



# FULCRUM

## TERMS AND CONDITIONS FOR MULTI-UTILITY CUSTOMER WORKS

VERSION 9 updated 04.02.2025



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## **1 GENERAL TERMS**

- 1.1 All quotations are made, and orders accepted and executed on the understanding that the Client is bound by these Conditions of Sale. The present document represents the Agreement between Fulcrum and the Business ("**Client**") in its entirety and supersedes any prior understanding or agreement (verbal, written or otherwise) between the parties.
- 1.2 All quotations are made in accordance with the terms of this agreement. Fulcrum reserve the right to alter the terms of any quotation should the Client not comply with their obligations under this agreement and/or any of the information should change. In any event, Fulcrum reserves the right to amend the quotation if the Works have not commenced 6 months after the quotation was issued.
- 1.3 The Client agrees that it has not relied on any representation made to it in entering into this Agreement except insofar as a representation has been reduced to writing and appears on the quotation or order form.
- 1.4 These Conditions shall form the basis of the contract between Fulcrum and the Client in relation to the sale and transfer of Materials and the carrying out of the Works, to the exclusion of all other terms and conditions including the Client's standard terms and conditions of purchase or any other conditions which the Purchaser may purport to apply under any purchase order or confirmation of order or any other document.
- 1.5 These Conditions shall have precedence over any other document referred to in or forming part of this Agreement and shall apply to the exclusion of any other terms and conditions referred to in the Quotation Acceptance Form or any other document emanating from the Client.

## **2 CONTRACT**

All orders are accepted subject to the terms of this agreement. Our records of any order placed by the Client in written form shall be conclusive.

## **3 DEFINITIONS AND INTERPRETATION**

- 3.1 For the purpose of this Agreement, the following definitions will apply:

<b>"Affiliate"</b>	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 Value"</b>	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;

<b>“Asset”</b>	means the completed Works up to and including the Supply Point;
<b>“Client Designated Representative”</b>	means the person appointed as such in accordance with clause 4;
<b>“Client”</b>	means the party to which the Firm Quotation is issued or, if different, the party who completes and signs the Quotation Acceptance Form;
<b>“Completion Notice”</b>	means a document that specified the date for completion of the Works issued in accordance with clause 36;
<b>“Commissioning-”</b>	means purging to natural gas of those elements of the Works designed to convey or contain natural gas, and its pressurisation to normal operating pressure, energising of any electrical cables and equipment, pressurisation to normal operating pressure of any water pipes and associated equipment and any decontamination, cleaning, preparation and testing required prior to use of the completed Works;
<b>“Condition Precedent”</b>	means any of the conditions precedent set out in clause 11.3;
<b>“Conditions”</b>	means these terms and conditions;
<b>“Confidential Information”</b>	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;
<b>“Confirmation of Acceptance”</b>	means Fulcrum’s written acknowledgements and acceptance of the Quotation Acceptance Form issued in accordance with clause 8.2;
<b>“Construction Commencement Date”</b>	means a date specified in the Programme or advised by Fulcrum to the Client in accordance with clause 16.1 (subject in each case to any adjustment to such date in accordance with this Agreement), being the date upon which Fulcrum intends to commence 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;
<b>“Contamination”</b>	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;
<b>“Contract Sum”</b>	means the full sum detailed within the Firm Quotation provided by Fulcrum;
<b>“Contract”</b>	means the contract comprising: <ul style="list-style-type: none"> <li>(a) the Firm Quotation, these Conditions and any documents expressly incorporated therein;</li> </ul>

- (b) the Quotation Acceptance Form; and
- (c) the Confirmation of Acceptance (if applicable);

**“Electricity Network Agreement”**

means an agreement entered into or to be entered into between Fulcrum and an Electricity Network Owner under which the Electricity Network Owner agrees to execute the Electricity Works and/or adopt the completed Electricity Works in accordance with the terms and conditions stated therein, provided that where Fulcrum has entered into a framework or other agreement with the Electricity Network Owner under which the Electricity Network Owner may agree to execute works and/or adopt completed works from time to time, any reference in this Agreement to Fulcrum entering into or having entered into the Electricity Network Agreement shall include the agreement of any matters or terms and any acceptance required pursuant to such framework in relation to the Electricity Works;

**“Electricity Network Owner”**

means a Distribution Network Operator or an Independent Distribution Network Operator licensed under the Electricity Act 8919 (as amended) who has entered or will enter into an Electricity Network Agreement with Fulcrum or any replacement Electricity Network Owner nominated by Fulcrum;

**“Electricity Works”**

means any part of the Works comprising installation and Commissioning of electrical cables, connections and associated equipment;

**“Equipment”**

means all vehicles, equipment, appliances, instruments, apparatus and other items used in the performance of the Works but does not include anything incorporated or to be incorporated into the Works;

**“Fibre Optic Works”**

means any part of the Works comprising installation of fibre optic cables and associated equipment up to the external boundary wall of the Plot;

**“Firm Quotation”**

means the quotation forming part of this Agreement as issued by Fulcrum containing details of the Works and Price, together with any other documents expressly incorporated therein. The Firm Quotation supersedes all other Quotations;

**“Fulcrum”**

means whichever of the following companies is named in the Firm Quotation:

- (a) Fulcrum Pipelines Limited
- (b) Fulcrum Electricity Assets Limited
- (c) Fulcrum Infrastructure Services Limited
- (d) Dunamis Infrastructure Services Limited
- (e)

