



**FULCRUM**

**TERMS AND CONDITIONS FOR GAS ONLY CUSTOMER WORKS**

VERSION 13 updated 01.03.2021



## CONTENTS

1	DEFINITIONS AND INTERPRETATION .....	3
2	QUOTATION AND ACCEPTANCE .....	5
3	DESIGN ONLY .....	5
4	CONDITIONS PRECEDENT AND COMMENCEMENT .....	5
5	FULCRUM'S OBLIGATIONS.....	6
6	THE CLIENT'S OBLIGATIONS .....	7
7	ACCESS TO THE WORKS .....	7
8	VARIATIONS.....	8
9	KEY DATES .....	9
10	EXTENSIONS OF TIME AND ADDITIONAL COST AND EXPENSE .....	9
11	COMPLETION AND TITLE/RISK.....	10
12	DEFERRALS AND CANCELLATIONS.....	10
13	PAYMENT.....	11
14	SUSPENSION .....	11
15	DEFECTS.....	11
16	INDEMNITY .....	12
17	LIMITATION OF LIABILITY .....	12
18	INSURANCES .....	13
19	FORCE MAJEURE.....	13
20	TERMINATION .....	13
21	INTELLECTUAL PROPERTY.....	14
22	CONFIDENTIALITY .....	14
23	ENTIRETY OF AGREEMENT AND AMENDMENTS .....	14
24	WAIVER.....	14
25	ANTI-CORRUPTION .....	14
26	ASSIGNMENT AND NOVATION .....	14
27	NOTICES.....	15
28	THIRD PARTY RIGHTS.....	15
29	SEVERABILITY.....	15
30	LAW AND DISPUTES.....	15
31	PRICE FLUCTUATIONS.....	15
32	CORRUPT ACTS .....	16
33	DATA PROTECTION .....	16
34	DOMESTIC REVERSE CHARGE .....	16

## TERMS & CONDITIONS

### 1 DEFINITIONS AND INTERPRETATION

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

- (a) **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 1159 of the Companies Act 2006) and any company, partnership or joint venture of which any of them shall have directly or indirectly not less than 26% equity participation;
- (b) **Asset** means the completed Works up to and including the emergency control valve;
- (c) **Asset Value** means any sum paid or allowed by Fulcrum to the Client or any third party in its capacity as Gas Transporter or which it has received from a Network Owner to purchase all or any part of the Asset.
- (d) **Client** means the party to whom the Quotation is issued or, if different, the party who completes and signs the Quotation Acceptance Form.
- (e) **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;
- (f) **Conditions** means these terms and conditions;
- (g) **Conditions Precedent** means any of the conditions precedent set out in clause 4.2;
- (h) **Completion Notice** means 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** 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;
- (j) **Confirmation of Acceptance** means Fulcrum’s written acknowledgment and acceptance of the Quotation Acceptance Form;
- (k) **Construction Commencement Date** means the date specified in the Programme or advised by Fulcrum to the Client in accordance with Clause 9.1 (subject in each case to any adjustment to such date in accordance with this Contract), being the date upon which Fulcrum intends to commence the construction of the Works, or where the Works are to be performed in phases, the date upon which Fulcrum intends to commence construction of the first Phase of the Works;
- (l) **Contamination** means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or as a gas or vapour), whether originating on or off the Site;
- (m) **Contract** means the contract comprising:
  - (i) the Quotation, these Conditions and any documents expressly incorporated therein;
  - (ii) the Quotation Acceptance Form; and
  - (iii) the Confirmation of Acceptance (if applicable);
- (n) **Date for Substantial Completion** shall mean a date specified in the Programme or advised by Fulcrum to the Client in accordance with Clause 9.1 (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);
- (o) **End User** is a VAT and CIS registered organisation that does not make onward supply of building or construction services it buys in
- (p) **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 in the Works;
- (q) **Fulcrum** means whichever of the following companies is named in the Quotation:
  - 1. Fulcrum Pipelines Limited
  - 2. Fulcrum Electricity Assets Limited
  - 3. Fulcrum Infrastructure Services Limited
  - 4. Dunamis Infrastructure Services Limited
  - 5. CDS Pipe Services Limited;
- (r) **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 therefor;
- (s) **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 adopt the Asset
- (t) **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;
- (u) **Intermediary Supplier** is a VAT and CIS registered organisation that:

