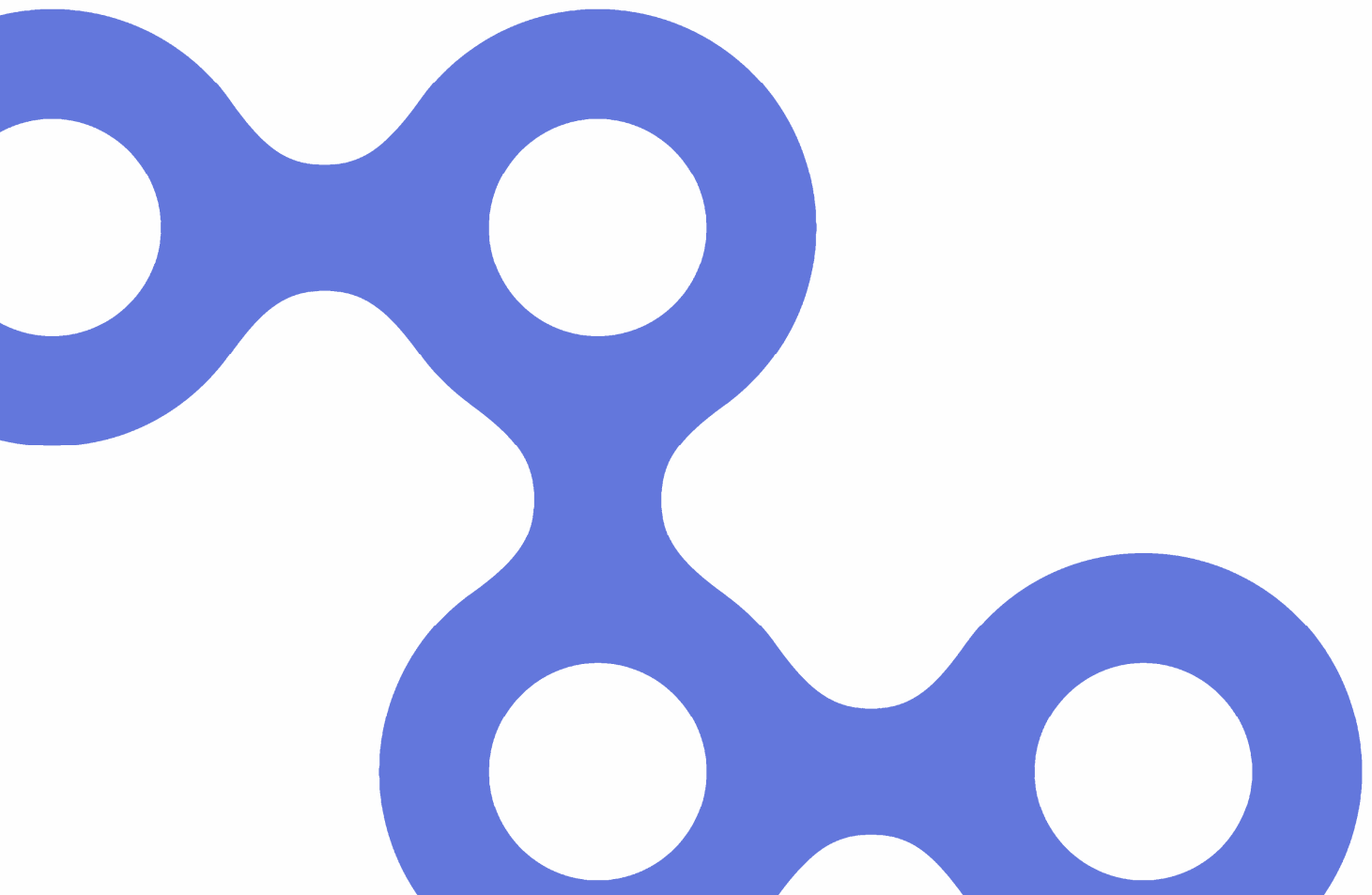




**FULCRUM INFRASTRUCTURE SERVICES LIMITED**  
**TERMS AND CONDITIONS**  
**FOR CUSTOMER WORKS**  
**VERSION 9**



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## TERMS & CONDITIONS

### 1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions where the context so admits the following words and expressions have the following meanings:

- (a) **Acceptance** shall have the meaning ascribed to the term in Clause 2.4;
- (b) **Affiliate** shall mean 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;
- (c) **Affected Party** shall have the meaning ascribed to the term in Clause 21.2
- (d) **Asset** shall mean the Works or any Phase of the Works (up to and including the emergency control valve) upon completion including (without limitation) any Plant and Materials incorporated into the Works;
- (e) **Background Intellectual Property** shall mean 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;
- (f) **Client Designated Representative** shall mean the person notified to Fulcrum in accordance with Clause 3;
- (g) **Commissioning** shall mean purging to natural gas of those elements of the Works designed to convey or contain natural gas, and its pressurisation to normal operating pressure;
- (h) **Completion Notice** shall mean the notice to be served by Fulcrum on the Client upon Substantial Completion of the Works, or any Phase of the Works;
- (i) **Confidential Information** shall mean 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;
- (j) **Confirmation of Acceptance** shall mean Fulcrum's written acknowledgment and acceptance of the Quotation Acceptance Form;

