



SP MANWEB PLC

GENERAL CONDITIONS

**FOR THE ADOPTION OF CONTESTABLE WORKS
FOR UNMETERED SUPPLIES TO
STREET FURNITURE**

JULY 2009

INDEX

DEFINITIONS 2

INTERPRETATION 5

DESIGN 5

HIGHWAYS AUTHORITY 6

STATUTORY CONSENTS AND LAND RIGHTS 6

CONSTRUCTION PRIOR TO INITIAL MAKING LIVE 6

MAKING LIVE OF CONTESTABLE WORKS BY THE CONTRACTOR..... 8

HANDOVER 9

PAYMENTS..... 10

INTEREST ON LATE PAYMENT 10

INSURANCE AND SECURITY 10

INTELLECTUAL PROPERTY 11

CONTRACTORS' LIABILITY 11

LIMITATION OF LIABILITY 12

FORCE MAJEURE AND SYSTEM EMERGENCIES 14

SUB-CONTRACTING AND ASSIGNMENT 14

CONFIDENTIALITY 14

TERMINATION OF THE AGREEMENT..... 15

SEVERANCE 16

WAIVERS AND VARIATIONS 16

ENTIRE AGREEMENT 17

NOTICES 17

DISPUTE RESOLUTION – ESCALATION..... 17

DISPUTE RESOLUTION – ADJUDICATION..... 17

**PROPER LAW, JURISDICTION AND THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
..... 19**

VARIATIONS TO THE AGREEMENT 20

CONSTRUCTION CONTRACT 20

INDEMNITIES..... 20

DEFINITIONS

1. The following words and expressions shall (except to the extent that the context otherwise requires) have the meanings hereby assigned to them:

“Accreditation to carry out Contestable Works”	means at any time satisfying the requirements of the Distributor at that time for persons carrying out the design and construction of Contestable Works and “Accredited to carry out Contestable Works”, “Accredited” and other cognate expressions shall be construed accordingly;
“Accredited for Live Working”	means at any time satisfying the requirements of the Distributor at that time for persons working live on electrical systems such as the Contestable Works and “Accredited for Live Working”, “Accredited” and other cognate expressions shall be construed accordingly;
“Act”	means the Electricity Act 1989 (as amended by the Utilities Act 2000);
“Adopted Contestable Assets”	means those of the Contestable Works so described in Clause 18;
“Adoption Date”	means in relation to any of the Contestable Assets the date upon which such of the Contestable Assets are adopted pursuant to Clause 18;
“Adoption”	means in relation to any Contestable Assets the operation of Clause 18 in relation to those of the Contestable Assets, and “Adopt” and other cognate expressions shall be construed accordingly;
“Agreement”	means the Street Furniture Adoption Agreement, the General Conditions and the Schedule;
“Applicable Law”	means at any time any and every law, statute, statutory instrument, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, or delegated or subordinated legislation whether in effect at that time which in any way affects or impinges upon any of the matters referred to in or required to be done under this Agreement;
“Authority”	means the Gas and Electricity Markets Authority established by Section 1(1) of the Utilities Act 2000;
“Commencement Notice”	means a notice given by the Contractor to the Distributor in the form contained in Part 5 of the Schedule;
“Commissioning Requirements”	means the tests which are described in Part 6 of the Schedule and of which, in relation to any part of the Contestable Works, the Distributor requires some to be passed prior to, and some to be passed after, the Making Live of such part of the Contestable Works;
“Completion Certificate”	has the meaning given to in Clause 20;
“Competent Authority”	includes any court of competent jurisdiction, tribunal, legislative body, the Secretary of State, the Authority, any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or of the European Communities;
“Construction Contract”	the contract between the Highways Authority and the Contractor for the carrying out of, inter alia, the Contestable Works;
“Construction and Installation Standards”	means the documents described in Part 1 of the Schedule;
“Contestable Assets”	means such part of any Contestable Works which will form part of the Distributor’s System;
“Contestable Design”	means the electrical design and physical layout of the Contestable Assets as may be agreed from time to time between parties;

“Contestable Works”	means in relation to any Commencement Notice the works described in that Commencement Notice;
“Contractor”	has the meaning given to it in the Adoption Agreement;
“Contractor’s Programme”	has the meaning given to it in Clause 8;
“Customer”	means a person being supplied with electricity who is connected to the Distributor’s System;
“Customer Interruption”	means an interruption of the supply of electricity to a Customer which lasts for three minutes or longer (excluding re-interruptions to the supply of electricity to a Customer previously interrupted during the same incident);
“Date of the Agreement”	means unless the Agreement otherwise provides, the date when the Adoption Agreement is made;
“Defects Correction Period”	means in relation to (a) any excavations, or works within excavations, being in either case excavations which are of a depth of 1½ metres or greater and which form part of any Contestable Works - the period of 3 years, and (b) all the other work which form part of such Contestable Works - the period of 2 years, in each case after the Handover Date of the Contestable Works containing such excavations or work (as the case may be);
“Design Standards”	means the documents described in Part 1 of the Schedule;
“Highways Authority”	has the meaning given to it in the Adoption Agreement;
“Highways Authority’s Obligations”	means the obligations on the Highways Authority in terms of or arising from Clauses 6, 13, 14, 18, 24 and 59;
“Distributor”	has the meaning given to it in the Adoption Agreement;
“Distributor’s Safety Rules”	means the safety rules for working on the Distributor’s System applicable as at the Date of this Agreement as described in Paragraph 3 of Part 1 of the Schedule;
“Distributor’s System”	has the meaning given to “licensee’s distribution system” in the Licence;
“Encumbrance”	means any charge, lien, hire purchase agreement, option, conditional sale or credit sale agreement or any other interest or right of any other person;
“Estimated Value of the Contestable Works”	means such amount as the Distributor acting in accordance with Good Industry Practice may estimate would be the cost to the Distributor of carrying out the Contestable Works;
“Force Majeure”	means any event or circumstance which is beyond the reasonable control of any Party and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including (without limitation) Act of God, strike, lock-out or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, other inclement weather conditions, explosion, fault or failure of any electricity, plant or apparatus to the extent that such event or circumstance could not have been prevented by Good Industry Practice, and also including governmental restraint, Act of Parliament, other legislation, bye-law and lawful directive, provided further that lack of funds shall not be interpreted as a cause beyond that Party’s reasonable control;
“General Conditions”	means these General Conditions;
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence and foresight