1. is part of the same corporate group or undertaking (as defined in s. 1161 Companies Act) with the expected End User of those services; or
  2. shares a relevant interest with the End User in the same land, buildings or civil engineering works where the construction works are taking place (eg landlord or tenant)
- (v) **IP Rights** means all intellectual property rights including patents, copyrights and all other rights in or relating to the Works or the design of the Works;
- (w) **Legislation** means all statutes, statutory instruments, by-laws, regulations and directives applicable to the Works or this Contract or that affect either Party in performance of its obligations under the Contract;
- (x) **Mandatory Requirements** means all Legislation relating to anti-bribery and anti-corruption, anti-slavery and human trafficking and anti-facilitation of tax evasion including the Human Right Act 1998, the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017;
- (y) **Meter** means 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;
- (z) **Meter Asset Manager** means anyone adopting a Meter;
- (aa) **Network** means 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 associated plant and equipment or an electricity, water or telecommunications equivalent;
- (bb) **Network Owner** means the owner of a Network;
- (cc) **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; or
  - (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;
- (dd) **Normal Working Hours** means the hours of 8.00 am to 6.00 pm on any Working Day;
- (ee) **Notice of Adjustment for Variation** has the meaning ascribed to the term in Clause 8.3;
- (ff) **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;
- (gg) **Outlet** means all pipe and gas consuming facilities installed or to be installed downstream of any Meter;
- (hh) **Party** means the Client or Fulcrum, as the case may be, and **Parties** shall mean both of them;
- (ii) **Phase of the Works** means each phase (if any) identified in the Quotation or Programme or otherwise agreed in writing between the Parties;
- (jj) **Plant and Materials** means items intended to be incorporated into the Works;
- (kk) **Price** means the total price for the Works set out in the Quotation as adjusted in accordance with this Contract;
- (ll) **Price Review Date** means the date immediately following expiry of twelve (12) months from the date of the Quotation and each anniversary of that date;
- (mm) **Programme** means the programme for the Works (including any Phase(s) of the Works) as identified or detailed in the Quotation, notified by Fulcrum to the Client under clause 9.1, adjusted in accordance with these Conditions or otherwise agreed in writing between the Parties;
- (nn) **Quotation** means the quotation forming part of this Contract as issued by Fulcrum containing details of the Works and the Price, together with any other documents expressly incorporated therein;
- (oo) **Quotation Acceptance Form** means the form of acceptance annexed to the Quotation;
- (pp) **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 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;
- (qq) **Reinforcement Costs** means any sums paid or to be paid by Fulcrum to the Gas Transporter in respect of the cost of any reinforcement of any pipeline upstream of the Works and required in connection with or by reason of the Works;
- (rr) **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;
- (ss) **Site Survey** means any site survey specified in the Quotation or subsequently advised by Fulcrum as being required for the performance of the Works;
- (tt) **Street Works Licence** means
- (i) A street works licence required in accordance with 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 any modification, re-enactment or replacement of it.

- (uu) **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, or meter installation and other parts of the Works to be carried out following Commissioning;
- (vv) **Supply Point** means the nearest emergency control valve installed upstream of the location at which a Meter in respect of a service connection is installed or to be installed (whether by Fulcrum or others);
- (ww) **TeCSA Adjudication Rules** means the procedural rules for adjudication of the Technology and Construction Solicitors Association;
- (xx) **Variation** means any addition to, deduction from, or other change or variation to the Works or performance of the Works in accordance with Clause 8;
- (yy) **Works** means the works and/or design services detailed in the Quotation, including any Phases of the Works, any Plant and Materials and any Variation; and
- (zz) **Working Day** means any day other than Saturday, Sunday and any day that is a bank holiday in England and Wales or (in the case of Works performed in Scotland) in Scotland under the Banking and Financial Dealings Act 1971.

- 1.2 Terms defined in this Clause 1 include the singular and the plural as the context so requires.
- 1.3 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 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 Contract and shall apply to the exclusion of any other terms and conditions referred to in the Quotation Acceptance Form or any document emanating from the Client.
- 1.7 Fulcrum may nominate another company in its corporate group ("the Group Company") to carry out any of the Works or any part thereof, where the Group Company has the relevant accreditations to carry out the Works or part thereof. Where a Group Company is nominated, the parties agree that in respect of the relevant Works, or part thereof:
  - (a) All references to Fulcrum in this Agreement shall be deemed to be to the Group Company;
  - (b) The Clients rights and obligations under this Agreement shall lie against the Group Company and not Fulcrum;
  - (c) The Group Company has the benefit of the rights of Fulcrum and shall comply with the obligations of Fulcrum under this Agreement.

## 2 QUOTATION AND ACCEPTANCE

- 2.1 The Contract shall become binding on the Parties on the date when Fulcrum receives the Quotation Acceptance Form or, if earlier, payment of the Price, within the period of validity specified in the Quotation (or within such other period as may be agreed in writing between the Parties).
- 2.2 If Fulcrum receives the Quotation Acceptance Form or, if earlier, payment of the Price, outside the period of validity specified in the Quotation (or within such other period as maybe agreed in writing between the Parties), the Quotation Acceptance Form or payment shall be treated as an offer from the Client that Fulcrum may at its sole and absolute discretion accept by issuing to the Client a Confirmation of Acceptance Form. In such circumstances, this Contract shall become binding on the Parties on the date Fulcrum issues such a Confirmation of Acceptance Form.
- 2.3 If the Works or any part of them are incomplete on the Price Review Date, subject to Clause 20.1, Fulcrum may adjust the Price for the Works or revise any other element of the Quotation and shall notify the Client in writing of any changes. Fulcrum may also amend withdraw or request the repayment of any Asset Value (or any part of it). Fulcrum shall be under no obligation to commence or continue with the Works until any increase in the Price has been paid by the Client.

