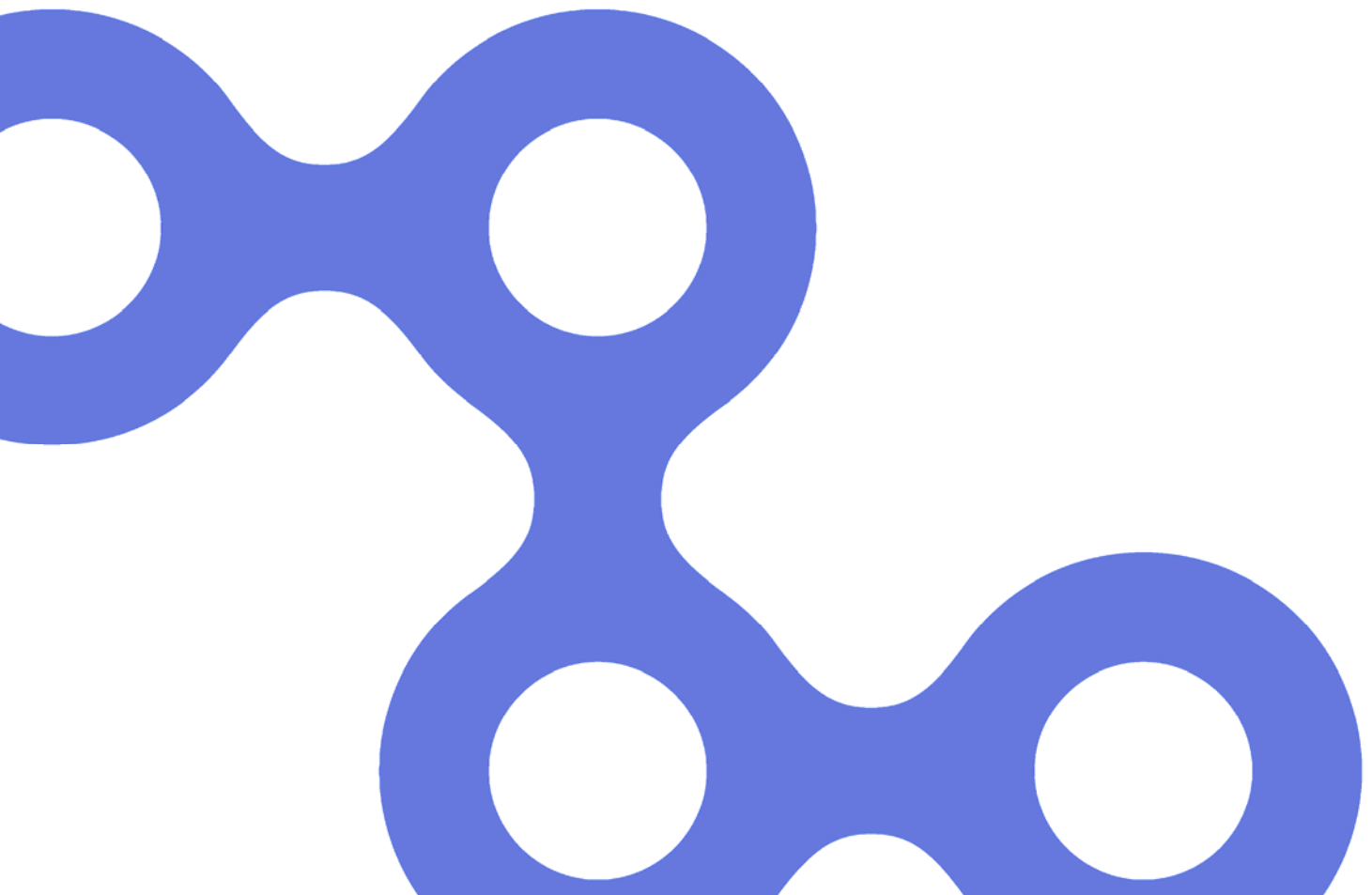




FULCRUM INFRASTRUCTURE SERVICES LIMITED
TERMS AND CONDITIONS
FOR Multi Utility Customer Works
Version 5.0



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1 DEFINITIONS AND INTERPRETATION

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

- (a) **Acceptance** means the Client's acceptance of the Quotation and entry into this Agreement, and occurs at the time identified in Clause 5.3;
- (b) **Advance Payment** means any advance payment identified in the Quotation and any sum that falls due and is payable by the Client on Acceptance or otherwise in advance of any Construction Commencement Date (in each case together with any adjustment thereto in accordance with these 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) **Agreement** means the agreement incorporating these Conditions;
- (f) **Background Intellectual Property** means all intellectual property rights including inventions, patents, registered designs, trade marks (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** means the party to which the Quotation is issued
- (h) **Client Designated Representative** means the person appointed as such in accordance with Clause 2;
- (i) **Commissioning** means purging to natural gas of those elements of the Works designed to convey or contain natural gas, and its pressurisation to normal operating pressure, energising of any electrical cables and equipment, pressurisation to normal operating pressure of any water pipes and associated equipment and any decontamination, cleaning, preparation and testing required prior to use of the completed Works;
- (j) **Conditions** means these terms and conditions;
- (k) **Conditions Precedent** means any of the conditions precedent set out in clause 6.3;
- (l) **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;

