

## Conditions of Use

Effective 1 April 2024

### Introduction

Highlands and Islands Airports Limited company number SC097647 ("**HIAL**") operates a group of 10 airports in Scotland at: Barra; Benbecula; Campbeltown; Inverness; Islay; Kirkwall; Stornoway; Sumburgh; Tiree and Wick (the "**HIAL Airports**"). Dundee airport is operated by HIAL through a subsidiary company, Dundee Airport Limited.

HIAL was incorporated in Edinburgh on 4<sup>th</sup> March 1986 as a private limited company under the Companies Act 1985. On 1<sup>st</sup> April 1995, ownership of the company passed from the Civil Aviation Authority to the Secretary of State for Scotland (now the Scottish Ministers). HIAL is classed as a Non Departmental Public Body within the Scottish Government.

Dundee Airport Limited (company number SC325066) ("**DAL**") operates Dundee Airport ("**Dundee Airport**") at Riverside Drive, Dundee, DD2 1UH.

Dundee Airport was incorporated in Edinburgh on 7<sup>th</sup> June 2007 as a private limited company under the Companies Act 1985. Dundee Airport is a subsidiary of HIAL. The Scottish Ministers are the ultimate controlling party of Dundee Airport

The Conditions of Use set out in this document apply to the Airports listed above and replace previous issues. These Conditions of Use apply (to the exclusion of all other terms and conditions) to any use of an Airport by an operator, airline or a handling agent. Any such use by, or on behalf of, such an entity shall be deemed to be acceptance of these Conditions of Use, and thus will form a legally binding contract between (1) the relevant using entity and (2) HIAL (in the case of use of the HIAL Airports) or DAL (in the case of use of Dundee Airport), on the basis of these Conditions of Use. To be clear (and without limitation) where an aircraft lands at a HIAL Airport or at Dundee Airport then that is use of the relevant Airport by both the operator of the relevant aircraft and the relevant airline.

Additional copies of the Conditions of Use are available at [www.hial.co.uk](http://www.hial.co.uk) or at HIAL's registered office:

Highlands and Islands Airports Limited  
Head Office  
Inverness Airport  
Inverness  
IV2 7JB

Tel: 01667 464 000

Fax: 01667 464 300

E-mail: [info@hial.co.uk](mailto:info@hial.co.uk)

Any queries regarding payment of charges should be made to the Finance department at the above address.

HIAL's Operating Procedures (which apply in respect of all Airports) are set out in Appendix 2.

## **1 Definitions and interpretation**

1.1 In these Conditions the following definitions apply:

**Affiliate** means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

**Airport** means any of the airports operated by HIAL or DAL from time to time;

**Aviramps** means passenger boarding ramp for embarking and disembarking passengers;

**Bribery Laws** means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;

**Business Day** means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in Scotland;

**Conditions** means the Highland and Islands Airports Limited's terms and conditions of supply set out in this document;

**Confidential Information** means any commercial, financial or technical information, information relating to the Services, plans, insert details of any specific confidential information, 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;

**Contract** means the agreement between the Supplier and the Customer for the supply and purchase of Services incorporating these Conditions and the Order;

**Control** has the meaning given to it in section 1124 of the Corporation Tax Act 2010;

**Controller** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**Customer** means the person who purchases the Services from a Supplier and, where applicable, whose details are set out in the Order;

**Data Protection Laws** means, as binding on either party or the Services:

- (a) the GDPR;
- (b) the Data Protection Act 2018;
- (c) any laws which implement any such laws; and
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

**Data Subject** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**Force Majeure** 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 Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

**GDPR** means the General Data Protection Regulation, Regulation (EU) 2016/679;

**Intellectual Property Rights** means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

**Modern Slavery Policy** means the Supplier's anti-slavery and human trafficking policy in force and notified to the Customer from time to time;

**Order** means the order for the Services from the Supplier placed by the Customer in substantially the same form as specified by the Supplier from time to time. Any use by a Customer of any of the Services at any Airport shall be any order for the Services used. In particular, the owner and the operator of any aircraft that lands at any Airport shall be deemed to have ordered the Services used by either the owner or the operator of the aircraft or both at that Airport;

