

## 1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

<b>Bribery Laws</b>	means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;
<b>Business Day</b>	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business <i>in England</i> ;
<b>Conditions</b>	means the Contractor's terms and conditions of supply set out in this document;
<b>Confidential Information</b>	means any commercial, financial or technical information, information relating to the Services, plans, designs, drawings, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract including the schedules;
<b>Contract</b>	means the agreement between the Contractor and the Customer for the supply and purchase of the Deliverables incorporating these Conditions, the Commercial Schedules and the Works Specification;
<b>Contractor</b>	Means Highline Contracts (Southern) Limited a company registered in England and Wales with company number 07543533 and whose registered office address is 10-12 Mulberry Green, Old Harlow, Essex, CM17 0ET;
<b>Contractor Personnel</b>	means all employees, officers, staff, other workers, agents, sub-contractors and consultants of the Contractor, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time; and
<b>Commercial Schedule</b>	Schedule 2 to this agreement.
<b>Customer</b>	means the person who purchases the Services and/or the Goods from the Contractor and whose details are set out in the Works Specification;
<b>Data Protection Laws</b>	means, as binding on either party or the Services:  the GDPR;  the Data Protection Act 2018;  any laws which implement any such laws; and  any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
<b>Deliverables</b>	means the Goods or Services or both as the case may be as set out in the Works Specification;
<b>Force Majeure</b>	means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its

	obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Contractor's or its Contractors' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
<b>GDPR</b>	means the General Data Protection Regulation, Regulation (EU) 2016/679;
<b>Goods</b>	means the goods and related accessories, spare parts and documentation and other physical material set out in the Works Specification and to be supplied by the Contractor to the Customer;
<b>Health and Safety legislation</b>	means any acts of Parliament in regards to health and safety in the work place and publicly accessible sites.
<b>Location</b>	means the address(es) for performance of the Services and for delivery of the Goods as set out in the Works Specification;
<b>Modern Slavery Policy</b>	means the Contractor's anti-slavery and human trafficking policy in force and notified to the Customer from time to time;
<b>Purchase Order</b>	means the Customer's order of the Services required to be carried out and/or Goods to be Supplied as part of the order;
<b>the parties / a party</b>	shall mean the Contractor and the Customer (or any one of them as the context implies)
<b>Personal Data</b>	shall have the meaning given to it in applicable Data Protection Laws from time to time;
<b>Price</b>	has the meaning set out in clause 3.1;
<b>processing</b>	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including <b>process, processing, processed</b> , and <b>processes</b> shall be construed accordingly);
<b>Processor</b>	shall have the meaning given to it in applicable Data Protection Laws from time to time;
<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer in connection with the performance of the Contractor's obligations under the Contract;
<b>Services</b>	means the Services set out in the Works Specification and to be performed by the Contractor for the Customer;
<b>Specification</b>	means the description or specification of the Services and Goods as set out or referred to in the Works Specification;

<b>VAT</b>	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.
<b>Works Specification</b>	means the Works Specification for the Services and the Goods to be provided by the Contractor to the Customer and which forms Schedule 1 of these Conditions;

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.5 a reference to a gender includes each other gender;
- 1.2.6 words in the singular include the plural and vice versa;
- 1.2.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.8 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and

## 2 Application of these Conditions

- 2.1 These Conditions together with the Works Specification and the Commercial Schedule apply to and form part of the Contract between the Contractor and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, any purchase orders and purchase order numbers, confirmation of Works Specification, any other specification or other document shall form part of the Contract except to the extent that the Contractor otherwise agrees in writing.
- 2.3 No variation of these Conditions or to a Works Specification or to the Contract or to the Commercial Schedules shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Contractor.
- 2.4 Each Purchase Order by the Customer to the Contractor shall be an offer to purchase Services subject to these Conditions.
- 2.5 A Purchase Order may be withdrawn or amended by the Customer at any time provided that notice in writing of such withdrawal or amendment by the Customer is received by the Contractor before acceptance by the Contractor. If the Contractor is unable to accept a Purchase Order, it shall notify the Customer as soon as reasonably practicable.

