



## Terms and Conditions of Business

## SCHEDULE 1- Conditions

### 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words and expressions have the following meanings:

- (a) **Acceptance** has the meaning ascribed to and occurs at the time identified in Clause 5.3;
- (b) **Advance Payment** means any advance payment identified in the Quotation and any adjustment thereto in accordance with these terms and conditions;
- (c) **Affiliate** means any subsidiary of a Party, any holding company of a Party, and any subsidiary of any such holding company (where "Subsidiary" and "Holding Company" shall have the meanings assigned to them under Section 736 of the Companies Act 1985) and any company, partnership or joint venture of which any of them shall have directly or indirectly not less than 26% equity participation;
- (d) **Affected Party** has the meaning ascribed to the term in Clause 23.2;
- (e) **Asset** means the Works or any Phase of the Works upon Substantial Completion including (without limitation) any Plant and Materials incorporated into the Works;
- (f) **Background Intellectual Property** means all intellectual property rights including inventions, patents, registered designs, trademarks (whether registered or unregistered), applications for any of the foregoing and the right to apply therefore in any part of the world, copyrights, rights in the nature of copyrights, moral rights, design rights, unregistered Community designs, database rights, topography rights, trade names, business names, logos, get-up, know how, and all or any similar or equivalent rights arising or subsisting in any country of the world, relating to the business, assets, operations or affairs of a Party;
- (g) **Client Designated Representative** means the person appointed as such in accordance with Clause 2;
- (h) **Commissioning** means testing and making live any utility that is installed.
- (i) **Conditions** means these terms and conditions;
- (j) **Conditions Precedent** means any of the conditions precedent set out in clause 6.3;
- (k) **Confidential Information means** any and all information, documents, technical reports, correspondence, data, records, and any other financial or commercial information (in any form electronic or otherwise) in connection with the Works, the performance of the Works or the business or affairs of either Party;
- (l) **Construction Commencement Date** means the date specified in the Programme or advised by Pascon Limited to the Client in accordance with Clause 11.1 (subject in each case to any adjustment to such date in accordance with this Agreement), being the date upon which Pascon Limited will commence the construction of the Works, or where the Works are to be performed in phases, the date upon which Pascon Limited will commence construction of the first Phase of the Works;
- (m) **Agreement** means the agreement incorporating these Conditions;

- (n) **Date for Final Completion** means a date specified in the Programme or advised by Pascon Limited to the Client in accordance with Clause 11.1 (subject in each case to any adjustment to such date in accordance with this Agreement), being the date upon which Pascon Limited will achieve Final Completion of the Works or a Phase of the Works (as the case may be);
- (o) **Date for Substantial Completion** means a date specified in the Programme or advised by Pascon Limited to the Client in accordance with Clause 11.1 (subject in each case to any adjustment to such date in accordance with this Agreement), being the date upon which Pascon Limited will achieve Substantial Completion of the Works or a Phase of the Works (as the case may be);
- (p) **Delivery Requirements** means the requirements and other matters set out in the contract documentation
- (q) **Equipment** means all vehicles, equipment, appliances, instruments, apparatus and other items used in the performance of the Works but does not include anything incorporated or to be incorporated into the Works;
- (r) **Final Completion** means completion of the Works or a Phase of the Works (as the case may be) including all reinstatement;
- (s) **Force Majeure** has the meaning ascribed to the term in Clause 20;
- (t) **Pascon Limited** means Pascon Limited (Company Number: 04241307) whose registered office is at 15 Vigo Place, Walsall, West Midlands, WS9 8UG
- (u) **Pascon Limited Designated Representative** means the person appointed as such in accordance with Clause 2;
- (v) **Gas Transporter** means a gas transporter within the meaning of and licensed under the Gas Act 1986 (as amended) who has entered or will enter into the Gas Transporter Agreement with Pascon Limited or any alternative gas transporter nominated by Pascon Limited replacement therefore;
- (w) **Gas Transporter Agreement** means an agreement entered into or to be entered into between Pascon Limited and a Gas Transporter under which the Gas Transporter agrees to execute the Works and/or adopt the Asset in accordance with the terms and conditions stated therein, provided that where Pascon Limited has entered into a framework or other agreement with the Gas Transporter under which the Gas Transporter may agree to execute works and/or adopt assets from time to time, any reference in this Agreement to Pascon Limited entering into or having entered into the Gas Transporter Agreement shall include the agreement of any matters or terms and any acceptance required pursuant to such framework in relation to the Works and/or the Asset;
- (x) **Electricity Network Agreement** means an agreement entered into or to be entered into between Pascon Limited and the Electricity Network Owner under which the Network Owner agrees to execute the Works and/or adopt the Asset in accordance with the terms and conditions stated therein, provided that where Pascon Limited has entered into a framework or other agreement with the Network Owner under which the Network Owner may agree to execute works and/or adopt assets from time to time, any reference in this Agreement to Pascon Limited entering into or having entered into the Electricity Network Agreement shall include the agreement of any matters or terms and any acceptance required pursuant to such framework in relation to the Works and/or the Asset;

