clause 22.6) but not fax.

1.7 Where the words **include(s)**, **including** or **in particular** are used in the Process Services Agreement, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.8 Any obligation in the Process Services Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.9 References to clauses are to the clauses of these Conditions.

1.10 If there is any ambiguity or inconsistency between any of the clauses of these Conditions and the provisions of the Order Process Summary or any documents contemplated in the Process Services Agreement then the documents shall be construed in accordance with the following order of priority:

- (a) the Order Process Summary;
- (b) these Conditions;
- (c) any other documents contemplated in the Order Process Summary.

### 2. COMMENCEMENT AND DURATION

2.1 NHE shall provide the Process Services to the Customer on the terms and conditions of the Process Services Agreement.

2.2 The Process Services Agreement shall commence on the Commencement Date and shall continue until the Order Process is complete, subject to earlier termination in accordance with these Conditions.

### 3. PROCESS PLAN

3.1 The Process Plan shall set out (as appropriate) amongst other things:

- (a) the Process methods and specifications;
- (b) the Raw Material Specification;
- (c) a description of the Customer's Works to be undertaken by the Customer, if any;
- (d) an estimated timetable (including estimated Process dates, periods or milestones) and responsibilities for the provision of the Process Services; and
- (e) all other works to be undertaken by the parties, and details of Deliverables, In-put Materials and such other information as NHE may request.

3.2 The Process Plan shall be subject to any amendments agreed between the parties in accordance with clause 6 (*Variation Control*) and clause 15 (*Variation*) but neither party shall unreasonably withhold its consent to any variations which are reasonably necessary or desirable to further the aims of the Order Process (subject to clause 6.3 and the other terms of the Process Services Agreement).

3.3 The parties shall co-operate reasonably with and assist one another during the term of the Process Services Agreement with a view to achieving the aims of the Process Plan as far as reasonably possible.

3.4 The parties acknowledge that:

- (a) the Process Plan (and/or the matters envisaged in the Order Process) may be experimental, untested and/or based upon the Customer's own designs and calculations;
- (b) all estimated or expected outcomes and results achieved using the Process Services are affected significantly by variations in the Raw Material used; and
- (c) NHE gives no warranty as to the effectiveness or efficiency of the Process Services in achieving any intended results expected or referred to in the Process Plan (whether in terms of the relative yields which may be achievable, the costs associated with the agreed processes or otherwise).

### 4. SUPPLY OF SERVICES

4.1 Subject to these Conditions, NHE shall supply and the Customer shall purchase the relevant amount or quantity of Process Services which are required in accordance with the Process Plan and the Order Process Summary from time to time.

4.2 The Customer shall place orders with NHE for the supply of Process Services on the terms of the Process Services Agreement for an amount (in aggregate) not less than the Minimum Amount.

4.3 The Customer shall, well in advance of each programme of production under the Process Services Agreement, give NHE its order for Process Services required (by reference to the amount of Raw Material intended for Process); each order so given shall be final. Orders for the Process Services shall be given by the Customer to NHE in writing or, if given orally, shall be confirmed by the Customer in writing not more than 3 days after the order is given by the Customer. All such orders are binding upon NHE only after it issues a written acknowledgement to the Customer.

4.4 NHE agrees to take all steps reasonably required to fulfil its obligations under the Process Services Agreement in the normal course. NHE shall not however be obliged to give the Customer priority over any other customer of NHE with regard to the supply of services.

4.5 NHE shall use reasonable endeavours to meet any performance dates, periods or milestones specified in the Process Plan, but it is acknowledged by the parties that any such dates, periods or milestones shall be estimates only and time for performance by NHE shall not be of the essence of the Process Services Agreement.