	which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances;
“Good Title”	means the covenant for the title implied by section 3(1) Law of Property (Miscellaneous Provisions) Act 1994 save that the words ‘other than any charges, Encumbrances or rights which the person does not and could not reasonably be expected to know about’ are added and subsection (2) shall be deleted in its entirety.
“Handover Date”	shall have the meaning given to it in Clause 22.1;
“Handover Certificate”	means a certificate issued by the Distributor to the Highways Authority in the form contained in Part 6 of the Schedule;
“Intellectual Property Rights”	means, patent, design right, trade mark (including any applications for any of the foregoing and whether registered or unregistered), copyright, database right, or other intellectual property rights anywhere in the world;
“Last Date”	means the date specified in Paragraph 5 of Part 2 of the Schedule;
“Licence”	means the Distributor’s distribution licence granted under section 6(1)(c) of the Act;
“Live Working Area”	means the area or property described in Part 2 of the Schedule;
“Make Live”	means in relation to any Contestable Assets or any part thereof the connection of the Contestable Assets or such part thereof (as the case may be) to the Distributor’s System so as to allow electricity to flow from the Distributor’s System to the Contestable Assets or such part thereof (as the case may be) and “Making Live”, “Made Live” and other cognate expressions shall be construed accordingly;
“NRSWA”	means the New Road and Street Works Act 1991;
“Party”	means the Distributor or the Highways Authority or the Contractor, being together the “Parties”;
“Required Information”	means information, and documents (including paper or electronic formats), drawings or other materials setting out or containing information required by the Distributor with reference to the Contestable Works and the site and neighbourhood thereof and includes (but shall not be limited to) information as to the topics set out in Part 2 of the Schedule and documents and others of the nature specified in the said Part;
“Schedule”	means the Schedule in 8 Parts annexed and executed as relative to the Adoption Agreement;
“Secretary of State”	has the meaning given to it under the Interpretation Act 1978;
“Shutdown”	means in relation to the Distributor’s System or any part thereof (as the case may be) the disconnection of the Distributor’s System or such part thereof by the movement of any switch or the removal of any fuse or the taking of any other step so as to stop electricity flowing from the Distributor’s System or such part thereof (as the case may be) to any part of the Contestable Works which have not been Adopted;
“Statutory Consents”	means all consents, licences, permissions and approval of any kind required under any statute or subordinate legislation including planning permission, building regulation approvals and Street Works Licences;
“Street Works Licence”	means a licence under Section 50 of the NRSWA;
“System Emergency”	means an event either on the Distributor’s System or on the distribution system of another distributor of electricity which results in the Distributor (acting in

- accordance with Good Industry Practice) considering it appropriate, or being requested, to divert resources (whether economic, technical, personnel or otherwise) for the duration of that event in order to allow the Distributor to deal with or respond to that event in accordance with Good Industry Practice;
- “Week” means each period of seven consecutive days starting at 0200 hours on a Monday and ending at 0200 hours on the next following Monday;
- “Working Day” means any day other than a Saturday, a Sunday, Christmas Day, New Year’s Day, Good Friday, or a day which is a banking holiday within the meaning of the Banking and Financial Dealings Act 1971; and
- “Works Schedule” the meaning given to it in Clause 11.

INTERPRETATION

2. In this Agreement unless the context otherwise requires:
- 2.1. any term importing gender shall include any gender;
 - 2.2. any term importing the singular includes the plural and vice versa;
 - 2.3. the words “includes” and “including” are to be construed without prejudice to the preceding generality;
 - 2.4. save where the context otherwise requires, any reference to a numbered Clause or Part or Paragraph of the Schedule (as the case may be) is a reference to the Clause of the Agreement, or Part or Paragraph of the Schedule, (as the case may be) so numbered;
 - 2.5. the Clause or Part headings do not form part of or affect the interpretation of the Agreement but are included for ease of reference only;
 - 2.6. any reference to a statute, statutory instrument, act regulation, rule or order shall be construed at any time as a reference to any such item as amended or re-enacted at that time; and
 - 2.7 any reference to a “person” includes any person, firm, company or other legal entity.

DESIGN

3. The Contractor undertakes to the Distributor that the Contestable Design of all Contestable Assets shall be designed by the Contractor in accordance with the specifications and standards set out in the documents listed in Parts 1 and 2 of the Schedule.
4. No approval, review or comment, or failure to approve, review or comment by the Distributor or on any Contestable Design or any Contestable Works or any other matter shall relieve the Contractor of any liability whatsoever or any of its obligations under this Agreement, or any part thereof or variation thereto, the Contractor having the sole responsibility for ensuring that the design of all of the Contestable Works (including the Contestable Design thereof) conforms in all respects with the specifications and standards set out in the documents listed in Parts 1 and 2 of the Schedule and the other provisions of this Agreement.
5. No later than 7 days before the Contractor commences any Contestable Works, the Contractor shall deliver to the Distributor a properly completed Commencement Notice as detailed in Part 5 of the Schedule signed by a duly authorised person on behalf of the Contractor and describing the Contestable Works to which that Commencement Notice relates, and if within that period of 7 days the Distributor notifies the Contractor that the Distributor is not willing to adopt some or all of those Contestable Works, then if the Distributor so notifies that the Distributor is not willing to Adopt some of those Contestable Works, that Commencement Notice will be deemed to have been given only in respect of those parts of those Contestable Works which the Distributor has not notified the Distributor it is not willing to adopt, and where

the Distributor has notified the Contractor and the Highways Authority that the Distributor is not willing to adopt any of those Contestable Works, that Commencement Notice will be deemed to be null and void and of no effect.

HIGHWAYS AUTHORITY

6. The Highways Authority undertakes that it shall use reasonable endeavours to ensure that the Contractor fulfils and observes its obligations arising from or in connection with the Agreement.

STATUTORY CONSENTS AND LAND RIGHTS

7. If not in the public highway the Contractor, without cost to the Distributor, before commencement of the Contestable Works (except only to the extent, if any, that it is not necessary for such lawful commencement), shall apply for and obtain the Statutory Consents and shall ensure that at all times during the carrying out and completion of the Contestable Works that the Contractor holds the Statutory Consents and all such rights in favour of the Contractor over land as are necessary for the Contractor to commence, carry out and complete the Contestable Works.

CONSTRUCTION PRIOR TO INITIAL MAKING LIVE

8. The Contractor shall, no later than the date on which the Distributor receives each Commencement Notice, provide the Distributor with an indicative programme (containing such information as the Distributor may reasonably require) showing the programme which the Contractor intends to follow in carrying out and completing the Contestable Works described in that Commencement Notice (the "Contractor's Programme") and in the event of the Contractor thereafter making any material alteration to the timing or sequence of any of the Contestable Works as shown on such programme, the Contractor shall promptly provide the Distributor with an up-dated version of such programme showing the effect of such material alterations.
9. The Contractor shall not commence carrying out the Contestable Works unless and until:-
 - 9.1 Until the Distributor has received the Commencement Notice describing those Contestable Works and the Contractor's Programme therefore.
 10. The Contractor shall procure that throughout the period whilst any Contestable Works are being carried out the Contractor and its sub-contractors and all its and their respective employees and agents shall be Accredited to carry out Contestable Works.
 11. The Contractor shall provide to the Distributor:-
 - 11.1 before commencing to carry out any Contestable Works, and
 - 11.2 on every Wednesday thereafter,a works schedule detailing the Contestable Works due to be carried out during the Week following such commencement and each such Wednesday (as the case may be) each such Schedule being (a "Works Schedule").
 12. The Contractor shall carry out and complete all of the Contestable Works in accordance with this Agreement.
 - 12.1 Without prejudice to the other obligations of the Contractor under this Agreement, the Contractor shall ensure that only materials which have first been approved by the Distributor and are of good quality and are in accordance with Good Industry Practice shall be used in the carrying out and completion of any Contestable Works, and that where it would accord with Good Industry Practice for the suppliers or manufacturers of such materials to provide warranties as to the quality and nature of such materials, which, as the case may be, may be assignable by the Contractor to the Distributor, then the Contractor will procure such warranties.
 - 12.2 Upon being requested by the Distributor so to do, the Contractor will:-

