

## NLG ANALYTICAL

### TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

#### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause shall apply in these conditions (**Conditions**).

**Agreement:** The attached Planned Service Agreement.

**Commencement Date:** The date stated as such in the Agreement.

**Company:** NLG Analytical Limited.

**Customer:** The party designated as such in the Agreement.

**Instrumentation:** The instruments which are located at the Premises and which are specified in the Agreement.

**Intellectual Property Rights:** All patents, rights to inventions, utility models, copyright and related rights, trademarks, 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.

**Premises:** The location of the Instrumentation which is specified in the Agreement.

**Services:** The (a) preventative maintenance/validation services and/or (b) the remedial (call-out) maintenance services, which are to be provided pursuant to and which are specified in, the Agreement.

**Service Charge:** The charge which shall be payable for the Services and which is specified in the Agreement.

- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these Conditions.

## **2. APPLICATION OF TERMS**

- 2.1 Subject to any variation under Condition 2.3, the Agreement shall be subject to and governed by these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 In the event of any conflict between any provision of these Conditions and any provision of the Agreement, these Conditions shall prevail.
- 2.3 These Conditions apply to the supply of the Services by the Company to the Customer and any variation to these Conditions and any representations about any Services shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in these Conditions and/or the Agreement. Nothing in this Condition 2.3 shall exclude or limit the Company's liability for fraudulent misrepresentation.

## **3. OBLIGATIONS OF THE COMPANY**

- 3.1 The annual preventative maintenance/validation service visit to the Premises shall be undertaken within 6 months from the Commencement Date, the exact date of the visit to be designated by the Company, at the Company's sole discretion. Where the Service Charge covers more than one visit per annum,

the date of any subsequent visit shall also be designated by the Company, at the Company's sole discretion. .

- 3.2 The Company shall use its reasonable endeavours to meet any performance dates specified in Condition 3.1, but any such dates shall be estimates only and time shall not be of the essence.
- 3.3 The Services shall be performed at the Premises during the standard business hours of 9:00am to 5:00pm, Monday to Friday, excluding Bank Holidays (or otherwise at the Company's service facility if, in the reasonable discretion of the Company's Service Engineer, doing so would be warranted by the nature of the matter at issue). Dates for performance of the Services shall be suggested by the Company to the Customer and mutually agreed in advance. The Company reserves the right to levy a re-scheduling charge should the Customer wish to change any agreed dates for performance of the Services less than 7 days prior to any date so agreed. In order to enable the Company to effectively perform the Services, the Customer will be provided with a Pre-Visit Site Readiness Form which must be fully completed and returned to the Company at least 3 days prior to the date agreed for performance of the Services. The Company reserves the right to reschedule the date agreed for performance of the Services and to levy a corresponding rescheduling charge in the event that the Customer fails to fully complete the Pre-Visit Site Readiness Form or to timely return the form to the Company.
- 3.4 Instruments requiring repair may be returned to the Company for repair by prior arrangement. Shipment and insurance costs are the sole responsibility of the Customer and all returns must be suitably and adequately packed and accompanied by a completed Notification of Hazards form, which must be obtained from the Company. Repair work for instruments returned to the Company shall be invoiced to the Customer on such terms as shall be mutually agreed in advance.
- 3.5 Validation Certificates will be issued upon successful completion of testing. Should a repeat validation be necessary, then test scheduling and test charges shall be mutually agreed prior to repeat testing. Unless otherwise agreed with the Company, the Customer shall be solely responsible for the storage and retention of Certificates. PROVIDED THAT all Certificates shall remain the sole and exclusive property of the Company until fully paid for.
- 3.6 The Services shall not include:

- a. Any work, including but not limited to electrical work, work involving the supply of gas and mobile phase work, in relation to anything which does not form a part of the Instrumentation; and
- b. Any maintenance or repair work (other than routine maintenance) with respect to any modification of, or addition to, the Instrumentation, if any such modification or addition has been undertaken without the Company's prior consent; and
- c. The repair of any damage to the Instrumentation caused by fire, lightning, water, wind, damage in transit, burglary, vandalism, or explosion; and
- d. The remedy of any defect or error in any software used in conjunction with the Instrumentation; and
- e. The remedy of any defect resulting from any misuse of, neglect of, tampering with, or wilful or accidental damage to the Instrumentation, or from the utilisation of incorrect mains voltage with the Instrumentation, the attachment of the Instrumentation to any unsuitable or inappropriate devices or the use of defective or inappropriate supplies with the Instrumentation, or from any failure to follow any instructions contained in any operation or maintenance manual published for, or otherwise specified to be appropriate for use in conjunction with, the Instrumentation, or from any failure to follow any written or oral instructions of the Company, or from any failure to carry out routine maintenance or to maintain a suitable environment for the Instrumentation at the Premises, including but not limited to any failure to maintain a continuous power supply or any required temperature or air quality control system; and
- f. Any additional preventative maintenance/validation service visit or remedial (call-out) maintenance response or any attendance at the Premises which, in any case, is requested or required because some act or omission of the Customer has prevented, suspended or delayed the performance of any obligation of the Company, or is requested or required because of the Customer's failure to perform, suspension or delay in the performance of any of the Customer's obligations under the Agreement.