- (y) **Water Network Agreement** means an agreement entered into or to be entered into between The Developer and the Water Network Owner under which the Network Owner agrees to execute the Works and/or adopt the Asset in accordance with the terms and conditions stated therein, provided that where the Developer has entered into a framework or other agreement with the Network Owner under which the Network Owner may agree to execute works and/or adopt assets from time to time, any reference in this Agreement to the Developer entering into or having entered into the Water Network Agreement shall include the agreement of any matters or terms and any acceptance required pursuant to such framework in relation to the Works and/or the Asset;
- (z) **Highway** means in respect of the Works being conducted in an England and Wales “street” and in respect of the Works being conducted in Scotland “road” as such terms are defined in NRSWA;
- (aa) **IP Rights** means all intellectual property rights including inventions, patents, registered designs, trademarks (whether registered or unregistered), applications for any of the foregoing and the right to apply therefore in any part of the world, copyrights, rights in the nature of copyrights, moral rights, design rights, unregistered Community designs, database rights, topography rights, trade names, business names, logos, get-up, know how, and all or any similar or equivalent rights arising or subsisting in any country of the world, in or relating to the Works or the design of the Works;
- (bb) **Legislation means** all statutes, statutory instruments, by-laws, regulations and directives relevant to the Works or this Agreement or that affect either Party in performance of its obligations under this Agreement;
- (cc) **Meter** means any device(s) to record the volume of gas, water or electricity passing or intended to pass through the Supply Point and, in connection with such recording, to control such gas, water and electricity;
- (dd) **Minimum Information Requirements** means the information required to be provided by the Client in completing the Customer Application Form prior to submission of the Quotation and such further information Pascon Limited requests from the Client;
- (ee) **Network** means a gas, water or electric system or system of pipelines and cables designed or installed so that either one or alternatively several buildings can be connected to it, including any and all associated mains and service pipes, meters, meter boxes, regulators and ancillary plant and equipment;
- (ff) **Network Owner** means the owner of a Network.
- (gg) **NJUG** relates to the National Joint Utilities Group recommended positioning of Utilities apparatus for new work on new developments and in existing streets.
- (hh) **Normal Working Hours** means the hours of 9.00 am to 5.00 pm on any Working Day;
- (ii) **NRSWA** means the New Roads and Street Works Act 1991 and any regulations made under that act and any amendment or modification to or replacement for that act or such regulations;
- (jj) **Outlet** means all pipe and cables with consuming facilities installed or to be installed downstream of any Meter;

- (kk) **Party** means the Client or Pascon Limited (as the case may be) and Parties means both of them;
- (ll) **Phase of the Works means** each phase (if any) identified in the Quotation or otherwise agreed in writing between the Parties;
- (mm) **Planned Dates means** in relation to the Works or Phase of the Works, the Construction Commencement Date, the Date for Substantial Completion and the Date for Final Completion;
- (nn) **Plant and Materials** means any items intended to be incorporated into the Works;
- (oo) **Price means** the total price for the Works as adjusted in accordance with this Agreement;
- (pp) **Price Review Date** has the meaning ascribed to the term in Clause 16.1;
- (qq) **Programme** means the programme for the Works or any Phase of the Works as identified or detailed in the Quotation or otherwise agreed in writing between the Parties;
- (rr) **Quotation** means the quotation forming part of this Agreement as issued by Pascon Limited to the Client containing details of the Works and Price, together with any other documents expressly incorporated therein;
- (ss) **Quotation Acceptance Form means** the form of acceptance annexed to the Quotation;
- (tt) **Reasonable and Prudent Operator** and **RPO** means a person seeking in good faith to perform its contractual obligations, and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight that is reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions;
- (uu) **Reinforcement Costs** means any sums paid or to be paid by Pascon Limited to the Gas Transporter in respect of the cost of any reinforcement of any pipeline required upstream of the Works;
- (vv) **Site** means the premises, property, lands, waters and other places on, under, in or through which the Works or any part of the Works are to be performed, including areas for temporary storage, accommodation and welfare facilities, as more particularly described in the Quotation and where applicable, a plan showing the boundaries of the site appended thereto;
- (ww) **Site Survey** means a non-intrusive visual survey of the Site;
- (xx) **Street Works License** means
  - (i) a street works license required in accordance with section 50 of NRSWA in respect of any part of the Works within a Highway or the positioning of any part of the Asset within a Highway, and
  - (ii) any permit required under the Traffic Management Act 2004 or any regulations made under that Act,
 or in each case any modification re-enactment or replacement of any such section or act;
- (yy) **Substantial Completion** means the completion of the Works, or where applicable any Phase of the Works (including in each case any Commissioning), with the exception of

any reinstatement and any other parts of the Works to be carried out following Commissioning;

(zz) **Supply Point** means the nearest emergency control valve installed upstream of the location at which a Meter in respect of a service connection is installed or to be installed (whether by Pascon Limited or others);

(aaa) **TeCSA Adjudication Rules means** the procedural rules for adjudication of the Technology and Construction Solicitors Association;

(bbb) **Utility** means the utility that forms part of our works

(ccc) **Variation** means:

(i) an addition to, deduction from, cancellation of or other change or variation to all or any part of the Works; and/or

(ii) a change to or deferral of all or any of the Planned Dates, the Programme or the timing or content of the Works or any Phase of the Works; and

(iii) any other matter identified in this Agreement as constituting a Variation;

(ddd) **Works** means the works and/or design services detailed in the Quotation, including any Phases of the Works, any Plant and Materials and any Variation;

(eee) **Working Day** means any day other than Saturday, Sunday and any day that is a bank holiday in England and Wales or (in the case of Works performed in Scotland) in Scotland under the Banking and Financial Dealings Act 1971.

1.2 Terms defined in this Clause 1 include the singular and the plural as the context so requires.

1.3 Unless otherwise stated references to clauses shall mean clauses of these Conditions.

1.4 Headings are inserted in these Conditions for convenience only and do not form part of and shall not affect the interpretation or construction of these Conditions.

1.5 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.6 These Conditions shall have precedence over any other document referred to in or forming part of this Agreement and shall apply to the exclusion of any other terms and conditions referred to in the Quotation Acceptance Form or any other document emanating from the Client.

### **3 DESIGN ONLY**

3.1 Notwithstanding any other provision of this Agreement, where the Works consist of design services and services preparatory to provision of a design only, the following provisions apply.

- (a) Pascon Limited obligations shall be limited to the provision of a design drawing as described in the Quotation.
- (b) Save where the contrary is expressly provided, any provision of these terms and conditions relating to:
  - (i) carrying out by Pascon Limited of works on Site (including Site rules, procurement, construction, performance and/or supervision of any works);
  - (ii) execution of the Works by or transfer of ownership of the Works and/or the Asset to a Network Owner;
  - (iii) entry into any Gas Transporter Agreement or any termination of or under any such agreement; and
  - (iv) entry into any Electricity Network Agreement or any termination of or under any such agreement; and
  - (v) obtaining of any permissions, consents, licenses (including Street Works Licenses), easements or other rights that may be necessary for or in connection with execution of any works to Pascon Limited design;
 shall not apply.
- (c) For the avoidance of doubt, Pascon Limited shall be under no obligation to obtain any Street Works License and gives no warranty that any permissions, consents, licenses (including Street Works Licenses), easements or other rights that may be necessary for or in connection with execution of any works to Pascon Limited design are or would be obtainable.
- (d) For the benefit of any doubt, where any design is undertaken by a third party, Pascon Limited will have absolutely no liability for any inaccuracy, inadequacy or whether the design was suitable.