- (m) **Construction Commencement Date** means a date specified in the Programme or advised by Fulcrum 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 Fulcrum will commence construction of the Works, or where the Works are to be performed in phases, the date upon which Fulcrum will commence construction of a Phase of the Works;
- (n) **Electricity Network Owner** means an Independent Distribution Network Operator licensed under the Electricity Act 1989 (as amended) who has entered or will enter into an Electricity Network Agreement with Fulcrum or any alternative IDNO nominated by Fulcrum in replacement thereof;
- (o) **Electricity Network Agreement** means an agreement entered into or to be entered into between Fulcrum and an Electricity Network Owner under which the Electricity Network Owner agrees to execute the Electricity Works and/or adopt the completed Electricity Works in accordance with the terms and conditions stated therein, provided that where Fulcrum has entered into a framework or other agreement with the Electricity Network Owner under which the Electricity Network Owner may agree to execute works and/or adopt completed works from time to time, any reference in this Agreement to Fulcrum 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 Electricity Works;
- (p) **Electricity Works** means any part of the Works comprising installation and Commissioning of electrical cables, connections and associated equipment;
- (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 Commissioning and provision of all documentation required for the purpose of adoption by each relevant Network Owner;
- (s) **Force Majeure** has the meaning ascribed to the term in Clause 23;
- (t) **Fulcrum** means Fulcrum Infrastructure Services Limited (Company Number 6006363) whose registered office is at 201 Bishopsgate, London EC2M 3AF;
- (u) **Fulcrum 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 Fulcrum or any alternative gas transporter nominated by Fulcrum in replacement thereof;
- (w) **Gas Transporter Agreement** means an agreement entered into or to be entered into between Fulcrum and a Gas Transporter under which the Gas Transporter

agrees to execute the Gas Works and/or adopt the completed Gas Works in accordance with the terms and conditions stated therein, provided that where Fulcrum 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 completed works from time to time, any reference in this Agreement to Fulcrum 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 Gas Works;

- (x) **Gas Works** means any part of the Works comprising installation, connection and/or Commissioning of gas service pipes and/or mains and associated equipment
- (y) **Handover Notice** means the notice to be given by Fulcrum to the Client upon Completion of the Works or any Phase of the Works;
- (z) **Highway** means in respect of the Works being conducted in 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, trade marks (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 or electricity;
- (dd) **Minimum Information** means the information reasonably required by Fulcrum (acting as an RPO) from the Client to enable Fulcrum to prepare any necessary design and a Quotation for the Works
- (ee) **Network** means a gas or water pipeline or electricity cable or system of such pipelines and/or cables designed or installed so that either one or alternatively several buildings can be connected to such pipeline, cable or system, including any and all associated mains and service pipes and associated plant and equipment;
- (ff) **Network Agreements** means such of the Gas Transporter Agreement, Electricity Network Agreement and Water Self Lay Agreement;
- (gg) **Network Owner** means the owner of a Network.

- (hh) **NJUG** means to the National Joint Utilities Group guidelines on the positioning of Underground Utilities Apparatus for New Development Sites as published prior to the date of the Quotation;
- (ii) **Nominated Energy Supplier** means an energy supplier nominated by Fulcrum in the Quotation or otherwise pursuant to this Agreement;
- (jj) **Normal Working Hours** means the hours of 8.00 am to 5.00 pm on any Working Day;
- (kk) **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;
- (ll) **Non-Contestable Work** means
- (i) any planning, design, approval, connection, commissioning, metering, inspection, monitoring, testing or other work or service required in connection with the Works, and
 - (ii) any reinforcement or increase in capacity of any Network required by reason of or in connection with the Works;
- that is executed or to be executed by or on behalf of a Network Owner other than pursuant to an agreement between Fulcrum and the relevant Network Owner for such work or service to be carried out or performed by Fulcrum;
- (mm) **Outlet** means all pipe, cables and facilities utilising any supply installed or to be installed downstream of any Meter;
- (nn) **Party** means the Client or Fulcrum (as the case may be) and Parties means both of them;
- (oo) **Phase of the Works** means each phase (if any) identified in the Quotation or Programme or otherwise agreed in writing between the Parties;
- (pp) **Plant and Materials** means items intended to be incorporated into the Works;
- (qq) **Price** means the total price for the Works as adjusted in accordance with this Agreement;
- (rr) **Price Review Date** has the meaning ascribed to the term in Clause 16.1;
- (ss) **Programme** means the programme for the Works (including and Phase(s) of the Works) as identified or detailed in the Quotation or otherwise agreed in writing between the Parties;
- (tt) **Quotation** means the quotation forming part of this Agreement as issued by Fulcrum to the Client containing details of the Works and Price, together with any other documents expressly incorporated therein;
- (uu) **Quotation Acceptance Form** means the form of acceptance annexed to the Quotation;

- (vv) **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;
- (ww) **Reinforcement Costs** means any sums paid or to be paid by Fulcrum in respect of the cost of any reinforcement of any Network upstream of the Works and required in connection with or by reason of the Works;
- (xx) **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;
- (yy) **Site Survey** means a non-intrusive visual survey of the Site;
- (zz) **Street Works Licence** means
- (i) a street works licence 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 Works 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;
- (aaa) **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;
- (bbb) **Supply Only Materials** means any ducting, pipe, meter boxes or other materials identified in the Quotation as to be provided by Fulcrum on a supply only basis;
- (ccc) **Supply Point** means
- (i) for gas, termination within the meter housing at the emergency control valve,
 - (ii) for electricity, termination within the meter housing at the connection block;
 - (iii) for water, termination of the communication pipe prior to connection with the supply pipe (normally within 300mm of the boundary);
- (ddd) **TeCSA Adjudication Rules** means the procedural rules for adjudication of the Technology and Construction Solicitors Association;

- (eee) **Upstream Network** means a Network upstream of the point of connection
- (fff) **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 any Construction Commencement Date, 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;
- (ggg) **Water Company** means the company appointed as the water undertaker for the relevant area in accordance with the Water Industry Act 1991 (as amended);
- (hhh) **Water Self Lay Agreement** means an agreement entered into or to be entered into between Fulcrum and/or the Client and the Water Company under which the Water Company agrees to execute all or part of the Water Works and/or adopt all or part of the completed Water Works in accordance with the terms and conditions stated therein, provided that where Fulcrum has entered into a framework or other agreement with the Water Company under which the Water Company may agree to execute works and/or adopt completed works from time to time, any reference in this Agreement to Fulcrum entering into or having entered into the Water Self Lay Agreement shall include the agreement of any matters or terms and any acceptance required pursuant to such framework in relation to the Works; ;
- (iii) **Water Works** means any part of the Works comprising installation, connection and/or Commissioning of water supply pipes and associated equipment;
- (jjj) **Works** means the works and/or design services and provision of Supply Only Materials detailed in the Quotation, taking into account any Variation but excluding in each case any Non-Contestable Work;
- (kkk) **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 In this Agreement references to the singular include the plural and vice versa.
- 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.