3.7 If the Company's performance of its obligations under the Agreement or otherwise is prevented, suspended, delayed or otherwise adversely affected by any act or omission of the Customer, its agents, subcontractors, consultants or employees, or from any fraud or negligence of the Customer, or from any failure to perform, suspension or delay in the performance of any of the Customer's obligations under the Agreement or otherwise, the Company shall not be liable

for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention, suspension, delay or adversely affected performance of the Company's obligations.

- 3.8 The Customer and the Company shall meet with such frequency as may be determined by the Company in order to monitor the progress of the Services or to deal with any other matters whatsoever, arising under or in connection with the Agreement. The Company shall notify the Customer if it becomes apparent that the performance of the Services is likely to be delayed, but without prejudice to the provisions of Condition 3.2, time shall not be of the essence in the performance of the Services.

#### **4. OBLIGATIONS OF THE CUSTOMER**

- 4.1 With respect to any Services which the Company is to provide for the Customer, the Customer shall:
- a. co-operate with the Company in all matters relating to the Services including, without limitation, by immediately providing the Company with any manuals, handbooks and passwords upon request; and
  - b. provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with such access to the Premises, office accommodation, data, utilities and other facilities as may be required by the Company and shall make the Instrumentation fully available to the Company, together with all documentation and any information necessary to enable the Company to diagnose any fault in the Instrumentation; and
  - c. be responsible (at its own cost) for preparing and maintaining any relevant part of the Premises for the provision of the Services; and
  - d. be solely responsible for ensuring the safety and safe entry onto the Premises of any person engaged by the Company to perform the Services at the Premises and all of the Customer's employees, invitees and licensees who are or may be present on the Premises during the performance of the Services (both inside and outside normal business hours), including but not limited to restricting access to those areas of the Premises where the Services are to be performed to those individuals engaged in performing the Services, or providing assistance or advice to those so engaged; and

- e. inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises; and
  - f. effect and maintain appropriate insurance in an adequate amount with respect to all possible risks which may arise in connection with the deployment of any person engaged by the Company to perform the Services at the Premises and shall, at the Company's request, provide such evidence of such insurance as the Company may reasonably require; and
  - g. ensure that any third party service or utility supply required for the proper and continuous functioning of the Instrumentation is continuously maintained; and
  - h. effect and maintain appropriate licences and consents, whether with the Company or with third parties, for anything which may be required for the provision of the Services at the Premises and the proper and continuous functioning of the Instrumentation.
- 4.2 The Customer shall furnish the Company with complete and accurate information both prior to and during any preventative maintenance visits, such as will enable the Company to fulfil the Company's obligations under the Agreement.
- 4.3 The Customer shall ensure that any request for remedial (call-out) maintenance contains complete and accurate information such as will enable the Company to fulfil the Company's obligations under the Agreement and, without limitation, to meet any response time stipulated in the Agreement.
- 4.4 The Customer shall, if requested by the Company to do so, ensure that an appropriately skilled (and, if applicable, qualified and/or competent), person is in attendance when the Services are being performed in order to enable the Services to be performed in accordance with all relevant safety procedures and also to operate any electrical systems or apparatus required to be operated in conjunction with the Instrumentation and in order to enable the Services to be performed.
- 4.5 The Customer acknowledges that it may be necessary to bypass the Instrumentation during the performance of the Services. The Customer acknowledges and understands all of the attendant risks and possible consequences associated with this procedure and further acknowledges and accepts sole responsibility therefor.

- 4.6 The Customer warrants and undertakes to the Company that it is the owner of the Instrumentation, that it has full power and authority to enter into the Agreement and to permit the Company to perform the Services and without limiting the generality of Condition 10.1, the Customer undertakes to fully and promptly indemnify and hold the Company harmless against any loss or damage that the Company may suffer as a result of any breach by the Customer of this Condition 4.6.
- 4.7 Routine maintenance procedures (as detailed in Instrumentation operation manuals) are the sole responsibility of the Customer and are to be performed by the Customer on an ongoing basis (including but not limited to lamp changes, syringe replacement, column installation, liquid and gas leak checks, and flow cell and liquid pathways flushing). Routine maintenance procedures may only be carried out by a competent user and only recommended parts may be used. The Customer must ensure that the Company is notified (prior to the Customer undertaking any routine maintenance) of any instance where there is a need to resolve any uncertainty regarding any routine maintenance procedure, so that any unnecessary breakdowns and/or call-outs may be avoided.