- (k) **Construction Commencement Date** shall mean the date specified in the Programme or advised by Fulcrum to the Client in accordance with Clause 10.1, being the date upon which Fulcrum will commence the construction of the Works, or where the Works are to be performed in phases, the date upon which Fulcrum will commence construction of the first Phase of the Works;
- (l) **Contract** shall mean the contract comprising:
- (i) the Quotation, these terms and conditions and any documents expressly incorporated therein;
  - (ii) the Quotation Acceptance Form; and
  - (iii) the Confirmation of Acceptance;
- (m) **Date for Substantial Completion** shall mean a date specified in the Programme or advised by Fulcrum to the Client in accordance with Clause 10.1 (subject in each case to any adjustment to such date in accordance with this Contract), being the date upon which Fulcrum will achieve Substantial Completion of the Works or a Phase of the Works (as the case may be);
- (n) **Equipment** shall mean 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 in the Works;
- (o) **Force Majeure** shall have the meaning ascribed to the term in Clause 21.4;
- (p) **Fulcrum** shall mean Fulcrum Infrastructure Services Limited (Company Number 6006363) whose registered office is at 201 Bishopsgate, London EC2M 3AF;
- (q) **Fulcrum Designated Representative** shall mean the person notified to the Client in accordance with Clause 3;
- (r) **Gas Transporter** shall mean a gas transporter within the meaning of and licensed under the Gas Act 1986 who has agreed with Fulcrum to take ownership of the Works and the Asset pursuant to the Gas Transporter Agreement or any alternative gas transporter appointed by Fulcrum in replacement therefor;
- (s) **Gas Transporter Agreement** shall mean an agreement entered into or to be entered into between Fulcrum and a Gas Transporter under which the Gas Transporter agrees to execute the Works and/or adopt the Asset in accordance with the terms and conditions stated therein, provided that where 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 assets from time to time, any reference in this Contract 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 Works and/or the Asset;
- (t) **Highway** shall mean 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;

- (u) **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;
- (v) **Legislation** shall mean all statutes, statutory instruments, by-laws, regulations and directives, applicable to the Works or that affect Fulcrum in carrying out the Works;
- (w) **Meter** shall mean any device(s) to record the volume of gas passing or intended to pass through the Supply Point and, in connection with such recording, to control such gas;
- (x) **Minimum Information Requirements** shall mean the information Fulcrum requests from the Client and such information as identified in the Customer Application Form (FCM11) completed prior to submission of the Quotation;
- (y) **Network** shall mean a gas pipeline which is designed or installed so that either one or alternatively several buildings can be connected to it, including any and all mains or service pipes, meters, meter boxes, governors and ancillary plant and equipment;
- (z) **Network Owner** shall mean the owner of a Network.
- (aa) **Normal Working Hours** shall mean the hours of 8.00 am to 5.00 pm on any day during which the clearing banks in the City of London are open;
- (bb) **Notice of Adjustment for Variation** has the meaning ascribed to the term in Clause 9.3;
- (cc) **NRSA** shall mean 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;
- (dd) **Outlet Pipe** shall mean all pipe and gas consuming facilities installed or to be installed downstream of any Meter;
- (ee) **Party** shall mean the Client or Fulcrum, as the case may be, and **Parties** shall mean both of them;
- (ff) **Phase of the Works** shall mean, where applicable, each phase identified in the Quotation or otherwise agreed in writing between the Parties;
- (gg) **Plant and Materials** shall mean any items intended to be incorporated into the Works;
- (hh) **Price** shall mean the total price for the Works as adjusted in accordance with this Contract;

- (ii) **Price Review Date** has the meaning ascribed to the term in Clause 14.2;
- (jj) **Programme** shall mean the programme for the Works or any Phase of the Works as identified or detailed in the Quotation or otherwise agreed in writing between the Parties;
- (kk) **Quotation** shall mean the quotation forming part of this Contract as issued by Fulcrum and addressed to the Client containing (inter alia) details of the Works and the Price, together with any other documents expressly incorporated therein;
- (ll) **Quotation Acceptance Form** shall mean the form of acceptance annexed to the Quotation;
- (mm) **Reasonable and Prudent Operator** and **RPO** shall mean 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 which would 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;
- (nn) **Reinforcement Costs** shall mean any sums to be reimbursed by Fulcrum to the Gas Transporter in respect of the cost of any reinforcement of any pipeline required upstream of the Works;
- (oo) **Site** shall mean 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 being appended thereto;
- (pp) **Street Works Licence** means a street works licence required in accordance with section 50 of NRSWA (or any modification, re-enactment or replacement of that section) in respect of any part of the Works within a Highway or the citing of any part of the Asset within a Highway;
- (qq) **Substantial Completion** shall mean the completion and Commissioning of the Works, or where applicable any Phase of the Works, with the exception of any reinstatement and other parts of the Works to be carried out following Commissioning;
- (rr) **Supply Point** shall mean the nearest emergency control valve installed upstream of the location at which a Meter in respect of a service connection is installed or to be installed (whether by Fulcrum or others);
- (ss) **TeCSA Adjudication Rules** shall mean the procedural rules for adjudication of the Technology and Construction Solicitors Association;
- (tt) **Variation** shall mean any addition to, deduction from, or other change or variation to the Works or performance of the Works in accordance with Clause 9;
- (uu) **Works** shall mean the works and/or design services detailed in the Quotation, including any Phases of the Works, any Plant and Materials and any Variation.