### 5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) provide, in a timely manner, such In-put Material and other information as NHE may require, and ensure that it is accurate in all material respects;
- (b) supply and deliver to NHE's Premises at its own cost all quantities of Raw Material required in accordance with the Process Plan (or as agreed between the parties from time to time) in a timely manner so as to enable NHE to perform the Process Services as envisaged in the Process Services Agreement. The Customer shall ensure that all Raw Material conforms precisely

to the Raw Material Specification and any samples of Raw Material previously supplied to NHE, and any other reasonable requirements of NHE from time to time;

- (c) comply with all health and safety rules and regulations and any other reasonable security requirements that apply at NHE's Premises;
- (d) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Process Services and conforms to all relevant United Kingdom standards or requirements; and
- (e) obtain and comply with all necessary licences, permits, relevant legislation and consents in relation to the use of In-put Material and the use of the Customer's Equipment in all cases before the date on which the Process Services are to start.

5.2 If NHE's performance of its obligations under the Process Services Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, NHE shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

5.3 The Customer shall be liable to pay to NHE, on demand, all reasonable costs, charges or losses sustained or incurred by NHE (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Process Services Agreement, subject to NHE confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not, without the prior written consent of NHE, at any time from the Commencement Date until the expiry of 12 months after the date of termination of the Process Services Agreement, solicit or entice away from NHE or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of NHE in the provision of the Process Services. Any consent given by NHE in accordance with this clause 5.4 shall be subject to the Customer paying to NHE a sum equivalent to 20% of the then current annual remuneration of NHE's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

### 6. VARIATION CONTROL

6.1 If either party wishes to vary the scope or execution of the Process Services or the Process Plan, it shall submit details of the requested variation to the other in writing.

6.2 If either party requests a variation to the scope or execution of the Process Services or the Process Plan, NHE shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the variation;
- (b) any necessary additions or variations to NHE's charges arising from the variation;
- (c) the likely effect of the variation on the Process Plan; and
- (d) any other impact of the variation on the Process Services Agreement.

6.3 NHE has no obligation to proceed with any variation proposed by either party unless and until the parties have agreed the necessary additions or variations to NHE's charges, the Process Services, the Process Plan and any other relevant terms of the Process Services Agreement to take account of the variation and the Process Services Agreement has been varied in accordance with clause 15 below.

6.4 Notwithstanding clause 6.3, NHE may, from time to time and upon such advance notice as is reasonably practicable, vary the Process Services in order to comply with any applicable safety or statutory requirements, provided that such variations do not materially affect the nature or scope of the Process Services. The Customer shall be responsible for payment of all costs and expenses associated with any such variations after due discussion with NHE.

### 7. CHARGES AND PAYMENT

7.1 In consideration of the provision of the Process Services by NHE, the Customer shall pay the NHE's associated charges as follows:

- (a) the charges payable for the Process Services shall be calculated in accordance with NHE's schedule of rates/charges specified (or referred to) in the Order Process Summary (subject to clause 7.3);
- (b) all charges quoted to the Customer shall be exclusive of VAT, which NHE shall add to its invoices at the appropriate rate;
- (c) NHE shall ensure that it produces and provides the Customer with Process production summary reports, and uses these to calculate the charges covered by each invoice referred to in clause 7.1(d); and
- (d) NHE shall invoice the Customer in arrears for its charges for Process Services undertaken, and all applicable Additional Cost Items (together with VAT where appropriate), calculated as provided in this clause 7.1 and clause 7.2.