**Personal Data** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**Price** has the meaning set out in clause 3.1;

**Protected Data** means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract;

**Regulations** means any law, enactment, regulation, and regulatory policy, guideline, requirement and industry code of any Regulatory Authority (including good practice codes) applicable to any part of the services or the supplier or the Customer;

**Regulatory Authority** means any person having governmental, regulatory, supervisory or other competent authority under any applicable Regulations over any part of the Services or the Supplier or the Customer;

**Services** means the Services set out in the Order or understood by the parties to be included in the Services and to be performed by the Supplier for the Customer, particulars of which are set out in the Schedule to these Terms and Conditions from time to time;

**Specification** means the description or specification of the Services set out or referred to in the Order or as used by the Customer at an Airport;

**Supplier** means HIAL (in connection with the HIAL Airports) or DAL (in connection with Dundee Airport), as appropriate; and

**VAT** 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.

1.2 In these Conditions, unless the context requires otherwise:

- (a) 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;

- (b) a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- (c) 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;
- (d) a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- (e) a reference to a gender includes each other gender;
- (f) words in the singular include the plural and vice versa;
- (g) 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;
- (h) a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- (i) without prejudice to the provisions of clause 15, 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
- (j) without prejudice to the provisions of clause 15, a reference to legislation includes all subordinate legislation made from time to time under that legislation.

## **2 Application of these Conditions**

- 2.1 These Conditions apply to and form part of the Contract between the Supplier 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, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Services subject to these Conditions.
- 2.5 An Order may be withdrawn or amended by the Customer at any time provided that notice of such withdrawal or amendment by the Customer is received by the Supplier before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 2.6 The offer constituted by an Order shall remain in effect and be capable of being accepted by the Supplier until withdrawn by the Customer giving notice to the Supplier on the date on which the Customer withdraws the Order.
- 2.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the earlier of:
  - (a) the Supplier's written acceptance of the Order; or
  - (b) the Supplier performing the Services or notifying the Customer that they are ready to be performed (as the case may be).
- 2.8 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9 Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.

### **3 Price**

- 3.1 The price for the Services shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges in force from time to time (**Price**).
- 3.2 The Prices are exclusive of:
- (a) the price of additional or complementary services which are not included in the standard price and for which shall the Customer be charged in addition at the Supplier's standard rates, and
  - (b) VAT (or equivalent sales tax).
- 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.4 The Supplier may increase the Prices at any time by giving the Customer notice of such increase, provided that the increase does not exceed 25% of the Prices in effect immediately prior to the increase.
- 3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Services and which is due to any factor beyond the control of the Supplier.

### **4 Payment**

- 4.1 The Supplier shall invoice the Customer for the Services at any time.
- 4.2 The Customer shall pay all invoices:
- (a) in full without deduction or set-off, in cleared funds within 14 days of the date of each invoice or before any aircraft leaves any Airport, as the Supplier in its absolute discretion may determine from time to time; and
  - (b) to the bank account nominated by the Supplier.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- (a) the Supplier may, without limiting its other rights, charge interest on such sums at 2% a year above the base rate of The Royal Bank of Scotland
  - (b) from time to time in force, and
  - (c) 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.
- 4.4 Without prejudice to the other rights of the Supplier, the Supplier shall have a right of special lien over any aircraft of any Customer that has not paid any sum due and owing to the Supplier by that Customer.

### **5 Credit limit**

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

### **6 Performance**

- 6.1 The Services shall be deemed performed on completion of the performance of the Services as specified in the Order.
- 6.2 The Supplier may perform the Services in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.3 Each performance of the Services shall be accompanied by a performance note stating:
- (a) the date of the Order;

- (b) the relevant Customer and Supplier details;
  - (c) the category, type and quantity of Services performed; and
  - (d) any special instructions.
- 6.4 Time of performance of the Services is not of the essence. The Supplier shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are approximate only.
- 6.5 The Supplier shall not be liable for any delay in or failure of performance caused by:
  - (a) the Customer's failure to provide the Supplier with adequate instructions for performance or otherwise relating to the Services or such information as the Supplier reasonably requires from time to time to perform the Services;
  - (b) Force Majeure.