2 DESIGNATED REPRESENTATIVES

- 2.1 The Client shall by notice to Fulcrum appoint the Client Designated Representative. Save to the extent that the contrary is specified in such notice, the Client Designated Representative shall have authority to act for and on behalf of the Client in all matters in connection with this Agreement.
- 2.2 Any instructions, directions or orders the Client may give to Fulcrum shall be in writing.

3 SUPPLY ONLY MATERIALS

- 3.1 Where the Quotation provides that Fulcrum will provide Supply Only Materials the following provisions apply.
- 3.2 Fulcrum will agree with the Client and confirm the date(s) for delivery to Site of Supply Only Materials. Fulcrum will arrange for such materials to be delivered to and off loaded at or adjacent to the Site. Unless otherwise stated in the Quotation or Programme, such materials are to be delivered in a single consignment.
- 3.3 The Client is responsible for supervising offloading of all Supply Only Materials and for removing any such materials to suitable storage areas. Following delivery to or adjacent to the Site, such materials shall be at the sole risk of the Client.
- 3.4 Subject to the following, Fulcrum warrants that at the time of delivery such materials will be free from defects and damage and in accordance with any description and quantity identified in this Agreement.
- 3.5 On delivery of such materials the Client will check that the materials are undamaged and otherwise free from defects and that the types and quantities of materials delivered are as specified in the Quotation and the delivery note.
 - (a) If the Client finds any defect in the materials or that the materials are not of the type(s) specified in the Quotation and the delivery note, the Client shall reject the materials immediately and endorse such rejection and the nature of such defect(s) and/or discrepancies on the delivery note or (if none is proffered) other contemporaneous written record created by the Client, and provide a copy of such note or record to the person making the delivery;
 - (b) if the Client finds any shortage in the quantity of materials delivered as against the quantities of such materials specified in the Quotation the Client shall endorse details of the shortfall on the delivery note or (if none is proffered) other contemporaneous written record created by the Client, and provide a copy of such note or record to the person making the delivery.

Within 24 hours following delivery the Client will give to Fulcrum by fax or email a copy of the delivery note as issued to the Client by Fulcrum's supplier at the time of delivery and any other contemporaneous record referred to above, endorsed where appropriate in accordance with the above provisions.

3.6 Save only to the extent that the Client proceeds in accordance with clause 3.5 above (including without limitation endorsement of any defect, discrepancy or shortfall as required by that clause):

- (a) the Client is deemed to accept the materials; and
- (b) It is further deemed that immediately following delivery the materials are free from defects and in accordance with the types and delivered in the quantities specified in this Agreement.

Fulcrum shall have no liability for or in connection with any damage, defect, discrepancy or shortage not notified in accordance with the above and any such matter shall be rectified at the sole cost of the Client.

3.7 Title in Supply Only Materials will pass to the Client on the later of:

- (a) delivery to or adjacent to the Site; and
- (b) receipt by Fulcrum of payment in full (free from any set off or deduction) in respect of such Supply Only Materials.

Fulcrum warrants that it has all necessary rights and title to pass title to the Client in accordance with the above.

3.8 The warranties set out above are the sole warranties provided by Fulcrum in relation to any Supply Only Materials. All other warranties, whether implied by statute or otherwise, are excluded to the fullest extent permitted by law.

4 SITE SURVEYS

4.1 Where the Quotation indicates that Fulcrum was unable to gain access to carry out a Site Survey prior to issuing the Quotation, the Quotation will be subject to amendment and the Price and Programme shall be adjusted to take into account any working restrictions, physical conditions and/or obstructions not expressly allowed for in such Quotation.

5 QUOTATION, ACCEPTANCE AND SUPPLIER NOMINATION

5.1 The Quotation is personal to the Client and may not be assigned without Fulcrum's written consent.

5.2 To proceed with a Quotation, the Client must complete and return the Quotation Acceptance Form to Fulcrum 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 Fulcrum of the Quotation Acceptance Form. The Quotation may be withdrawn by Fulcrum at any time prior to Acceptance.

5.4 Where the Client accepts an option within the Quotation indicating that the Client wishes Fulcrum to nominate the energy supplier, the following provisions apply. Compliance by the Client with these provisions is a conditions precedent to the Client's entitlement to all or any part of the discount identified within the Quotation.

- (a) The Client will sign and return to Fulcrum a copy of the energy supplier nomination form (as referred to in the Quotation) together with the Quotation Acceptance Form.
- (b) The Client will enter into such agreements with and accept such terms as the Energy Supplier may require.
- (c) Following completion and hand over of each property comprised in the Client's development, the Client will forward to Fulcrum a all documentation relating to the transfer of responsibility to the new owner or occupier (as provided by, or obtained by the Client from, the Nominated Energy Supplier) in respect of each electricity Supply Point and gas Supply Point serving such property, duly completed and signed by all relevant parties in accordance with the Nominated Energy Supplier's requirements.
- (d) Where following Completion of the Works the total number of Supply Points comprised in the Completed Works and supplied by the Nominated Energy Supplier is less than that anticipated in calculating the discount Fulcrum will be entitled to:
 - (i) reduce the discount pro rata (on the basis that the total discount identified in the Quotation is apportioned equally across all Supply Points and that all Supply Points are to be supplied by the Nominated Energy Supplier); and
 - (ii) issue an invoice to the Client for any outstanding amount due following reduction of the discount (together with VAT as applicable).

The Client will pay the amount due pursuant to such invoice within 30 days of the date of Fulcrum's invoice.