#### **4 SITE SURVEYS**

- 4.1 It is the client's responsibility to provide Pascon Limited with any information relating to the site and conditions that may affect the proposed works. Pascon Limited will not carry out a physical Site Survey prior to issuing the Quotation. Please note, the Quotation will be subject to amendment and the Price and Planned Dates shall be adjusted to take into account of any working restrictions, physical conditions and/or obstructions that are identified.
- 4.2. We have assumed ground condition to be as described and all excavation work is in ground free of obstruction, any costs associated with the excavation around obstructions, through rock or contaminated ground would be charged for as an extra to contract. Excavation has been assumed as described in the scope of works. Should the route not be possible, or non-standard sub-surface ground this will constitute a variation and will be charged accordingly. Our costs are based on desktop study comprising of a Google Earth overview of the site area and any further investigations into ground conditions will result in an extra charge.

#### **5 QUOTATION AND ACCEPTANCE**

- 5.1 The Quotation is personal to the Client and may not be assigned without Pascon Limited's written consent.
- 5.2 To proceed with the Works, the Client must complete and return the Quotation Acceptance Form to Pascon Limited accepting the quotation within the period of validity specified in the Quotation (or within such other period as may be agreed in writing between the Parties).
- 5.3 Acceptance shall take place on receipt by Pascon Limited of the Quotation Acceptance Form.

- 5.4 For the benefit of any doubt, The Quotation may be withdrawn by Pascon Limited at any time prior to Acceptance.
- 5.5 For the benefit of any doubt, we will not commence any work until the agreed first stage payment is received by us in cleared funds.

## **6 CONDITIONS PRECEDENT AND COMMENCEMENT**

- 6.1 Notwithstanding any other provision of this Agreement, Pascon Limited shall have no obligation to:
- a. commence or continue to provide the Works (including any design);
  - b. procure or continue to procure any Plant and Materials or other goods or materials required in connection with the Works; or
  - c. schedule, seek agreement for or confirm to the Client of any of the Planned Dates;
- at any time when any of the Conditions Precedent are not fulfilled.
- 6.2 For the avoidance of doubt, performance, commencement or re-commencement of any of the above activities shall not constitute any waiver of any provision of this clause 6 and shall be without prejudice to Pascon Limited right not to continue with any such activity or obligation at any time when the Conditions Precedent are not fulfilled.
- 6.3 The following are the Conditions Precedent:
- (a) Pascon Limited and the Gas Transporter have entered into the Gas Transporter Agreement relating to the Works and such agreement remains in full force and effect;
  - (b) Pascon Limited and the Electricity Network Owner have entered into the Electricity Network Agreement relating to the Works and such agreement remains in full force and effect;
  - (c) Pascon Limited and the Water Adopting Authority have entered into an Adoption Agreement relating to the Works and such agreement remains in full force and effect;
  - (d) Pascon Limited employment under the Gas Transporter Agreement has not been terminated for any reason;
  - (e) The Client has made payment in full (free from any set-off or deduction) of any Advance Payment identified in the Quotation;
  - (f) Any Street Works License or consent required in connection with the Works has been obtained;
  - (g) Execution of all or any part of the Works is not prevented by any restriction on the execution of street works pursuant to any relevant Legislation;
  - (h) Any approval, authorisation or consent required under the Gas Transporter Agreement has been given by the Gas Transporter; and
  - (i) The Client has complied with its obligations under Clause 8.1 in full.
- 6.4 In no circumstances shall Pascon Limited be liable to the Client or any third party for any failure or delay in the fulfilment of any of the Conditions Precedent.
- 6.5 If at any time following Acceptance, the Conditions Precedent are not fulfilled during any continuous period of six months Pascon Limited will treat such failure as a change event cancellation and be entitled to terminate the agreement. If such termination occurs, Pascon Limited will be entitled to charge the Client with a cancellation fee which will be 10% of the overall contract value. If applicable, Pascon Limited will also be entitled to charge for any reinstatement works falling within a Highway and any further works necessary to leave the Works in a safe condition.



## **7 PASCON LIMITED OBLIGATIONS**

7.1 Pascon Limited shall carry out and complete the Works and comply with its obligations under this Agreement in accordance with the standard of a Reasonable and Prudent Operator (RPO).

7.2 Pascon Limited shall use all reasonable endeavors to:

- (a) enter into the Gas Transporter Agreement and obtain any authorisation or consent required under such agreement; and
- (b) enter into the Electricity Network Owner Agreement and obtain any authorisation or consent required under such agreement; and
- (c) obtain any required Street Works License;

provided always that Pascon Limited shall have no obligation to do so until the Client has paid any Advance Payment identified in the Quotation in full (free from any set-off or deduction).

7.3 Pascon Limited shall, subject to and in accordance with these Conditions:

- a) design, procure, perform and supervise the Works in compliance with these Conditions and all relevant Legislation;
- b) comply with the Programme and meet the Planned Dates relating to the Works and any Phase of the Works;
- c) comply with all reasonable Site rules agreed between the Parties;
- d) comply with the terms of any permission, license or consent required in connection with the Works and notified to Pascon Limited by the Client; and
- e) comply with the Delivery Requirements.

7.4 The following works and/or matters shall not form part of the Works or otherwise form part of Pascon Limited obligations under this Agreement unless expressly and separately identified in the relevant Quotation as falling within the scope of Pascon Limited obligations and/or the Works or comprised in a Variation:

- (a) supply and installation of any Meter housing or backboards;
- (b) supply and installation of any Meter. For the avoidance of doubt, unless the contrary is expressly stated in the Quotation the services to be installed by Pascon Limited will terminate at the Supply Point;
- (c) provision of any temporary supplies which do not form part of the completed works
- (d) inspection, installation or alteration of Outlet Pipe;
- (e) provision, erection or dismantling of any scaffolding, raised platform or other access system required in connection with the Works;
- (f) making good cosmetic surfaces, plasterwork and decoration;
- (g) relocation, protection, replacement or any avoidance of damage to growing plants provided that Pascon Limited will take reasonable care to avoid or minimise damage to such plants;
- (h) diversion of any existing apparatus including but not limited to cable, duct, pipe-work, drain or infrastructure;
- (i) temporary or permanent reinstatement of any trench excavated on the Site in the course of the Works or otherwise required in connection with the Works, other than excavation, backfilling or reinstatement required in a Highway;

- (j) provision of any bedding and/or surrounding materials within any trench or excavation or otherwise required in connection with any part of the Works other than within a Highway;
- (k) removal of any excavated material from site in connection with any trench or excavation to carry out the works;
- (l) provision and installation of any ducting;
- (m) construction or formation of any point of entry into any building;
- (p) carrying out works outside Normal Working Hours;
- (q) any works and/or matters excluded in the Quotation.