**“Gas Transporter Agreement”**

means an agreement entered into or to be entered into between Fulcrum and a Gas Transporter under which the Gas Transporter agrees to execute the Gas Works and/or adopt the completed Gas Works in accordance with

the terms and conditions stated therein, provided that where Fulcrum has entered into a framework or other agreement with the Gas Transporter under which the Gas Transporter may agree to execute works and/or adopt completed works from time to time, any reference in this Agreement to Fulcrum entering into or having entered into the Gas Transporter Agreement shall include the agreement of any matters or terms and any acceptance required pursuant to such framework in relation to the Gas Works;

<b>“Gas Transporter”</b>	means a gas transporter within the meaning of and licensed under the Gas Act 8619 (as amended) who has entered or will enter into the Gas Transporter Agreement with Fulcrum or any replacement gas transporter nominated by Fulcrum;
<b>“Gas Works”</b>	means any part of the Works comprising installation, connection and/or Commissioning of gas service pipes and/or mains and associated equipment;
<b>“Highway”</b>	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;
<b>“HMRC”</b>	means HM Revenue & Customs;
<b>“Indicative Quotation”</b>	means the indicative quotation that Fulcrum may provide. The indicative quotation does not form part of the Contract and instead provides an estimated Price;
<b>“IP Rights”</b>	means all intellectual property rights including patents, copyrights and all other rights in or relating to the Works or the design of the Works;
<b>“Legislation”</b>	means all statutes, statutory instruments, by-laws, regulations and directives relevant to the Works or this Agreement or that affect either Party in performance of its obligations under this Agreement;
<b>“Mandatory Requirements”</b>	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;
<b>“Meter Asset Manager”</b>	means anyone adopting a Meter;
<b>“Meter”</b>	means any device(s) to record the volume of gas, water or electricity passing or intended to pass through the Supply Point and, in connection with such recording, to control such gas, water or electricity;
<b>“Network Agreements”</b>	means any of the Gas Transporter Agreement, Electricity Network Agreement, Water Self Lay Agreement and any equivalent Fibre Optic Agreement;
<b>“Network Owner”</b>	means the owner of a Network.
<b>“Network”</b>	means a gas or water pipeline or electricity, telecommunication or fibre optic cable or system of such pipelines and/or cables designed or installed so that either one or alternatively several buildings can be connected to such

pipeline, cable or system, including any and all associated mains and service pipes and associated plant and equipment;

**“NJUG”** means to the National Joint Utilities Group guidelines on the positioning of Underground Utilities Apparatus for New Development Sites as published prior to the date of the Firm Quotation;

**“Nominated Energy Supplier”** means an energy supplier nominated by Fulcrum in the Firm Quotation or otherwise pursuant to this Agreement;

**“Non-Contestable Work”** means:

- (a) any planning, design, approval, connection, commissioning, metering, inspection, monitoring, testing or other work or service required in connection with the Works, and
- (b) any reinforcement or increase in capacity of any Network required by reason of or in connection with the Works;

that is executed or to be executed by or on behalf of a Network Owner other than pursuant to an agreement between Fulcrum and the relevant Network Owner for such work or service to be carried out or performed by Fulcrum;

**“Normal Working Hours”** means the hours of 8.00 am to 6.00 pm on any Working day;

**“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;

**“Order”** means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 1920 (SI 1920 No. 892);

**“Outlet”** means all pipe, cables and facilities utilising any supply installed or to be installed downstream of any Meter;

**“Party”** means the Client or Fulcrum (as the case may be) and Parties means both of them;

**“Phase of the Works”** means each phase (if any) identified in the Firm Quotation or Programme or otherwise agreed in writing between the Parties;

**“Plant and Materials”** means items intended to be incorporated into the Works;

**“Price Review Date”** means the date immediately following expiry of twelve (12) months from the date of the Firm Quotation and each anniversary of that date;

**“Price”** means the total price for the Works as adjusted in accordance with this Agreement;

**“Programme”** means the programme for the Works (including any Phase(s) of the Works) as identified or detailed in the Firm Quotation, notified by Fulcrum to the Client under clause 16.1, adjusted in accordance with these Conditions or otherwise



agreed in writing between the Parties;

**“Quotation Acceptance Form”** means the form of acceptance annexed to the Firm Quotation;

**“Reasonable and Prudent Operator and RPO”** means a person seeking in good faith to perform its contractual obligations, and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight that is reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions;

**“Reinforcement Costs”** means any sums paid or to be paid by Fulcrum in respect of the cost of any reinforcement of any Network upstream of the Works and required in connection with or by reason of the Works;

**“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

**“Site Survey”** means a non-intrusive visual survey of the Site or other survey specified in the Firm Quotation;

**“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 Firm Quotation and where applicable, a plan showing the boundaries of the site appended thereto;

**“Street Works Licence”** means:

- (a) 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, or
- (b) any permit required under the Traffic Management Act 2004 or any regulations made under that Act,

Or in each case any modification re-enactment or replacement of any such section or act;

**“Substantial Completion”** means the completion of the Works, or where applicable any Phase of the Works (including in each case any Commissioning), with the exception of any reinstatement and any other parts of the Works to be carried out following Commissioning;

**“Supply Point”** means:

- (a) for gas, termination within the meter housing at the emergency

control valve,

- (b) for electricity, termination within the meter housing at the connection block;
- (c) for water, termination of the communication pipe prior to connection with the supply pipe (normally within 300mm of the boundary);
- (d) for telecommunications and/or fibre optic, termination at the exterior property wall of each Plot;