- 1.2 Terms defined in this Clause 1 include the singular and the plural as the context so requires.
- 1.3 References to Clauses shall mean clauses of these terms and conditions.
- 1.4 Headings are inserted in these terms and conditions for convenience only and do not form part and shall not affect the interpretation or construction of these terms and 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 terms and conditions shall have precedence over any other document referred to in or forming part of this Contract 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 QUOTATION AND ACCEPTANCE**

- 2.1 The Quotation is issued subject to the provisions of this Clause 2.
- 2.2 The Quotation is personal to the Client and may not be assigned without Fulcrum's consent in writing.
- 2.3 If the Client wishes to proceed with the 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).
- 2.4 Acceptance and formation of this Contract shall take place on issue by Fulcrum of the Confirmation of Acceptance. The Quotation may be withdrawn by Fulcrum at any time prior to Acceptance. Fulcrum shall have no obligation to the Client and no obligation to enter into this Contract pending issue of the Confirmation of Acceptance.

## **3 DESIGNATED REPRESENTATIVES**

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

## **4 DESIGN ONLY**

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

- (a) Fulcrum's obligations shall be limited to the provision of a design drawing as described in the Quotation.
- (b) Save where the contrary is expressly provided, any provision of these terms and conditions relating to:
  - (i) carrying out by Fulcrum of works on Site (including Site rules, procurement, construction, performance and/or supervision of any works);
  - (ii) execution of the Works by or transfer of ownership of the Works and/or the Asset to a Gas Transporter;
  - (iii) entry into any Gas Transporter Agreement or any termination of or under any such agreement; and
  - (iv) obtaining of any permissions, consents, licences (including Street Works Licences), easements or other rights that may be necessary for or in connection with execution of any works to Fulcrum's design;

shall not apply.

- (c) For the avoidance of doubt, Fulcrum shall be under no obligation to obtain any permissions, consents, licences (including Street Works Licences), easements or other rights that may be necessary for or in connection with execution of any works to Fulcrum's design, and gives no warranty that any such permissions, consents, licences, easements or other rights are or would be obtainable.

## **5 CONDITIONS PRECEDENT AND COMMENCEMENT**

5.1 Notwithstanding any other provision of this Contract, Fulcrum shall have no obligation to:

- (a) commence or continue to provide the Works;
- (b) procure or continue to procure any Plant and Materials or other goods or materials required in connection with the Works; or
- (c) advise the Client of any date pursuant to Clause 10.1;

at any time when the conditions precedent set out in clause 5.2 are not fulfilled. For the avoidance of doubt, performance, commencement or re-commencement of any of the activities or obligations referred to in this clause 5.1 shall not constitute any waiver of Fulcrum's rights under this clause 5.1 and shall be without prejudice to Fulcrum's right not to continue with any such activity or obligation pending fulfilment of all such conditions precedent.

5.2 The following are the conditions precedent referred to in clause 5.1:

- (a) Fulcrum and the Gas Transporter have entered into the Gas Transporter Agreement relating to the Works and such agreement remains in full force and effect; and
- (b) Fulcrum's employment under the Gas Transporter Agreement 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 identified in this Contract;
- (d) any Street Works 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 provision of NRSWA;
- (f) any approval, authorisation or consent required under the Gas Transporter Agreement has been given by the Gas Transporter;
- (g) any planning permission has been obtained; and
- (h) the Client has complied with its obligations under Clause 7.1.

5.3 In no circumstances shall Fulcrum be liable to the Client or any third party for any failure or delay to the fulfilment of the conditions precedent set out in this Clause 5.

## **6 FULCRUM'S OBLIGATIONS**

6.1 Fulcrum shall carry out and complete the Works and comply with its obligations under this Contract in accordance with the standard of a Reasonable and Prudent Operator (RPO).

6.2 Fulcrum shall use all reasonable endeavours to:

- (a) enter into the Gas Transporter Agreement;
- (b) obtain any required Street Works Licence;
- (c) obtain any permissions, consents, licences, easements and other rights expressly identified in the Quotation as falling outside the scope of the Clients obligations;

provided always that Fulcrum shall have no obligation to enter into any such agreement or to obtain or to take any or any further steps towards obtaining any such licence, permission, consent, easement or right until the Client has paid any advance payment identified in the Quotation in full (free from any set-off or deduction).

6.3 Fulcrum shall, subject to and in accordance with these terms and conditions:

- (a) design, procure, perform and supervise the Works in compliance with these terms and conditions and all relevant Legislation;

- (b) use all reasonable endeavours to comply with the Programme, the Construction Commencement Date and to achieve Substantial Completion by the Date(s) for Substantial Completion relating to the Works or any Phase of the Works;
- (c) comply with all reasonable Site rules agreed between the Parties;
- (d) comply with the terms of any permission, licence or consent required in connection with the Works and notified to Fulcrum by the Client or forming part of any permission, licence or consent obtained by Fulcrum from any third party; and
- (e) subject to provision by the Client of any confirmation of authority required by the relevant Meter Asset Manager, liaise with such Meter Asset Manager as necessary for the purpose of co-ordination of Meter installation.

