



## **G-Cloud 14**

# **ElysianIT – Terms and Conditions**

**Framework Reference: RM1557.14**



# Terms and Conditions

Terms and conditions are in accordance with the G-Cloud Framework agreement and call off contract

# Conditions of Engagement

## 1. DEFINITIONS

### 1.1. The definitions in this condition apply in these terms.

- **Business Day** - any day which is not a Saturday, Sunday or public holiday in the UK.
- **Confidential Information** - information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in condition 11.5.
- **Contract** - the Contract between you and us which consists of (1) the Task Order and (2) these Terms and Conditions
- **the Effective Date** - the date the Contract starts, which will be the date we send you an Order acknowledgement under condition 2.
- **Existing Data** - existing data of yours that you want us to Migrate on your behalf.
- **Fees** - the fees payable by you to us set out in the Task Order and which we may revise during the Term as set out in condition 9.1 and 9.7.
- **Month** - a calendar month during the Term.
- **Normal Business Hours** - 9.00 am to 5.30 pm local UK time, each Business Day.
- **Order** - your order for the services, which you can find on the Task Order.
- **Provider** - any trusted third party that we work with from time to time to provide the Services.
- **Task Order** - our Task Order to you for the Services which are provided with or attached to or which otherwise refers to or incorporates these terms.
- **Responsibility** - any liability or obligation to pay liquidated damages, sanctions or other financial penalties or any other compensation or costs or any waiver of Fees or other charges or costs or damages due.
- **Services** - the services we provide to you to in accordance with your Order as detailed on the Task Order
- **Set-up** - the Services required to set up for your use comprising Migration Services and any consequential implementation and configuration.
- **Software** - the software application(s) provided by us or which you use and which you can find referred to on the Task Order; this software may be updated from time to time during the Term by us or by the Provider.
- **Term** - has the meaning given in condition 15.1.
- **Third Party Terms** - any and all Provider terms applicable to you from time to time, for example software licence terms and any documentation or other Provider's terms or policies which we provide to you or make available to you.
- **Virus** - anything or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.
- **we** - ElysianIT Limited (CRN 09245203) whose registered office is at Former Board Room, Upper Farm Road, Wooton St. Lawrence, Basingstoke Hampshire. RG23 8PE and "us" and "our" have corresponding meanings.
- **you** - the organisation specified on the Task Order as the customer including any organisation to which you assign the Contract with our prior written consent under condition 20.1.
- **Your Data** - all Existing Data which we are to Migrate for you, and other data inputted by your Authorised Users, or by us on your behalf during the Term as part of our Services.

## **2. BASIS OF CONTRACT**

**2.1. The Task Order will be agreed in the following manner:**

**2.1.1. we will discuss your requirements for our Services;**

**2.1.2. we will provide you with a draft Task Order, specifying the Software and Services to be provided, Fees estimate (which is subject to assessment in the case of Services indicated on the Task Order) and any applicable estimated dates and/or timetable; and**

**2.1.3. we will discuss the Task Order with you and when it has been agreed, we will prepare a final version. You will sign the final version of the Task Order and return it to us.**

**2.2. Any draft Task Order we give you will not constitute a contractual offer that is capable of acceptance by you. The Contract will only come into existence when we send you an Order acknowledgement in response to our receipt of the signed final Task Order from you.**

**2.3. After we have sent you the Task Order, we may still need to revise any Fees and timetable following our assessment of your Existing Environment and Data, as described in condition 3.**

**2.4. These terms apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate or which are implied by trade, custom, practice or course of dealing.**

### **3. DATA MIGRATION**

- 3.1. There may be technical or practical limitations that affect or prevent Migration of Existing Data or make it uneconomic or otherwise unworkable. Accordingly, you accept that the Fees on the Task Order and any timetable for Migration are subject to an assessment by us of your Existing Data after the Contract starts,**
- 3.2. You will provide us access to your existing environment and data promptly on or after the Effective Date and we will carry out an assessment, , and inform you of any change to the Fees and timetable as a result of the assessment.**
- 3.3. If you wish to terminate the whole Contract, you may do so, but you must pay our reasonable Fees incurred up to the date of termination. Condition 23 sets out how to give us notice to terminate the Contract.**