## **5. THE SERVICE CHARGE**

- 5.1 The Customer shall pay the Company the Service Charge set forth in the Agreement.
- 5.2 The Service Charge shall be exclusive of any VAT, which the Customer shall pay to the Company on the due date for payment of the Service Charge.
- 5.3 The Customer shall pay to the Company any additional sums which, in the Company's reasonable discretion, are required as a result of the Customer's instructions or lack of instructions, or any other cause attributable to the Customer directly or indirectly, including, without limitation, any failure by the Customer to fulfil any obligation set forth in Condition 4. The Company reserves the right to increase the Service Charge due to any change in the Services requested by the Customer, or any delay caused by any instructions of the Customer.
- 5.4 Without prejudice to Condition 5.3, the Company reserves the right to review and increase the Service Charge annually, provided that the Company gives the Customer 30 days prior written notice of any such increase.

- 5.5 Unless otherwise specified in the Agreement, the Service Charge for the preventative maintenance/validation services shall include (a) travel time to the Premises and (b) time spent servicing the Instrumentation at the Premises and the cost of any spare parts and consumable items shall not be included; the requirement to replace spare parts and consumable items shall be solely determined by the Company's Service Engineer at his or her reasonable discretion, as shall any requirement to undertake any work that is not covered within generally accepted preventative maintenance procedures, for which the Company shall provide the Customer with an estimate of costs for acceptance prior to proceeding.
- 5.6 The Service Charge is based upon the maintenance estimated to be required for Instrumentation operated on a daily single shift basis. Any significant change in the usage rate, (including but not limited to utilising the Instrumentation for second or third shift operation) must be immediately notified to the Company and the Company reserves the right to increase the Service Charge in any such case.
- 5.7 Where the Service Charge does not include remedial (call-out) maintenance, call-outs shall be subject to a charge to be quoted and agreed in advance. Where the Service Charge does include remedial (call-out) maintenance, only parts used for the repair will be charged to the Customer, provided that in any such case, the call-out is a genuine breakdown and not a user error call-out, i.e. where the fault occasioning the call-out has been caused by or contributed to by the Customer's act or omission (including but not limited to any instance where the fault was occasioned by operator/method error), or where the fault could have been remedied by the Customer without the Company's assistance.
- 5.8 Any costs, charges and/or expenses incurred by the Company in connection with the alteration, rebuilding or reconditioning of the Instrumentation shall not be covered by the Service Charge, nor shall the provision of any software.

## **6. PAYMENT**

- 6.1 The Customer shall pay the Service Charge to the Company on the date or dates stipulated in the Agreement, or in the absence in the Agreement of any such date or dates, within 30 days of the date of the Company's invoice.
- 6.2 Time for payment shall be of the essence.

- 6.3 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer tenders payment by cheque and said cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.
- 6.4 All payments payable to the Company shall become due immediately on the termination of the Agreement, despite any other provision.
- 6.5 The Customer shall make all payments due under the Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 6.6 If the Customer fails to pay the Company any sum due under the Agreement, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5 % above the base lending rate from time to time of Lloyds TSB Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall reimburse the Company for any and all costs incurred by the Company in recovering payment pursuant to this Condition 6.6.
- 6.7 Without prejudice to Condition 6.6, any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Condition 8.3, shall entitle the Company, at any time and without notice to the Customer and without limitation to any other remedy available to the Company under the Agreement, or otherwise:
- 6.7.1 To suspend or cancel the performance of any Services; and
- 6.7.2 To treat the Agreement as having been repudiated by the Customer.
- 6.8 The Company may set a reasonable credit limit for the Customer. The Company may change credit terms at any time should the Customer's financial condition or previous payment record so warrant.

## **7. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

- 7.1 Any and all Intellectual Property Rights (howsoever arising), in relation to the Services (and in relation to any replacement parts supplied in conjunction with the Services, to the extent that the relevant rights in those parts have not been reserved to the manufacturer) shall at all times vest in and belong solely to the Company and nothing in the Agreement or otherwise shall operate to confer any rights on the Customer with respect to any such Intellectual Property Rights.
- 7.2 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature (including but not limited to pricing structures and service and validation procedures) and have been disclosed to the Customer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Services or the Company's business which the Customer may obtain.
- 7.3 The Customer may disclose such information:
- a. 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 Contract; and
  - b. as may be required by law, court order or any governmental or regulatory authority.
- 7.4 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with the Customer's confidentiality obligations in this Condition 7.
- 7.5 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.