## 3 DESIGN ONLY

- 3.1 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 Conditions relating to the following shall not apply;
    - (i) carrying out by Fulcrum of works on Site;
    - (i) a Gas Transporter or any Gas Transporter Agreement; and
    - (ii) 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.

## 4 CONDITIONS PRECEDENT AND COMMENCEMENT

- 4.1 Notwithstanding any other provision of this Contract, Fulcrum shall have no obligation to commence or continue to provide the works (including any design) or procure any Plant and Materials required for the Works at any time when the Conditions Precedent are not fulfilled. For the avoidance of doubt, performance, commencement or re-commencement of any of the

activities or obligation referred to in this Clause 4.1 shall not constitute any waiver of Fulcrum's rights under this Clause 4.1 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.

**4.2** The following are the Conditions Precedent:

- (a) No statutory, regulatory, technical or other matter has or may prevent commencement of the Works;
- (b) any approval, authorisation or consent required from the Gas Transporter, Network Owner or Meter Asset Manager has been given;
- (c) the Client has made payment in full (free from any set-off or deduction) of any part of the Price stated in the Quotation as being due prior to or upon the Parties entering into this Contract or prior to the Construction Commencement Date, or any payment due under Clause 2.3 or 13.3;
- (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 relevant Legislation;
- (f) any planning permission or Site Survey has been obtained;
- (g) any Non-Contestable Works have been performed to the extent necessary to enable the Works to progress;
- (h) the Network Owner, Meter Asset Manager or any other relevant statutory body has approved the design of the Works; and
- (i) the Client has complied with its obligations under Clause 6.1.

**4.3** If at any time any of the Conditions Precedent are not fulfilled for a period of 2 months Fulcrum may by written notice to the Client elect not to proceed with the Works. Any such 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.

## **5 FULCRUM'S OBLIGATIONS**

**5.1** 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).

**5.2** Subject to clause 4 Fulcrum shall use reasonable endeavours to:

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

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

- (a) design, procure and perform the Works in compliance with these Conditions and all relevant Legislation, in the case of design using the standard of skill and care reasonably to be expected of an RPO;
- (b) use 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 prior to the Parties entering into this Contract 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.

**5.4** 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 or backboard;
- (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) 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) 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 Quotation expressly includes reinstatement beyond any Highway, Fulcrum will reinstate metalled surfaces with tarmac only or (at Fulcrum's sole and absolute 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) performance 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; and
- (n) any works and/or matters excluded in the Quotation,

**5.5** Notwithstanding any other provision of this Contract, any works or commissioning that cannot lawfully be undertaken:

- (a) prior to adoption of the Asset by a Gas Transporter; or
- (b) 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.

## **6 THE CLIENT'S OBLIGATIONS**

**6.1** The Client shall at its own cost promptly and without causing delay to the performance of any part of the Works and in any event within seven (7) days of the Parties entering into this Contract:

- (a) provide all necessary information to Fulcrum relating to or affecting the Works or performance of the Works
- (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 and the siting, installation, operation and maintenance of the Asset to be installed or constructed in the course of the Works or as required by the Gas Transporter, and provide copies of the same to Fulcrum.
- (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) or any adjoining land as Fulcrum may reasonably require for performance of the Works or any Phase of the Works or to carry out a Site Survey 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; and
- (d) comply with Fulcrum's relevant guidelines, health and safety policies, and reasonable instructions and directions

**6.2** Save where the Quotation expressly states to the contrary the Client shall at its own cost 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) provide any Plant and Materials, Equipment and services 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) where the duration of the Works or a Phase of the Works on Site exceed one (1) Working Day, ensure that the Works can be performed on consecutive Working Days;
- (d) ensure that the Site or part of the Site where the Works are to be carried out is free from obstructions or any other impediment that may interfere with Fulcrum's ability to carry out and complete the Works;
- (e) ensure that any scaffolding in the vicinity of the Works is removed prior to the Construction Commencement Date;
- (f) within 10 Working Days following the Date of Substantial Completion enter into a contract with a gas shipper or gas supplier as appropriate to ensure that a Meter can be fitted to or as part of the Works;
- (g) 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 and provide all necessary site security for the protection of the Works, Plant and Materials or Equipment from loss or damage;
- (h) provide in advance of commencement of the Works line and level for installation of the Works to comply with NJUG;
- (i) promptly rectify any damage to the Works or Asset caused by the Client or any third party. Fulcrum may amend, withdraw or request repayment of any Asset Value if a Network Owner withdraws or reduces any Asset Value payable to Fulcrum as a consequence of damage to the Works or Asset
- (j) if requested by Fulcrum repay all or any part of the Asset Value due to the Asset Value being reduced or withdrawn by a Network Owner; and
- (k) perform any other actions required for Fulcrum to provide the Works.

## **7 ACCESS TO THE WORKS**

**7.1** 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 VARIATIONS

8.1 The Client may request in writing a Variation to the Works or any part thereof. Subject to the following provisions of this Clause 8 and any approval required from the Gas Transporter or a Network Owner, the Works shall be varied in accordance with such Variation unless Fulcrum, acting reasonably, objects to the Variation in writing, in which case the Variation shall not proceed. Where the Client reduces the total number of Supply Points comprised in the Works, or reduces the load requirement, Fulcrum will be entitled to:

- (i) reduce the Asset Value; and
- (ii) issue an invoice to the Client for any outstanding amount due following reduction of the Asset Value (together with VAT as applicable).