#### **4. PERMISSIONS AND RESTRICTIONS**

- 4.1. You must comply, and must ensure that your Authorised Users comply, with all applicable Third-Party Terms from time to time and the requirements set out in the Task Order.**
- 4.2. In relation to you and your Authorised Users, you undertake that:-**
  - 4.2.1. You do not access, store, distribute or transmit any Viruses (or any other material) that:**
    - 4.2.2. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive.**
    - 4.2.3. facilitates illegal activity.**
    - 4.2.4. depicts sexually explicit images.**
    - 4.2.5. promotes unlawful violence.**
    - 4.2.6. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or**
    - 4.2.7. causes damage or injury to any person or property and we may disable your access to any material that breaches this condition without Responsibility to you.**
- 4.3. You shall not except as may be allowed by any applicable law which cannot be excluded by agreement between us and except to the extent expressly permitted under these terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services we provide to you.**
- 4.4. The Services provided to you are provided to you only, and shall not be considered to be granted to anyone else, including any subsidiary or holding company of yours.**

## **5. SERVICE LEVELS**

- 5.1. During the Term, we shall provide the Services on and subject to the terms of the Contract and being in accordance with the Task Order.**
- 5.2. We shall use commercially reasonable endeavours to provide the Services at the time and in the manner specified in the Task Order except for unscheduled maintenance or works required to be performed outside Normal Business Hours, provided that we have used reasonable endeavours to give you as much advance notice as we can and which are not provided for in the Task Order.**

## **6. YOUR DATA**

- 6.1. You will own all rights, title and interest in and to all of Your Data and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data.**
- 6.2. We will Migrate Your Data as set out in the Task Order and in our back up policy.**
- 6.3. In the event of any loss or damage to Your Data, your sole and exclusive remedy shall be for us to use reasonable commercial endeavours to restore Your Data from the latest back-up maintained by us in accordance with the archiving procedure described in our back-up policy. We will have no responsibility to you for any loss, destruction, alteration or disclosure of Your Data caused by you or by any third party (except for our Providers that we use to perform services related to Your Data maintenance and back-up).**
- 6.4. If we process any personal data on your behalf when performing our obligations under the Contract, we each record our intention that you shall be the data controller and we shall be a data processor and in any such case:**
  - 6.4.1. you acknowledge and agree that the personal data may be transferred or stored or migrated outside the EEA by a Provider in order to comply with our obligations comprising the Services:**
  - 6.4.2. you shall ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully transfer the personal data in accordance with the Contract on your behalf;**
  - 6.4.3. you shall ensure that the relevant individuals have been informed of and have given their consent to, that use, processing, and transfer as required by all applicable data protection legislation;**
  - 6.4.4. we shall Migrate the personal data only in accordance with the Services and any lawful instructions given pursuant thereto by you from time to time: and**
  - 6.4.5. each party shall take appropriate technical and organisational measures against unauthorised or unlawful migration of the personal data or its accidental loss, destruction or damage.**

## **7. OUR WARRANTIES AND UNDERTAKINGS**

- 7.1. We undertake that the Services will be provided substantially in accordance with the Task Order and with reasonable skill and care.**
- 7.2. If the Services do not conform to the undertaking in 7.1, we will, at our expense, use reasonable commercial endeavours to correct any non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. That correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in condition 7.1,**
- 7.3. The undertaking at condition 7.1 shall not apply to the extent of any non-conformance which is caused by contrary to our instructions, or modification or alteration you or any party other than us or our duly authorised contractors or agents.**
- 7.4. These terms shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing, software, services or documentation which are similar to those provided to you.**
- 7.5. We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance by us of the Services.**