## **8. TERM AND TERMINATION**

- 8.1 The Services shall be provided from the Commencement Date and shall continue to be provided thereafter unless and until the Agreement is terminated by either party in accordance with the provisions of this Condition 8.

- 8.2 Without limiting any of the provisions of Condition 8.3 below, the Company may terminate the Agreement immediately if the Customer fails to pay any sum due to the Company under the Agreement and such sum remains unpaid for fourteen (14) days after notice has been given to the Customer that such sum has not been paid.
- 8.3 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract immediately on giving notice to the other if:
- (i) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of being notified in writing of the breach;
  - (ii) the other party becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt or is unable to pay its debts (within the meaning of section 124 of the Insolvency Act 1986);
  - (iii) 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 (ii) above;
  - (iv) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - (v) there is a change of control of the other party.
- 8.4 The circumstances set out in Condition 8.3 above are only circumstances in which the Customer may terminate the Agreement without charge; otherwise, the Customer may terminate the Agreement upon 45 days written notice to the Company, but the Company reserves the right to impose a cancellation charge of 20% in any instance where the Customer wishes to terminate the Agreement pursuant to this Condition 8.4.

## 9. LIMITATION OF LIABILITY

9.1 The Company warrants and undertakes to the Customer:

- (i) that the Services shall be performed with reasonable skill and care;
- (ii) that it shall have a free and unencumbered title to any replacement parts for the Instrumentation supplied hereunder; and
- (iii) that any replacement parts shall, at the time of their installation on the Instrumentation, be of merchantable quality and reasonably fit for their purpose
- (iv) that immediately following any preventative maintenance service visit, any and all replacement parts will be guaranteed against manufacturing defects for the following time periods:
  - a. 'Hard' wetted components i.e. check valves, pistons, stators:  
6 month warranty.
  - b. Plunger Seals: 14 day warranty.
  - c. Detector Lamps- Manufacturers warranty: 1-2,000 hours.
  - d. Printed Circuit board- Manufacturers warranty: 0 to 1 year;

**PROVIDED THAT** the Company shall not be liable for a breach of any of the warranties in sub-clauses (iii) or (iv) if:

- (A) the Customer makes any further use of any replacement part (or any Instrumentation incorporating any replacement part) which the Customer has alleged to be defective after giving notice of any such defect; or
- (B) the Customer alters or repairs any replacement part (or any Instrumentation incorporating any replacement part) without the prior written consent of the Company; or
- (C) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of any replacement part (or any Instrumentation incorporating any replacement part) or (if there are none) good trade practice; or
- (D) the defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions or from any

misuse of any replacement part (or any Instrumentation incorporating any replacement part); or

- (E) the Service Charge (or any other sum which is due and payable) has not been paid by the time for payment stipulated in Condition 5; or
- (F) the defect is of a type specifically excluded by the Company, or by any relevant manufacturer, by notice in writing.

9.2 All other warranties, conditions and terms implied by statute or common law (save for the conditions implied by section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from this Agreement.

9.3 Nothing in this Agreement shall exclude or limit the liability of the Company:

- a. for death or personal injury caused by the Company's negligence; or
- b. under section 2(3), Consumer Protection Act 1987; or
- c. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- d. for fraud or fraudulent misrepresentation.

9.4 Subject to Condition 9.2 and Condition 9.3:

- a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Company's obligations under the Agreement shall be limited to the Service Charge that is payable pursuant to Condition 5.1; and
- b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement.

## **10. INDEMNITY AND FORCE MAJEURE**

10.1 The Customer shall hold the Company harmless and keep the Company indemnified in full against all direct, indirect or consequential liabilities (all

three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by any third party to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

- 10.2 The parties to the Agreement shall not be liable for any failure of performance or any delay in performing any of their obligations under this Agreement (other than for non-payment or late payment of the Service Charge and/or any other sums payable pursuant to the provisions of Condition 5) by reason of Act of God, war, civil disorder, labour dispute, Governmental action, fire, flood or drought.

## **11. GENERAL**

- 11.1 Each right or remedy of the Company under the Agreement is without prejudice to any other right or remedy of the Company whether under the Agreement or not.
- 11.2 If any provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.
- 11.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of any of its rights under the Agreement.
- 11.4 Any waiver by the Company of any breach of, or any default under, any provision of the Agreement by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Agreement.

- 11.5 The parties to the Agreement do not intend that any term of the Agreement shall be enforceable by virtue of the Agreements (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.6 The formation, existence, construction, performance, validity and all aspects of the Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.