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

## 8.2

If:

- (a) the Gas Transporter or Meter Asset Manager 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 requires reinforcement of the existing gas network; or
- (b) there is any error, omission or inaccuracy in or change to:
  - (i) any assumption or other information set out in the Quotation; or
  - (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 the Works or any existing Network or infrastructure,and such error, omission, inaccuracy or change necessitates a change to the Works or the design, location or performance of the Works, for any reason unless due to Fulcrum's negligence or breach of contract; or
- (c) additional connections, additional site visits or other changes to the Works or the design, location or performance of the Works are required; or
- (d) the Client or a third party changes the conditions under which the Works are carried out, either by instruction or otherwise, including but not limited to changes to Normal Working Hours, access to the Site or Works, methods or conditions of working and Site layouts, number of Site visits required, changes that prevent Fulcrum from carrying out the Works on consecutive Working Days and sequence, timing or the duration of the Works; or
- (e) a change to the design, location or performance of the Works is required as a result of the Site Survey;
- (f) in the opinion of Fulcrum, acting as an RPO, a change to the design, location or performance of the Works is required for statutory, health and safety or engineering compliance; or
- (g) the Client notifies Fulcrum of the terms of any permission, licence or consent required in connection with the Works after the Parties entered into this Contract; or
- (h) it is not possible to carry out first-time permanent reinstatement for reasons outside of Fulcrum's control, or the Client instructs temporary reinstatement to be carried out by Fulcrum; or
- (i) there is any excess pipework required by the Client over and above that included in the Quotation or any existing pipework is not adequate for the purposes of the Works; or
- (j) any change in Legislation;

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

## 8.3

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, this adjustment will take into account any impact on the Asset Value due to the Variation.
- (b) Within five (5) 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 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 of acceptance of the adjustment to the Price within the time period specified in Clause 8.3(b):
  - (i) in the case of a Variation requested by the Client, Fulcrum may in its sole and absolute discretion elect not to continue with all or any part of such Variation; and



- (ii) in any event, the Price shall be adjusted in accordance with the Notice of Adjustment for Variation (subject to any further adjustment to reflect any part of any Variation not implemented following an election made by Fulcrum pursuant to Clause 8.3 (d(i)).
- (e) If the Client notifies non-acceptance of the adjustment to the Price in accordance with Clause 8.3(b), the Client shall in the same notice set out its reasons for non-acceptance of such adjustment and:
  - (i) in the case of a Variation requested by the Client, the Client shall in the same notice instruct Fulcrum either to proceed with the Variation or withdraw it and if Fulcrum is instructed to proceed with the Variation, the Price shall be adjusted and such adjustment to the Price shall be determined using fair rates and prices; or
  - (ii) in the case of any Variation other than a Variation requested by the Client, the Price shall be adjusted and such adjustment to the Price shall be determined using fair rates and prices.

## **9 KEY DATES**

**9.1** Subject to the provisions of Clause 4.1 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 for the Works and (where applicable) any Phase of the Works;
- (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 EXTENSIONS OF TIME AND ADDITIONAL COST AND EXPENSE**

**10.1** If Fulcrum considers that the performance of the Works or a Phase of the Works or any part of them has been delayed and/or 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) has or will be increased due to:

- (a) delay in satisfaction of any of the Conditions Precedent;
- (b) any Variation;
- (c) discovery of items of historical, archaeological or special scientific interest;
- (d) delays caused by any statutory authority;
- (e) delays caused by a Network Owner including, but not limited to, the Network Owner undertaking Non-Contestable Work or the Network Owner's records relevant to the Site or Works being incomplete or inaccurate;
- (f) Fulcrum encounters any ground or physical conditions or Contamination that could not reasonably have been foreseen by Fulcrum (acting as an RPO at the date of formation of this Contract);
- (g) any change to Legislation after the date of formation of this Contract.
- (h) exceptionally adverse weather conditions;
- (i) 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;
- (j) any suspension pursuant to Clause 14;
- (k) any delay caused by the Gas Transporter, Network Owner or Meter Asset Manager 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, Network Owner or Meter Asset Manager;
- (l) 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;
- (m) late acceptance of the Quotation in accordance with Clause 2.2;
- (n) the Client's failure or delay in performing its obligations under this Contract or any other act or omission for or on behalf of the Client including any act or omission by any persons (including contractors) engaged or employed by the Client or otherwise under the Client's control;
- (o) the Client requires the removal, re-execution and opening up for inspection of any Works and such is not due to Fulcrum's negligence or breach of contract;
- (p) compliance with the traffic management or road closure requirements of a statutory body;
- (q) any other matter beyond the control of Fulcrum.

Fulcrum shall notify the Client in writing of such increased cost and expense and/or time, and the provisions of Clause 10.2 shall apply.