## **8. YOUR OBLIGATIONS**

### **8.1. You must:**

#### **8.1.1. provide us with:**

**8.1.1.1. all necessary co-operation in relation to the Services; and**

**8.1.1.2. all necessary access to information we may require in order to provide the Services, including any Existing Data, security access information and configuration information:**

**8.1.2. follow our reasonable instructions;**

**8.1.3. ensure all information provided to us and representations you make to us about your current ICT environment and Existing Data are accurate and complete in all respects;**

**8.1.4. ensure your ICT environment is compatible with and adequate for the delivery of the Services;**

**8.1.5. comply with all applicable laws and regulations with respect to your use of the Services;**

**8.1.6. carry out your other responsibilities set out in these terms in a timely and efficient manner. In the event of any delays in your provision of assistance, we may adjust any agreed timetable or delivery schedule as reasonably necessary;**

**8.1.7. obtain and shall maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform our obligations under these terms;**

**8.1.8. ensure that your network and systems and network connection and telecommunications links comply with any relevant specifications or recommendations provided by us from time to time; and**

**8.1.9. ensuring your network connections and telecommunications links are fit and adequate for your purposes.**

## **9. CHARGES AND PAYMENT**

- 9.1. We may revise the Fees which are expressed to be “subject to assessment” on the Task Order after the Effective Date, Please see condition 3 for further details of Fees,**
- 9.2. On or before the Effective Date, you will provide us with the information required on the Task Order and any other relevant valid, up-to-date and complete contact and billing details and we will invoice you as set out on the Task Order.**
- 9.3. If we have not received payment within 14 (fourteen) days of the due date, and in addition to any of our other rights and remedies:**
  - 9.3.1. we may, without Responsibility to you, suspend provision of the Services while the invoice(s) concerned remain unpaid; you will still be obliged to pay for the Services during the period of suspension; and**
  - 9.3.2. interest shall accrue on due amounts at an annual rate equal to 4% (four percent) over the then current base lending rate of the Bank of England’s base rate at the date the relevant invoice was issued, starting on the due date and continuing until fully paid, whether before or after judgment.**
- 9.4. All Fees and other fees stated or referred to in these terms:**
  - 9.4.1. shall be payable in pounds sterling;**
  - 9.4.2. are non-cancellable and non-refundable;**
  - 9.4.3. are exclusive of value added tax, which shall be added to our invoice(s) at the appropriate rate.**

## **10. PROPRIETARY RIGHTS**

**10.1. You acknowledge and agree that we and/or our Licensors own all intellectual property rights in the Services. Except as expressly stated in the Contract, these terms do not grant you any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of any part of the Services.**

**10.2. We confirm that we have all the rights in relation to the Services that are necessary to grant all the rights we purport to grant under, and in accordance with, the terms of the Contract.**

## **11. CONFIDENTIALITY**

**11.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not include information that:**

**11.1.1. is or becomes publicly known other than through any actor or omission of the receiving party;**

**11.1.2. was in the other party's lawful possession before the disclosure;**

**11.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;**

**11.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or**

**11.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.**

**11.1.6. Each party shall hold the other's Confidential Information in confidence and, unless required by law or required by a Provider for the purpose of the Contract, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the performance of the Contract.**

**11.2. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in breach of these terms.**

**11.3. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.**

**11.4. You acknowledge that details of the Data and Services and the results of any performance tests constitute our Confidential Information. We acknowledge that Your Data is your Confidential Information.**

**11.5. This condition 11 shall survive termination of the Contract, however arising.**

## **12. INDEMNITY**

**12.1. We shall defend you against any claim that the Services we provide infringe any United Kingdom patent, copyright, trade mark, database right or right of confidentiality, and we shall indemnify you against any amounts awarded against you in judgment or settlement of those claims (including reasonable legal fees), provided that:**