- 2.6 The offer constituted by a Purchase Order shall remain in effect and be capable of being accepted by the Contractor until withdrawn by the Customer giving notice to the Contractor after the expiry of 7 Business Days from the date on which the Customer submitted the Purchase Order.
- 2.7 The Contractor may accept or reject a Purchase Order at its discretion. A Purchase Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the earlier of:
- 2.7.1 The Works Specification being provided to the Contractor; or
- 2.7.2 the Contractor performing the Services or notifying the Customer that they are ready to be performed (as the case may be).
- 2.8 Rejection by the Contractor of a Purchase Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9 The Contractor may issue quotations to the Customer from time to time. Quotations are **invitations to treat only**. They are not an offer to supply Services and are incapable of being accepted by the Customer. Any quotation is valid for 60 days.
- 2.10 Marketing and other promotional material relating to the Services and any Goods available from the Contractor are illustrative only and do not form part of the Contract.

### **3 Price**

- 3.1 The price for the Deliverables shall be as set out in the Schedule 2 to these Conditions (**Price**).
- 3.2 The price for the Services shall be as set out in the Schedule 2 to these Conditions.
- 3.3 The Prices are exclusive of VAT (or equivalent sales tax).
- 3.4 The Customer shall pay any applicable VAT to the Contractor on receipt of a valid VAT invoice.
- 3.5 If any further works are required, which are outside of the Works Specification the Contractor will notify the Customer via email or telephone. The Customer shall then within 5 working days issue a new Purchase Order outlining the additional works. Following a new Purchase Order, the Contractor shall issue a further Works Specification and the details as outlined in Schedule 2 to these Conditions.
- 3.6 The Contractor shall not undertake any additional works until a further Work Specification is issued.

### **4 Payment**

- 4.1 The Contractor shall invoice the Customer for the Deliverables in accordance with Schedule 2 to these Conditions.
- 4.2 The Customer shall pay all invoices:
- 4.2.1 In absence of any special conditions as outlined in the Commercial Schedule, in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice; and
- 4.2.2 to the bank account nominated by the Contractor.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 4.3.1 the Contractor may, without limiting its other rights, charge interest on such sums at 5 % a year above the base rate of Barclay's Bank plc from time to time in force, and

- 4.3.2 interest shall accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 4.3.3 Should the Customer fail to pay an invoice that is not disputed in accordance with clause 18 the Contractor is permitted to remove the Contractor Personnel from site until the invoice is paid in full. Such action will not constitute a breach of the Contract.
- 4.3.4 If the Contractor exercise its right at clause 3.3 any timescales as outlined in the Commercial Schedule shall be adjusted accordingly.
- 4.3.5 If only a part of an invoice is being disputed such will require immediate settlement and the remainder to be resolved in accordance with clause 18.

## **5 Performance**

- 5.1 A Works Specification shall specify whether the Services and/or Goods are to be:
  - 5.1.1 Performed and / or supplied at the Location on the date(s) specified in the Works Specification; or
  - 5.1.2 Performed at an alternative premise set out in the Works Specification (as the case may be). The Customer shall make such premises available for the Contractor so that the Contractor is able to meet its obligations within the period(s) set out in the Works Specification.
- 5.2 The Services shall be deemed performed on completion of the performance of the Services as specified in the Works Specification.
- 5.3 The Goods shall be deemed supplied on delivery to the Location or as specified in the Works Specification.
- 5.4 The Contractor may perform the Services in stages as set out in the Works Specification or as otherwise agreed in writing between the parties. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any element of the Contract.
- 5.5 The Contractor will supply the Goods in accordance with the terms agreed in the Works Specification. Any delay in supply of the Goods shall not entitle the Customer to cancel any element of the Contract.
- 5.6 Time of performance of the Deliverables is not of the essence unless otherwise agreed in writing by the Contractor. The Contractor shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are approximate only.
- 5.7 On completion of the works the Contractor shall clear away to a designated place provided on the site or where no such place is provided remove from site, all rubbish, waste etc. Such removal will be undertaken in accordance with the applicable laws.
- 5.8 The Contractor shall not be liable for any delay in or failure of performance caused by:
  - 5.8.1 the Customer's failure to comply with it's obligations as set out in clause 5.8;
  - 5.8.2 Force Majeure; and
  - 5.8.3 Any delays caused by an outside contractor.