6 CONDITIONS PRECEDENT AND COMMENCEMENT

6.1 Notwithstanding any other provision of this Agreement, Fulcrum 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 any Construction Commencement Date;

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 Fulcrum's 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) Fulcrum has entered into each of the Network Agreements relating to the Works and each such agreement remains in full force and effect;
- (b) Fulcrum's employment under any of the Network Agreements has not been terminated for any reason;
- (c) the Client has made payment in full (free from any set-off or deduction) of any Advance Payment;
- (d) any Street Works Licence or other permission, licence or consent required in connection with the Works has been obtained;
- (e) 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;
- (f) any approval, authorisation or consent required under the Network Agreements has been given by the relevant Network Owner;
- (g) any Non-Contestable Works have been performed to the extent necessary to enable the Works to progress;
- (h) the Client has complied with its obligations under Clause 8.1 in full; and
- (i) the Client has entered into an agreements for energy supplies to all gas and electricity Supply Points on the Site and such agreements remain in full force and effect, and has notified Fulcrum of all contract reference numbers generated by the relevant suppliers.

6.4 Subject to clause 7.2 below, Fulcrum shall have no liability to the Client or any third party by reason of any failure or delay in the fulfilment of any of the Conditions Precedent.

6.5 If at any time following Acceptance any of the Conditions Precedent are not fulfilled during any continuous period of 3 months either Party may by written notice to the other elect not to proceed with the Works forming the subject of the relevant Quotation. Save to the extent the Parties agree otherwise any such written notice shall constitute a Variation omitting any outstanding part 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.

7 FULCRUM'S OBLIGATIONS

7.1 Fulcrum 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 Fulcrum shall use reasonable endeavours to:

- (a) enter into the Network Agreements and obtain any approval, authorisation or consent required under such agreements;
- (b) obtain any required Street Works Licence;

- (c) liaise with any Network Owner for the purpose of co-ordinating any Non-Contestable Works;

provided always that Fulcrum shall have no obligation to do so unless the Client has paid in full any Advance Payment that is due under this Agreement (free from any set-off or deduction).

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

- (a) procure, perform and supervise the Works in compliance with these Conditions and all relevant Legislation;
- (b) comply with all relevant health and safety requirements;
- (c) comply with the Programme and meet the Construction Commencement Dates relating to the Works and any Phase of the Works;
- (d) comply with all reasonable Site rules agreed between the Parties;
- (e) comply with the terms of any permission, licence or consent required in connection with the Works and notified to Fulcrum by the Client; and
- (f) subject to provision by the Client of any confirmation of authority required by the relevant Meter Asset Manager or Meter Operator, liaise with such Meter Asset Manager and Meter Operator as necessary for the purpose of co-ordination of Meter installation.

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

- (a) supply and installation of any Meter housing or backboard;
- (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 Fulcrum will terminate at the Supply Point;
- (c) provision of any temporary supplies;
- (d) inspection, installation or alteration of any Outlet;
- (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 Fulcrum will take reasonable care to avoid or minimise damage to such plants;
- (h) diversion of any existing apparatus, cable, duct, pipe-work, drain or infrastructure;

- (i) any excavation, backfilling, provision and placing of any bedding and/or surrounding materials within any trench or excavation, or temporary or permanent reinstatement on the Site or otherwise required in connection with the Works, other than any excavation, placing of bedding and/or surrounding materials, backfilling or reinstatement required in a Highway;
- (j) removal from site of any material excavated in connection with any trench or other excavation required for the Works (whether carried out by Fulcrum or others);
- (k) provision and installation of any ducting or laying any supply pipe or communication pipe between the location of each Supply Point and the point of connection to the relevant main;
- (l) provide and install any required ducting and any supply pipe or communication;
- (m) construction or formation of any point of entry into any building;
- (n) reinstating any original surface (including without limitation any paving, mosaic, coloured tarmac, or tiles) other than within a Highway. Where the Quotation expressly includes reinstatement beyond any Highway
 - (i) Fulcrum will reinstate with a safe temporary surface, and
 - (ii) metalled surfaces will be reinstated with tarmac only or alternatively (at Fulcrum's discretion and without imposing any responsibility upon Fulcrum to prevent any damage) Fulcrum may relay any undamaged modules removed upon excavation and left adjacent to the excavation;
- (o) performance of the Works or the design thereof so as to avoid interruption to the conveyance of gas, electricity or water to the Supply Point during the conduct of the Works or in the course of any future maintenance of the Works;
- (p) carrying out works outside Normal Working Hours;
- (q) any works and/or matters excluded in the Quotation.

7.5 Notwithstanding any other provision of this Agreement any works or commissioning that cannot lawfully be undertaken

- (a) prior to adoption of the relevant part(s) of the Works by a Network Owner; or
- (b) other than by or on behalf of a Network Owner;

shall not form part of the Works or otherwise be included in Fulcrum's obligations under this Agreement save to the extent that Fulcrum can lawfully perform such works or commissioning under and in accordance with the relevant Network Agreement.

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

- (a) non-fulfilment of any of the Conditions Precedent;

- (b) the Client's inability or failure to give access to and use of the Site as required or the Site otherwise not being ready for performance of the Works or relevant Phase of the Works (as the case may be);
- (c) following a request from the Client for a Variation until receipt of the Client's written acceptance of a Change Event Quotation in relation to such request or the Client's written confirmation that the requested Variation is not to proceed and the Works are to continue in accordance with the original design;
- (d) following occurrence of any Change Event until receipt of the Client's written acceptance of a Change Event Quotation;
- (e) Fulcrum is lawfully entitled to suspend all or such part of the Works.

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 relevant Construction Commencement Date or at such earlier time as Fulcrum may reasonably require:

- (a) provide all necessary information to Fulcrum. 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.