- 12.2.1 assign to the Distributor such warranties as the Contractor has obtained pursuant to Clause 12.1, and/or
- 12.2.2 enforce against such suppliers or manufacturers such warranties or other rights as the Contractor may have against such suppliers or manufacturers and that at the Distributor's cost.
13. The parties acknowledge that in relation to all of the Contestable Works, the Distributor shall not be, and one of the Highways Authority or the Contractor shall be, "the Client" for the purposes of the Construction (Design and Management) Regulations 1994, and;
- 13.1 such one of the Contractor or the Highways Authority who is the Client for the purposes of those Regulations, or
- 13.2 in the event that despite the foregoing provisions of this Clause 13, neither the Contractor or the Highways Authority is the Client for the purposes of these Regulations then the Highways Authority: -
- undertakes to indemnify the Distributor at all times against all demands, actions, proceedings, damages, losses, costs and expenses which are made or brought against, or incurred or suffered by the Distributor arising from or in connection with the performance or purported performance by the Contractor or the Highways Authority (as the case may be) or the failure by the Contractor or the Highways Authority (as the case may be) to perform or the fact that neither the Contractor nor the Highways Authority performs, the duties, obligations, requirements, and responsibilities imposed upon the Contractor or the Highways Authority (as the case may be) by or undertaken by the Contractor or Highways Authority (as the case may be) in connection with the Construction (Design and Management) Regulations 1994,
14. The Highways Authority and the Contractor shall allow the Distributor access at all reasonable times to all places where any Contestable Works are to be or have been carried out for the purpose of inspecting those Contestable Works and all materials used or intended for use in those Contestable Works and witnessing the carrying out of any Commissioning Requirements thereon. The Distributor shall, as soon as is practicable and in any case no later than the next Working Day after any such inspection give the Contractor notice of any defect or any other matter of which the Distributor has become aware of during such inspection and which is considered by the Distributor not to comply with this Agreement. If the Distributor gives notice under this Clause to the Contractor, the Contractor shall promptly and in consultation with the Distributor conduct all investigations and carry out any remedial works which are necessary in order to remedy such defect or matter so that all of the Contestable Works or any such materials (as the case may be) do comply with this Agreement and for the avoidance of doubt the costs of any such remedial works will be borne by the Contractor.
15. The Distributor shall have no authority to give any instructions to or to supervise the Contractor, or any employee, agent or sub-contractor of the Contractor provided that the Distributor may issue any instructions which it reasonably considers to be necessary on safety grounds, and the Contractor shall procure that the Contractor and any such employee, agent or sub-contractor will comply with any such instruction so issued by the Distributor.
16. The Distributor may, upon reasonable grounds, and by giving the Contractor reasonable notice in writing to this effect require the Contractor to uncover or make openings in any part of any of the Contestable Works. The Contractor shall meet all the costs incurred by the Contractor in complying with such notice if inspection of the Contestable Works reveals any material non-compliance with the requirements of this Agreement and the Distributor shall be liable for all reasonable costs incurred by the Contractor in complying with such notice if inspection of the Contestable Works fails to reveal any material non-compliance with the requirements of this Agreement. If the notice is to uncover works which the Distributor was unable to inspect due to the Contractor failing to notify the Distributor of a change to any Contractor's Programme or any of the Contestable Works not being carried out as described in any Works Schedule relating thereto, all the costs incurred by the Contractor and the Distributor in uncovering and inspecting such works shall be met, and in the case of the Distributor's reasonable costs reimbursed to the Distributor pursuant to Clause 27, by the Contractor irrespective of whether any defects are revealed by such uncovering and inspection.

MAKING LIVE OF CONTESTABLE WORKS BY THE CONTRACTOR

17. On each occasion before the Last Date on which the Contractor considers that a part or parts of the any Contestable Works has or have been completed to a stage where Making Live of such part or parts (as the case may be) is required the Contractor may carry out the work necessary to Make Live such part or parts, but only providing that:-
 - 17.1 the proposed carrying out of such work has been notified in a Works Schedule and plan relating to those Contestable Works provided to the Distributor pursuant to Clause 11;
 - 17.2 all such work is to be carried out within the Live Working Area in accordance with the live working procedures specified in Paragraph 3 of Part 1 of the Schedule and is in accordance with the Contractor's Programme;
 - 17.3 all the employees of the Contractor undertaking such work are Accredited for Live Working and also authorised under the Distributor's Safety Rules for the tasks they are undertaking;
 - 17.4 at the time such work is undertaken the Contractor is Accredited for Live Working and has systems and procedures in place for the management of safety which comply with all Applicable Law and Good Industry Practice and are acceptable to the Distributor; and
 - 17.5 Good Title has been provided to the Distributor by the Contractor over the Contestable Assets to be Made Live.
18. Upon and with effect from the Making Live of any part or parts of any Contestable Works pursuant to Clause 17 (those assets included within such part or parts (as the case may be) being "Adopted Contestable Assets") those Adopted Contestable Assets shall become part of the Distributor's System and the Highways Authority and Contractor shall treat those Adopted Contestable Assets in all respects as the property of the Distributor and from that time as forming part of the Distributor's System.
19. Immediately following Making Live of any part or parts of any Contestable Works pursuant to Clause 17 the Distributor shall assume operational responsibility for the Adopted Contestable Assets within such part or parts (as the case may be). All fault repair work which is required to be carried out thereafter thereon, shall be carried out by the Distributor.
20. Following Making Live of any part or parts of any Contestable Works by the Contractor in accordance with Clause 17, the Contractor shall complete the Commissioning Requirements of the Adopted Contestable Assets within such part or parts (as the case may be), and as soon as the Contractor is satisfied that such of the Commissioning Requirements of those Adopted Contestable Assets have been passed the Contractor shall within 5 Working Days:
 - 20.1 sign and issue to the Distributor a certificate specifying the Adopted Contestable Assets to which that certificate relates and the date on which those Adopted Contestable Assets passed those of the Commissioning Requirements (each such certificate being a "Completion Certificate") to which certificate shall be attached copies of all relevant test and conformance certificates;
 - 20.2 issue to the Distributor evidence satisfactory to the Distributor (acting reasonably) that all of the following requirements have been met;
 - 20.2.1 those of the Contestable Works which have been Made Live have been carried out and completed in accordance with the Approved Design using materials and workmanship in accordance with this Agreement;
 - 20.2.2 Good Title has been provided to the Distributor by the Contractor over the Contestable Assets which have been Made Live;
 - 20.2.3 the Contractor has delivered to the Distributor, true, accurate and complete "as-laid plans" of the Contestable Works or the part or parts thereof which

has or have been Made Live (as the case may be) in accordance with applicable procedures; and

20.2.4 the Contractor has rectified all defects or other matters previously notified to the Contractor under Clause 14.