6.4 The following works and/or matters shall not form part of the Works or otherwise form part of Fulcrum's obligations under this Contract unless expressly and separately identified in the 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;
- (b) supply and installation of any Meter. For the avoidance of doubt, the services to be installed by Fulcrum will terminate at the Supply Point;
- (c) inspection, installation or alteration of Outlet Pipe;
- (d) provision, erection or dismantling of any scaffolding, raised platform or other access system required in connection with the Works;
- (e) making good cosmetic surfaces, plasterwork and decoration;
- (f) 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;
- (g) the diversion of any existing apparatus, cable, duct, pipe-work, drain or infrastructure;
- (h) excavation, backfilling, or temporary or permanent reinstatement of any trench excavated on the Site in the course of the Works or otherwise required in connection with the Works, other than excavation, backfilling or reinstatement required in a Highway;
- (i) provision and placing of any bedding and/or surrounding materials within any trench or excavation or otherwise required in connection with any part of the Works;
- (j) provision and installation of any ducting;
- (k) construction or formation of any point of entry and/or associated supporting structure for any pipework or other apparatus into any building;

- (l) reinstating any original surface (including without limitation any paving, mosaic, coloured tarmac, or tiles) other than within a Highway. Where the Works expressly include reinstatement beyond any Highway, Fulcrum will reinstate metalled surfaces with tarmac only or (at Fulcrum's discretion and without imposing any responsibility upon Fulcrum to prevent any damage) relay any undamaged modules removed upon excavation and left adjacent to the excavation;
- (m) the conduct of the Works or the design thereof so as to avoid interruption to the conveyance of gas to the Supply Point during the conduct of the Works or in the course of any future maintenance of the Works following Substantial Completion;
- (n) carrying out works outside Normal Working Hours;
- (o) any works and/or matters excluded in the Quotation;

provided always that notwithstanding any other provision of this Contract, any works or commissioning that cannot lawfully be undertaken prior to adoption of the Asset by a Gas Transporter or that cannot lawfully be undertake other than by or on behalf of a Gas Transporter shall not form part of the Works or otherwise be included in Fulcrum's obligations under this Contract save to the extent that Fulcrum can lawfully perform such works or commissioning under and in accordance with the Gas Transporter Agreement.

## **7 THE CLIENT'S OBLIGATIONS**

7.1 Save to the extent that the contrary is expressly stated in the Quotation, the Client shall promptly and without causing delay to the Works and in any event within 7 days of the date of Acceptance:

- (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 Requirements.

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

- (b) grant or procure the grant from any relevant third party of all planning and other permissions, consents, licences, easements, leases, interests and rights (in each case on an unconditional and irrevocable basis) necessary for performance of the Works and the citing, installation, operation and maintenance of the Asset to be installed or constructed in the course of the Works (including without limitation all permissions, consents, licences, easements, leases, interests and rights required by the Gas Transporter), 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 or any Phase of the Works and ensure that Fulcrum, its sub-contractors and agents may obtain such access and possession safely at all times during the performance of the Works;
- (d) to demonstrate compliance with sub-clauses 7.1(a) and (c) above, provide 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 Contract 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.

7.2 The Client shall notify Fulcrum in writing when it has fulfilled each of its obligations as set out in Clause 7.1.

7.3 The Client shall:

- (a) promptly and so as to not to cause any delay or disruption to the Works, provide any Plant and Materials to be provided by the Client, and any Equipment, materials or services that the Parties agree are to be provided by the Client;
- (b) ensure that all works to be carried out by others or that are otherwise preparatory to or necessary for completion of the Works are carried out promptly and so as not to cause any delay or disruption to the Works;
- (c) comply with all relevant Legislation;
- (d) pay to Fulcrum all sums falling due under this Contract (subject to any right of set-off or deduction the Client may have in accordance with this Contract);
- (e) during performance of the Works report any suspected interference with the Works (or any part thereof) or any Plant and Materials or Equipment to Fulcrum promptly.

7.4 For the avoidance of doubt, the Client will comply with the requirements of this clause 7 at its own cost without any cost or charges being incurred by Fulcrum or the Gas Transporter.

## **8 ACCESS TO THE WORKS**

8.1 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.

8.2 Supervision of the Works will at all times remain the responsibility of Fulcrum.

## 9 VARIATIONS

9.1 The Client may request in writing a Variation to the Works or any part thereof. Subject to the following provisions of this Clause 9 and any approval required from the Gas Transporter, the Works shall be varied in accordance with such Variation.

9.2 If:

- (a) the Gas Transporter requires Fulcrum to make any change to the Works or the design of the Works or a Network Owner requires that Fulcrum make any such change; or
- (b) there is any error, omission or inaccuracy in or change to:
  - (i) any assumption set out in the Quotation,
  - (ii) the location of final connection point(s) onto any existing Network as indicated by the relevant Network Owner, or
  - (iii) any other information provided by the Client, the relevant Network Owner or others concerning any existing Network or infrastructure,

and such error, omission, inaccuracy or change necessitates a change to the Works or the design of the Works, whether to connect to any existing Network in accordance with Network Owner requirements or otherwise; or

- (c) additional connections or other changes to the Works or the design 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; or
- (d) 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; or
  - (ii) any running sand, water table above the level at which any works are to be performed or unforeseen physical conditions;

and any such obstruction or conditions necessitates a change to the Works or the design of the Works or a change to the scope or nature of any excavation or other preparatory works;

Fulcrum shall notify the Client in writing of such change or other matter. Any such change or matter shall automatically constitute a Variation.