### **5.8 The Customer is obliged to:**

- a) make the Location available and ensure that it complies with the Health and Safety Regulations;
- b) prepare the Location in accordance with the Contractor's instructions;

- c) provide the Contractor with adequate instructions for performance or otherwise relating to the Services or the Goods;
- d) provide details of any wiring and location of pipes including the mains;
- e) provide any materials and equipment as specified in the Works Specification;

## **6 Risk**

Risk in the Goods shall pass to the Customer on delivery to the Location.

## **7 Title**

- 7.1 Title to the Goods shall pass to the Customer once the Contractor has received payment in full and cleared funds for the Deliverables.
- 7.2 Until title to the Goods has passed to the Customer, the Customer shall:
  - 7.2.1 hold the Goods as bailee for the Contractor;
  - 7.2.2 save where the Goods have been integrated, store the Goods separately from all other material in the Customer's possession;
  - 7.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
  - 7.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks and (iii) for an amount at least equal to their Price;
  - 7.2.5 ensure that the Goods are clearly identifiable as belonging to the Contractor;
  - 7.2.6 save where the Goods have been integrated, not remove or alter any mark on or packaging of the Goods;
  - 7.2.7 inform the Contractor immediately if it becomes subject to any of the events or circumstances set out in clauses 16.1.1 to 16.1.4 or 16.2.1 to 16.2.11; and
  - 7.2.8 on reasonable notice permit the Contractor to inspect the Goods during the Customer's normal business hours and provide the Contractor with such information concerning the Goods as the Contractor may reasonably request from time to time.
- 7.3 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Contractor, or the Contractor reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 16.1.1 to 16.1.4 or 16.2.1 to 16.2.11, the Contractor may:
  - 7.3.1 require the Customer at the Customer's expense to re-deliver the Goods to the Contractor; and
  - 7.3.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

## **8 Warranty**

- 8.1 The Contractor warrants that, for a period of 12 months from performance (the **Warranty Period**), the Services shall:
  - 8.1.1 conform in all material respects to to the Works Specification;
  - 8.1.2 be free from material defects in design, material and workmanship;
  - 8.1.3 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;

- 8.1.4 any media on which the results of the Services are supplied shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 8.2 Any Goods that form part of the Deliverables shall have the benefit of the warranties as offered by the manufacturer.
- 8.3 The Customer warrants that it has provided the Contractor with all relevant, full and accurate information as to the Customer's business and needs.
- 8.4 The Contractor shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 8, provided that the Customer:
  - 8.4.1 serves a written notice on Contractor not later than *five* Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
  - 8.4.2 such notice specifies that some or all of the Deliverables do not comply with clause 8.1.2 and identifying in sufficient detail the nature and extent of the defects; and
  - 8.4.3 gives the Contractor a reasonable opportunity to examine the claim of the defective Deliverables.
- 8.5 The provisions of these Conditions shall apply to any Deliverables that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Deliverables.
- 8.6 Except as set out in this clause 8:
  - 8.6.1 the Contractor gives no warranty and makes no representations in relation to the Deliverables; and

and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

## **9 Anti-bribery**

- 9.1 For the purposes of this clause 9 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 9.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:
  - 9.2.1 all of that party's personnel;
  - 9.2.2 all others associated with that party; and
  - 9.2.3 all of that party's sub-contractors;

involved in performing the Contract so comply.

- 9.3 Without limitation to clause 9.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 9.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 9.

## **10 Anti-slavery**

- 10.1 The Customer undertakes, warrants and represents that:

10.1.1 neither the Customer nor any of its officers, employees, agents or sub-contractors has:

- (a) committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**); or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (c) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

10.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy

10.1.3 it shall notify the Contractor immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of Customer's obligations under clause 10.1. Such notice shall set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.

10.2 Any breach of clause 10.1 by the Customer shall be deemed a material breach of the Contract and shall entitle the Contractor to terminate the Contract with immediate effect.

## **11 Indemnity and insurance**

11.1 The Customer shall indemnify, and keep indemnified, the Contractor from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Contractor as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.