- 7.2 NHE's standard processing charges referred to in the Order Process Summary exclude:
- all costs and expenses incurred by NHE associated with the Order Process, including those Additional Cost Items referred to in the Order Process Summary and all materials, drawings, inspections, permits and any other ancillary expenses reasonably incurred, and the cost of services reasonably and properly provided by third parties and required by NHE for the supply of the Process Services. Such costs, expenses, materials and third party services shall be invoiced by NHE at cost; and
  - VAT, which NHE shall add to its invoices at the appropriate rate.
- 7.3 The parties agree that NHE may review and increase its schedule of rates/charges set out in the Order Process Summary from time to time. NHE shall give the Customer written notice of any such increase at least 3 months before the proposed date of that increase. If such increase is not acceptable to the Customer, it may terminate the Agreement by giving 3 months' written notice to NHE in accordance with clause 12.3.
- 7.4 The Customer shall pay each invoice submitted to it by NHE, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by NHE.
- 7.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay NHE on the due date, NHE may:
- charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of NatWest Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and NHE may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Customer shall pay the interest immediately on demand; and
  - suspend all Process Services until payment has been made in full.
- 7.6 Time for payment shall be of the essence of the Process Services Agreement.
- 7.7 All sums payable to NHE under the Process Services Agreement shall become due immediately on its termination, despite any other provision. This clause 7.7 is without prejudice to any right to claim for interest under the law, or any such right under the Process Services Agreement.
- 7.8 NHE may, without prejudice to any other rights it may have, set off any liability of the Customer to NHE against any liability of NHE to the Customer.
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1 For the avoidance of doubt, all Background Information and know-how used in connection with the Order Process shall remain the property of the party introducing the same. NHE's Background Information includes all Pre-existing Materials.
- 8.2 Any inventions, discoveries, ideas, improvements, devices, products, know-how or the like, whether patentable or not ("**Inventions**"), and copyright material that NHE, its staff or agents, alone or jointly with others, conceives, invents, makes, or produces during the course of the Order Process including Deliverables ("**Foreground Information**") shall belong to NHE.
- 9. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**
- 9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by NHE, its employees, agents, consultants or subcontractors and any other confidential information concerning NHE's business or its products which the Customer may obtain.
- 9.2 The Customer may disclose such information:
- to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Process Services Agreement; and
  - as may be required by law, court order or any governmental or regulatory authority.
- 9.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 9.
- 9.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Process Services Agreement.
- 9.5 All materials, equipment and tools, drawings, specifications and data supplied by NHE to the Customer (including Pre-existing Materials) shall, at all times, be and remain as between NHE and the Customer the exclusive property of NHE, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to NHE, and shall not be disposed of or used other than in accordance with NHE's written instructions or authorisation.

**10. LIMITATION OF LIABILITY**

- 10.1 NHE shall use reasonable endeavours to provide the Process Services, and to deliver the Deliverables to the Customer, in accordance with the Process Plan in all material respects. The parties acknowledge however the inherent limitations referred to in clause 3.4 and that NHE gives no warranty as to the effectiveness or efficiency of the Process Services in achieving any intended results expected or referred to in the Process Plan (whether in terms of the relative yields which may be achievable, the costs associated with the agreed processes or otherwise).
- 10.2 This clause 10 sets out the entire financial liability of NHE (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
- any breach of the Process Services Agreement, including any deliberate personal repudiatory breach of the Process Services Agreement by NHE, or its employees, agents or subcontractors;
  - any use made by the Customer of the Process Services, the Deliverables or any part of them; and
  - any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Process Services Agreement.
- 10.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Process Services Agreement.
- 10.4 Nothing in the Process Services Agreement limits or excludes the liability of NHE:
- for death or personal injury resulting from negligence; or
  - for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by NHE.
- 10.5 Subject to clause 10.4:
- NHE shall not be liable for:
    - loss of profits; or
    - loss of business; or
    - depletion of goodwill and/or similar losses; or
    - loss of anticipated savings; or
    - loss of goods; or
    - loss of contract; or
    - loss of use; or
    - loss of corruption of data or information; or
    - any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
  - NHE's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise in connection with the performance or contemplated performance of the Process Services Agreement shall be limited to 150% of the aggregate amount paid or payable by the Customer to NHE under the Process Services Agreement.
- 11. DATA PROTECTION**
- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 11.2 The parties acknowledge that:
- if NHE processes any personal data on the Customer's behalf when performing its obligations under the Process Services Agreement, the Customer is the controller and NHE is the processor for the purposes of the Data Protection Legislation.
  - the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Process Services and NHE's other obligations under the Process Services Agreement.
- 11.3 Without prejudice to the generality of clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to NHE for the duration and purposes of the Process Services Agreement so

that NHE may lawfully use, process and transfer the personal data in accordance with the Process Services Agreement on the Customer's behalf.