7.6 Pascon Limited shall be entitled to defer all or any part of the Works in the following circumstances:

- (a) a failure to make an agreed payment on or before the due date;
- (b) a request from the Client for a Variation pending acceptance of a Change Event Quotation;
- (c) the Client's inability or failure to give access to and use of the Site as required for performance of the Works or relevant Phase of the Works (as the case may be);
- (d) the Site not being ready for performance of the Works or relevant Phase of the Works (as the case may be); or
- (e) non-fulfilment of any of the Conditions Precedent.

## **8 THE CLIENT'S OBLIGATIONS**

8.1 Save to the extent that the contrary is expressly stated in the relevant Quotation, the Client shall promptly and without causing delay to the performance of any part of the Works and in any event not later than 7 days before the Commencement Date or at such earlier time as Pascon Limited may reasonably require:

- (a) provide all necessary information to Pascon Limited. Such information shall be complete and accurate and shall include (without limitation):
  - (i) all information and data relating to or affecting the Works or performance of the Works; and
  - (ii) all information referred to in the Minimum Information Requirements.

The Client acknowledges and agrees that such information may be relied on by Pascon Limited in designing and performing the Works and for all purposes relating to this Agreement;

- (b) grant or procure from any relevant third party of all planning and other permissions, consents, approvals, licenses, easements, leases, interests and rights (in each case on an unconditional and irrevocable basis and on reasonable terms agreed between the Parties) necessary for performance of the Works, the siting, installation, operation and maintenance of the Asset, and ownership of the Works and the Asset

by the Network Owner (including without limitation all permissions, consents, licenses, easements, conveyances, leases, grants, transfers, interests and rights required by and on any terms specified by the Network Owner), save that the Client shall not be required to obtain any Street Works License;

- (c) grant or procure permission to enable Pascon Limited, its sub-contractors or agents to gain such access to and possession of the Site (other than any part of the Site falling within a Highway) as Pascon Limited may reasonably require for performance of the Works or any Phase of the Works and ensure that Pascon Limited, its sub-contractors and agents may obtain such access and possession at all times during performance of the Works;
- (d) demonstrate compliance with sub-clauses 6.1(b) and 6.1(c) above by notifying Pascon Limited in writing when it has fulfilled such obligations and providing to Pascon Limited copies of all planning and other permissions, consents, licenses, easements, leases, interests, rights and conveyances granted or procured by the Client in accordance with those sub-clauses. For the purposes of this Agreement such permissions, consents, licenses, easements, leases, interests and rights shall be deemed not to be in place until such copies have been provided to Pascon Limited.

**8.2 The Client shall:**

- (a) provide any agreed Plant and Materials in a timely manner;
- (b) provide and install all ducting to the required specification for the installation of all mains and services;
- (c) provide in advance of our works, lines and levels for installation of the works to comply with NJUG standards;
- (d) ensure that all works to be carried out by others are carried out promptly and so as not to cause any delay or disruption to our approved design for the Works;
- (e) comply with any relevant Legislation;
- (f) pay to Pascon Limited all sums falling due under this Agreement; and
- (g) during performance of the Works, report any suspected interference with the Works (or any part thereof) or any Plant and Materials or Equipment of which the Client is aware to Pascon Limited promptly.

**8.3** For the avoidance of doubt, the Client will comply with the requirements of this clause 8 at its own cost without any cost or charges being incurred by Pascon Limited.

**9 ACCESS TO THE WORKS**

**9.1** Pascon Limited shall afford the Client together with any other person(s) nominated by the Client and approved by Pascon Limited reasonable access to witness the Works. The Client will comply with the prevailing safety rules and regulations in operation at the Site and such further rules and regulations that Pascon Limited may reasonably impose and shall ensure that any such nominated persons comply with such rules and regulations.

**9.2** Supervision of our contracted Works will at all times remain the responsibility of Pascon Limited only.

**10 CHANGE EVENTS**

**10.1** The Client may request in writing a Variation. The Client acknowledges that any Variation may require design approval by the Network Owner and Relevant Upstream Network Owner and in such case further costs may become applicable in this regard. In addition, any variation requested by the Client must be agreed in writing by Pascon Limited prior to any variation work being undertaken.

**10.2** The following are Change Events:

- (a) a Variation requested by the Client;
- (b) the Network Owner requires Pascon Limited to make any Variation or other change to the design or performance of the Works due to Network Owner or other Network Owner requirements, or a Network Owner requires that Pascon Limited make any such Variation or other change;
- (c) there is any error, omission or inaccuracy in or change to:
  - (i) any assumption or matter identified in the Quotation,
  - (ii) the location of final connection point(s) onto any existing Network as indicated by the relevant Network Owner, or
  - (iii) any other information provided by the Client, the Customer, a Network Owner or others concerning any existing Network or infrastructure,
 and such error, omission, inaccuracy or change necessitates a Variation or other change to the design or performance of the Works, whether to connect to any existing Network in accordance with Network Owner requirements or otherwise;
- (d) additional connections or other changes to the Works or the design or performance of the Works are required due to any re-phasing of or delay to the Works or any part of the Works, save to the extent that such re-phasing or delay is caused by Pascon Limited;
- (e) Pascon Limited encounters:
  - (i) any artificial obstruction not accurately identified and located within information provided to Pascon Limited by the Client, the Customer or relevant Network Owner prior to the date of Acceptance;
  - (ii) site layouts or physical conditions including contaminated ground or ground obstructions that could not reasonably have been foreseen by Pascon Limited (acting as an RPO) prior to issue of the relevant Quotation; or
  - (iii) items of historical, archaeological or special scientific interest;
 and any such obstruction or conditions necessitates a Variation or other change to the design or performance of the Works;
- (f) any matter or circumstance identified on site that has not been provided for in the Price quoted;
- (g) the imposition of working restrictions or Site rules that Pascon Limited (acting as an RPO) could not reasonably be expected to have foreseen prior to issuing the Quotation;
- (h) restrictions on hours of work within Normal Working Hours;
- (i) where Pascon Limited has issued a Quotation but subsequently identifies physical conditions that the client has failed to disclose including but not limited to ground obstructions and contaminated ground;
- (j) unreasonable terms of any permission, consent, license, easement or lease in connection with or affecting the Works or performance of the works;
- (k) the interference of the owners or occupiers of land to which Pascon Limited requires access for the performance of the Works;
- (l) all or any part of the Works are deferred following commencement of the Works or relevant Phase of the Works (as the case may be) or dispatch of labour, Plant and Materials or Equipment to the Site of such Works due to:
  - (i) a request from the Client for a Variation,