21. Where the Distributor:-

21.1 is not satisfied with the evidence provided under Clause 20 in relation to any part or parts of any remaining Contestable Works Made Live pursuant to Clause 17; or

21.2 disputes that such part or parts (as the case may be) have passed the Commissioning Requirements to the reasonable satisfaction of the Distributor; or

21.3 where the Completion Certificate and evidence required under Clause 20 in relation to any such part or parts (as the case may be) is not provided to the Distributor within 5 Working Days of the Contractor Making Live such part or parts (as the case may be)

the Distributor may:-

(a) disconnect such part or parts until the Contractor undertakes the necessary repairs or

(b) undertake the repairs itself and recover the reasonable costs from the Contractor;

and the Distributor shall use all reasonable endeavours to notify the Contractor of the Distributor's decision to exercise its rights under the foregoing provisions of this Clause 21, as soon as reasonably practicable. If the Contractor considers that the Distributor should have been satisfied with such evidence, or that such part or parts did pass the Commissioning Requirements, or that such Completion Certificate and evidence was so provided to the Distributor within those 5 Working Days or that the Distributor having undertaken works to those Adopted Contestable Assets to enable those Adopted Contestable Assets to pass those of the Commissioning Requirements to the reasonable satisfaction of the Distributor the costs thereof which the Distributor wishes to recover from the Contractor are unreasonable, then the Contractor by giving written notice to the Distributor to this effect, may object to the failure of the Distributor to accept such Completion Certificate and evidence or the amount of the costs charged by the Distributor to undertake repairs as being unreasonable (as the case may be) and if the Contractor so objects, then the Contractor and the Distributor shall promptly and in good faith discuss and seek to agree whether or not the Contractor's objections are valid and/or the amount of such costs being charged by the Distributor are unreasonable (as the case may be). If the Contractor and the Distributor cannot so agree whether or not the Contractor's objections are valid, or the amount of such costs are unreasonable (as the case may be), then either the Contractor or the Distributor may refer the dispute over the validity of such objections and the amount of such costs, if any to the procedure specified in Clauses 55 and 56. The Contractor will pay the amount of such costs, which the Distributor is to recover from the Contractor, or any different amount agreed or determined pursuant to Clauses 55 or 56 to the Distributor pursuant to Clause 27.

HANDOVER

22. When the Contractor is satisfied that all of the Contestable Works described in a Commencement Notice have been carried out and completed in accordance with this Agreement and no further work is required thereto, the Contractor shall:-

22.1 sign and issue to the Distributor and the Highways Authority a certificate in relation to those Contestable Works (each such certificate being a "Handover Certificate") in relation to those Contestable Works specifying the date of such completion (the "Handover Date") to which Certificate is incorporated a Completion Certificates relating to the Contestable Works to which the Handover Certificates relates; and

- 22.2 the Contractor shall provide to the Distributor with such Handover Certificate the CDM File for those Contestable Works if not already covered by the Contractors generic CDM statement;
23. The Distributor may, by giving notice to this effect to the Contractor, object to the issue of a Handover Certificate but only on the grounds that it considers that the Contestable Works to which such Handover Certificates relates, have not been carried out and completed in accordance with the Agreement or that the Contractor has failed to rectify defects or other matters previously notified under Clause 14. Upon receipt of any such notice, the Contractor and the Distributor shall promptly and in good faith discuss and seek to agree whether or not the Distributor's objections are valid and, if so, the measures to be taken by the Contractor to enable the Distributor to withdraw its objections and accept the issue of a Handover Certificate in relation to those Contestable Works. If the Contractor and the Distributor cannot so agree whether or not the Distributor's objections are valid, or the measure to be taken by the Contractor to enable the Distributor to withdraw its objections and accept the issue of a Handover Certificate in relation to those Contestable Works either the Contractor or the Distributor may refer the dispute over the validity of such objections or the measure, if any, to be taken by the Contractor to enable the Distributor to withdraw its objections and to accept the issue of the Handover Certificate in relation to those Contestable Works to the procedure specified in Clauses 55 and 56.
24. Unless within 10 Working Days of the receipt by the Distributor of any Handover Certificate for any Contestable Works the Distributor objects to the issue of that Handover Certificate those Contestable Works shall become part of the Distributor's System and, neither the Highways Authority nor the Contractor shall undertake any further work on those Contestable Works.

PAYMENTS

25. The Contractor will pay to the Distributor the amounts (if any) specified in Part 7 of the Schedule as being payable by the Contractor and that at the times respectively specified in that Part for the payment of such amounts.
26. The Contractor will pay to the Distributor by way of liquidated damages, the sum of £10 in respect of each Customer Interruption which occurs prior to the Handover Date in respect of any Contested Works, being a Customer Interruption which arises directly or indirectly as a result of or in connection with any act or omission of the Contractor in connection with the carrying out or purported carrying out of those Contestable Works or any part thereof; and the Contractor and Distributor acknowledge that such sum of £10 is considered by them to represent a genuine pre-estimate of the loss which will be incurred by the Distributor as a result of each such Customer Interruption.
27. Any amount payable by one Party to another pursuant to this Agreement shall be paid within 28 days of the receipt by the Party obliged to pay the same of a valid invoice for such amount.
28. All amounts mentioned in this Agreement as payable by either Party to either of the other Parties are stated exclusive of Value Added Tax (if any) payable thereon and the Party obliged to pay such amounts shall add to such amounts Value Added Tax at the rate applicable thereto from time to time.

INTEREST ON LATE PAYMENT

29. If any amount due under the Agreement remains unpaid after the due date for its payment, such amount shall bear interest calculated from day to day at a rate per annum of 4% above the base rate (for the time being and from time to time) of The Royal Bank of Scotland plc from the due date until the amount due and any accrued interest thereon has been paid in full.

INSURANCE AND SECURITY

30. The Contractor shall, from the Date of the Agreement until the expiry of 3 years after the Handover Date for the last of the Contestable Works in relation to which a Handover Certificate is issued pursuant to this Agreement, in the case of Contestable Works which include any excavations or works within excavations which are of a depth of one and a half metres or

greater, and until the expiry of 2 years after such Handover Date in the case of all other Contestable Works, keep and maintain:-

- 30.1 public liability insurance in its own name to a minimum level of not less than £5,000,000 per incident or series of incidents arising out of one event; and
- 30.2 employer's liability insurance for a minimum liability of £5,000,000 per incident or series of incidents arising out of any one event or for any higher minimum limit which may be required at any time in order to comply with Applicable Law, and

the Contractor shall, whenever reasonably required in writing by the Distributor, produce to the Distributor confirmation from its insurer that the policies effecting the insurances required by this Clause remain current together with evidence of payment of the last premia due thereon.

- 31. The Distributor shall be entitled, by written notice to that effect given to the Contractor at any time, to require the Contractor to deliver to the Distributor, within 28 days of the giving of such notice, a guarantee or other form of security as specified in Part 8 of the Schedule in an amount and form and on terms and conditions all satisfactory to the Distributor.