<b>“Supply”</b>	means a supply made for VAT purposes under or in connection with this Agreement by Fulcrum and Supplies shall be construed accordingly.
<b>“TeCSA Adjudication Rules”</b>	means the procedural rules for adjudication of the Technology and Construction Solicitors Association;
<b>“Telecommunication Works”</b>	means any part of the Works comprising installation of telecommunication cables and associated equipment up to the external boundary wall of the Plot;
<b>“Variation”</b>	means any addition to, deduction from, or other change or variation to the Works or performance of the Works in accordance with clause 15;
<b>“Water Company”</b>	means the company appointed as the water undertaker for the relevant area in accordance with the Water Industry Act 1991 (as amended);
<b>“Water Self Lay Agreement”</b>	means an agreement entered into or to be entered into between Fulcrum and/or the Client and the Water Company under which the Water Company agrees to execute all or part of the Water Works and/or adopt all or part of the completed Water Works in accordance with the terms and conditions stated therein, provided that where Fulcrum has entered into a framework or other agreement with the Water Company under which the Water Company may agree to execute works and/or adopt completed works from time to time, any reference in this Agreement to Fulcrum entering into or having entered into the Water Self Lay Agreement shall include the agreement of any matters or terms and any acceptance required pursuant to such framework in relation to the Works;
<b>“Water Works”</b>	means any part of the Works comprising installation, connection and/or Commissioning of water supply pipes and associated equipment;
<b>“Working Day”</b>	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.
<b>“Works”</b>	means the works and/or design services detailed in the Firm Quotation, taking into account any Variation but excluding in each case any Non-Contestable Work;

#### **4 DESIGNATED REPRESENTATIVES**

- 4.1 The Client may appoint a Client Designated Representative but shall provide notice to Fulcrum in writing within 5 Business days of the appointment. Save to the extent that the contrary is specified in such notice, the Client Designated Representative shall have authority to act for and on behalf of the Client in all matters in connection with this Agreement.
- 4.2 Any instructions, directions or orders the Client may give to Fulcrum shall be in writing.

#### **5 DESIGN**

- 5.1 Where Fulcrum has design responsibility for the Works, we will use the degree of skill and care in the design performance and installation of the Works, that would reasonably be expected of an RPO in the same field, carrying out activities of a similar nature, scope and complexity.

#### **6 SITE SURVEYS**

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

#### **7 GROUND CONDITIONS**

- 7.1 The Client shall provide to Fulcrum details of the means of access to the Site during the construction period, vehicle parking facilities on Site, loading and unloading areas for materials, site compounds, temporary warning and direction signs on adjacent highways and any other similar information required for Fulcrum's working arrangements. If necessary, the Client shall amend such details to obtain the approval of the local planning authority or other relevant public authority having jurisdiction with respect to the Works.
- 7.2 Fulcrum shall not be required to inspect the physical and other conditions (including the sub-surface and ground conditions) and all other conditions of or affecting the site of the Works. The Client shall have carried out all the necessary site investigations and has reviewed and fully taken into account all site investigation and environmental reports prior to the date of this Agreement and shall be deemed to have obtained all necessary information as to any risks, contingencies and other circumstances in relation thereto which may influence or affect the execution of the Works. Fulcrum shall be entitled to rely upon any survey, report or other document prepared by or on behalf of the Client regarding any matter referred to in this clause 7. Fulcrum shall not be required to discover or foresee any such condition, risk, contingency or circumstance in regard to the Site and/or the ground conditions at the Site whether or not the same ought reasonably to have been discovered or foreseen by a competent and careful contractor. The discovery of any such condition, risk, contingency or circumstance shall entitle Fulcrum to an adjustment of the Contract Sum and/or a claim for loss and/or expense and/or extension of time under this Agreement.

#### **8 QUOTATION, ACCEPTANCE AND SUPPLIER NOMINATION**

- 8.1 The Conditions 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 Firm Quotation (or within such other period as may be agreed in writing between the Parties).

- 8.2 If Fulcrum receives the Quotation Acceptance Form or, if earlier, payment of the Price, outside the period of validity specified in the Firm 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 Conditions shall become binding on the Parties on the date Fulcrum issues such a Confirmation of Acceptance Form.
- 8.3 If where the Works or any part of the Works are incomplete on the Price Review Date, subject to clause 22 Fulcrum may adjust the Price for the Works or revise any other element of the Firm Quotation in accordance with the prevailing Price Adjustment Formulae Indices on the Price Review Date 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 accepted by the Client in writing.
- 8.4 The Price includes the Plant and Materials costs applicable at the date of the Firm Quotation.
- 8.5 If the project has not been completed within 6 months from the Confirmation of Acceptance then Fulcrum reserve the right to amend the Asset discount value given.
- 8.6 In the event of an increase in the costs of Plant and Materials after the date of the Firm Quotation Fulcrum may adjust the Price to include any such increase. The adjustment to the Price shall be paid by the Client in accordance with clause 18.
- 8.7 Where the Client accepts an option within the Firm Quotation indicating that the Client wishes Fulcrum to nominate the energy supplier, the following provisions apply. Compliance by the Client with these provisions is a conditions precedent to the Client's entitlement to all or any part of any Asset Value identified within the Quotation.
- 8.7.1 The Client will sign and return to Fulcrum a copy of the energy supplier nomination form (as referred to in the Firm Quotation) together with the Quotation Acceptance Form.
- 8.7.2 The Client will enter into such agreements with and accept such terms as the Nominated Energy Supplier may require.
- 8.7.3 Following completion and hand over of each property comprised in the Client's development, the Client will forward to Fulcrum all documentation relating to the transfer of responsibility to the new owner or occupier (as provided by, or obtained by the Client from, the Nominated Energy Supplier) in respect of each electricity Supply Point and gas Supply Point serving such property, duly completed and signed by all relevant parties in accordance with the Nominated Energy Supplier's requirements.
- 8.7.4 Where following Substantial Completion of the Works the total number of Supply Points comprised in the Works and supplied by the Nominated Energy Supplier is less than that anticipated in calculating the Asset Value Fulcrum will be entitled to:
- 8.7.4.1 reduce the Asset Value pro rata (on the basis that the total discount identified in the Firm Quotation is apportioned equally across all Supply Points and that all Supply Points are to be supplied by the Nominated Energy Supplier); and