**12.1.1. you give us prompt notice of any the claim;**

**12.1.2. you provide us with reasonable co-operation in the defence and settlement of the claim, at our expense; and**

**12.1.3. you give us sole authority to defend or settle the claim,**

**12.2. In the defence or settlement of any claim, we may obtain the right for you to continue using Services, replace or modify the Services so that it becomes non-infringing or, if we consider that those remedies are not available or likely to be available, we may terminate the Contract immediately by notice to you, without Responsibility to you for that act of termination.**

**12.3. In no event shall we, our employees, agents and Providers be responsible or liable to you to the extent that the alleged infringement is based on:**

**12.3.1. a modification of the Services by anyone other than us; or**

**12.3.2. your use of Services in a manner contrary to the instructions we have given to you; or**

**12.3.3. your continued use of the Services after notice of the alleged or actual infringement from us or any appropriate authority.**

**12.4. Conditions 12.1 to 12.3 inclusive state your sole and exclusive rights and remedies, and our (including our employees' agents' and Providers') entire obligations and liability, for infringement of any third party intellectual property rights or right of confidentiality.**

**12.5. You shall defend, indemnify and hold us harmless against claims. actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with a breach by you of the Contract, provided that:**

**12.5.1. we give you prompt notice of the claim;**

**12.5.2. we provide you with reasonable co-operation in the defence and settlement of the claim, at your expense; and**

**12.5.3. we give you sole authority to defend or settle the claim.**

## **13. LIMITATION OF LIABILITY**

**13.1. This condition 13 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and Providers) to you in respect of other matters namely:**

**13.1.1. any breach of the Contract;**

**13.1.2. any use made by you of the Services or any part of them; and**

**13.1.3. any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Contract.**

**13.2. Except as expressly and specifically provided in the Contract:**

**13.2.1. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are to the fullest extent permitted by applicable law, excluded from the Contract; in particular we do not warrant:**

**13.2.2. we are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet; you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of those communications facilities;**

**13.2.3. that the Services will meet your requirements or be fit for your purposes: we encourage you to make your own thorough and careful assessment of those matters before the Effective Date;**

**13.2.4. you assume sole responsibility for (a) your use of the Data Migrated including information, materials or Your Data that you subsequently input (b) your reliance (by act or omission) on any reports or results or conclusions drawn from your use and (c) ensuring your use complies with applicable legal and regulatory requirements. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts you provide to us in connection with the Services, or any actions we have taken at your direction.**

**13.3. Nothing in the Contract excludes our liability:**

**13.3.1. for death or personal injury caused by our negligence; or**

**13.3.2. for fraud or fraudulent misrepresentation.**

**13.4. Subject to condition 13.2 and condition 13.3:**

**13.4.1. we shall not be responsible or liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution, under any indemnity or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, penalties, charges or expenses however arising under the Contract; and**

**13.4.2. our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution, under any indemnity or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited the total Fees paid for the Services during the 12 (twelve) months immediately preceding the date on which the claim arose or £15,000 (fifteen thousand pounds), whichever is the greater sum.**

## **14. CLAIMS**

You must make any claim under an indemnity or bring any legal proceedings against us within 12 (twelve) calendar months from the date you first became aware or ought reasonably to have become aware of the facts giving rise to the triggering of the indemnity or liability or alleged liability or within the relevant statutory limitation period, whichever is the earlier.