## **7 Compliance**

Each party shall comply with such Regulations and shall maintain such authorisations and all other approvals, permits and authorities from Regulatory Authorities as are required of it from time to time to perform its obligations under or in connection with this agreement.

## **8 Warranty**

- 8.1 The Supplier warrants that, at the time of performance, the Services shall:
  - (a) conform in all material respects to their description and the Specification;
  - (b) be free from material defects; and
  - (c) be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II s 13.
- 8.2 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs as reasonably requested by or on behalf of the Supplier from time to time. The Supplier shall, at its option, remedy, re-perform or refund the Services that do not comply with clause 8.1, provided that:
  - (a) the Customer serves a written notice on the Supplier not later than five Business Days from performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from performance in the case of latent defects; and
  - (b) such notice specifies that some or all of the Services do not comply with clause 8.1 and identifies in sufficient detail the nature and extent of the defects; and
  - (c) the Customer gives the Supplier a reasonable opportunity to examine the claim of the defective Services.
- 8.3 The provisions of these Conditions shall apply to any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.
- 8.4 Except as set out in this clause 8:
  - (a) the Supplier gives no warranties and makes no representations in relation to the Services; and
  - (b) shall have no liability for their failure to comply with the warranty in clause 8.1; and
  - (c) all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 8.5 The Customer shall be entitled to exercise its rights under clause 8 notwithstanding that the Services were not rejected following any initial inspection.

## **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 use all reasonable endeavours to ensure that:
- (a) all of that party's personnel;
  - (b) all others associated with that party; and
  - (c) 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:
- (a) neither the Customer nor any of its officers, employees, agents or sub-contractors has:
    - (i) committed an offence under the Modern Slavery Act 2015 (an MSA Offence); or
    - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
    - (iii) 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;
  - (b) it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy its responses to the Supplier's modern slavery and human trafficking due diligence questionnaire are complete and accurate; and
  - (c) it shall notify the Supplier 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 Supplier to terminate the Contract with immediate effect.

## **11 Indemnity and insurance**

- 11.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier 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. 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 Supplier the benefit of such insurance.

## **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 Supplier's total liability shall not exceed the sum of £10,000,000.
- 12.3 Subject to clauses 12.5 and 12.6, the Supplier shall not be liable for consequential, indirect or special losses.
- 12.4 Subject to clauses 12.5 and 12.6, the Supplier shall not be liable for any of the following (whether direct or indirect):
- (a) loss of profit;
  - (b) loss or corruption of data;
  - (c) loss of use;
  - (d) loss of production;
  - (e) loss of contract;
  - (f) loss of opportunity;
  - (g) loss of savings, discount or rebate (whether actual or anticipated); (h) 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:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) any other losses which cannot be excluded or limited by applicable law; (d) any losses caused by wilful misconduct.

## **13 Intellectual property**

- 13.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that performance or benefit of the Services infringes the Intellectual Property Rights of any third party (IPR Claim), provided that the Supplier shall have no such liability if the Customer:
- (a) does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
  - (b) makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
  - (c) does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
  - (d) does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
  - (e) does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.
- 13.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:



- (a) procure for the Customer the right to continue receiving the benefit of the relevant Services; or
- (b) modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their Specification.

13.3 The Supplier's obligations under clause 13.1 shall not apply to Services modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.

#### **14 Confidentiality and announcements**

14.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

- (a) any information which was in the public domain at the date of the Contract;
- (b) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
- (c) any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
- (d) any disclosure required by law or a Regulatory Authority or otherwise by the provisions of the Contract

except that the provisions of clauses 14.1 (a) to 14.1 (c) shall not apply to information to which clause 14.4 relates.