- 8.7.4.2 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.

## **9 PLANT AND MATERIALS AND WORKMANSHIPS**

- 9.1 All Plant and Materials for the Works shall, so far as procurable,
- 9.1.1 conform with their description within the Firm Quotation;
  - 9.1.2 be free from material defects in design, material and workmanship;
  - 9.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979)

## **10 SUPPLY OF THE WORKS**

- 10.1 Fulcrum shall supply the Works to you in accordance with the Firm Quotation and these Conditions in all material respects.
- 10.2 Fulcrum shall use all reasonable endeavours to meet any performance dates specified in the Firm Quotation but any such dates shall be estimates only and time shall not be of the essence for performance of the Works.
- 10.3 Fulcrum may amend the Programme if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Works, and we shall notify you in any such event.
- 10.4 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:
- 10.4.1 all references to Fulcrum in this Agreement shall be deemed to be to the Group Company;
  - 10.4.2 the Clients rights and obligations under this Agreement shall lie against the Group Company and not Fulcrum;
  - 10.4.3 the Group Company has the benefit of the rights of Fulcrum and shall comply with the obligations of Fulcrum under this Agreement.

## **11 CONDITIONS PRECEDENT AND COMMENCEMENT**

- 11.1 Notwithstanding any other provision of this Conditions, Fulcrum shall have no obligation to:
- 11.1.1 commence or continue to provide the Works (including any design);
  - 11.1.2 procure or continue to procure any Plant and Materials or other goods or materials required in connection with the Works; or

11.1.3 schedule, seek agreement for or confirm to the Client any Construction Commencement Date;

at any time when any of the Conditions Precedent at sub-clause 11.3 below are not fulfilled.

11.2 For the avoidance of doubt, performance, commencement or re-commencement of any of the above activities shall not constitute any waiver of any provision of this clause 11 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.

11.3 The following are the Conditions Precedent:

11.3.1 Fulcrum has entered into each of the Network Agreements relating to the Works and each such agreement remains in full force and effect;

11.3.2 Fulcrum's employment under any of the Network Agreements has not been terminated for any reason;

11.3.3 No statutory, regulatory, technical or other matter has or may prevent commencement or continuation of the Works;

11.3.4 any approval, authorisation or consent required from the Network Owner or Meter Asset Manager has been given;

11.3.5 the Client has made payment in full (free from any set-off or deduction) of any part of the Price stated in the Firm Quotation as being due prior to or upon the Parties entering into this Agreement or prior to the Construction Commencement Date, or any payment due under clause 8 or 21;

11.3.6 any Street Works Licence or consent required in connection with the Works has been obtained;

11.3.7 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;

11.3.8 any planning permission or Site Survey has been obtained;

11.3.9 any Non-Contestable Works have been performed to the extent necessary to enable the Works to progress;

11.3.10 the Network Owner, Meter Asset Manager or any other relevant statutory body has approved the design of the Works;

11.3.11 the Client has complied with its obligations under clause 10; and

11.3.12 the Client has entered into agreements for energy supplies to all gas and electricity Supply Points on the Site and such agreements remain in full force and effect, and has notified Fulcrum of all contract reference numbers generated by the relevant suppliers.

11.4 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.

## **12 FULCRUM'S OBLIGATIONS**

12.1 Subject to clause 11 Fulcrum shall use reasonable endeavours to:

- 12.1.1 enter into the Network Agreements and obtain any approval, authorisation or consent required under such agreements;
- 12.1.2 obtain any required Street Works Licence; and
- 12.1.3 liaise with any Network Owner for the purpose of co-ordinating any Non- Contestable Works.

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

- 12.2.1 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;
- 12.2.2 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;
- 12.2.3 comply with all reasonable Site rules agreed between the Parties;
- 12.2.4 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 Agreement or forming part of any permission, licence or consent obtained by Fulcrum from any third party; and
- 12.2.5 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.

12.3 The works and/or matters detailed in Schedule 1 shall not form part of the Works and are not Fulcrum's obligations under these Conditions, unless expressly and separately identified in the Firm Quotation as falling within the scope of Fulcrum's obligations and/or the Works or comprised in a Variation.

## **13 THE CLIENT'S OBLIGATIONS**

13.1 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 Agreement:

- 13.1.1 provide all necessary information to Fulcrum relating to or affecting the Works or performance of the Works
- 13.1.2 provide all surveys and site investigation reports relating to the ground conditions and the access to the Site.