**10.2** The following shall apply:

- (a) the Price shall be adjusted by the addition of:
  - (i) the amount of any increased cost and/or expense due to any matter referred to in Clause 10.1 or 10.3 ; and
  - (ii) an uplift equal to 13.5% of such increased cost and/or expenses as a contribution to management cost and overheads; and
  - (iii) a fair and reasonable addition to such increased cost and/or expense as a contribution to profit.

- (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 10.1, 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.

**10.3** Where the scope of the Works or any Phase of the Works includes connection of services to multiple Supply Points (provided that the total number of Supply Points to be connected is more than 6 (six) and save as agreed in respect of connection of services to show homes) and:

- (a) Fulcrum is requested to attend Site to connect services to fewer than 6 (six) Supply Points in any one visit and agrees to attend; or
- (b) having attended Site Fulcrum is unable to connect services to a minimum of 6 (six) Supply Points because the Site is not ready or the Client has failed to comply with its obligations under this Contract;

Fulcrum shall be entitled to an adjustment in the Price and an extension of time in accordance with clause 10.2

## **11 COMPLETION AND TITLE/RISK**

**11.1** Upon Substantial Completion, Fulcrum will serve a Completion Notice on the Client. The Client acknowledges and agrees that ownership of part or all the Works will pass to or vest in the Gas Transporter in accordance with the Gas Transporter Agreement.

**11.2** 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 unless and until:

- (a) such title vests in the Gas Transporter in accordance with the Gas Transporter Agreement; or
- (b) such title vests in a Meter Asset Manager or other relevant licensed third party; or
- (c) where (a) and (b) above do not apply, title shall vest in the Client at Substantial Completion provided there are no Conditions Precedent applicable at that date.

**11.3** Save to the extent any loss or damage is caused by the negligence or breach of contract by Fulcrum, the Works on Site will at all times be at the Client's risk

**11.4** 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 6 and this Clause 11, to enable the Gas Transporter to obtain title to the Works with full title guarantee free from any encumbrances, liens or charges whatsoever.

**11.5** The Client shall at its own cost 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; and
- (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).

## **12 DEFERRALS AND CANCELLATIONS**

**12.1** A deferral may occur in the following circumstances:

- (a) The Client may defer the Construction Commencement Date or any other commencement date by giving Fulcrum notice in writing;
- (b) Fulcrum or its sub-contractor has physically arrived on a site but the Client is not ready or able to allow the Works or any Phase of the Works (as the case may be) to proceed.

**12.2** In the event of a deferral under clause 12.1 the Client shall pay:

- (a) Fulcrum's appropriate deferral fee, current at the date of the deferral. The Client may request a copy of Fulcrum's schedule of deferral fees at any time; and
- (b) Costs incurred by Fulcrum in obtaining or attempting to obtain any Street Works licence or other statutory consent.

**12.3** In the event of a deferral, Fulcrum shall advise the Client of the revised Construction Commencement Date and any adjustment to the Price, in addition to the deferral costs referred to in Clause 12.2 above, required as a consequence of the deferral. Fulcrum may also amend, withdraw or require the repayment of any Asset Value (or any part of it). The Client acknowledges that the re-scheduling of the Works may be affected by matters outside the reasonable control of Fulcrum including, but not limited to, the requirement to obtain or renew statutory consents, licences and permits.

**12.4** The Client may request the cancellation of the Works by notice in writing to Fulcrum. If Fulcrum accepts the request, the following shall apply:

- (a) If the request is received by Fulcrum more than 5 Working Days before the Construction Commencement Date the Client shall pay 25% of the Price (which for the purpose of this clause 12.4 shall exclude any adjustment to the Price in respect of Asset Value) or £2,000, whichever is the higher together with any Reinforcement Costs incurred by

Fulcrum or the Network Owner and any Asset Value. If the Client has already paid a proportion of the Price that is higher than the amount due under this clause 12.4(a), the difference shall be refunded to the Client within 28 days;

- (b) If the request is received by Fulcrum 5 Working Days or less before the Construction Commencement Date the Client shall pay the full amount of the Price (which for the purpose of this clause 12.4 shall exclude any adjustment to the Price in respect of Asset Value) together with any Reinforcement Costs incurred by Fulcrum or the Network Owner and any Asset Value, less any amount previously paid.

Fulcrum may, in its absolute discretion, waive or reduce any cancellation payment due under the above terms.

**12.5** In the event that any sums become payable by the Client under this Clause 12, those sums shall be payable in accordance with Clause 13.3.

**12.6** Fulcrum may set off against any amounts due to the Client under this Contract any amounts which the Client may owe Fulcrum under this Contract or otherwise.

### **13 PAYMENT**

**13.1** 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.

**13.2** Payment of the Price shall be as follows:

- (a) If the Client has not paid the Price (or any part of it) stated in the Quotation (or otherwise notified by Fulcrum in writing to the Client) as being payable prior to or upon the Parties entering into this Contract, the Client shall pay the Price (or that part of it) within seven (7) days of the Parties entering into this Contract;
- (b) If any part of the Price is stated in the Quotation (or otherwise agreed by the Parties in writing) as being payable on a specified date or on commencement or completion of any part of the Works or a Phase of the Works, the Client shall pay Fulcrum on that specific date or on the date of the commencement or completion;
- (c) If Fulcrum has paid or allowed any Asset Value in calculating the Price it may at any time adjust the Price or request payment of the Asset Value. Any adjustment or payment shall be paid in accordance with Clause 13.3.