11.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions as a minimum the Customer should have a public and employer's liability insurance – 10 million any one occurrence. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to the Contractor the benefit of such insurance.

11.3 The Contractor shall insure against all liability arising or likely to arise in the following amounts:

- a) public and product liability – 10 million any one occurrence;
- b) employer's liability – 10 million any one occurrence;
- c) professional indemnity - 10 million any one occurrence.

## **12 Limitation of liability**

12.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 12.

12.2 Subject to clauses 12.5 and 12.6, the Contractor's total liability shall not exceed the higher of (i) an amount recoverable from any insurance policy maintained by the Contractor from time to time (less any excess payable by the Contractor); or (ii) the Price.

12.3 Subject to clauses 12.5 and 12.6, the Contractor shall not be liable for consequential, indirect or special losses.

12.4 Subject to clauses 12.5 and 12.6, the Contractor shall not be liable for any of the following (whether direct or indirect):



- 12.4.1 loss of profit;
  - 12.4.2 loss or corruption of data;
  - 12.4.3 loss of use;
  - 12.4.4 loss of production;
  - 12.4.5 loss of contract;
  - 12.4.6 loss of opportunity;
  - 12.4.7 loss of savings, discount or rebate (whether actual or anticipated);
  - 12.4.8 harm to reputation or loss of goodwill.
- 12.5 The limitations of liability set out in clauses 12.2 to 12.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 12.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 12.6.1 death or personal injury caused by negligence;
  - 12.6.2 fraud or fraudulent misrepresentation;
  - 12.6.3 any other losses which cannot be excluded or limited by applicable law;
  - 12.6.4 any losses caused by wilful misconduct.

### **13 Confidentiality and announcements**

- 13.1 Both parties shall keep confidential all Confidential Information and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 13.1.1 any information which was in the public domain at the date of the Contract;
  - 13.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - 13.1.3 any information which is independently developed by the Customer without using information supplied by the Contractor or by any Affiliate of the Contractor; or
  - 13.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract

except that the provisions of clauses 13.1.1 to 13.1.3 shall not apply to information to which clause 13.4 relates.

- 13.2 This clause shall remain in force in perpetuity.
- 13.3 The Customer and the Contractor shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 13.4 To the extent any Confidential Information is Protected Data (as defined in clause 14) such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of the provisions of clause 14.1.

### **14 Processing of personal data**

- 14.1 The parties agree that the Customer is a Controller and that the Contractor is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Contractor in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data

Protection Laws. Nothing in these Conditions relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.

## **15 Force Majeure**

15.1 A party shall not be liable if delayed in or prevented from performing its obligations under this Contract due to Force Majeure, provided that it:

15.1.1 promptly notifies the other party of the Force Majeure event and its expected duration; and

15.1.2 uses its reasonable endeavours to minimise the effects of that event.

15.2 If, due to Force Majeure, a party:

15.2.1 is or shall be unable to perform a material obligation; or

15.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 60 days or a total of more than 30 days in any consecutive period of 60 days;

the parties shall look to renegotiate the Contract in good faith to achieve, as nearly as possible, the original commercial intent.

## **16 Termination**

16.1 The Contractor may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:

16.1.1 the Customer commits a material breach of Contract and such breach is not remediable;

16.1.2 the Customer commits a material breach of the Contract which is capable of being remedied and such breach is not remedied within 14 days of receiving written notice of such breach;

16.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 15 days after the Contractor has given notification that the payment is overdue; or

16.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

16.2 The Customer may terminate the Contract at any time by giving notice in writing to the Contractor if the Contractor:

16.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

16.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Contractor reasonably believes that to be the case;

16.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

16.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

16.2.5 has a resolution passed for its winding up;

- 16.2.6 has a petition presented to any court for its winding up or an application is made for an administration Works Specification, or any winding-up or administration Works Specification is made against it;
  - 16.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced;
  - 16.2.8 has a freezing order made against it;
  - 16.2.9 is subject to any recovery or attempted recovery of items supplied to it by a Contractor retaining title to those items;
  - 16.2.10 is subject to any events or circumstances analogous to those in clauses 16.2.1 to 16.2.9 in any jurisdiction;
  - 16.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 16.2.1 to 16.2.10 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 16.3 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Contractor at any time up to the date of termination.