INTELLECTUAL PROPERTY

- 32.1 The Contractor hereby warrants to the Distributor that it has not at any time prior to the Date of the Agreement, and shall not at any time throughout the duration of the Agreement, assign, licence or otherwise grant any rights in any Intellectual Property Rights it may have or may acquire in any of the Contestable Works, or the Contestable Design (including any "as laid plans" as delivered to the Distributor pursuant to Clause 20.2.3) to any other person including but not limited to the Highways Authority or the Customer.
- 32.2 The Contractor hereby assigns Good Title to the Distributor in and to the Intellectual Property Rights arising from or relating to the Contestable Design (including any "as laid plans" as delivered to the Distributor pursuant to Clause 20.2.3) or the Contestable Works.
- 33. As and when requested by the Distributor the Contractor will deliver to the Distributor such further information as the Distributor acting in accordance with Good Industry Practice may require in order to enable the Distributor to fully understand the Contestable Design (including such "as-laid plans").
- 34. The Contractor warrants that all Intellectual Property Rights necessary to allow the Contractor to fulfil its obligations under Clauses 32 to 36 (inclusive) shall be acquired by the Contractor prior to Adoption of the Contestable Assets within the Contestable Works.
- 35. The Contractor undertakes to indemnify the Distributor against all reasonable losses, costs and expenses suffered or incurred by the Distributor arising out of any claim by any third party that the use by the Distributor of the Intellectual Property Rights licensed or vested in the Distributor pursuant to Clauses 32 or 33 (as the case may be) infringes that third party's rights.
- 36. The Contractor warrants that it owns all Intellectual Property Rights in or relating to the Contestable Design, (including the "as-laid plans" referred to in Clause 32) and the Contestable Works.

CONTRACTORS' LIABILITY

- 37. The Contractor shall carry the whole risk of loss or damage to every part of all Contestable Works (whether on the Live Working Area or elsewhere) until the Adoption of such part pursuant to Clause 18 (as the case may be), and shall indemnify and keep indemnified the Distributor against all demands, actions, proceedings, damages, losses, costs and expenses (including fines and penalties) which are made or brought against or incurred or suffered by the Distributor (whether before or after the Adoption Date of such part of the Contestable Works) in connection with or arising from:-
 - 37.1 any defect in the design of, the materials used in, or workmanship in carrying out, such part of the Contestable Works, prior to the Adoption Date; or

- 37.2 any defect arising from any act, default, omission of the Contractor or any agent or employee of the Contractor, or of any other person with whom the Contractor is responsible, in any such case in the carrying out of such part of the Contestable Works, or
- 37.3 any defect arising as a result of such part not having been carried out and completed in accordance with this Agreement.”
38. The Contractor shall indemnify and keep indemnified the Distributor against reasonable costs incurred or suffered by the Distributor in remedying any fault or carrying out any repair or rectification on or in connection with any of the Adopted Contestable Assets during the period:-
- 38.1 commencing on the Adoption Date of such Adopted Contestable Assets, and
- 38.2 ending on the expiry of the Defects Correction Period for such Adopted Contestable Assets, and
- that whether arising from the design, materials used in or workmanship, of such Adopted Contestable Assets unless such fault, repair or need for rectification is directly caused by:-
- (a) the Distributor acting in breach of this Agreement; or
- (b) some person other than the Contractor or any agent or employee of the Contractor or person for whom the Contractor is responsible.
39. The Contractor shall indemnify and keep indemnified the Distributor against all demands, actions, proceedings, damages, losses, costs and expenses (including fines and penalties):-
- 39.1 which are made or brought against or incurred or suffered by the Distributor as a result of, or in connection which are made or brought against or incurred or suffered by the Distributor under or arising from the NRSWA which may arise in connection with or as a result of the carrying out or the purported carrying out of the Contestable Works or the purported exercise by the Contractor of any rights, or the failure by the Contractor to fulfil any obligations or liabilities under or arising from the NRSWA (including any Street Works Licence granted thereunder); or.
- 39.2 which are made or brought against or incurred or suffered by the Distributor as a result of, or in connection with:-
- 39.2.1 any such demand, action, proceeding, damage, loss, cost or expense (including fines and penalties) which are made or brought by, or are sought to be recovered by, any such granter arising from any act or omission by the Contractor or any agent or employee of the Contractor or other person for whom the Contractor is responsible in connection with or in the course of carrying out the Contestable Works; and/or
- 39.2.2 any failure by the Contractor in respect of any legal duty or obligation owed by the Contractor to such granter; and/or
- 39.2.3 any failure by the Contractor to ensure that the officers, employees or agents of the Contractor and other persons for whom the Contractor is responsible in law conduct themselves upon the property of the said granter during the carrying out of the Contestable Works in a proper and responsible manner.

LIMITATION OF LIABILITY

- 40.1 None of the Parties shall be liable for any breach of this Agreement caused directly or indirectly by Force Majeure or by a System Emergency.
- 40.2 Subject to Clauses 40.4 and 40.6, and save where any provision of this Agreement provides for an indemnity, no Party (the “Party Liable”) nor any of its officers, employees or agents shall be liable to either of the other Party for loss arising from any breach of this Agreement other than

for loss directly resulting from such breach and which at the Date of the Agreement was reasonably foreseeable as likely to result in the ordinary course of events from such breach in respect of physical damage to the property of that one of the other Parties, its officers, employees or agents provided that the liability of any Party in respect of all claims for such loss shall not in aggregate exceed £1 million.

40.3 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or of any of its officers, employees or agents and the Party Liable shall indemnify and keep indemnified each of the other Parties, its officers, employees or agents from and against all such and any loss or liability which such other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

40.4 Subject to Clause 40.6 and save (subject as hereinafter provided) where any provision of this Agreement provides for an indemnity, no Party, nor its officers, employees or agents shall in any circumstances whatsoever be liable to any of the other Parties for:

40.4.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

40.4.2 any indirect or consequential loss; or

40.4.3 any losses resulting from the liability of such other Party to any other person howsoever arising, save as provided in Clause 40.3,

provided that the Distributor shall not be entitled to recover under any provision of this Agreement which provides for an indemnity in favour of the Distributor, any such loss as is described in Clauses 40.4.1, 40.4.2 or 40.4.3 which has been suffered by the Distributor, but nothing in this proviso shall in any event prevent the Distributor from recovering under such indemnity any such loss suffered by any person other than the Distributor.

40.5 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including without limitation any rights any of the Parties may possess in tort which shall include without limitation actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute and releases the Party Liable to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

40.6 Save as otherwise expressly provided in this Agreement, this Clause 40 in so far as it excludes or limits liability shall override any other provision of this Agreement, provided that nothing in this Clause 40 shall exclude or restrict or otherwise prejudice or affect any of:-

40.6.1 the rights, powers, duties and obligations of any of the Parties which are conferred or created by the Act, the Licence or any regulations made under the Act; or

40.6.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, the Licence or otherwise howsoever.

40.7 Each of the sub-clauses of this Clause 40 shall:-

40.7.1 be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

40.7.2 survive termination of this Agreement.

40.8 Each of the Parties agrees that each of the other Parties holds the benefit of Clauses 40.2 40.3 and 40.4 for itself and as trustee and agent for its officers, employees and agents.

- 40.9 For the avoidance of doubt, nothing in this Clause 40 shall prevent or restrict any of the Parties from enforcing any obligations (including suing for a debt) owed to it under or pursuant to the Agreement.
- 40.10 Subject to Clause 40.3, the liability of any Party in respect of all claims under the indemnities provided for in the Agreement shall not exceed Ten million pounds Sterling.