11.4 Without prejudice to the generality of clause 11.1, NHE shall, in relation to any personal data processed in connection with the performance by NHE of its obligations under the Process Services Agreement:

- (a) process that personal data only on the documented written instructions of the Customer unless NHE is required by the laws of any member of the European Union or by the laws of the European Union applicable to NHE and/or Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (Applicable Laws). Where NHE is relying on Applicable Laws as the basis for processing personal data, NHE shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit NHE from so notifying the Customer;
- (b) ensure that NHE has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- (c) not transfer any personal data outside of the EEA unless the following conditions are fulfilled:
  - (i) the Customer or NHE has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) NHE complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (iv) NHE complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach;
- (f) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and immediately inform the Customer if, in the opinion of NHE, an instruction infringes the Data Protection Legislation.

11.5 The Customer consents to NHE appointing relevant third-party processor of personal data under the Process Services Agreement. NHE confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement which NHE undertakes reflects and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and NHE, NHE shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

11.6 Either party may, at any time on not less than 30 days' notice, revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Process Services Agreement).

## 12. TERMINATION

12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Process Services Agreement immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Process Services Agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of the Process Services Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, 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

- (d) the other party 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 of that other party with one or more other companies, or the solvent reconstruction of that other party; or
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
- (f) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
- (g) a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
- (h) a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
- (i) 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 its assets and such attachment or process is not discharged within 14 days; or
- (j) 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 mentioned in clause 12.1(c) to clause 12.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

12.2 The parties acknowledge and agree that any breach of clause 9 shall constitute a material breach for the purposes of this clause 12.

12.3 Either NHE or the Customer may terminate the Process Services Agreement at any time on giving not less than 3 months' notice to the other party.

12.4 On termination of the Process Services Agreement for any reason:

- (a) the Customer shall immediately pay to NHE all of NHE's outstanding unpaid invoices and interest and, in respect of Process Services supplied but for which no invoice has been submitted, NHE may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall promptly return all of NHE's Equipment and Pre-existing Materials in its possession. If the Customer fails to do so, then NHE may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

12.5 On termination of the Process Services Agreement (however arising) the following clauses shall survive and continue in full force and effect:

- (a) clause 7;
- (b) clause 8;
- (c) clause 9;
- (d) clause 10;
- (e) clause 12;
- (f) clause 14; and
- (g) clause 24.

## 13. FORCE MAJEURE

13.1 A party, provided that it has complied with the provisions of clause 13.3, shall not be in breach of the Process Services Agreement, nor liable for any failure or delay in performance of any obligations under the Process Services Agreement (and, subject to clause 13.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**), including but not limited to any of the following:

- (a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
  - (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
  - (c) terrorist attack, civil war, civil commotion or riots;
  - (d) nuclear, chemical or biological contamination or sonic boom;
  - (e) pandemic, epidemic and other civil emergency situation;
  - (f) compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
  - (g) fire, explosion or accidental damage;
  - (h) loss at sea;
  - (i) adverse weather conditions;
  - (j) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
  - (k) any labour dispute, including but not limited to strikes, industrial action or lockouts;
  - (l) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
  - (m) interruption or failure of utility service, including but not limited to electric power, gas or water.
- 13.2 The corresponding obligations of the other party will be suspended to the same extent.
- 13.3 Any party that is subject to a Force Majeure Event shall not be in breach of the Process Services Agreement provided that it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance.
- 13.4 If the Force Majeure Event prevails for a continuous period of more than 6 months, either party may terminate the Process Services Agreement by giving 30 days' written notice to all the other party. On the expiry of this notice period, the Process Services Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Process Services Agreement occurring prior to such termination.
- 14. INDEMNITY BY CUSTOMER**
- 14.1 The Customer shall indemnify and hold NHE harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, NHE as a result of or in connection with:
- (a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the provision of the Process Services (including the Deliverables) or the associated arrangements envisaged in the Process Plan or the Process Services Agreement, to the extent the same is based upon or incorporates the Customer's own particular requirements, specifications or designs; or
  - (b) any damage caused to NHE's Premises or NHE's Equipment or any claim made against NHE in respect of any liability, loss, damage, injury, cost or expense sustained by NHE's employees or agents or by any customer or third party to the extent that such damage, liability, loss, damage, injury, cost or expense was caused by, relates to or arises as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Customer's Works or any of the Customer's obligations under the Process Services Agreement.
- 15. VARIATION**
- Subject to clause 3 and clause 6, no variation of the Process Services Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 16. WAIVER**
- 16.1 Failure to exercise, or any delay in exercising, any right or remedy provided under the Process Services Agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.
- 16.2 No single or partial exercise of any right or remedy provided under the Process Services Agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