9.3 Subject to the following, Fulcrum shall be entitled to make a fair and reasonable adjustment to the Price in respect of any Variation.

- (a) Fulcrum shall advise the Client in writing of any adjustment to the Price ("Notice of Adjustment for Variation") as soon as reasonably practicable following Fulcrum becoming aware of such Variation.

- (b) Within 7 days of receipt of such notice the Client shall notify Fulcrum in writing whether or not the adjustment identified in the Notice of Adjustment for Variation is accepted.
- (c) If the Client fails to give such notice or notifies acceptance of the adjustment to the Price, the Price shall be adjusted in accordance with the Notice of Adjustment for Variation.
- (d) If the Client fails to give such notice or notifies non-acceptance of the adjustment to the Price:
  - (i) in the case of a Variation requested by the Client, Fulcrum may in its absolute discretion elect not to continue with such Variation; and
  - (ii) in any event, the Price shall be adjusted in accordance with this Contract in respect of the Variation (subject to any further adjustment to reflect any part of any Variation not implemented following an election made by Fulcrum pursuant to Clause 9.3(d)(i)).
- (e) The Client shall include in any notification of non-acceptance of adjustment to the Price its reasons for non-acceptance of such adjustment.

## **10 KEY DATES**

- 10.1 Subject to the foregoing, and to the provisions of Clause 5.1, save where such dates are specified in the Programme Fulcrum shall advise the Client in writing of the following dates in relation to this Contract:
- (a) the Construction Commencement Date;
  - (b) the Date for Substantial Completion for the Works or (where applicable) each Phase of the Works; and
  - (c) any other dates required pursuant to the Quotation.
- 10.2 The Client acknowledges and agrees that Fulcrum's ability to comply with the Programme, the Construction Commencement Date and any Date for Substantial Completion is dependent upon the Client fulfilling its obligations under Clause 7.

## **11 EXTENSIONS OF TIME AND ADDITIONAL COST AND EXPENSE**

- 11.1 If Fulcrum considers that the costs and expenses of fulfilling its obligations under this Contract or otherwise incurred in connection with this Contract (including without limitation any sum that Fulcrum is or will be liable to pay to the Gas Transporter or other third party) and/or the time required to perform the Works has or will be increased due to:
- (a) delay in satisfaction of any of the conditions precedent set out in Clause 5.1;
  - (b) any Variation;
  - (c) discovery of items of historical, archaeological or special scientific interest;

- (d) delay in the delivery of Plant and Materials necessary for the Works provided that such delay was not reasonably foreseeable by Fulcrum (acting as an RPO) as at the date of formation of this Contract;
- (e) the imposition of unreasonable Site rules or restriction on hours of work within Normal Working Hours;
- (f) unreasonable terms of any permission, consent, licence, easement or lease in connection with or affecting the Works or performance of the Works;
- (g) the interference of the owners or occupiers of land to which Fulcrum requires access for the performance of the Works;
- (h) delay in the grant of permissions or in the acquisition of land or any interest in land, including delay due to compulsory acquisition;
- (i) delays imposed by any statutory authority that could not reasonably have been foreseen by Fulcrum (acting as an RPO) as at the date of formation of this Contract;
- (j) any occurrence in the performance of the Works that could not reasonably have been foreseen by Fulcrum (acting as an RPO) as at the date of formation of this Contract;
- (k) any amendments, modifications or substitutions made to or replacement of NRSWA as in force at the date of formation of this Contract or any regulations made under the Traffic Management Act 2004 or any amendment or modification or replacement of the Traffic Management Act 2004 or any such regulations;
- (l) 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 this Contract and which could not reasonably have been foreseen by Fulcrum (acting as an RPO) as at the date of formation of this Contract;
- (m) any tornado, hurricane or other exceptionally adverse weather conditions;
- (n) any suspension pursuant to Clause 16;
- (o) any delay imposed by the Gas Transporter which is not due to Fulcrum's negligence or breach of contract and any delay due to any breach or failure by the Gas Transporter;
- (p) 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 Contract;
- (q) the Client's failure or delay in performing its obligations under this Contract;

Fulcrum shall notify the Client in writing of such increased cost and expense and/or time and the justification of such increase, and the provisions of Clause 11.2 shall apply.

11.2 Subject to Clause 11.3:

- (a) the Price shall be adjusted by:
  - (i) addition of the amount of any increased cost and/or expense due to any matter referred to in Clause 11.2; and
  - (ii) addition of an uplift equal to 13.5% of such increased cost and/or expenses as a contribution to management costs.
- (b) Fulcrum shall be entitled to an extension of time equal to the period of delay to the performance of the Works caused by any matter referred to in Clause 11.2, including (without limitation) any consequent delays in mobilisation or remobilisation, and the Programme and Date for Substantial Completion and any other dates referred to in this Contract shall be adjusted accordingly.

11.3 Fulcrum shall not be entitled to any adjustment to the Price pursuant to Clause 11.2 to the extent that the Price has already been adjusted under any other provision of this Contract to include the costs and expenses and the amount of the uplift referred to.

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

## **12 COMPLETION**

12.1 Upon Substantial Completion, Fulcrum will serve a Completion Notice on the Client. In addition Fulcrum will serve a similar notice of completion upon the Gas Transporter pursuant to the Gas Transporter Agreement.