## **15. TERM AND TERMINATION**

**15.1. The Contract shall start on the Effective Date and shall, unless otherwise terminated under this condition 15, continue for the Term unless terminated in accordance with the Contract**

**15.2. We may terminate the Contract:**

**15.2.1. immediately if our agreement with a Provider is terminated; or**

**15.2.2. on 30 (thirty) days' notice for any reason.**

**15.3. In addition to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:**

**15.3.1. the other party commits a material breach of any of the terms of the Contract and (if the breach is remediable) fails to remedy that breach within 30 (thirty) days of that party being notified in writing of the breach; or**

**15.3.2. an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or**

**15.3.3. an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or**

**15.3.4. a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or**

**15.3.5. the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or**

**15.3.6. the other party ceases, or threatens to cease, to trade; or**

**15.3.7. the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.**

**15.4. On termination of the Contract for any reason:**

**15.4.1. all licences granted under the Contract shall immediately terminate;**

**15.4.2. each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;**

**15.4.3. we may destroy or otherwise dispose of any of Your Data in our possession unless we receive, no later than 10 (ten) days after the effective date of the termination of the Contract, a written request for the delivery to you of the then most recent back-up of Your Data. We shall use reasonable commercial endeavours to deliver the back-up to you within 30 (thirty) days of our receipt of a written request, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by us in returning or disposing of Your Data; and**

**15.4.4. the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.**

## **16. FORCE MAJEURE**

We shall have no responsibility or liability to you under the Contract if we are prevented from or delayed in performing our obligations, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including strikes, lock-outs or other industrial disputes (whether involving our workforce or that of any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or Providers, provided that we inform you of the event and its expected duration (which we may do by email, through our website or through social media).

## **17. WAIVER**

**17.1. A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.**

**17.2. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.**

## **18. SEVERANCE**

**18.1. If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.**

**18.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.**

## **19. ENTIRE AGREEMENT**

**19.1. The Contract, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.**

**19.2. Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.**

## **20. ASSIGNMENT**

**20.1. You shall not without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under the Contract.**

**20.2. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract**

## **21. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **22. THIRD PARTY RIGHTS**

**22.1. A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.**

**22.2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.**

## **23. NOTICES**

**23.1. Except where email notice is permitted elsewhere in these terms, a notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery to the other party at its address set out in the Task Order, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's main fax number.**

**23.2. A notice delivered by hand or recorded delivery shall be considered to have been received when delivered (or if delivery is not in business hours, at 9am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post shall be considered to have been received on the third Business Day after posting. A notice sent by fax shall be considered to have been received at the time of transmission (as shown by the timed printout obtained by the sender).**

## **24. DISPUTE RESOLUTION**

**24.1. If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (Dispute) then, except as expressly provided in the Contract, the parties shall follow the dispute resolution procedure set out in this clause:**

**24.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice) together with relevant supporting documentation. On service of the Dispute Notice an authorised person from each party shall attempt in good faith to resolve the Dispute;**

**24.1.2. if the authorised persons are for any reason unable to resolve the Dispute within 30 (thirty) days of service of the Dispute Notice, the Dispute shall be referred to a member of each party's senior management team who shall attempt in good faith to resolve it; and**

**24.1.3. if the members of the senior management team are for any reason unable to resolve the Dispute within 30 (thirty) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 (thirty) days after the date of the ADR notice, subject to the mediator's availability. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.**

**24.2. The commencement of a medication shall not prevent the parties commencing or continuing court proceedings.**

## **25. INTERPRETATION**

**25.1. The rules of interpretation in this condition apply in these terms:**

**25.1.1. Condition headings shall not affect the interpretation of these terms.**

**25.1.2. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.**

**25.1.3. A reference to one gender shall include a reference to the other gender.**

**25.1.4. Words in the singular shall include the plural and vice versa.**

**25.1.5. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment or replacement and includes any subordinate legislation for the time being in force made under it.**

**25.1.6. Where the words include(s), including or in particular are used in these terms, they are considered to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.**

**25.1.7. A reference to writing or written includes faxes but not email unless stated.**

**25.1.8. References to conditions are to the conditions of these terms,**

## **26. GOVERNING LAW AND JURISDICTION**

**26.1. The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England & Wales.**

**26.2. The parties irrevocably agree that the courts of England & Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contractor its subject matter or formation (including non-contractual disputes or claims).**