The Client acknowledges and agrees that such information may be relied on by Fulcrum in carrying out the Works and for all purposes relating to this Agreement;

- (b) grant or procure the grant from any relevant third party of all planning and other permissions, consents, approvals, licences, 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 completed Works, and ownership of the Works by the relevant Network Owner (including without limitation all permissions, consents, licences, easements, conveyances, leases, grants, transfers, interests and rights required by and on any terms specified by the relevant Network Owner), save that the Client shall not be required to obtain any Street Works Licence;
- (c) grant or procure permission to enable Fulcrum, 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 Fulcrum may reasonably require for performance of the Works and ensure that Fulcrum, 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 8.1(b) and 8.1(c) above by notifying Fulcrum in writing when it has fulfilled such obligations and providing to Fulcrum copies of all planning and other permissions, consents, licences, 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, licences, easements, leases, interests and rights shall be deemed not to be in place until such copies have been provided to Fulcrum.

8.2 Save where the Quotation expressly states to the contrary the Client shall promptly and so as to not to cause any delay or disruption to the Works, and in each case in accordance with all applicable Legislation, standards, specifications and codes of practice:

- (a) where required pursuant to the Quotation or any Variation or as agreed in writing between the Parties, provide any Plant and Materials, Equipment and services to be provided by the Client;
- (b) provide and install any Meter housing or backboard;
- (c) provide, erect and dismantle any scaffolding, raised platform or other access system required in connection with the Works;
- (d) relocate and protect as necessary any growing plants;
- (e) arrange diversion of any existing apparatus, cable, duct, pipe-work, drain or infrastructure to avoid clashes with any part of the Works;
- (f) carry out any excavation, backfilling, provision and placing of any bedding and/or surrounding materials within any trench or excavation, or temporary or permanent reinstatement on the Site or otherwise required in connection with the Works, other than any excavation, placing of bedding and/or surrounding materials, backfilling or reinstatement required in a Highway;
- (g) provide and install any required ducting and any provide and lay any supply pipe or communication pipe between the location of each Supply Point and the point of connection to the relevant main;
- (h) construct or otherwise form of any point of entry into any building;
- (i) provide in advance of commencement of the Works line and level for installation of the Works to comply with NJUG version 7;
- (j) ensure that all works to be carried out by others or that are to be completed prior to performance of all or any part(s) of the Works are carried out;
- (k) pay to Fulcrum all sums falling due under this Agreement (subject to any right of set-off or deduction the Client may have in accordance with this Agreement);
- (l) 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 Fulcrum 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 Fulcrum or any Network Owner.

9 ACCESS TO THE WORKS

- 9.1 Fulcrum shall afford the Client together with any other person(s) nominated by the Client and approved by Fulcrum 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 Fulcrum may reasonably impose and shall ensure that any such nominated persons comply with such rules and regulations.
- 9.2 Supervision of the Works will at all times remain the responsibility of Fulcrum.

10 CHANGE EVENTS

- 10.1 The Client may request in writing a Variation. The Client acknowledges that any Variation will require design approval by any relevant Network Owner. Subject to the following provisions of this Clause 10 and the granting of any such approval, a Variation requested by the Client shall take effect.
- 10.2 The following are Change Events:
- (a) a Variation requested by the Client;
 - (b) a Network Owner requires Fulcrum to make any Variation or other change to the design or performance of the Works;
 - (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 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 Fulcrum;
 - (e) Fulcrum encounters:
 - (i) any artificial obstruction not accurately identified and located within information provided to Fulcrum by the Client or relevant Network Owner prior to the date of Acceptance;
 - (ii) site layouts or physical conditions that could not reasonably have been foreseen by Fulcrum (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, condition or item necessitates a Variation or other change to the design or performance of the Works;

- (f) any matter or circumstance identified in the Quotation or these Conditions as not having been allowed for in the Price occurs;
- (g) the imposition of working restrictions or Site rules that Fulcrum (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) unreasonable terms of any permission, consent, licence, easement or lease in connection with or affecting the Works or performance of the Works;
- (j) the interference of the owners or occupiers of land to which Fulcrum requires access for the performance of the Works;
- (k) Fulcrum is entitled to and does suspend or defer all or any part of the Works 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 on any ground entitling Fulcrum to make such suspension or deferral pursuant to this Agreement;
- (l) the Works are destroyed or damaged (whether in whole or in part) due to any matter not expressly at Fulcrum's risk pursuant to this Agreement;
- (m) 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;
- (n) any amendment, modification or substitution made to or replacement of NRSWA as in force at the date of the Quotation or implementation of any regulations 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;
- (o) 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 Fulcrum (acting as an RPO) as at the date of issue of the Quotation;

To avoid 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 Fulcrum shall notify the Client in writing of the occurrence of a Change Event. Subject to the following provisions of this clause 10, Fulcrum shall be entitled to make a fair and

reasonable adjustment to the Price in respect of any Change Event and as otherwise provided 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) Fulcrum shall be entitled to retain provision within the Price for:
 - (i) any 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 (in each case whether prior to Acceptance or otherwise);
 - (ii) any costs incurred in obtaining or attempting to obtain any Street Works Licence;
 - (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 Fulcrum for which Fulcrum is liable and unable lawfully or contractually to avoid, including (without limitation) forfeited deposits and cancellation charges; and
 - (v) contribution to management costs and overheads.
- (b) The Parties agree that for the purposes of this clause 10.4, the provision within the Price for the matters referred to in clause 10.4(a)(i) is deemed to be 10% of the total Price for the whole of the Works assessed immediately prior to the cancellation or Variation referred to or (in the case of cancellation of or a Variation omitting part(s) only of the relevant Works) 10% of the part of such Price relating to the cancelled or omitted part(s) of the Works.
- (c) 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.

10.5 There shall be no adjustment to the Price in respect of any change to the Works or the design of the Works:

- (a) required by the Network Owner, or
- (b) due to any error or inaccuracy in the location of final connection point(s) onto any existing Network as indicated by the relevant Network Owner; or
- (c) due to any error or inaccuracy in or change to any information provided by the relevant Network Owner or others (not being the Client or any party providing information on behalf of the Client) concerning any existing Network or infrastructure.