14.2 This clause shall remain in force in perpetuity.

14.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or Regulatory Authority.

14.4 To the extent any Confidential Information is Protected Data 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 15.

#### **15 Processing of personal data**

15.1 The parties agree that each of the Customer and the Supplier is a Controller for the purposes of the Data Protection Laws.

15.2 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 15.

15.3 This Clause 15 shall survive the termination or expiry of the Contract.

#### **16 Force Majeure**

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

- (a) promptly notifies the other of the Force Majeure event and its expected duration; and
- (b) uses best endeavours to minimise the effects of that event.

16.2 If, due to Force Majeure, a party:

- (a) is or shall be unable to perform a material obligation; or
- (b) is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or a total of more than 30 days in any consecutive period of 60 days;

then the parties shall, within 90 days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

## **17 Termination**

17.1 The Supplier 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:

- (a) the Customer commits a material breach of Contract and such breach is not remediable;
- (b) 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;
- (c) the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
- (d) 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.

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

- (a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- (b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
- (c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- (d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- (e) has a resolution passed for its winding up;
- (f) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- (g) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- (h) has a freezing order made against it;
- (i) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- (j) is subject to any events or circumstances analogous to those in clauses 17.2 (a) to 17.2 (i) in any jurisdiction;
- (k) takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 17.2 (a) to 17.2 (j) 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.

- 17.3 The Supplier may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 17.4 The right of the Supplier to terminate the Contract pursuant to clause 17.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
- 17.5 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 17, it shall immediately notify the Customer in writing.
- 17.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

## **18 Dispute resolution**

- 18.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 18.
- 18.2 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.
- 18.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- (a) within 7 days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.
  - (b) if the dispute has not been resolved within 7 days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within 7 days to discuss the dispute and attempt to resolve it.
- 18.4 The specific format for the resolution of the dispute under clause 18.3 (a) and, if necessary, clause 18.3 (b) shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 18.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 18.3 (b) then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 18.6 Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clauses 18.3 and 18.5 have been completed.

## **19 Notices**

- 19.1 Any notice or other communication given by a party under these Conditions shall:
- (a) be in writing and in English;
  - (b) be signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - (c) be sent to the relevant party at the address set out in the Contract
- 19.2 Notices may be given, and are deemed received:
- (a) by hand: on receipt of a signature at the time of delivery;
  - (b) by Royal Mail Recorded Signed For post: at 9.00 am on the Business Day after posting;

- (c) by Royal Mail International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting; and
- (d) by email on receipt of a delivery receipt from the correct address.

19.3 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 19.1 and shall be effective:

- (a) on the date specified in the notice as being the date of such change; or
- (b) if no date is so specified, 2 Business Days after the notice is deemed to be received.

19.4 All references to time are to the local time at the place of deemed receipt.

19.5 This clause does not apply to notices given in legal proceedings or arbitration.

## **20 Cumulative remedies**

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

## **21 Time**

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

## **22 Further assurance**

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

## **23 Entire agreement**

23.1 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.

23.2 Each party acknowledges that it has not entered into the Contract 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.

23.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

## **24 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 Supplier.

## **25 Assignment**

25.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed OR which it may withhold or delay at its absolute discretion.

25.2 Notwithstanding clause 25.1, 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 Supplier prior 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.

## **26 Set off**

26.1 The Supplier 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.

26.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **27 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.

## **28 Equitable relief**

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **29 Severance**

29.1 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.

29.2 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 order to agree the terms of a mutually acceptable alternative provision.

## **30 Waiver**

30.1 No failure, delay or omission by the Contract 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.

30.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

## **31 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.

## **32 Conflicts within contract**

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

## **33 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).

## **34 Third party rights**

34.1 Except as expressly provided for in clause 34.2, 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.

34.2 Any Affiliate of the Supplier 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 order to rescind or vary the Contract or any provision of it.

**35 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 Scotland.

**36 Jurisdiction**

The parties irrevocably agree that the courts of Scotland shall have non-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).