- (ii) the Client's inability or failure to give access to and use of the Site as required for performance of the Works or other failure to comply with its obligations under this Agreement, or
- (iii) the Site not being ready for performance of the Works or relevant Phase of the Works (as the case may be);
- (m) all or any part of the Works are suspended pursuant to Clause 15;
- (n) all or any part of the Works are deferred or delayed due to Pascon Limited not proceeding with the Works at a time when any of the Conditions Precedent are not fulfilled;
- (o) any imposition of or increase in Reinforcement Costs by reason of any error, inaccuracy or omission in information supplied by the Client or any breach of warranty or obligation on the part of the Client under this Agreement;
- (p) any amendment, modification or substitution made to or replacement of NRSWA as in force at the date of the Quotation or any regulations are made under the Traffic Management Act 2004 or any amendment or modification or replacement of the Traffic Management Act 2004 or any such regulations, in each case where such amendment, modification, substitution, replacement or regulations has not been published as at the date of issue of the Quotation;
- (q) any new or amended Legislation (other than in relation to NRSWA, the Traffic Management Act 2004 or any regulations made under the Traffic Management Act 2004) applicable to or affecting the Works or performance of the Works which comes into effect after the date of issue of the Quotation and which could not reasonably have been foreseen by Pascon Limited (acting as an RPO) as at the date of issue of the Quotation;
- (r) where Pascon Limited has issued a Quotation to the Client which is accepted, but the Client does not proceed with making the initial payment to Pascon Limited within six months;

For the avoidance of doubt, any reference above to a change to the performance of the works includes any change to the scope or nature of any temporary works, excavation or other preparatory works.

10.3 Pascon Limited shall notify the Client in writing of the occurrence of a Change Event. Subject to the following provisions of this clause 10, Pascon Limited shall be entitled to make a fair and reasonable adjustment to the Price in respect of any Change Event in accordance with the following provisions of this clause 10.

10.4 In the case of cancellation of, or any Variation omitting, all or part(s) of the Works the following provisions apply.

- (a) Pascon Limited shall be entitled to retain provision within the Price for:

- (i) design and administration in connection with the Works or such part(s) of the Works (as the case may be), including any Site Survey, preparation of the Quotation, general administration, design and design approval;
  - (ii) any costs incurred in obtaining or attempting to obtain any Street Works License;
  - (iii) any mobilisation, Works performed and any further works carried out or to be carried out in connection with any reinstatement within a Highway or so as to leave the Works in a safe condition;
  - (iv) any costs incurred by reason of such cancellation or omission under or in connection with any sub-contracts or orders for Plant and Materials, Equipment labour or other resources entered into or placed by Pascon Limited for which Pascon Limited is liable and unable lawfully or contractually to avoid, including (without limitation) forfeited deposits and cancellation charges;
  - (v) contribution to management costs and overheads at the rate of 10% of the overall contract value;
- (b) To avoid doubt, any refund to the Client in respect of any part of the Price paid in advance will be subject to deduction of the sums referred to in this clause 10.4 including but not limited to the 10% cancellation fee of the overall contract value.

10.5 Within 48 hours of issue of a Change Event Quotation by Pascon Limited the Client shall either accept or reject such Change Event Quotation. In the case of rejection of a Change Event Quotation relating to a requested

Variation, the Client shall at the same time confirm that the requested Variation is not to proceed and whether or not the Works are to continue in accordance with the original design.

- (a) If the Client accepts a Change Event Quotation then the Price, the Programme and the Planned Dates for the relevant Works will be amended in accordance with the relevant Change Event Quotation.
- (b) If within the period referred to above the Client does not:
  - (i) accept in writing a Change Event Quotation in respect of a requested Variation or confirm that the requested Variation will not proceed, and the Works are to continue in accordance with the original design; and/or
  - (ii) accept in writing a Change Event Quotation in respect of the occurrence of a Change Event;

(as the case may be) then unless the Parties agree otherwise the Client's non-acceptance of the Change Event Quotation shall constitute a Variation.

10.6 Pascon Limited shall not be obliged to proceed and may (at Pascon Limited's discretion) defer all or part of the Works:

- (a) following occurrence of any Change Event until receipt of the Client's written acceptance of a Change Event Quotation; and
- (b) following a request for a Variation, until receipt of the Client's written acceptance of a Change Event Quotation in relation to such request or written confirmation that the requested Variation is not to proceed and the Works are to continue in accordance with the original design.

## **11 PLANNED DATES**

11.1 The Client acknowledges and agrees that Pascon Limited will prepare a programme of works although time is not the essence of the contract and any dates are provided as estimates only and should not be relied upon.

## **12 NETWORK OWNER DEFAULT**

12.1 In the event that the Network Owner defaults under the terms of the Gas Transporter or Electricity Network Agreement or Water Network Agreement, Pascon Limited may subject to the terms of the Gas Transporter or Electricity Network Agreement or Water Network Agreement, enter into an agreement with an alternative provider.

### **13 PRICE REVIEW**

- 13.1 In the event that the Works or any Phase(s) of the Works continue beyond twelve months from the date of the Quotation the following provisions apply.
- 13.2 A Price Review Date will occur on the date immediately following expiry of 12 months from the date of the Accepted Quotation and thereafter on each anniversary of that date.