10.6 Save where the scope of Works included in any Phase of the Works and to be carried out during the relevant Site visit includes installation of mains intended to serve multiple Supply Points and save as agreed in respect of connection of services to show homes, where:

- (a) Fulcrum is requested to attend Site to connect services to fewer than four Supply Points in any one visit, or
- (b) having attended Site is unable to connect services to a minimum of four Supply Points because the Site is not ready or the Client has failed to comply with its obligations under this Agreement;

Fulcrum shall be entitled to payment in all respects as if installation of services to four Supply Points had been completed during such visit and the Price shall be adjusted accordingly. This provision is in recognition of the cost to Fulcrum of attending Site and does not detract from Fulcrum's entitlement to payment for any subsequent installation and/or connection of services.

10.7 Subject to the preceding provisions of this clause 10, following receipt of a request for a Variation and following occurrence of any Change Event Fulcrum will evaluate the impact of such requested Variation or Change Event and provide a quotation (a "Change Event Quotation") to the Client setting out any adjustment to the Price (including adjustment of the part of the Price applicable to any Phase of the Works and (where applicable) adjustment to any Advance Payment and/or stage payments) the Programme and the Construction Commencement Date by reason of such requested Variation or Change Event that Fulcrum, acting as an RPO, considers appropriate. Without limitation to the foregoing, where a requested Variation or Change Event would or does entail delay to all or part of the Works Fulcrum may include in the Change Event Quotation adjustments to reflect inflationary and other increases in the cost to Fulcrum of performing the Works by reason of such delay.

10.8 Within 7 days (or such other period as may be agreed by the Parties) of issue of a Change Event Quotation by Fulcrum 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 Construction Commencement Date and the Programme 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) in the case of a requested Variation, accept in writing a Change Event Quotation or confirm that the requested Variation will not proceed and the Works are to continue in accordance with the original design; and
 - (ii) in the case of any other Change Event, accept in writing a Change Event Quotation in respect of the occurrence of the relevant 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 omitting

any outstanding part 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.

11 PROGRAMMING

- 11.1 Subject to the foregoing and to Clause 6.1, save where such dates are specified in the Programme, Fulcrum will schedule and following agreement of the Client (such agreement not to be unreasonably withheld or delayed) confirm to the Client in writing:
- (a) the Construction Commencement Date for the Works and (where applicable) any Phase of the Works; and
 - (b) the delivery date for any Supply Only Materials to be provided by Fulcrum in accordance with this Agreement.
- 11.2 Unless the Quotation expressly states to the contrary, the Price has been calculated on the basis that:
- (a) the Works will be carried out continuously and all gas, electricity and water infrastructure will be installed simultaneously; and
 - (b) any Supply Only Materials will be delivered in a single delivery.
- 11.3 The Client acknowledges and agrees that Fulcrum's ability to comply with the Programme and the Construction Commencement Dates is dependent upon the Client fulfilling its obligations under Clause 8.

12 EXTENSIONS OF TIME

- 12.1 If the commencement or completion of all or any part of the Works and/or delivery of any materials is delayed or impeded by reasons of:
- (a) a Change Event;
 - (b) Force Majeure;
 - (c) any other matter which is outside the control of Fulcrum and which could not reasonably have been foreseen by Fulcrum (acting as an RPO) as at the date of issue of the relevant Quotation;
 - (d) interference of the owners or occupiers of land to which Fulcrum requires access for the performance of the Works;
 - (e) delay imposed by a Network Owner or due to Network Owner requirements (provided that such delay is not due to Fulcrum's negligence or breach of contract) and any delay due to any breach or failure by the Network Owner;
 - (f) the Client's failure or delay in performing its obligations under this Agreement.
- 12.2 Fulcrum will notify the Client of such delay or impediment. The Construction Commencement Dates, the Programme and any other dates pursuant to this Agreement shall be adjusted by addition of a period equal to such delay or the delay caused by such

impediment (as the case may be) together with a reasonable allowance for any mobilisation or re-mobilisation, provided that Fulcrum shall not be entitled to any such adjustment in respect of delay caused by circumstances beyond Fulcrum's control to the extent that:

- (a) it would (as at the date of issue of the Quotation) have been reasonable to expect Fulcrum (acting as an RPO in the ordinary course of its business) to plan for and provide contingency arrangement to avoid or reduce such delay in the circumstances that have occurred; and
- (b) such delay would have been avoided or reduced had such contingency arrangements been in place.

12.3 Fulcrum shall use reasonable endeavours to avoid and minimise delay to the Works.

13 COMPLETION

13.1 Upon Completion of the Works and each Phase of the Works, Fulcrum will give the Client a Handover Notice. The Client will sign and return a copy of the Handover Notice as acknowledgment of completion of the Works or Phase of the Works identified in the Handover Notice.

14 TITLE AND RISK

14.1 The Client acknowledges and agrees that title to the Works and any Plant and Materials incorporated into the Works will vest in the relevant Network Owners on or before Completion of the Works.

14.2 Subject to any contrary provisions within the Network Agreements, title to the Works and all Plant and Materials incorporated or to be incorporated into the Works will vest in Fulcrum unless and until such title vests in the Network Owner.

14.3 Save to the extent that any loss or damage is caused by the negligence or breach of this Agreement by Fulcrum, the Works on Site will at all times be at the risk in the Client.

15 NETWORK OWNER DEFAULT

15.1 In the event that a Network Owner defaults under the terms of any of the Network Agreements, Fulcrum may (where practicable and with the Client's agreement, such agreement not to be unreasonably withheld or delayed) and subject to the terms of the relevant Network Agreement enter into an alternative Network Agreement with an alternative Network Owner.

16 PRICE REVIEW

16.1 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.

16.2 A Price Review Date will occur on the date immediately following expiry of 12 months from the date of the Quotation and thereafter on each anniversary of that date.

16.3 On each Price Review Date any part of the Price that has not yet fallen due to Fulcrum will be adjusted in accordance with the change identified by the Retail Prices Index since

the date of the Quotation or (where there has been a previous Price Review Date) since the last Price Review Date.