FORCE MAJEURE AND SYSTEM EMERGENCIES

41. If any Party shall be unable to carry out its obligations under the Agreement due to a circumstance of Force Majeure or if the Distributor shall be unable to carry out any obligations under this Agreement (if any) due to a System Emergency this Agreement shall remain in full force and effect but save as otherwise provided herein all the Parties' obligations (other than obligations as to payment) shall be suspended without liability for a period equal to the circumstance of Force Majeure or System Emergency (as the case may be) provided that:
- 41.1 the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure or the System Emergency (as the case may be);
- 41.2 no obligations of any Party that arose before the Force Majeure or the System Emergency causing the suspension of performance are excused as a result of the Force Majeure or the System Emergency (as the case may be); and
- 41.3 the non-performing Party shall use all reasonable efforts to remedy its inability to perform.

SUB-CONTRACTING AND ASSIGNMENT

42. The Contractor may sub-contract any part of any Contestable Works, provided that the Contractor ensures that only appropriately Accredited contractors are engaged in the carrying out or completion of those of the Contestable Works. The sub-contracting by the Contractor of any of its obligations under this Agreement shall not relieve the Contractor from liability for performance of such obligations in accordance with this Agreement and any such sub-contracting must be on terms and conditions as to the person employed by the sub-contractor, and the quality of the work and materials used, no less onerous than those contained in this Agreement.
43. No Party may assign or transfer their respective rights and obligations under or benefits or burdens of this Agreement without the written consent of the other Parties, such consent not to be unreasonably withheld or a decision thereon unreasonably delayed.

CONFIDENTIALITY

- 44.1 Each of the Parties shall keep confidential the terms of the Agreement and all information obtained from either of the other Parties (the Party from whom such information is obtained being the "Disclosing Party") under or in connection with the Agreement and shall not disclose the same to any third party without the written consent of the Disclosing Party except in accordance with Clause 44.2.
- 44.2 The provisions of Clause 44.1 shall not apply to information which:-
- 44.2.1 is in or comes into the public domain otherwise than by breach of the Agreement, or
- 44.2.2 is obtained from a third party which is free to disclose the same, or
- 44.2.3 must be disclosed by requirement of law or valid legal or regulatory process, in which case the Party required to make such disclosure shall wherever possible notify the Disclosing Party in advance of such disclosures and in any event promptly thereafter, and shall reasonably co-operate with any attempt to maintain confidentiality of such information (which for the avoidance of doubt includes any disclosures permitted under the Employment Rights Act 1996, as amended by the Public Interest Disclosures Act 1998); or

44.2.4 any of the Parties requires to disclose to employees, agents, directors, officers or advisers who are directly involved in the performance or administration of this Agreement in order to enable that one of the Parties to fulfil their obligations and exercise their rights respectively under or arising from the Agreement and that one of the Parties shall in any such case ensure that such persons are aware of and comply with the obligations undertaken by that one of the Parties pursuant to this Clause; or

44.2.5 constitutes or forms part of the Contestable Design and any information, designs, plans or other materials or works made available by the Contractor to the Distributor relating to the Contestable Works (including the "as-laid plans" referred to in Clause 32) which information the Distributor shall be entitled to use without restriction.

TERMINATION OF THE AGREEMENT

45.1 The Contractor or the Highways Authority shall be entitled to terminate this Agreement by giving the other Parties a minimum of one month's notice in writing.

45.2 In the event that:-

45.2.1 the Contractor or the Highways Authority shall fail in any material respect to conform or comply with any of its obligations under this Agreement, and (if such failure is capable of remedy) it is not remedied to the reasonable satisfaction of the Distributor within 30 days of the Party so failing receiving notice from the Distributor of the occurrence thereof and requiring the same to be remedied; or

45.2.2 a petition is presented for the winding up of, or notice is given of a General Meeting at which a resolution will be considered to wind up, either the Contractor or the Highways Authority or a receiver or an administrative receiver or an administrator of the Contractor or the Highways Authority is appointed, or any step is taken by any person to appoint an administrator of the Contractor or the Highways Authority, or either the Contractor or the Highways Authority enters into any composition, scheme or arrangement with (or assignment for the benefit of) its creditors or should be unable to pay its debts within the meaning of Section 123(1)(e) or Section 123(2) of the Insolvency Act 1986, or

45.2.3 no physical work forming part of the Contestable Works has commenced within one year after the Date of the Agreement; or

45.2.4 the Contractor fails to fulfil his obligations in terms of or arising from Clause 31; or

45.2.5 a Handover Certificate in respect of any of the Contestable Works not having been issued to the Distributor pursuant to Clause 22 by the Last Date, provided that if the Contractor purports to issue a Handover Certificate pursuant to Clause 22, and the Distributor objects to the issue of the Handover Certificate in writing, within 30 days of receipt stating the reason for his objection and the works required to remedy the objection pursuant to Clause 23, then until the earliest of:-

(a) the Contractor and the Distributor agreeing that the Distributor's objection to the issue of such Handover Certificate are invalid, or

(b) the Distributor and the Contractor agreeing what are the measures to be taken by the Contractor to enable the Distributor to withdraw such objection and accept the issue of such Handover Certificate and the Contractor has fully implemented such measure within 30 days, or

(c) if it is determined pursuant to Clauses 55 and 56 that such objections are invalid, or

(d) that the measures to be taken by the Contractor to enable the Distributor to withdraw its objections and accept the issue of such Handover Certificate are determined pursuant to Clause 55 or 56 and such measure are fully implemented,

then such Handover Certificate shall not be regarded as having been issued to the Distributor pursuant to Clause 22.

45.2.6 the Highways Authority or the Contractor terminating the Construction Contract;

then in any such case such event shall become an event of default when the Distributor declares by notice in writing given to the Contractor and the Highways Authority that such event has become an event of default provided that at that time the event of default continues unremedied.

45.3 In the event that:-

45.3.1 the Distributor shall fail in any material respect to conform or comply with any of its obligations under this Agreement, and (if such failure is capable of remedy) it is not remedied to the reasonable satisfaction of the Contractor within 30 days of the Distributor receiving notice from the Contractor of the occurrence thereof and requiring the same to be remedied; or

45.3.2 a petition is presented for the winding up of, or notice is given of a General Meeting at which a resolution will be considered to wind up, the Distributor, or a receiver, an administrative receiver or an administrator of the Distributor is appointed, or any step is taken by any person to appoint an administrator of the Distributor, or the Distributor enters into any composition, scheme or arrangement with (or assignment for the benefit of) its creditors or should be unable to pay its debts within the meaning of Section 123(1) or Section 123(2) of the Insolvency Act 1986;

then in any such case such event shall become an event of default when the Contractor declares by notice in writing given to the Distributor and the Highways Authority that such event has become an event of default provided that at that time the event of default continues unremedied.

46.1 Once the Distributor has given, and upon the giving of, notice of an event of default pursuant to Clause 45.2, this Agreement shall terminate.

46.2 Once the Contractor has given, and upon the giving of, notice of an event of default pursuant to Clause 45.3, this Agreement shall terminate.

47. The termination of this Agreement for whatever reason or cause shall be without prejudice to any other rights or obligations which may have accrued or become due between any of the Parties prior to or on the date of termination, and any provisions, rights or obligations stated to take effect on termination shall remain in full force and effect.

SEVERANCE

48. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction or any Competent Authority to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.

WAIVERS AND VARIATIONS

49. No act or omission of any Party shall by itself amount to waiver of any right or remedy of that Party unless expressly stated by that Party in writing nor shall any reasonable delay by any Party in exercising any right or remedy of that Party by itself constitute a waiver of that right or remedy.