- 16.3 A waiver (which may be given subject to conditions) of any right or remedy provided under the Process Services Agreement or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.
- 16.4 A party that waives a right or remedy provided under the Process Services Agreement or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.
- 16.5 Unless specifically provided otherwise, rights arising under the Process Services Agreement are cumulative and do not exclude rights provided by law.
- 17. SEVERANCE**
- 17.1 If any provision of the Process Services Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the agreement, and the validity and enforceability of the other provisions of the agreement shall not be affected.
- 17.2 If a provision of the Process Services Agreement (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 18. ENTIRE AGREEMENT**
- 18.1 The Process Services Agreement and any documents referred to in it constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Process Services Agreement.
- 18.2 Each party acknowledges that, in entering into the Process Services Agreement and the documents referred to in it, does not rely on any statement, representation, assurance or warranty (**Representation**) of any person (whether a party to the Process Services Agreement or not) other than as expressly set out in the Process Services Agreement or those documents. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in the Process Services Agreement.
- 18.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 19. ASSIGNMENT**
- 19.1 Neither party shall, save as expressly envisaged in the Process Services Agreement, without the prior written consent of the other (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Process Services Agreement.
- 19.2 Each party that has rights under the Process Services Agreement is acting on its own behalf and not for the benefit of another person.
- 20. NO PARTNERSHIP OR AGENCY**
- Nothing in the Process Services Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 21. RIGHTS OF THIRD PARTIES**
- A person who is not a party to the Process Services Agreement shall not have any rights under or in connection with it.
- 22. NOTICES**
- 22.1 A notice given to a party under or in connection with the Process Services Agreement:
- (a) shall be in writing in English (or accompanied by a properly prepared translation into English);
  - (b) shall be signed by or on behalf of the party giving it; and
  - (c) shall be:
    - (i) delivered personally; or
    - (ii) sent by commercial courier; or

- (iii) sent by pre-paid first-class post or recorded delivery; or
  - (iv) sent by airmail requiring signature on delivery,
- to each party required to receive the notice at the relevant address specified in the Order Process Summary or as otherwise specified by the relevant party by notice in writing to the other party.
- 22.2 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:
- (a) if delivered personally, at the time of delivery; or
  - (b) if delivered by commercial courier, at the time of signature of the courier's receipt; or
  - (c) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the third day after posting; or
  - (d) if sent by airmail, five days from the date of posting.
- 22.3 For the purposes of this clause:
- (a) all times are to be read as local time in the place of deemed receipt; and
  - (b) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice or other communication is deemed to have been received when business next starts in the place of receipt.
- 22.4 To prove delivery, it is sufficient to prove that if sent by pre-paid first class post, the envelope containing the notice or other communication was properly addressed and posted.

- 22.5 The provisions of this clause 22 shall not apply to the service of any process in any legal action or proceedings.
- 22.6 A notice or other communication required to be given under or in connection with the Process Services Agreement shall not be validly served if sent by e-mail.
- 23. DISPUTE RESOLUTION**
- 23.1 If any dispute arises in connection with the Process Services Agreement, senior representatives of the parties shall, within 7 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 23.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 7 days after the date of the ADR notice.
- 23.3 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.
- 24. GOVERNING LAW AND JURISDICTION**
- 24.1 The Process Services Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 24.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Process Services Agreement or its subject matter or formation (including non-contractual disputes or claims).