**13.3** Where any adjustment is made to the Price in accordance with this Contract, Fulcrum shall be entitled to request payment from the Client in full immediately for any increase.

**13.4** Any sum payable pursuant to a request for payment issued under Clauses 13.3 shall fall due for payment seven (7) days after the date of the request. The final date for payment in relation to each payment falling due shall be fourteen (14) days after the date of the request.

**13.5** If payment under clause 13.2 or 13.4 is late the Client shall pay interest on the amount of such late payment from the final date for payment at an annual rate of five per cent (5%) per annum above the Bank of England base rate in force from time to time, compounded monthly 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.

### **14 SUSPENSION**

**14.1** 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 sole and absolute discretion shall decide, until the Client has rectified such breach.

### **15 DEFECTS**

**15.1** Subject to the following provisions of this Clause 15 and Clause 17, Fulcrum confirms that 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 this obligation does not extend to any defect arising as a result of:

- (a) incorrect or misleading information supplied by or on behalf of the Client; or
- (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 or on behalf of the Client and relied upon by Fulcrum in performing the Works; or
- (c) any breach or default on the part of the Client; or
- (d) failure to maintain the Works by others; or
- (e) the carrying out of works by others which impact on the Works,

**15.2** Where the Works consist only of design services and services preparatory to provision of design services:

- (a) Fulcrum confirms that the Works will be carried out with the skill and care reasonably to be expected of an RPO; and
- (b) the obligation set out in this Clause 15.2 shall apply to the exclusion of the obligation set out in Clause 15.1.

**15.3** The Client shall promptly notify Fulcrum in writing of any breach of Clause 15.1 or Clause 15.2 (as the case may be) and give Fulcrum a reasonable opportunity to rectify such defect, or where Clause 15.2 applies, to rectify any defects in Fulcrum's design or in any 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 shall be to rectify any such defect at its own cost.

- 15.4** The Client acknowledges that where title in the Works or any part of them has vested in the Gas Transporter under the Gas Transporter Agreement, any works required to be rectified pursuant to this Contract 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 where and to the extent that the Gas Transporter does not approve or otherwise elects not to proceed with rectification of a defect required to be rectified pursuant to this Contract.
- 15.5** Fulcrum shall not be liable to the Client for any defect in the Works, or (as the case may be) any defect in its design or in any works executed to Fulcrum's design, unless the Client has given Fulcrum an opportunity to rectify in accordance with this Clause 15. Where Fulcrum is given such an opportunity but fails to rectify such defect within a reasonable time taking into account the provisions of Clause 15.4 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.
- 15.6** 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 15.3, 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 15. 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.
- 15.7** Notwithstanding any other provision of this Clause 15 or this Contract and without extension to any applicable period of limitation, Fulcrum's liability for defects in the Works, whether under this contract or otherwise, shall expire in accordance with the following provisions:
- (a) Where Clause 15.1 applies, such liability shall expire on the earlier of:
    - (i) the date on which the Asset is taken into use; or
    - (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; or
    - (iii) Twelve months after the date of Substantial Completion
  - (b) Where Clause 15.2 applies, such liability shall expire twelve months after the date of the design.
  - (c) No action or proceedings under or in respect of this Contract shall be brought against Fulcrum after expiry of the periods referred to in 15.7 (a) or (b) above.
- 16 INDEMNITY**
- 16.1** Fulcrum shall keep the Client indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Client as a result of or in connection with any claim made against the Client by a third party for death, personal injury or damage to property arising out of, or in connection with the Works to the extent that the claim is attributable to the negligence or breach of contract of Fulcrum its employees, agents or subcontractors.
- 16.2** The Client shall keep Fulcrum indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Fulcrum as a result of or in connection with any claim made against Fulcrum by a third party for death, personal injury or damage to property arising out of, or in connection with the Works to the extent that the claim is attributable to the negligence or breach of contract of the Client, its employees, agents or subcontractors.
- 17 LIMITATION OF LIABILITY**
- 17.1** Nothing in this Contract shall exclude or limit the liability of either Party for death or personal injury resulting from negligence or for fraud or fraudulent misrepresentation.
- 17.2** 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 25% of the original Price as set out in the relevant Quotation for any and all such liability. 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.
- 17.3** Neither Party shall be liable to the other Party for any:
- (a) loss of income or revenue, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of anticipated savings, loss of, damage to or corruption of data, loss of use 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, indemnity or tortious act omission or default of either Party or by any other act omission default or breach of this Contract.

**17.4** Fulcrum shall have no liability for costs, expenses or losses incurred by the Client as a consequence of any delay to the commencement or completion of the Works, however caused.

## **18 INSURANCES**

**18.1** Fulcrum and the Client (where the Client is not an individual) 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 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, 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.

## **19 FORCE MAJEURE**

**19.1** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if the period of delay or non-performance continues for 42 days, the party not affected may terminate this Contract by giving 28 days' written notice to the other party.