50. No amendments to this Agreement shall have any effect whatsoever unless made in writing and signed on behalf of all the Parties.

ENTIRE AGREEMENT

51. This Agreement constitutes the entire agreement between the Parties in respect of the subject matter thereof and supersedes any previous agreement or arrangements between the parties in respect of that subject matter .

NOTICES

52. Any notice, demand, certificate or other communication required to be given or sent under the Agreement to any of the Parties shall be in writing and served personally or by first class post or (except in the case of notices given pursuant to Clauses 45, 55 or 56) by fax or by e-mail at the address or fax number or e-mail address stated in for such one of the parties in Part 3 of the Schedule or at such other address, fax number or e-mail address as may be notified in writing by that Party to the other Parties for the purpose of service of documents under the Agreement.
53. Any notice, demand, certificate or other communication shall be deemed to have been served as follows:
- 53.1 if given or delivered personally, at the time when given or delivered;
 - 53.2 if sent by pre-paid first class post, at the expiry of 2 Working Days after the document was delivered into the custody of the postal authorities; or
 - 53.3 if sent by fax, upon transmission, or
 - 53.4 if sent by e-mail upon transmission provided that the sender of the e-mail is not subsequently notified electronically by his internet service provider with whom such e-mail was sent that such e-mail has not been delivered.
54. In proving service pursuant to Clause 53 it shall be sufficient for the Party claiming to have given notice to prove that personal delivery was made or that the envelope containing the notice was properly addressed pursuant to Clause 53 and delivered into the custody of the postal authorities as a pre-paid first class letter or that the fax was sent or the e-mail was sent (as the case may be).

DISPUTE RESOLUTION – ESCALATION

55. If any dispute or difference shall arise between any of the Parties regarding this Agreement any Party to the dispute or difference may give to the other Parties who are a Party to that dispute or difference a notice describing the dispute or difference and requiring the dispute or difference to be settled within 14 Working Days of the date of the notice or such shorter period as may be reasonable, having regard to the nature of the dispute or difference. Upon receipt of that notice those of the Parties giving or receiving that notice shall arrange for a meeting to take place within 7 Working Days, or such shorter period as may be appropriate between each of the Parties giving or receiving that notice for the purposes of settling that dispute or difference. If that dispute or difference is not resolved at that meeting, or otherwise within the remainder of the period specified in that notice, then at the expiry of the said period, any of the Parties to the dispute or difference may require the dispute or difference to be referred to the Managing Director of each of the Parties to the dispute or difference for resolution within 7 Working Days of referral to them. In the event that any dispute or difference is not resolved by this procedure, then any of the Parties may refer the dispute or difference to adjudication in accordance with Clause 56. Each of the Parties involved in any such dispute or difference shall bear their own costs and expenses in relation to the foregoing procedure.

DISPUTE RESOLUTION – ADJUDICATION

- 56.1 In the event of any dispute or difference not being resolved in terms of Clause 55 any Party may refer that dispute or difference to adjudication in accordance with the terms of this Clause 56.

- 56.2 The adjudicator to decide the dispute or difference in accordance with the terms of the Agreement shall be either a person agreed by the Parties or, on the application of the Party who is seeking the appointment of the adjudicator, appointed by The Chartered Institute of Arbitrators.
- 56.3 If any of the Parties wishes to refer a dispute or difference to adjudication pursuant to this Clause 56, that Party shall, give notice of his intention to refer such dispute or difference to adjudication to the other Parties and:-
- 56.3.1 any agreement by the Parties on the appointment of an adjudicator must be reached with the object of securing the appointment of and the referral of the dispute or difference to the adjudicator within 7 days of the date of the notice of intention to refer; or
- 56.3.2 any application to the nominating body referred to in Clause 56.2 must be made with the object of securing the appointment of and referral of the dispute or difference to the adjudicator within 7 days of the date of the notice of intention to refer.
- 56.4 An adjudicator may resign at any time on giving notice in writing to the Parties. In the event that an adjudicator resigns then the provisions of Clause 56.2 shall be applied so as to secure the appointment of a fresh adjudicator so as to seek compliance with the terms of this Clause. In the event of resignation (in the default of any direction by the adjudicator) the fees and expenses of the adjudicator shall be shared equally.
- 56.5 If the adjudicator dies or becomes ill or is unavailable for some other cause and is therefore unable to adjudicate on a dispute or difference referred to him, the Parties may either agree upon an individual to replace the adjudicator or failing agreement, any Party may apply to the original nominator for the nomination of an adjudicator to adjudicate the dispute or difference.
- 56.6 The adjudicator may, with the consent of all the Parties, adjudicate at the same time on any dispute or difference under different agreements, which are related to the performance of this Agreement. All the Parties may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these disputes or differences.
- 56.7 If an adjudicator is agreed or appointed within 7 days of the notice of intention to refer a dispute or difference to adjudication given by a Party pursuant to Clause 56.3 then the Party giving that notice of intention shall refer the dispute or difference to the adjudicator ("the Referral") within 7 days of that notice of intention. If the adjudicator is not agreed or appointed within 7 days of that notice of intention the Referral shall be made immediately on such agreement or appointment. The Referral shall include details of the dispute or difference together with a summary of the contentions, a statement of the remedy which is sought and any material the Party making the Referral wishes the adjudicator to consider. The Referral and its accompanying documentation shall be copied simultaneously to the other Parties.
- 56.8 Subject to any direction from the adjudicator any of the Parties not making the Referral may send to the adjudicator with a copy to the other Parties, a written statement of the contrary contentions together with any material they wish the adjudicator to consider with due despatch.
- 56.9 The adjudicator shall within 28 days of the Referral and its accompanying documentation reach his decision and forthwith send that decision in writing to the Parties. The Party who has made the Referral may consent to allowing the adjudicator to extend the period of 28 days by up to 14 days. By agreement among the Parties after the Referral has been made a longer period than 28 days may be notified jointly by the Parties to the adjudicator within which to reach his decision.
- 56.10 The terms of appointment of the adjudicator shall include a provision whereby if requested by one of the Parties, not later than 7 days from the date of delivering his decision to the Parties, the adjudicator shall provide reasons for that decision.
- 56.11 The adjudicator shall (a) act impartially and independently, (b) set his own procedure (which, unless the Parties otherwise agree, must comply with the requirements of Clauses 56.11.1 to 56.11.7 inclusive), and (c) at his discretion may take the initiative in ascertaining the facts and the law as he considers necessary. In reaching his determination he shall:-