## **17 Dispute resolution – adjudication**

- 17.1 Any dispute or difference arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, may be referred to adjudication at any time by written notice by either party (the Notice). The parties may agree the appointment of the adjudicator, but where the appointment of the adjudicator is not agreed within 10 days of the Notice being made by the relevant party, either party may apply to the nominating authority such as the President of the Chartered Institute of Arbitrators or *RICS* for the nomination of an adjudicator and the referral of the dispute.
- 17.2 The parties shall appoint the adjudicator with the following terms of reference:
- 17.2.1 the adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred;
  - 17.2.2 the adjudicator may extend the period of 28 days set out at clause 17.2.1 by up to 14 days, with the consent of the party by whom the dispute was referred;
  - 17.2.3 the adjudicator shall act impartially;
  - 17.2.4 the adjudicator may take the initiative in ascertaining the facts and the law;
  - 17.2.5 the decision of the adjudicator shall be binding upon the parties until the dispute is finally determined by legal proceedings, or by agreement; and
- 17.3 the adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of its functions as adjudicator unless the act or omission is in bad faith and The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

## **18 Notices**

- 18.1 Any notice given by a party under these Conditions shall:

- 18.1.1 be in writing and in English;
- 18.1.2 be signed by, or on behalf of, the party giving it; and
- 18.1.3 be sent to the relevant party at the address set out in the Contract
- 18.2 Notices may be given, and are deemed received:
  - 18.2.1 by hand: on receipt of a signature at the time of delivery;
  - 18.2.2 by *Royal Mail Recorded Signed For* post: at 9.00 am on the *second* Business Day after posting;
  - 18.2.3 by post: at 9.00 am on the *fourth* Business Day after posting; and
  - 18.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission;
- 18.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 18.1 and shall be effective:
  - 18.3.1 on the date specified in the notice as being the date of such change; or
  - 18.3.2 if no date is so specified, four Business Days after the notice is deemed to be received.
- 18.4 All references to time are to the local time at the place of deemed receipt.
- 18.5 This clause does not apply to notices given in legal proceedings or arbitration.

## **19 Further assurance**

Each party shall, at their own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

## **20 Entire agreement**

- 20.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 20.2 Each party acknowledges that it has not entered into the Contractor any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 20.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

## **21 Variation**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Contractor.

## **22 Assignment**

- 22.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Contractor's prior written consent.
- 22.2 The Contractor may sub-contractor any element of the Works Specification and Deliverables without any recourse to the Customer.
- 22.3 Notwithstanding clause 22.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Contractor prior written notice of such subcontracting or assignment including the identity of the

relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

## **23 Set off**

- 23.1 The Contractor shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Contractor has with the Customer.
- 23.2 The Customer shall pay all sums that it owes to the Contractor under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **24 No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## **25 Severance**

- 25.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 25.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in Works Specification to agree the terms of a mutually acceptable alternative provision.

## **26 Waiver**

- 26.1 No failure, delay or omission by the Contractor in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 26.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Contractor shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Contractor.
- 26.3 A waiver of any term, provision, condition or breach of the Contract by the Contractor shall only be effective if given in writing and signed by the Contractor, and then only in the instance and for the purpose for which it is given.

## **27 Compliance with law**

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

## **28 Conflicts within contract**

If there is a conflict between the terms contained in the Conditions and the terms of the Works Specification, schedules, appendices or annexes to the Contract, the terms of the Schedule 1 and 2 shall prevail.

## **29 Costs and expenses**

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

### **30 Third party rights**

- 30.1 Except as expressly provided for in clause 30.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 30.2 Any Affiliate of the Contractor shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in Works Specification to rescind or vary the Contract or any provision of it.

### **31 Governing law**

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

### **32 Jurisdiction**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

## **SCHEDULE 1 – WORKS SPECIFICATION**

## **SCHEDULE 2 Commercial Schedule**

**PART 1 - Price, Upfront Payment, Payment Dates and trigger points**

**PART 2 – Valuation Spreadsheet**