- 13.1.3 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 Network Owner, and provide copies of the same to Fulcrum.
  - 13.1.4 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
  - 13.1.5 comply with Fulcrum's relevant guidelines, health and safety policies, and reasonable instructions and directions.
- 13.2 Save where the Firm 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:
- 13.2.1 provide any Plant and Materials, Equipment and services to be provided by the Client;
  - 13.2.2 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, including but not limited to ensuring the internal wiring and appropriate wall terminations are installed for Telecommunication Works and/or Fibre Optic Works ;
  - 13.2.3 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;
  - 13.2.4 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;
  - 13.2.5 ensure that any scaffolding in the vicinity of the Works is removed prior to the Construction Commencement Date;
  - 13.2.6 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;
  - 13.2.7 provide in advance of commencement of the Works line and level for installation of the Works to comply with NJUG;
  - 13.2.8 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;



- 13.2.9 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;
- 13.2.10 perform any other actions required for Fulcrum to provide the Works; and
- 13.2.11 within 10 Working Days following the Date of Substantial Completion enter agreements for energy supplies to all gas and electricity Supply Points on the Site to ensure that a Meter can be fitted to or as part of the Works;

#### **14 ACCESS TO THE WORKS**

- 14.1 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.
- 14.2 The Client (and any such person nominated by 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. The Client (and any such person nominated by the Client) shall not be entitled to issue any instruction to Fulcrum or anyone acting on behalf of Fulcrum.

#### **15 VARIATIONS**

- 15.1 The Client may request in writing a Variation to the Works or any part of the Works ("the Client Variation").
- 15.2 Fulcrum may request a Variation to the Works or any part of Works at any time on any number occasions in writing (the "Fulcrum Variation"). The Fulcrum Variation shall include details of the adjustment to the Price ("Notice of Adjustment for Variation")
- 15.3 Subject to the following provisions of this clause 15 and any approval required from a Network Owner, the Works shall be varied in accordance with such Client Variation unless Fulcrum, acting reasonably, objects to the Client Variation in writing, in which case the Client 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:
  - 15.3.1 reduce the Asset Value; and
  - 15.3.2 issue an invoice to the Client for any outstanding amount due following reduction of the Asset Value (together with VAT as applicable).
- 15.4 Where the Client receives the Fulcrum Variation it shall be required to accept or reject in writing the terms of the Fulcrum Variation within 5 working days, failing which the Client will be deemed to have accepted the terms of the Fulcrum Variation.
- 15.5 The Client shall make payment in full for the Client Variation or the Fulcrum Variation (as the case may be) no later than 5 working days after any such Client Variation or Fulcrum Variation is accepted in writing or deemed accepted. Fulcrum shall be entitled to include the Client Variation or the Fulcrum Variation in next application for payment following acceptance in writing or deemed acceptance (as the case may be).
- 15.6 Where:

- 15.6.1 the Network Owner 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 Network; or
- 15.6.2 there is any error, omission or inaccuracy in or change to:
  - 15.6.2.1 any assumption or other information set out in the Firm Quotation; or
  - 15.6.2.2 the location of final connection point(s) onto any existing Network as indicated by the relevant Network Owner; or
  - 15.6.2.3 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
- 15.6.3 additional connections, additional site visits or other changes to the Works or the design, location or performance of the Works are required; or
- 15.6.4 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
- 15.6.5 a change to the design, location or performance of the Works is required as a result of the Site Survey or clause 6.1 applies; or
- 15.6.6 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
- 15.6.7 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 Agreement; or
- 15.6.8 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
- 15.6.9 there is any excess pipework, cabling or other Plant and Materials required by the Client over and above that included in the Firm Quotation or any existing pipework or cabling is not adequate for the purposes of the Works; or
- 15.6.10 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.

- 15.7 Subject to the following, Fulcrum shall be entitled to make a fair and reasonable adjustment to the Price in respect of any Variation (which shall include the Client Variation and Fulcrum Variation) :
- 15.7.1 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 receipt of the Client Variation and this adjustment will take into account any impact on the Asset Value due to the Client Variation.
  - 15.7.2 Within five (5) working 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.
  - 15.7.3 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.
  - 15.7.4 If the Client fails to give such notice of acceptance or non-acceptance of the adjustment to the Price within the time period specified in clause 15.3.2:
    - 15.7.4.1 in the case of a Client Variation , Fulcrum may in its sole and absolute discretion elect not to continue with all or any part of such Client Variation; and
    - 15.7.4.2 in the case of the Fulcrum Variation then the Client shall be deemed to have accepted the terms of the- Notice of Adjustment to the Variation.
    - 15.7.4.3 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 15. 7.4.2).
  - 15.7.5 If the Client notifies non-acceptance of the adjustment to the Price in accordance with clause 15. 7.2, the Client shall in the same notice set out its reasons for non-acceptance of such adjustment and:
    - 15.7.5.1 in the case of a Client Variation, the Client shall in the same notice instruct Fulcrum either to proceed with the Client Variation or withdraw it and if Fulcrum is instructed to proceed with the Client Variation, the Price shall be adjusted and such adjustment to the Price shall be determined using fair rates and prices; or
    - 15.7.5.2 in the case of any Variation other than a Client Variation (which shall include a Fulcrum Variation) , the Price shall be adjusted and such adjustment to the Price shall be determined using fair rates and prices.
- 15.8 Notwithstanding the foregoing where Fulcrum believes that Fulcrum has been carrying out such works which constitute a Variation to the Works, but no instructions has been issued in writing in relation to such works Fulcrum shall be entitled to issue a Notice of Adjustment for Variation detailing all of these works and the adjustment to the Price required as a result of these works. Fulcrum shall be entitled to payment of the adjustment to the Price even though no agreement has been reached with the Client in this regard on condition that works were necessary and completed by Fulcrum for the benefit of the Client.