## **20 TERMINATION**

**20.1** Fulcrum may terminate its employment under this Contract forthwith by written notice to the Client in the event that the Works or any part of them have not commenced twelve (12) months after the date of the Quotation or have not been completed within six (6) months from the Date of Commencement.

**20.2** Either Party may terminate Fulcrum's employment under this Contract forthwith by written notice to the other in the event that:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (h) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (i) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
- (j) either Party is in material breach of clauses 32 or 33.

**20.3** Notwithstanding any other right or remedy of the Parties under this Contract, in the event of termination under Clause 19 or this Clause 20, the Client shall pay to Fulcrum (to the extent not previously paid):

- (a) the value of Works performed up to the date of termination (excluding any allowance for Asset Value), including proper allowance for any design carried out by Fulcrum, whether prior to the date of the Quotation or otherwise together with a fair and reasonable addition to such amounts as a contribution to management cost, overhead and profit;
- (b) the amount of any Asset Value paid or allowed by Fulcrum.
- (c) all further sums to which Fulcrum is entitled under this Contract; and
- (d) save in the case of termination by the Client pursuant to Clause 20.2 the reasonable costs of cancelling any contracts, 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, together with any unpaid part of the Price.

## **21 INTELLECTUAL PROPERTY**

**21.1** 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.

## **22 CONFIDENTIALITY**

**22.1** 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;
- (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) to their employees, consultants, sub-contractors, potential sub-contractors or agents as is strictly necessary for them to properly perform their respective duties to the Client or Fulcrum (as the case may be) which are required in order for the Parties to perform their obligations under this Contract; or
- (g) where expressly permitted under this Contract.

**22.2** Where a Party makes disclosure to any employee, consultant, sub-contractor, potential sub-contractor 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, sub-contractor, potential sub-contractor 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.

**22.3** 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.

## **23 ENTIRETY OF AGREEMENT AND AMENDMENTS**

**23.1** 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.

**23.2** 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 or not) except those expressly set out in this Contract.

**23.3** 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.

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

## **24 WAIVER**

**24.1** 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.

## **25 ANTI-CORRUPTION**

**25.1** The Parties shall comply with all applicable laws and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 or any amendment or re-enactment of it.

## **26 ASSIGNMENT AND SUB-CONTRACTORS**

**26.1** The Client may not assign, charge, mortgage or otherwise transfer any rights and/or obligations under this Contract without Fulcrum's prior written consent, which consent may not be unreasonably withheld or delayed.

**26.2** Fulcrum may assign, charge, mortgage or otherwise transfer any of its rights and/or obligations under this contract by notice in writing to the Client.

**26.3** 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.

**26.4** Within ten (10) days of receiving a written request from Fulcrum, the Client shall enter into a deed of novation in such form as Fulcrum may reasonably require with Fulcrum and an Affiliate or any person (or entity) taking or acquiring the whole or substantially the whole of Fulcrum's interest in this Contract.

## **27 NOTICES**

**27.1** 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.

**27.2** 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.

**27.3** 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; or
- (c) three (3) Working Days subsequent to the date of posting if sent by registered post, recorded delivery or pre-paid first class post.

## **28 THIRD PARTY RIGHTS**

**28.1** 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.

## **29 SEVERABILITY**

**29.1** In the event that any of these terms, conditions or provisions, or any part(s) thereof, shall be determined by a tribunal of competent jurisdiction to be invalid, unlawful or unenforceable to any extent, such term, condition or provision, or part(s) thereof, shall be severed from the remaining terms, conditions and provisions, or remainders of such terms, conditions and provisions, which shall continue to be valid to the fullest extent permitted by law.

## **30 LAW AND DISPUTES**

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

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

**30.3** Any dispute between the Parties may be referred to adjudication in accordance with the TeCSA Adjudication Rules current at the date of referral.

## **31 PRICE FLUCTUATIONS**

**31.1** The Price excludes all charges, levies, duties, tariffs or similar sums imposed on imports or exports of Plant and Materials or any raw materials or components used in their manufacture in any jurisdiction (**Trade Tariffs**) as a consequence of the UK ceasing to be a member state of the European Union, regardless of which countries comprise the UK at such date or the terms upon which the UK holds membership being materially changed (**Brexit**). All Trade Tariffs shall be the sole responsibility of the Client, and the Client shall promptly make payment of any Trade Tariffs directly to HMRC or the relevant collecting agency, and Fulcrum shall not be required to make any payment in respect of any Trade Tariff on behalf of the Client.

**31.2** Fulcrum shall have no responsibility or liability for any loss to the extent it is a consequence of or arises from:

- (a) any delay by the Client in complying with its obligations to pay any Trade Tariff under clause 31.1;
- (b) any delay in the Plant and Materials being delivered to the Site caused by:
  - (i) any requirement for the Plant and Materials to obtain approval to pass through any border crossing into the United Kingdom;
  - (ii) disruption to transport networks (including road, sea, air or rail freight networks) arising from delays at any land border crossing, sea port or airport.