12.2 The Client acknowledges and agrees that ownership of the Works will pass to or vest in the Gas Transporter in accordance with the Gas Transporter Agreement.

12.3 Subject to any contrary provisions within the Gas Transporter Agreement, title to the Works and all Plant and Materials incorporated or to be incorporated into the Works shall vest in Fulcrum pending transfer to the Gas Transporter in accordance with the Gas Transporter Agreement.

12.4 The Client will, at its own cost, assist Fulcrum and do all such things as are necessary, including (without limitation) performing its obligations pursuant to Clause 7 and this Clause 12, to enable the Gas Transporter to obtain title to the Works with full title guarantee free from any encumbrances, liens or charges whatsoever.

12.5 The Client shall execute or (where appropriate) procure that any third party executes any agreements and deeds that:

- (a) Fulcrum and/or the Gas Transporter requires to enable the Gas Transporter to obtain title to the Works or otherwise to adopt the Asset;
- (b) are required to enable the Gas Transporter to operate and maintain the Asset;
- (c) are deemed necessary by the Gas Transporter for the grant or transfer of any permission, consent, licence, easement or other interest in land or the conveyance of any land required for the purposes of or in connection with execution of the Works or ownership of the Asset by the Gas Transporter or the

subsequent operation and maintenance of the Asset, including (without limitation) any conveyance, lease, grant or transfer that the Gas Transporter deems necessary in accordance with the Gas Transporter's standard conditions for the purchase of land (if any).

### **13 GAS TRANSPORTER DEFAULT**

- 13.1 In the event that the Gas Transporter defaults under the terms of the Gas Transporter Agreement, Fulcrum may with the Client's agreement (such agreement not to be unreasonably withheld or delayed) and subject to the terms of the Gas Transporter Agreement enter into a Gas Transporter Agreement with an alternative Gas Transporter.

### **14 PRICE REVIEW**

- 14.1 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.
- 14.2 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.
- 14.3 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.

### **15 PAYMENT**

- 15.1 Subject to the provisions of Clause 15.4, in consideration of the performance by Fulcrum of its obligations under this Contract the Client will pay to Fulcrum the Price (plus VAT as applicable) and any further sums to be paid by the Client under this Contract.
- 15.2 The entirety of the Price is to be paid as an advance payment and will fall due on Acceptance.
- 15.3 The final date for payment in relation to each payment falling due shall be the later of:
- (a) 28 days following the date on which payment falls due; and
  - (b) 28 days following receipt by the Client of Fulcrum's invoice in respect of such payment.
- 15.4 Where any adjustment is made to the Price in accordance with this Contract Fulcrum shall be entitled to invoice the Client in full immediately for any increase. Payment by the Client of any such increase shall be deemed to form part of the conditions precedent set out in Clause 5.1. Fulcrum will refund the amount of any decrease in the Price.
- 15.5 The Client shall bear all taxes, duties, imposts and other fiscal charges which become due on the Price or otherwise in respect of any sum for which the Client is or becomes liable to Fulcrum under this Contract, and shall reimburse Fulcrum for any interest, penalties, liabilities and expenses (including reasonable legal expenses) incurred by Fulcrum as a result of the Client's delay in reimbursing the same.

- 15.6 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.
- 15.7 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.

## **16 SUSPENSION**

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

## **17 WARRANTY**

- 17.1 Subject to the following provisions of this Clause 17, Fulcrum warrants that at the time of Substantial 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 arising as a result of:

- (a) incorrect or misleading information supplied by or on behalf of the Client;
- (b) incorrect or misleading information in relation to the Site or in relation to any Plant and Materials or any Equipment, materials or services provided by the Client and relied upon by Fulcrum in performing the Works; or
- (c) any breach or default on the part of the Client;

and 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 Contract are excluded.

- 17.2 Where the Works consist only of design services and services preparatory to provision of design services:

- (a) Fulcrum warrants that the Works will be carried out with the skill and care reasonably to be expected of an RPO;
- (b) the warranty set out in this clause 17.2 shall apply to the exclusion of the warranty set out in clause 17.1; and
- (c) all other warranties on the part of Fulcrum in relation to the Works, whether expressly set out in this Contract or implied (whether by statute or otherwise), are excluded.

- 17.3 The Client shall promptly notify Fulcrum in writing of any breach of the warranty given in Clause 17.1 or clause 17.2 (as the case may be) and give Fulcrum a reasonable opportunity to rectify such defect, or (where the warranty in clause 17.2 applies) to rectify

any design defects in works executed to Fulcrum's design. 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.