## **16 PROGRAMMING**

- 16.1 Subject to clause 8.1 save where such dates are specified in the Programme Fulcrum will schedule and confirm to the Client in writing:
- 16.1.1 the Construction Commencement Date for the Works and (where applicable) any Phase of the Works;
  - 16.1.2 the Date for Substantial Completion for the Works or (where applicable) each Phase of the Works;
  - 16.1.3 any other dates required pursuant to the Firm Quotations; and
- 16.2 Unless the Firm Quotation expressly states to the contrary, the Price has been calculated on the basis that the Works will be carried out continuously and all gas, electricity and water infrastructure will be installed simultaneously.
- 16.3 The Client acknowledges and agrees that Fulcrum's ability to comply with the Programme and the Construction Commencement Dates is dependent upon the Client fulfilling its obligations under clause 10.

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

- 17.1 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 Agreement or otherwise incurred in connection with this Agreement (including without limitation any sum that Fulcrum is or will be liable to pay to the Network Owner or other third party) has or will be increased due to:
- 17.1.1 delay in satisfaction of any of the Conditions Precedent;
  - 17.1.2 any Variation;
  - 17.1.3 failure by the Client to fulfil its obligations;
  - 17.1.4 discovery of items of historical, archaeological or special scientific interest;
  - 17.1.5 delays caused by any statutory authority;
  - 17.1.6 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;
  - 17.1.7 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 Agreement);
  - 17.1.8 any change to Legislation after the date of formation of this Agreement;
  - 17.1.9 exceptionally adverse weather conditions;
  - 17.1.10 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;

- 17.1.11 any suspension pursuant to clause 22;
- 17.1.12 any delay caused by the 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 Network Owner or Meter Asset Manager;
- 17.1.13 any imposition of or increase in Reinforcement Costs by reason of any error, inaccuracy or omission in information supplied by the Client or any breach of warranty or obligation on the part of the Client under this Agreement;
- 17.1.14 late acceptance of the Firm Quotation in accordance with clause 8.2;
- 17.1.15 the Client's failure or delay in performing its obligations under this Agreement 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;
- 17.1.16 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;
- 17.1.17 compliance with the traffic management or road closure requirements of a statutory body;
- 17.1.18 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 17.2 shall apply.

17.2 The following shall apply:

- 17.2.1 the Price shall be adjusted by the addition of:
  - 17.2.1.1 the amount of any increased cost and/or expense due to any matter referred to in clause 17.1 or 17.3; and
  - 17.2.1.2 an uplift equal to 20% of such increased cost and/or expenses as a contribution to management cost and overheads; and
  - 17.2.1.3 a fair and reasonable addition to such increased cost and/or expense as a contribution to profit.
- 17.2.2 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 17.1, 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 Agreement shall be adjusted accordingly.

17.3 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:

- 17.3.1 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

- 17.3.2 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 Agreement;

Fulcrum shall be entitled to an adjustment in the Price and an extension of time in accordance with clause 17.2.

## **18 COMPLETION AND TITLE**

- 18.1 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 Network Owner in accordance with the Network Agreement.
- 18.2 Subject to any contrary provisions within the Network 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:
- 18.2.1 such title vests in the Network Owner in accordance with the Network Agreement; or
  - 18.2.2 such title vests in a Meter Asset Manager or other relevant licensed third party; or
  - 18.2.3 where clauses 18.2.1 and 18.2.2 above do not apply, title shall vest in the Client at Substantial Completion provided there are no Conditions Precedent applicable at that date.
- 18.3 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.
- 18.4 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 13 and this clause 18 to enable the Network Owner to obtain title to the Works with full title guarantee free from any encumbrances, liens or charges whatsoever.
- 18.5 The Client shall at its own cost execute or (where appropriate) procure that any third party executes any agreements and deeds that:
- 18.5.1 Fulcrum and/or the Network Owner requires to enable the Network Owner to obtain title to the Works or otherwise to adopt the Asset;
  - 18.5.2 are required to enable the Network Owner to operate and maintain the Asset; and
  - 18.5.3 are deemed necessary by the Network Owner 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 Network Owner or the subsequent operation and maintenance of the Asset, including (without limitation) any conveyance, lease, grant or transfer that the Network Owner deems necessary in accordance with the Network Owner's standard conditions for the purchase of land (if any).

## **19 DEFERRALS AND CANCELLATIONS**

- 19.1 A deferral may occur in the following circumstances:

- 19.1.1 The Client may defer the Construction Commencement Date or any other commencement date by giving Fulcrum notice in writing;
  - 19.1.2 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.
- 19.2 In the event of a deferral under clause 19.1 the Client shall pay:
  - 19.2.1 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
  - 19.2.2 Costs incurred by Fulcrum in obtaining or attempting to obtain any Street Works Licence, other statutory consent or other costs incurred (including, but not limited to, traffic management costs and sub-contractor costs).
- 19.3 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 19.2 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.
- 19.4 The Client may request the cancellation of the Works by notice in writing to Fulcrum. If Fulcrum accepts the request, the following shall apply:
  - 19.4.1 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 19.4 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 19.4.1, the difference shall be refunded to the Client within 28 days;
  - 19.4.2 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 19.4 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.
- 19.5 In the event that any sums become payable by the Client under this clause 19, those sums shall be payable in accordance with clause 21.
- 19.6 Fulcrum may set off against any amounts due to the Client under this Agreement any amounts which the Client may owe Fulcrum under this Agreement or otherwise.