### **14 PAYMENT**

- 14.1 In consideration of the performance by Pascon Limited of its obligations under this Agreement the Client will pay to Pascon Limited the Price (plus VAT as applicable).
- 14.2 Where the Quotation provides for stage payments, the payments must be made in accordance with the payments set out in the quotation.
- 14.3 The Client shall bear all Value Added Tax that becomes due on the Price.
- 14.4 The Client shall, unless otherwise specified in the Quotation, make payment in pounds sterling to the bank account notified to the Client in writing by Pascon Limited.
- 14.5 If payment is late the Client shall pay interest on the amount of such late payment from the final date for payment of Pascon Limited invoice at an annual rate of four percent (4%) per annum above the Bank of England base rate in force from time to time, compounded quarterly until the date of payment. Addition of such interest shall be without prejudice to any other right or remedy Pascon Limited has in respect of such late payment, and shall not



constitute any waiver of any breach by the Client or of any right or remedy on the part of Pascon Limited.

- 14.6 If the Client disputes any invoice or any part thereof it shall notify Pascon Limited of the amount in dispute within 7 days of the invoice and such dispute shall be resolved in accordance with clause 30 prior to the relevant stage of works commencing. Without prejudice to the above provisions of this clause 14, the Client will pay the undisputed portion of any invoice notwithstanding any such dispute.

## **15 SUSPENSION**

- 15.1 In the event that the Client is in breach of any of the payment provisions of this Agreement, Pascon Limited shall be entitled, on giving twenty-four (24) hours written notice, to suspend performance of its obligations under this Agreement in whole or in such part as Pascon Limited in its absolute discretion shall decide, until the Client has rectified such breach.

## **16 WARRANTY**

- 16.1 Subject to the following provisions of this Clause 16, Pascon Limited warrants that it will carry out the Works with the skill and care reasonably to be expected of an RPO and as at the time of completion, the Works or (where applicable) any relevant Phase of the Works will be free from defect (except any defect due to user abuse and improper operation), provided that such warranty does not extend to any defect caused by:
- (a) incorrect or misleading information supplied by or on behalf of the Client;
  - (b) incorrect or misleading information in relation to the Site or in relation to any Plant and Materials or any Equipment, materials or services provided by the Client and relied upon by Pascon Limited in performing the Works; or
  - (c) any breach or default on the part of the Client.
- 16.2 All warranties (whether implied by statute or otherwise) on the part of Pascon Limited in relation to the Works or this Agreement other than those expressly set out in this Agreement are excluded.
- 16.4 The Client shall promptly notify Pascon Limited in writing of any breach of the warranty given in Clause 16.1 (as the case may be) and give Pascon Limited a reasonable opportunity to rectify any such defect. The sole liability of Pascon Limited for any breach of such warranty shall be to rectify any such defect at its own cost.
- 16.5 The Client acknowledges that where title in the Works has vested in the Gas Transporter under the Gas Transporter Agreement or the Electricity Network Owner under the Electricity Network Agreement or the Water Network Owner under the Water Network Agreement, all liability for such works rests with the adopting authority.

- 16.6 Pascon Limited shall not be liable to the Client for any defect in the Works, unless the Client has given Pascon Limited an opportunity to rectify in accordance with this Clause 16.
- 16.7 For the avoidance of doubt, any warranty periods will commence upon delivery to site. The adopting authority requires Pascon Limited to provide two years warranty from the date of energisation, so any delays outside of Pascon Limited's control, may result in a variation being required for revalidation of warranties.

## **17 INDEMNITY**

- 17.1 The Client shall indemnify Pascon Limited in respect of:
- (a) any claims from owners or occupiers of the Site for losses, damages, costs and expenses which arise as a necessary and unavoidable (using reasonable skill and care) consequence of the execution of the Works;
  - (b) any claim from any third party or other liability incurred by Pascon Limited by reason of any failure of the Client to comply with its obligations under Clause 8.1.
  - (c) any delays incurred as a direct result of the Client's failure to comply with its obligations under Clause 8.
  - (d) any cancellation fee should the Client not accept a change event quotation and cancel the works.

## **18 LIMITATION OF LIABILITY**

- 18.1 Nothing in this Agreement shall exclude or limit the liability:
- (a) of either Party for death or personal injury resulting from negligence or for fraud or fraudulent misrepresentation; or
  - (b) of the Client pursuant to Clause 17.1.

The following provisions of this Clause 18 are subject always to this Clause 18.1.

- 18.2 Pascon Limited's aggregate liability to the Client howsoever caused or arising under or in connection with this Agreement, whether in contract, for breach, in tort (including without limitation negligence, breach of statutory duty or other tortious act omission or default), by way of indemnity, contribution or otherwise, shall be limited to 100% of the original Price as set out in the relevant Quotation for any and all such liability relating to Works (including any Variation thereto) provided or to be provided and any act omission or default in connection with such Quotation.
- 18.3 Neither Party shall be liable to the other Party for any:
- (a) loss of profit, loss of use, loss of revenue, loss of anticipated saving, loss of contract or loss of production; or
  - (b) indirect or consequential loss, injury or damage;

Whether incurred by the other Party or any third party, howsoever caused or arising, under or in connection with this Agreement (whether or not foreseeable at the date of this Agreement), whether in contract, for breach, in tort (including negligence, breach of statutory duty or other tortious act omission or default), by way of indemnity, contribution or otherwise.

## **19 INSURANCES**

- 19.1 Pascon Limited and the Client shall each effect and maintain at all times when any works are being or will be carried out under this Agreement at their own respective cost, insurance policies with insurers of good repute carrying on business in the United Kingdom and on reasonable and usual terms including the minimum types and amounts of cover set out below.

- (a) Employer's liability Insurance for an amount not less than £2,000,000 per occurrence or series of occurrences arising from one event and complying with all applicable Legislation
- (b) General third-party liability insurance with a combined bodily injury and property damage limit of not less than £2,000,000 per occurrence or series of occurrences arising from one event.
- (c) Comprehensive motor vehicle liability insurance on motor vehicles used in connection with this Agreement.

In each case such insurance shall include the directors, officers and senior managers of the insured Party as co-insureds.