- 17.4 The Client acknowledges that where title in the Works has vested in the Gas Transporter under the Gas Transporter Agreement, any rectification works will be subject to the approval, instruction, direction and control of the Gas Transporter. Fulcrum will have no liability to the Client in respect of any breach of warranty where and to the extent that the Gas Transporter does not approve or otherwise elects not to proceed with rectification of a defect.
- 17.5 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 17. Where Fulcrum is given such an opportunity but fails to rectify such defect within a reasonable time taking into account the provisions of clause 17.4 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.
- 17.6 The Client agrees that the Gas Transporter's 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 the Gas Transporter has given an instruction to Fulcrum to correct any defect pursuant to the Gas Transporter 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 17.3, the Gas Transporter'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 by the Gas Transporter shall be deemed to be the rectification of any similar defect notified by the Client pursuant to this Clause 17. The Client agrees to grant Fulcrum and the Gas Transporter such access as either party reasonably requires for the inspection and testing of the Works and any defects corrected by Fulcrum pursuant to the Gas Transporter Agreement.
- 17.7 Notwithstanding any other provision of this Clause 17 or this Contract and without extension to any applicable period of limitation, warranties on the part of Fulcrum shall expire in accordance with the following provisions.
- (a) Where the warranty in clause 17.1 applies, such warranty shall expire on the earlier of:
- (i) the date on which the Asset is taken into use; and
  - (ii) the earliest date following Substantial Completion on which the Asset 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 Contract.
- (b) Where the warranty in clause 17.2 applies, such warranty shall expire on the date of completion and adoption by a Gas Transporter of works executed to Fulcrum's design.

17.8 Following expiry in accordance with clause 17.7 of the warranty set out in clause 17.1 or clause 17.2 (as the case may be), 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, whether set out in this Clause 17 or otherwise; or
- (c) in connection with rectification or the cost of rectification of any defect in the Works or any design defect in works executed to Fulcrum's design (as the case may be);

whether under this Contract or otherwise.

17.9 For the avoidance of doubt, any liability of Fulcrum under this Clause 17 is subject to the provisions of Clause 19.

## **18 INDEMNITY**

18.1 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 7.1 or otherwise under this Contract.

## **19 LIMITATION OF LIABILITY**

19.1 Nothing in this Contract 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 18.1.

The following provisions of this Clause 19 are subject always to this Clause 19.1.

19.2 Fulcrum's liability to the Client howsoever arising, whether in contract, tort (including without limitation negligence, breach of statutory duty or other tortious act omission or default), by way of contribution or otherwise, shall be limited to 100% of the Price.

19.3 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, however caused or arising under or in connection with this Contract and whether or not foreseeable at the date of this Contract, irrespective of whether caused by the negligence, breach of statutory duty or tortious act omission or default of either Party or by any other act omission default or breach of this Contract.

## **20 INSURANCES**

20.1 Fulcrum and the Client shall each effect and maintain throughout the continuance of this Contract at their own respective cost, insurance policies with insurers and under policies satisfactory to each Party which shall include but not be limited to the minimum types and amounts as set out in Clauses 20.1(a) to (c) 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, which shall comply 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 Contract.

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

## **21 FORCE MAJEURE**

21.1 Neither Party shall be liable to the other or deemed to be in breach of this Contract by reason of any failure or delay in performing its obligations under this Contract if such failure or delay has been caused by Force Majeure.

21.2 If a party (the "Affected Party") is affected by Force Majeure in the performance of its obligations under this Contract, 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 21, 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.

21.3 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 under this Contract. 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 will terminate on the termination date set out in the notice. The provisions of Clause 22.5 shall apply in the event of any such termination.

21.4 For the purposes of this Contract, 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 Contract;
- (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 due to protests, blockades or other action of individuals or organisations, whether acting collectively or otherwise.

## **22 CANCELLATION AND TERMINATION**

22.1 If the Client purports to cancel the Works and Fulcrum accepts such cancellation the following provisions shall apply.

- (a) Subject to clause 22.1(b) below, the Client shall pay to Fulcrum (to the extent not previously paid):
  - (i) the full value of Works performed, including proper allowance for any design carried out by Fulcrum (whether prior to the date of the Quotation or otherwise) and any further works carried out so as to leave the Works in a safe condition; and
  - (ii) all further sums to which Fulcrum is entitled under this Contract; and

- (iii) the reasonable costs of cancelling any sub-contracts or orders for Plant and Materials or Equipment entered into or placed by Fulcrum in connection with the Works for which Fulcrum is liable and unable lawfully or contractually to avoid, including (without limitation) forfeited deposits and cancellation charges.
- (b) The amount payable by the Client to Fulcrum pursuant to clause 22.1(a) is subject to a minimum charge equal to the greater of:
  - (i) 10% of the Price as stated in the Quotation; or
  - (ii) £2,000 (two thousand pounds);

by way of payment for abortive design work and administration carried out by Fulcrum under or in connection with this Contract (in each case whether prior to the date of the Quotation or otherwise), provided that such minimum charge shall not exceed the remaining balance of the Price.

22.2 If Fulcrum breaches any of its obligations under this Contract, the Client may give Fulcrum written notice specifying 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 14 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 Contract.

22.3 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 Contract) by the final date for payment; or
- (b) otherwise breaches any of its obligations under this Contract;

Fulcrum may give the Client written notice specifying the breach and stating that notice of termination will be served if such 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 Contract.

22.4 Either Party may terminate Fulcrum's employment under this Contract 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.

22.5 Notwithstanding any other right or remedy of the Parties under this Contract, in the event of termination under Clause 21 or this Clause 22 the Client shall pay to Fulcrum (to the extent not previously paid):

- (a) the full value of Works performed up to the date of termination, including proper allowance for any design carried out by Fulcrum, whether prior to the date of the Quotation or otherwise; and
- (b) all further sums to which Fulcrum is entitled under this Contract; and
- (c) save in the case of termination by the Client pursuant to clause 22.2 or clause 22.4, the reasonable costs of cancelling any sub-contracts or orders for Plant and Materials or Equipment entered into or placed by Fulcrum in connection with the Works for which Fulcrum is liable and unable lawfully or contractually to avoid, including (without limitation) forfeited deposits and cancellation charges;

provided that Fulcrum may in its discretion elect to treat any termination by Fulcrum pursuant to clause 22.3 or clause 22.4 as acceptance of a purported cancellation by the Client, in which case the provisions of clause 22.1 shall apply.