## **20 NETWORK OWNER DEFAULT**

- 20.1 In the event that a Network Owner defaults under the terms of any of the Network Agreements, Fulcrum may (where practicable and with the Client's agreement, such agreement not to be

unreasonably withheld or delayed) and subject to the terms of the relevant Network Agreement enter into an alternative Network Agreement with an alternative Network Owner.

- 20.2 Subject to clause 22, Fulcrum shall not be liable for any costs incurred or losses suffered by the Client or any third party as a result of a Network Owner's failure to provide access to the Network or any delay caused by the Network Owner to the Works.

## **21 PAYMENT**

### **21.1 Price**

- 21.1.1 In consideration of the performance by Fulcrum of its obligations under this Agreement the Client shall pay to Fulcrum the Price (plus VAT as applicable) and any further sums to be paid by the Client under this Agreement.

- 21.1.2 The Price is based upon the following:

- 21.1.2.1 tender drawing quantities and Programme prepared by Fulcrum;
- 21.1.2.2 the fee quote prepared and issued by Fulcrum;
- 21.1.2.3 any adjustment to the Price required as a result of any Variation of the Works and/or Specification made in accordance with this Agreement

- 21.1.3 The Price is subject to VAT at the prevailing rate.

- 21.1.4 Where the Price are scheduled to take less than 45 days you are required to make full payment of the Price within 7 working days of the invoice date.

- 21.1.5 Fulcrum may, by giving written notice to the Client, increase the price of any Plant and Materials detailed in the Firm Quotation to reflect any increase in the cost of the Plant and Materials that is due to:

- 21.1.5.1 any factor outside of Fulcrum's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs;
- 21.1.5.2 any Variation to the Works in accordance with this Agreement;
- 21.1.5.3 any delay caused by any instructions or failure to give Fulcrum adequate or accurate information or instructions.

- 21.1.6 Where any adjustment is made to the Price in accordance with this Agreement, Fulcrum shall be entitled to include such adjustment with the next scheduled application for payment made in accordance with this Agreement.

### **21.2 Interim Payments**

- 21.2.1 Interim payments will apply where the Works are scheduled to take longer than 45 days, or where agreed in writing by the Client and Fulcrum.

- 21.2.2 The first interim valuation date is the date set out in the Firm Quotation and thereafter shall be at the intervals set out in the Firm Quotation.



- 21.2.3 The Price is payable, in arrears from the date specified in paragraph 8.3.2 , and each instalment shall be the amount of the Price which has been incurred since the previous payment less any part of the Price claimed in any previous application for payment ("**Instalment**").
- 21.2.4 In relation to each Instalment, Fulcrum shall make an application to the Client stating the sum that Fulcrum considers to be due, the basis on which that sum has been calculated and provide the necessary substantiation for the sum claimed by Fulcrum ("**the Invoice**").
- 21.2.5 Where a Pay Less Notice is given, the payment to be made before the final date of payment shall not be less than the amount stated be due.

### 21.3 Due Dates and Pay Less Notices

- 21.3.1 The due date for payment of the Invoice under this Agreement is the date 10 working days after the date on which the Invoice is issued.
- 21.3.2 The final date for payment of the Invoice under this Agreement is the date 15 working days after the date on which the Invoice is issued.
- 21.3.3 Where the Client intends to pay less than the sum due, the Client must serve a notice of his intention to pay less than the sum stated in the relevant invoice ("**Pay Less Notice**") not later than 1 day before the final date for payment which shall specify the sum he considers due to the and the basis on which that sum is calculated.
- 21.3.4 The title to any Materials shall not pass to the Client until payment has been made in full.

## 22 SUSPENSION

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

## 23 DEFECTS

- 23.1 Where the Client identifies any defect in the Works, they must:
  - 23.1.1 notify Fulcrum in writing;
  - 23.1.2 no later than 7 working days after the Works have been signed off; and
  - 23.1.3 provide to Fulcrum substantial evidence of any such defect.
- 23.2 For the purpose of this Agreement, substantial evidence must include:
  - 23.2.1 a written statement detailing the date and time that the defect or problem became apparent;
  - 23.2.2 the statement must be signed by a representative of the Client; and