17 PAYMENT

- 17.1 In consideration of Fulcrum's of its obligations under this Agreement the Client will pay to Fulcrum the Price (plus VAT as applicable).
- 17.2 Subject to any contrary provisions set out in the Quotation, any provision of this Agreement for earlier payment and any adjustments in accordance with this Agreement:
- (a) 10% of the Price will fall due on and will be paid at the time of Acceptance; and
 - (b) any part of the Price that relates to a charge levied by a Network Owner for Non-Contestable Works or otherwise for acceptance of adoption will be paid by the Client within 14 days of Fulcrum's written request to the Client for payment;
 - (c) the balance of the Price will fall due 35 days prior to the first Construction Commencement Date and the final date for payment of such balance shall be 7 days after such balance falls due.
- 17.3 Where in accordance with this Agreement any adjustment is made to any Advance Payment (including any Advance Payment for any Phase of the Works or other stage that has been completed):
- (a) Fulcrum shall be entitled to invoice the Client immediately for any increase in such the Advance Payment; and
 - (b) any decrease in the value of any such Advance Payment previously invoiced to and paid by the Client shall be deducted from the next payment due in respect of the Works or refunded by Fulcrum to the Client to the extent that no further payment is or will become due; and
 - (c) payment by the Client of any increase in any Advance Payment shall be deemed to form part of the Conditions Precedent.
- 17.4 The Client shall bear all Value Added Tax that becomes due on the Price.
- 17.5 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 Fulcrum.
- 17.6 If payment is late the Client shall pay interest on the amount of such late payment from the final date for payment of Fulcrum' invoice at an annual rate of three percent (3%) per annum above the Barclays Bank 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 Fulcrum 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 Fulcrum.
- 17.7 If the Client disputes any invoice or any part thereof it shall notify Fulcrum of the amount in dispute within 42 days of the invoice and such dispute shall be resolved in accordance with clause 33. Without prejudice to the above provisions of this clause 17, the Client will pay the undisputed portion of any invoice notwithstanding any such dispute.

18 SUSPENSION

- 18.1 In the event that the Client is in breach of any of the payment provisions of this Agreement, Fulcrum shall be entitled, on giving seven (7) days written notice, to suspend performance of its obligations under this Agreement in whole or in such part as Fulcrum in its absolute discretion shall decide, until the Client has rectified such breach.

19 WARRANTY

- 19.1 Subject to the following provisions of this Clause 19, Fulcrum 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 used or relied upon by Fulcrum in performing the Works; or
 - (c) any breach or default on the part of the Client.
- 19.2 All warranties (whether implied by statute or otherwise) on the part of Fulcrum in relation to the Works other than those expressly set out in this Agreement are excluded to the fullest extent permitted by law.
- 19.3 The Client shall promptly notify Fulcrum in writing of any breach of the warranty given in Clause 19.1 and give Fulcrum a reasonable opportunity to rectify any such defect. The Client shall provide such access to the Site as Fulcrum reasonably requires in order to conduct such rectification. The sole liability of Fulcrum for any breach of such warranty shall be to rectify any such defect at its own cost.
- 19.4 The Client acknowledges that where title in the Works or any part of the Works is vested in a Network Owner any rectification works will be subject to the approval, instruction, direction and control of the relevant Network Owner. Fulcrum will have no liability to the Client in respect of any breach of warranty where and to the extent that the Network Owner does not approve or otherwise elects not to proceed with rectification of a defect.
- 19.5 Fulcrum shall not be liable to the Client for any defect in the Works, or (as the case may be) any design defect in works executed to Fulcrum's design, unless the Client has given Fulcrum an opportunity to rectify in accordance with this Clause 19. Where Fulcrum is given such an opportunity but fails to rectify such defect within a reasonable time taking into account the provisions of clause 19.3 above, Fulcrum's sole liability to the Client in respect of the defect and such failure shall be the reasonable direct cost incurred by the Client in rectifying such defect.
- 19.6 The Client agrees that the Network Owner decision in relation to any aspect of the Works, including without limitation any defect, shall be final and binding upon the Client. Without prejudice to the generality of the foregoing, in the event that a Network Owner has given an instruction to Fulcrum to correct any defect pursuant to any Network Agreement or otherwise to carry out any additional or remedial works, and such action would conflict with any notice given by the Client under Clause 19.3, the Network

Owner's instruction shall take precedence and Fulcrum shall notify the Client in writing of the same. Any work performed by Fulcrum in the rectification of any defect notified to Fulcrum by the Network Owner shall be deemed to be the rectification of any similar defect notified by the Client pursuant to this Clause 19. The Client agrees to grant Fulcrum and the Network Owner such access as either party reasonably requires for the inspection and testing of the Works and any defects to be corrected by Fulcrum pursuant to any Network Agreement.

19.7 Notwithstanding any other provision of this Clause 19 or this Agreement and without extension to any applicable period of limitation, warranties under this Agreement on the part of Fulcrum shall expire in accordance with the following provisions.

- (a) insofar as such warranties relate to reinstatement works or any other part of the Works that has not and is not intended to vest in a Network Owner (or any alternative Network Owner) such warranties shall expire 12 months following Final Completion;
- (b) insofar as such warranties relate to the exercise of reasonable skill and care in relation to the design capacity of the completed Works, such warranties shall expire 12 months following Substantial Completion;
- (c) insofar as such warranties relate to matters other than those referred to in clauses 19.7(a) or (b) above, such warranties shall expire on the earlier of
 - (i) the date on which the Works are taken into use,
 - (ii) the earliest date following Substantial Completion on which the Works could have been taken into use were it not for any delay, breach or default of the Client in performing any of its obligations under this Agreement, and
 - (iii) 12 months following Substantial Completion.

19.8 Following expiry in accordance with the above provisions of the warranties set out in clause 19.1 Fulcrum shall have no further obligation or liability to the Client:

- (a) to provide the Works; or
- (b) for any breach of any warranty in relation to the Works or the design or performance of the Works whether set out in this Clause 19 or otherwise; or
- (c) in connection with rectification or the cost of rectification of any defect in the Works or any design defect (as the case may be);

whether under this Agreement or otherwise.