## **23 INTELLECTUAL PROPERTY**

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

23.2 Subject to any contrary provision within the Gas Transporter Agreement, all IP Rights resulting from or in the Works or arising in connection with this Contract shall vest in Fulcrum.

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

- (a) performance of the Works; and

- (b) the taking of ownership of the Works and the Asset by a Gas Transporter and operation and maintenance of the Asset by the Gas Transporter.

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

23.4 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 Asset, provided always that such licence shall terminate with effect from the date on which the Asset is taken into use or (where the Works consist of design services and services preparatory to provision of a design only), the date on which works to 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.

23.5 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 of IP Rights by the Client other than as permitted by the licence granted under this Contract; or
- (b) all or any part of:
  - (i) the Background Intellectual Property licensed to Fulcrum under Clause 23.3; or
  - (ii) any rights held out by the Client as forming part of such Background Intellectual Property;

infringing the rights of any third party.

## **24 CONFIDENTIALITY**

24.1 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 Contract. 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 Gas Transporter in connection with the Gas Transporter Agreement, or any subcontractor or potential subcontractor for the purpose of seeking tenders for carrying out of the Works or any part of the Works;
- (b) with the written agreement of the other Party or by requirement of law or of a regulatory authority or governmental body having jurisdiction over the Parties, or by any recognised stock exchange;
- (c) to a Party's professional advisers;
- (d) where the information is in or comes into the public domain (otherwise than by failure of a Party to comply with its obligations under this Contract);

- (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 Contract.

24.2 Where a Party makes disclosure to any employee, consultant, subcontractor, potential subcontractor or agent, that disclosure shall be subject to obligations equivalent to those set out in this Contract. Each Party shall use all reasonable endeavours to procure that any such employee, consultant, subcontractor, potential subcontractor or agent complies with such obligations, provided that each Party shall continue to be responsible to the other in respect of any disclosure or use of Confidential Information by a person to whom disclosure is made by that Party.

24.3 Upon expiry or earlier termination of this Contract, each Party shall return to the other all Confidential Information which has been disclosed by the other Party.

## **25 ENTIRETY OF AGREEMENT AND AMENDMENTS**

25.1 This Contract 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 Contract.

25.2 Each of the Parties acknowledges and confirms that it does not enter into this Contract 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 contract or not) except those expressly set out in this Contract.

25.3 The above does not apply to any statement representation or warranty made fraudulently or to any provision of this Contract that was induced by fraud.

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

## **26 WAIVER**

26.1 No term of this Contract 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 Contract unless expressly set forth in such waiver.

26.2 The non-enforcement of any terms of this Contract by either Party shall not be construed as a waiver of or otherwise prejudicial to the rights of such Party under this Contract or at law or in equity.

- 26.3 No failure or delay in exercising any right or remedy under this Contract shall be construed as a waiver of that right or remedy.
- 26.4 No single or partial exercise of any right or remedy shall preclude further exercise of that right or remedy.
- 26.5 No waiver by a Party of any breach of this Contract shall be construed as a waiver of any preceding or subsequent breach.

## **27 RELATIONSHIP OF PARTIES**

- 27.1 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.

## **28 ASSIGNMENT AND SUB-CONTRACTING**

- 28.1 Neither Party may assign or otherwise transfer the benefit of this Contract 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.
- 28.2 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 Contract.

## **29 NOTICES**

- 29.1 Any notices or other communications between the Parties under this Contract shall be given in writing or (where expressly permitted by the terms of this Contract) confirmed in writing.
- 29.2 Unless otherwise agreed any such notice of communication shall be respectively addressed and sent by personal delivery, facsimile transmission or registered post, recorded delivery or pre-paid first class post to the address and/or other relevant contact details set out in the Quotation.
- 29.3 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.

## **30 SURVIVAL**

- 30.1 In the event of termination or expiry of this Contract, Fulcrum and the Client nevertheless remain bound by the following provisions of this Contract:
- (a) Clause 15 Payment

- (b) Clause 17 Warranty
- (c) Clause 18 Liability and Indemnity
- (d) Clause 19 Limitation of Liability
- (e) Clause 22 Termination
- (f) Clause 23 Intellectual Property
- (g) Clause 24 Confidentiality
- (h) Clause 28 Assignment and Subcontracting
- (i) Clause 31 Third Party Rights
- (j) Clause 32 Law and Disputes

### **31 THIRD PARTY RIGHTS**

31.1 Notwithstanding references in any provision of this Contract 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 Contract shall have any right to enforce any provision of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **32 LAW AND DISPUTES**

32.1 This Contract shall be governed by and construed in accordance with the laws of England.

32.2 The English Courts shall have jurisdiction in relation to all matters under or in connection with this Contract. Such jurisdiction shall be exclusive save in relation to any enforcement of a judgment of the English Courts.

32.3 Any dispute between the Parties may be referred to adjudication in accordance with the TeCSA Adjudication Rules.