- 56.11.1 apply his own knowledge and/or experience;
 - 56.11.2 be entitled to review and revise any certificate, opinion, decision, requirement or notice issued, given or made under this Agreement as if no such certificate, opinion, decision, requirement or notice had been issued, given or made;
 - 56.11.3 request from any of the Parties further information to that contained in the notice of Referral and its accompanying documentation or in any written statement provided by any of the Parties including the results of any tests that have been made;
 - 56.11.4 require any of the Parties to carry out tests or additional tests or to open up work or further open up work;
 - 56.11.5 obtain such information as he considers necessary from any employee or representative of any of the Parties provided that before obtaining information from an employee of a Party he has given prior notice to that Party;
 - 56.11.6 obtain from others such information and advice as he considers necessary on technical and on legal matters subject to giving prior notice to the Parties together with a statement or estimate of the cost involved; and
 - 56.11.7 give directions as to the timetable for the adjudication, any deadlines, or limits to the length of written documents or the number of documents to be supplied;
- 56.12 The Parties shall each meet their own costs of the adjudication except that the adjudicator may direct as to who should pay any costs incurred by the adjudicator.
- 56.13 The adjudicator and any Party shall not disclose to any other person any information or document provided to him in connection with the adjudication which the Party providing it has indicated is to be treated as confidential, except to the extent that it is necessary for the purposes of, or in connection with the adjudication or any subsequent arbitration or court proceedings.
- 56.14 Without prejudice, and subject, to any direction made by the Adjudicator pursuant to Clause 56.12 the Parties shall be jointly and severally liable to the adjudicator for his fee and for all expenses reasonably incurred by the adjudicator pursuant to the adjudication.
- 56.15 The decision of the adjudicator shall be binding on the Parties until the dispute or difference is finally determined by arbitration or by court proceedings or by an agreement in writing between the Parties made after the decision of the adjudicator has been given.
- 56.16 The Parties shall, without prejudice to their other rights under this Agreement, comply with the decisions of the adjudicator immediately on delivery of the decision to the Parties. If any of the Parties do not comply with the decision of the adjudicator the other Parties shall be entitled to take further proceedings as they consider appropriate.
- 56.17 The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and this protection from liability shall similarly extend to any employee or agent of the adjudicator.

PROPER LAW, JURISDICTION AND THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 57.1 This Agreement shall be governed by and construed in all respects in accordance with the law of England and Wales and the Parties prorogate the non-exclusive jurisdiction of the English Courts.
- 57.2 Nothing in this Agreement is intended to confer on any person any right to enforce any term which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

VARIATIONS TO THE AGREEMENT

- 58.1 If the Authority or any part thereof issues any determination or guidance, which the Distributor reasonably considers requires alteration to this Agreement in order to enable the Distributor to comply with Applicable Law including the Licence, the Distributor shall be entitled to give notice to the Contractor and the Highways Authority giving reasonable details of such determination or guidance (as the case may be) and of the alterations to this Agreement which the Distributor reasonably considers are so required and the Distributor, Contractor and the Highways Authority will meet as soon as practicable after the giving of such notice in order to discuss in good faith, whether or not they can agree which alterations (if any) should be made to this Agreement as a result of such determination or guidance.
- 58.2 The Contractor and the Highways Authority each undertake not to unreasonably withhold, or to unreasonably delay a decision on the granting of, the agreement of the Contractor and the Highways Authority (as the case may be) to this Agreement being altered as specified in any notice given by the Distributor to the Contractor and the Highways Authority pursuant to Clause 58.1, provide that neither the Contractor nor the Highways Authority will be regarded as unreasonably withholding its agreement to such alterations if the making of such alterations would result in the Contractor or the Highways Authority (as the case may be):-
- 58.2.1 being in breach of any of its other contractual obligations, and/or
- 58.2.2 incurring or suffering costs or expense which the Distributor has not undertaken to reimburse the Contractor or the Highways Authority (as the case may be).
- 58.3 In the event of the Contractor, the Highways Authority and the Distributor agreeing the alterations (if any) which are to be made to this Agreement pursuant to this Clause 58 following an issue of a notice by the Distributor to the Contractor and the Highways Authority pursuant to Clause 58.1, the Distributor is hereby authorised to make such alterations to this Agreement on behalf of and as attorney for the Contractor and the Highways Authority.
- 58.4 If the Distributor, Contractor and the Highways Authority fail to agree whether or not any such alterations should be made pursuant to this Clause 58 following the issue of a notice by the Distributor to the Contractor and the Highways Authority pursuant to Clause 58.1, either the Contractor or the Distributor may refer the dispute as to whether or not such, or any other alterations should be made to this Agreement as a result of the issue of such determination or guidance by the Authority or any part thereof, to the procedure specified in Clauses 55 and 56.

CONSTRUCTION CONTRACT

- 59.1 Each of the Contractor and the Highways Authority warrant and undertake to the Distributor that before the Contractor starts to carry out any Contestable Works, the Contractor and the Highways Authority will have entered into a Construction Contract in relation to those Contestable Works and that such Construction Contract will at all times during its subsistence comply with the provisions of the Agreement.
- 59.2 Each of the Contractor and the Highways Authority will immediately notify the Distributor in the event of the Highways Authority or the Contractor terminating the Construction Contract or the Construction Contract relating to any Contestable Works for any other reason terminating, in either such case before the Contestable Works to which such Construction Contract relates have been Adopted.
- 59.3 Where there is conflict between the General Conditions and the Construction Contract, the provisions of the General Conditions should prevail.

INDEMNITIES

60. Where any of the Parties (the "Indemnified Party") becomes entitled to make a claim against any of the other Parties (the "Indemnifier") in terms of an indemnity in the Agreement:
- 60.1 the Indemnified Party shall (but not as a pre-condition) notify the Indemnifier in writing as soon as practicable after the Indemnified Party becomes aware of the entitlement to make such claim;

60.2 the Indemnifier shall be entitled to challenge or appeal, (including where relevant in any tribunal or court) the claim for itself and/or on behalf of the Indemnified Party (including without limitation to conduct proceedings in the Indemnified Party's name) where it considers reasonable to do so and shall confirm in writing to the Indemnified Party its intention to do so following notification pursuant to Clause 60.1, but shall only so challenge or appeal if the Indemnifier has first produced to the Indemnified Party a legal opinion from a suitably qualified lawyer confirming that the Indemnifier and/or the Indemnified Party is likely to be successful in any such challenge on appeal and has indemnified the Indemnified Party (to its satisfaction) against all costs and expenses which the Indemnified Party might incur as a result of the Indemnifier exercising its rights under this Clause 60;

60.3 the Indemnified Party, (but only for so long as:

(a) the Indemnifier is validly challenging, defending or appealing such claim and otherwise acting in accordance with the provisions of this Agreement), and

(b) the Indemnified Party (whether on account of any such challenge, defence or appeal) is not required by law to pay such claim)

shall not pay such claim or make any admissions, compromise or settlement whatsoever in respect of that claim, without prior written authority from the Indemnifier; and

60.4 the Indemnified Party shall (but not as a pre-condition) promptly provide all reasonable assistance to the Indemnifier, including the provision of any records or other documentation requested by the Indemnifier, and the Indemnified Party shall be entitled to invoice the Indemnifier for all costs, charges and expenses incurred by the Indemnified Party in fulfilling its obligations under this Clause 60 and the Indemnifier shall pay the whole amount of such costs, charges or expenses in accordance with Clause 27.

61. To the extent that any indemnity contained in this Agreement covers damage, loss, costs or expenses (including fines and penalties) incurred by one of the Parties as opposed to damage, loss, costs or expenses (including fines and penalties) incurred by any third party, such indemnity shall not be construed as affecting any obligations of the Indemnified Party under common law to mitigate its losses on each occasion.

62. No Joint and Several Liability

Nothing in the Agreement shall constitute or be deemed to constitute a partnership between any of the partners nor any joint and several liability among any two or more of the parties.