## **20 FORCE MAJEURE**

- 20.1 Neither Party shall be liable to the other or deemed to be in breach of this Agreement by reason of any failure or delay in performing its obligations under this Agreement if such failure or delay has been caused by Force Majeure.
- 20.2 If a party (the "Affected Party") is affected by Force Majeure in the performance of its obligations under this Agreement, then:
- (a) the Affected Party shall on becoming aware of the Force Majeure give written notice to the other party, specifying the nature and extent of the Force Majeure;
  - (b) the Affected Party will at all times use reasonable endeavors to mitigate the severity of the impact of the Force Majeure;
  - (c) Subject to the provisions of this Clause 20, the date for performance of such obligations shall be postponed by a period equal to the delay caused by the Force Majeure; and
  - (d) neither Party shall be entitled to payment from the other Party in respect of extra costs and expenses incurred by reason of the Force Majeure.
- 20.3 If the Force Majeure in question prevails for a continuous period in excess of three months after the date on which the Force Majeure begins, either Party shall be entitled to give notice in writing to the other to terminate Pascon Limited's employment in relation to any Works affected by such Force Majeure. The notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, Pascon Limited's employment in relation to such Works will terminate on the termination date set out in the notice.
- 20.4 For the purposes of this Agreement, Force Majeure means any of the following events or any combination of such events:
- (a) war, civil war or armed conflict arising within and affecting the United Kingdom of Great Britain and Northern Ireland;
  - (b) nuclear, chemical or biological contamination of the Site;
  - (c) acts of terrorism;
  - (d) substantial damage to the Works arising from the effect of pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed, which materially affects either Party's ability to carry out its obligations under this Agreement;
  - (e) fire or flood (other than fire or flood caused by the negligence, breach or default of the Affected Party);
  - (f) hurricanes, tornadoes and other exceptionally adverse weather conditions;

- (g) official strike or lockout;
- (h) refusal by a relevant authority to grant any Street Works License or planning permission (not being a planning permission that the Client is required to obtain) required in connection with the Works or any part of the Works or delay in the grant of such license or permission or the refusal to grant any such license or permission other than on unreasonably onerous terms;
- (i) shortage of fuel supplies due to protests, blockades or other action of individuals or organisations, whether acting collectively or otherwise;
- (j) epidemic or pandemic.

## **21 CANCELLATION AND TERMINATION**

21.1 If the Client cancels or purports to cancel all or part of the Works the provisions of clause 10 apply in relation to any such cancellation or purported cancellation. For the avoidance of doubt, where the client has accepted a Quotation but has failed to make payment to commence the Works within a period of six months from the date of acceptance, this will be considered as a cancellation and the provisions of clause 10.4(v) will apply.

21.2 If Pascon Limited commits a material breach of its obligations under this Agreement, the Client may give Pascon Limited written notice identifying the breach and stating that notice of termination will be served if such breach is not remedied. If Pascon Limited fails to remedy such breach within six months after receipt of such notice or within such period fails to demonstrate to the Client that it has taken and is taking steps to remedy such breach and will remedy such breach within a period agreed with the Client (such agreement not to be unreasonably withheld or delayed), then the Client may forthwith by written notice terminate Pascon Limited's employment under this Agreement.

21.3 If the Client:

- (a) does not pay Pascon Limited any amount properly due (subject to any deduction or set-off the Client is entitled to make pursuant to this Agreement) by the final date for payment; or
- (b) otherwise commits a material breach of its obligations under this Agreement;

Pascon Limited may give the Client written notice identifying the non-payment or breach and stating that notice of termination will be served if such non-payment or breach is not remedied. If the Client fails to remedy such breach within 7 days after receipt of such notice or (in the case of a breach other than in relation to payment) within such period fails to demonstrate to Pascon Limited that it has taken and is taking steps to remedy such breach and will remedy such breach within a period agreed with Pascon Limited (such agreement not to be unreasonably withheld or delayed), then Pascon Limited may forthwith by written notice terminate its employment under this Agreement and the provisions of clause 10.4(v) shall apply.

21.4 Pascon Limited may terminate the Agreement forthwith by written notice to the Client in the event that the Client:

- (a) becomes or threatens to become bankrupt or insolvent or is adjudicated bankrupt or insolvent by a court of competent jurisdiction in its country of incorporation; or
- (b) has a body or person (including, but not limited to, a liquidator, administrator or other receiver or manager) appointed to manage its affairs or assets or its undertakings on behalf of its creditors, its members or a court of competent jurisdiction; or
- (c) issues a notice proposing that it should be wound up or passes a resolution for its winding up (except in each case for the purposes of amalgamation or reconstruction); or

- (d) ceases to carry on all or substantially all of its business or is unable to pay its debts as defined in accordance with relevant legislation (in the case of a company incorporated in England and Wales, within the meaning of Section 123 of the Insolvency Act 1986) including any amendments and re-enactments thereof.

21.5 Notwithstanding any other right or remedy of the Parties under this Agreement, termination under Clause 20 or this Clause 21 shall constitute a Variation omitting all outstanding parts of the Works other than any reinstatement works falling within a Highway and any further works necessary to leave the Works in a safe condition. The provisions of clause 10.4 will apply in relation to any such Variation.

## **22 INTELLECTUAL PROPERTY**

22.1 All Background Intellectual Property owned by each Party prior to the date of this Agreement shall continue to be the sole property of that Party.

22.2 Subject to any contrary provision agreed between Pascon Limited and the Network Owner, all IP Rights resulting from or in the Works or arising in connection with this Agreement shall vest in Pascon Limited.

22.3 The Client grants to Pascon Limited an irrevocable non-exclusive royalty free licence to use Background Intellectual Property owned by the Client so far as necessary for the purpose of:

- (a) performance of the Works; and
- (b) the taking of ownership of the Works and the Asset by the Network Owner and operation and maintenance of the Asset by the Network Owner.

The Client warrants that it has all necessary rights and/or title to enable it to grant such license.

22.4 Pascon Limited grants to the Client an irrevocable non-exclusive royalty free license to use the IP Rights created in the design and/or performance of the Works for all purposes in connection with the performance of the Works and use of the Asset, provided always that such license shall terminate with effect from the date on which the Asset is taken into use or (where the Works consist of design services and services preparatory to provision of a design only), the date on which works to Pascon Limited design are completed and taken into use. Pascon Limited warrants that it has all necessary rights and/or title to enable it to grant such license.