19.9 For the avoidance of doubt, any liability of Fulcrum under this Clause 19 is subject to the provisions of Clause 21.

20 INDEMNITY

20.1 The Client shall indemnify Fulcrum 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 Fulcrum by reason of any failure of the Client to comply with its obligations under Clause 8.1.

21 LIMITATION OF LIABILITY

21.1 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 20.1.

The following provisions of this Clause 21 are subject always to this Clause 21.1.

21.2 Fulcrum'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 25% of the original Price as set out in the relevant Quotation for any and all such liability; and

21.3 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.

22 INSURANCES

22.1 Fulcrum 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 within the customs territory of the European Union 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 £5,000,000 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.

23 FORCE MAJEURE

23.1 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.

23.2 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 endeavours to mitigate the severity of the impact of the Force Majeure;
- (c) Subject to the provisions of this Clause 23, 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.

23.3 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 Fulcrum'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, Fulcrum's employment in relation to such Works will terminate on the termination date set out in the notice.

23.4 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 lock out;
- (h) refusal by a relevant authority to grant any Street Works Licence 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 licence or permission or the refusal to grant any such licence 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.

24 CANCELLATION AND TERMINATION

- 24.1 Any written notice issue by the Client under or in connection with this clause 24 must be addressed to the Commercial Director of Fulcrum, failing which such notice shall not be valid.
- 24.2 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.
- 24.3 If Fulcrum commits a material breach of its obligations under this Agreement, the Client may give Fulcrum written notice identifying the breach and stating that notice of termination will be served if such breach is not remedied. If Fulcrum fails to remedy such breach within 28 days 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 Fulcrum's employment under this Agreement.
- 24.4 If the Client:
 - (a) does not pay Fulcrum 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;

Fulcrum 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 14 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 Fulcrum that it has taken and is taking steps to remedy such breach and will remedy such breach within a period agreed with Fulcrum (such agreement not to be unreasonably withheld or delayed), then Fulcrum may forthwith by written notice terminate its employment under this Agreement.

- 24.5 Either Party may terminate Fulcrum's employment under this Agreement forthwith by written notice to the other in the event that the other Party:
 - (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.

24.6 Notwithstanding any other right or remedy of the Parties under this Agreement, termination under Clause 23 or this Clause 24 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 (in each case insofar as reasonably practicable taking into account any Force Majeure giving rise to such termination). The provisions of clause 10.4 will apply in relation to any such Variation, provided that in the event of termination by the Client under clause 24.3 or clause 24.5 (but not otherwise) clauses 10.4(a)(i) and (iv) and clause 10.4(b) will not apply when calculating any consequent adjustment to the Price.

24.7 Subject to deduction of all previous payments made by the Client to Fulcrum under this Agreement, the Client shall pay to Fulcrum the Price as adjusted in accordance with clause 24.6. In the event that such Price is less than the total of such previous payments, Fulcrum will pay the difference to the Client.

25 INTELLECTUAL PROPERTY

25.1 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.

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

25.3 The Client grants to Fulcrum an irrevocable non exclusive royalty free licence to use Background Intellectual Property owned by the Client and to sub-licence such Background Intellectual Property to any Network Owner(s) so far as necessary for the purpose of:

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

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

25.4 Fulcrum grants to the Client an irrevocable non exclusive royalty free licence 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 completed Works, provided always that such licence shall terminate with effect from the date on which the Works are 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 Fulcrum's design are completed and taken into use. Fulcrum warrants that it has all necessary rights and/or title to enable it to grant such licence.

25.5 The Client shall indemnify and hold harmless Fulcrum 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 licence granted under this Agreement; or
- (b) use within the scope of the licence granted under this Agreement of all or any part of:
 - (i) the Background Intellectual Property licensed to Fulcrum under Clause 25.3; or
 - (ii) any rights held out by the Client as forming part of such Background Intellectual Property;

infringing the rights of any third party.

26 CONFIDENTIALITY

26.1 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 Fulcrum needs to disclose such information to a Network Owner under or in connection with any Network Agreement, or to 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.

26.2 Where a Party makes disclosure to any adviser, 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 endeavours to procure that any such adviser, 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.

26.3 Upon Final Completion of the Works or earlier termination of Fulcrum's employment under this Agreement, each Party shall return to the other all Confidential Information which has been disclosed by the other Party.

27 ENTIRETY OF AGREEMENT AND AMENDMENTS

27.1 This Agreement constitutes the entire agreement between Fulcrum 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.

27.2 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.

27.3 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.

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

28 WAIVER

28.1 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.

28.2 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.

28.3 No failure or delay in exercising any right or remedy under this Agreement shall be construed as a waiver of that right or remedy.

28.4 No single or partial exercise of any right or remedy shall preclude further exercise of that right or remedy.

28.5 No waiver by a Party of any breach of this Agreement shall be construed as a waiver of any preceding or subsequent breach.

29 RELATIONSHIP OF PARTIES

29.1 The status of Fulcrum shall be that of independent contractor and the relationship of the Parties shall not be that of principal and agent or employer and employee.

30 ASSIGNMENT AND SUB-CONTRACTING

30.1 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 Fulcrum to an Affiliate.

30.2 Fulcrum shall have the right to sub-contract the whole or any part of the Works. Any such sub-contracting shall not relieve Fulcrum from any liability or obligation under this Agreement.

31 NOTICES

31.1 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.

31.2 Unless otherwise agreed or the contrary is provided in these Conditions 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.

31.3 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.

32 THIRD PARTY RIGHTS

32.1 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.

33 LAW AND DISPUTES

33.1 This Agreement shall be governed by and construed in accordance with the laws of England.

- 33.2 The English Courts shall 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.
- 33.3 Any dispute between the Parties may be referred to adjudication in accordance with the TeCSA Adjudication Rules.