**31.3** The Client shall pay any increase in the Price and additional costs incurred by Fulcrum as a consequence of a Brexit Trigger Event. A **Brexit Trigger Event** means any of the following events caused by Brexit or any discussions, proposals, negotiations or any other steps taken by the UK government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:

- (a) **Change in Law:** a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, **Law** means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;

- (b) **Licence or consent:** in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by a party to perform the agreement;
- (c) **Currency Fluctuation:** a change of more than 5% to the rate of exchange of sterling against either the Euro or United States Dollar, since the price for the Works was last agreed. The rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England;

### **32 CORRUPT ACTS**

**32.1** In performing its obligations under this contract, neither Fulcrum or the Client shall:

- (a) engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- (b) engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2015 if such activity, practice or conduct were carried out in the UK;
- (c) engage in any activity or conduct which would constitute a UK or foreign tax evasion facilitation offence under section 45(1) or 46(1) of the Criminal Finances Act 2017; and
- (d) do, or omit to do, any act that will cause or lead the other Party to be in breach of the Mandatory Requirements.

### **33 DATA PROTECTION**

**33.1** Each Party shall comply with its obligations under all applicable laws relating to the protection of personal data and privacy, including the General Data Protection Regulation (2016/679) (GDPR) and the Data Protection Act 2018 (as amended or replaced from time to time).

**33.2** The Parties acknowledge and agree that:

- (a) each Party may receive personal data relating to the other Party's personnel, agents and/or contractors including name, email address and work telephone number ("Personnel Personal Data") for the purposes of the administration and/or management of this Contract, and for the purposes of proper liaison and communication of each Party in relation to this Contract ("Administration Purposes");
- (b) each Party shall be an independent controller of its processing of any of the other Party's Personnel Personal Data that it receives from the other Party in connection with the Administration Purposes; and
- (c) the Client shall, at Fulcrum's reasonable request, and prior to disclosing any of the Client's Personnel Personal Data to Fulcrum for the Administration Purposes, promptly provide a copy of any privacy notice supplied by Fulcrum (or hyperlink to such notice) to all relevant individuals who are the subject of the Client's Personnel Personal Data.

**33.3** The Client acknowledges that all other processing of personal data by Fulcrum is as set out in Fulcrum's privacy notice which can be found on Fulcrum's website and the Client shall provide this privacy notice to any individuals whose personal data it provides to Fulcrum.

**33.4** To the extent either Party (the "Controller") processes any personal data on behalf of the other Party as a processor (the "Processor"), the Processor shall comply with the provisions set out in Article 28 of the GDPR (together with any provisions referenced therein) which shall have effect as obligations on the Processor as if set out in full in this Contract and the expressions "controller" and "processor" used in those provisions and incorporated in this Agreement pursuant to this clause 33.4 shall be deemed references to the Party as Controller and the Party as Processor respectively. Upon notice by the Controller to the Processor, the Parties shall agree in good faith the following details in respect of the processing by the Processor on behalf of the Controller: (i) the subject-matter of the processing; (ii) the nature and purpose of the processing; and (iii) the type of personal data and categories of data subjects. The Parties agree that the obligations and rights of the Controller in connection with the Processor's processing under this Contract are as set out in this Contract and in the applicable laws relating to the protection of personal data and privacy. All such processing shall be carried out by the Processor only to the extent and duration necessary for the purposes of complying with its obligations under this Contract and as otherwise agreed between the Parties pursuant to this clause 33.4.

### **34 DOMESTIC REVERSE CHARGE**

**34.1** In this clause 34, the following definitions shall apply:

- (a) HMRC means HM Revenue & Customs;
- (b) Order means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892);
- (c) Reverse Charge means, in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier's behalf, to account for and pay VAT on the supply and not for the supplier; and
- (d) Supply means a supply made for VAT purposes under or in connection with this Contract by Fulcrum and Supplies shall be construed accordingly.

**34.2** Unless it has notified Fulcrum to the contrary prior to this Contract becoming binding on the Parties, the Client confirms that:

- (a) it is not CIS registered; and
- (b) it is not an end user or intermediary supplier for the purposes of the Order;



and the Parties consider that the Reverse Charge will not apply to the Supplies so that it is for Fulcrum to account for and pay VAT to HMRC. The Client shall notify Fulcrum immediately in the event that its status as set out in this clause changes.

**34.3** Where Fulcrum has accounted for VAT on Supplies (on the understanding that the Reverse Charge did not apply) but HMRC notifies the Client in writing that:

- (a) the Reverse Charge did apply in respect of those Supplies, and
- (b) notwithstanding that Fulcrum has accounted for VAT to HMRC in respect of those Supplies, the Client has to account for VAT under the Reverse Charge on those Supplies,

Fulcrum shall, following receipt of a copy of such notice, pay to the Client the amount of VAT payable by the Client.

**34.4** Where the Client has accounted for VAT on Supplies (on the understanding that the Reverse Charge did apply) but HMRC notifies Fulcrum in writing that:

- (a) the Reverse Charge did not apply in respect of those Supplies, and
- (b) notwithstanding that the Client has accounted for VAT to HMRC in respect of those Supplies, Fulcrum has to account for VAT under the Reverse Charge on those Supplies,

the Client shall, following receipt of a copy of such notice, pay to Fulcrum the amount of VAT payable by Fulcrum.