22.5 The Client shall indemnify and hold harmless Pascon Limited against all actions, claims, damages, costs and expenses arising from or incurred by reason of:

- (a) use by the Client of IP Rights created in the design and/or performance of the Works other than as permitted by the license granted under this Agreement; or
- (b) use within the scope of the license granted under this Agreement of all or any part of:
  - (i) the Background Intellectual Property licensed to Pascon Limited under Clause 22.3; or
  - (ii) any rights held out by the Client as forming part of such Background Intellectual Property;

infringing the rights of any third party.

## **23 CONFIDENTIALITY**

- 23.1 Each Party shall keep confidential all Confidential Information connected with the other Party or the business of the other Party that comes to its knowledge under or as a result of this Agreement. The Parties shall not disclose such information to any third party or use it other than for the management and performance of the Works except:
- (a) to the extent Pascon Limited needs to disclose such information to the Network Owner in connection with the Gas Transporter Agreement or the Electricity Network Agreement, or the Water Network Agreement or any subcontractor or potential subcontractor for the purpose of seeking tenders for carrying out of the Works or any part of the Works;
  - (b) with the written agreement of the other Party or by requirement of law or of a regulatory authority or governmental body having jurisdiction over the Parties, or by any recognised stock exchange;
  - (c) to a Party's professional advisers;
  - (d) where the information is in or comes into the public domain (otherwise than by failure of a Party to comply with its obligations under this Agreement);
  - (e) where the receiving Party can show that it had the information in its possession prior to disclosure free from any obligation of confidentiality to the other Party or any third party;
  - (f) where the receiving Party can show that the information was developed independently by the receiving Party without reference to information disclosed by the disclosing Party;
  - (g) where the information is or becomes lawfully available to the receiving Party from a source having a right to disclose the same; or
  - (h) where expressly permitted under this Agreement.
- 23.2 Where a Party makes disclosure to any employee, consultant, subcontractor, potential subcontractor or agent, that disclosure shall be subject to obligations equivalent to those set out in this Agreement. Each Party shall use all reasonable endeavors to procure that any such employee, consultant, subcontractor, potential subcontractor or agent complies with such obligations, provided that each Party shall continue to be responsible to the other in respect of any disclosure or use of Confidential Information by a person to whom disclosure is made by that Party.
- 23.3 Upon Final Completion of the Works or earlier termination of Pascon Limited's employment under this Agreement, each Party shall, upon written request, return to the other all Confidential Information which has been disclosed by the other Party.

## **24 ENTIRETY OF AGREEMENT AND AMENDMENTS**

- 24.1 This Agreement constitutes the entire agreement between Pascon Limited and the Client in connection with its subject matter and supersedes all prior representations, communications, agreements, negotiations and understandings whether oral or written concerning the subject matter of this Agreement.
- 24.2 Each of the Parties acknowledges and confirms that it does not enter into this Agreement on the basis of and does not rely upon and has not relied upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly set out in this Agreement.
- 24.3 The above does not apply to any statement representation or warranty made fraudulently or to any provision of this Agreement that was induced by fraud.

- 24.4 No amendment to this Agreement shall be binding on the Parties unless in writing and signed by both Parties.

## **25 WAIVER**

- 25.1 No term of this Agreement shall be considered waived by either Party unless such waiver is set out expressly in writing and signed by the Party waiving such term. No such waiver shall be a waiver of any default or breach of the terms of this Agreement unless expressly set forth in such waiver.
- 25.2 The non-enforcement of any terms of this Agreement by either Party shall not be construed as a waiver of or otherwise prejudicial to the rights of such Party under this Agreement or at law or in equity.
- 25.3 No failure or delay in exercising any right or remedy under this Agreement shall be construed as a waiver of that right or remedy.
- 25.4 No single or partial exercise of any right or remedy shall preclude further exercise of that right or remedy.
- 25.5 No waiver by a Party of any breach of this Agreement shall be construed as a waiver of any preceding or subsequent breach.

## **26 RELATIONSHIP OF PARTIES**

- 26.1 The status of Pascon Limited shall be that of independent contractor and the relationship of the Parties shall not be that of principal and agent or employer and employee.

## **27 ASSIGNMENT AND SUB-CONTRACTING**

- 27.1 Neither Party may assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed, provided that such consent shall not be required for an assignment by Pascon Limited to an Affiliate.
- 27.2 Pascon Limited shall have the right to sub-contract the whole or any part of the Works. Any such sub-contracting shall not relieve Pascon Limited from any liability or obligation under this Agreement.

## **28 NOTICES**

- 28.1 Any notices or other communications between the Parties under this Agreement shall be given in writing or (where expressly permitted by the terms of this Agreement) confirmed in writing.
- 28.2 Unless otherwise agreed any such notice of communication shall be respectively addressed and sent by personal delivery, facsimile transmission or registered post, recorded delivery or pre-paid first-class post to the address and/or other relevant contact details set out in the Quotation.
- 28.3 Any such notice or communication shall be deemed to have been duly delivered and received:
- (a) at the actual time of delivery if delivered personally;
  - (b) at the time of legible receipt if transmitted by facsimile;
  - (c) three (3) working days subsequent to the date of posting if sent by registered post, recorded delivery or pre-paid first-class post.

## **29 THIRD PARTY RIGHTS**

- 29.1 Notwithstanding references in any provision of this Agreement to a third party (whether by name, description or as a member of a class), the Parties do not intend such provision to be enforceable by the third party in its own right. No party other than a Party to this Agreement

shall have any right to enforce any provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **30 LAW AND DISPUTES**

- 30.1 This Agreement shall be governed by and construed in accordance with the laws of England.
- 30.2 The English Courts shall have jurisdiction in relation to all matters under or in connection with this Agreement. Such jurisdiction shall be exclusive save in relation to any enforcement of a judgment of the English Courts.
- 30.3 Any dispute between the Parties may be referred to adjudication in accordance with the TeCSA Adjudication Rules. In any event the parties must engage in a suitable form of Alternative Dispute Resolution prior to the issue of any court proceedings.