- 23.2.3 photographic evidence if applicable.
- 23.3 Where Fulcrum accept the substantial evidence provided by the Client, Fulcrum shall review this evidence and provide details of how Fulcrum intend to rectify the defect.
- 23.4 For the avoidance of doubt the acceptance of any defects in accordance with this clause 23 shall not entitle the Client to withhold any payment otherwise due in accordance with this Agreement.
- 23.5 The Client shall promptly notify Fulcrum in writing of any breach of Clause 23.1 and give Fulcrum a reasonable opportunity to rectify such defect. The Client shall provide such access to the Site as Fulcrum reasonably requires in order to conduct such rectification. The sole liability of Fulcrum for any breach shall be to rectify any such defect at its own cost.
- 23.6 The Client acknowledges that where title in the Works or any part of them has vested in the Network Owner under the Network Agreement, any works required to be rectified pursuant to this Agreement will be subject to the approval, instruction, direction and control of the Network Owner. Fulcrum will have no liability to the Client in respect of any breach where and to the extent that the Network Owner does not approve or otherwise elects not to proceed with rectification of a defect required to be rectified pursuant to this Agreement.
- 23.7 The Client agrees that the Network Owner'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 Network Owner has given an instruction to Fulcrum to correct any defect pursuant to the Network Agreement, or otherwise to carry out any additional or remedial works, and such action would conflict with any notice given by the Client under clause 23.2, the Network Owner's instruction shall take precedence and Fulcrum shall notify the Client in writing of the same. Any work performed by Fulcrum in the rectification of any defect notified by the Network Owner shall be deemed to be the rectification of any similar defect notified by the Client pursuant to this clause 23. The Client agrees to grant Fulcrum and the Network Owner such access as either Party reasonably requires for the inspection and testing of the Works and any defects corrected by Fulcrum pursuant to the Network Agreement.
- 23.8 Notwithstanding any other provision of this clause 23 or this Agreement and without extension to any applicable period of limitation, Fulcrum's liability for defects in the Works, whether under this Agreement or otherwise, shall expire in accordance with the following provisions:
- 23.8.1 Such liability shall expire on the earlier of:
- 23.8.1.1 the date on which the Asset is taken into use; or
- 23.8.1.2 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 Agreement; or
- 23.8.1.3 Twelve months after the date of Substantial Completion.
- 23.8.2 No action or proceedings under or in respect of this Agreement shall be brought against Fulcrum after expiry of the periods referred to in Clause 23.8.1 above.

## **24 INDEMNITY**

- 24.1 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.
- 24.2 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.

## **25 LIMITATION OF LIABILITY**

- 25.1 Nothing in this Agreement shall exclude or limit the liability of either Party for death or personal injury resulting from negligence or for fraud or fraudulent misrepresentation.
- 25.2 Subject to clauses 22 and 29 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 Firm 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 Agreement are excluded.
- 25.3 Neither Party shall be liable to the other Party for any:
- 25.3.1 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
  - 25.3.2 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 Agreement, 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 Agreement.
  - 25.3.3 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.

## **26 LIMITATION PERIOD**

No action shall be brought after the expiration of 6 years from the date of Substantial Completion.

## **27 INSURANCES**

27.1 Fulcrum and the Client (where the Client is not an individual) shall each effect and maintain throughout the continuance of this Agreement 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.

27.1.1 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.

27.1.2 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.

27.1.3 Professional Indemnity Insurance for negligent design and specification, with a limit of indemnity of not less than £2,000,000.00 and an excess of not more than £150,000.00 for any occurrence or series of occurrences arising out of each and every event

## **28 FORCE MAJEURE**

28.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement 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.

## **29 TERMINATION**

29.1 Fulcrum may terminate its employment under this Agreement 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 Firm Quotation or have not been completed within six (6) months from the Date of Commencement.

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

29.2.1 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 (for avoidance of doubt the failure to make payment in accordance with the Contract is a material breach);

29.2.2 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;

- 29.2.3 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;
  - 29.2.4 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;
  - 29.2.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
  - 29.2.6 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);
  - 29.2.7 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;
  - 29.2.8 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
  - 29.2.9 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
  - 29.2.10 either Party is in material breach of clauses 40 or 41.
- 29.3 Notwithstanding any other right or remedy of the Parties under this Agreement, in the event of termination under clause 28 or this clause 29, the Client shall pay to Fulcrum (to the extent not previously paid):
- 29.3.1 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 Firm Quotation or otherwise together with a fair and reasonable addition to such amounts as a contribution to management cost, overhead and profit;
  - 29.3.2 the amount of any Asset Value paid or allowed by Fulcrum.
  - 29.3.3 all further sums to which Fulcrum is entitled under this Agreement; and
  - 29.3.4 save in the case of termination by the Client pursuant to clause 29.2 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.

## **30 INTELLECTUAL PROPERTY AND COPYRIGHT**

- 30.1 Fulcrum grants to the Client an irrevocable, non-exclusive, royalty-free licence to use and reproduce any of the drawings, details, specifications and calculations which have been or are prepared by or on behalf of the Contractor relating to the Works and the designs contained in them (Documents) for any purpose connected with the Works (other than by the reproduction of

such designs in any extension to the Works) and to grant sub-licences in the terms of this licence but the copyright in the Documents shall remain vested in Fulcrum. Fulcrum will not be liable for any use of the Documents for any purposes other than those for which the same are or were prepared. The Client shall on written request be entitled to be supplied by Fulcrum with copies of the Documents.

30.2 As contemplated by the Copyright, Design and Patents Act 1988, the extent that Fulcrum is author of the Documents, Fulcrum waives any rights against the Client, its successors in title, assignees and licensees to the extent that the exercise of such rights would prevent or impede the reproduction and use of the Documents, and the designs contained in them, for any purpose connected with the Works.

30.3 Fulcrum warrants that the use of the Documents for the purposes of Works will not infringe the rights of any third person.

## **31 CONFIDENTIALITY**

31.1 Each Party shall keep confidential all Confidential Information connected with the other Party or the business of the other Party that comes to its knowledge under or as a result of this Agreement. The Parties shall not disclose such information to any third party or use it other than for the management and performance of the Works except:

31.1.1 to the extent Fulcrum needs to disclose such information to a Network Owner in connection with the Network Agreement;

31.1.2 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;

31.1.3 to a Party's professional advisers;

31.1.4 where the information is in or comes into the public domain (otherwise than by failure of a Party to comply with its obligations under this Agreement);

31.1.5 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;

31.1.6 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 Agreement; or

31.1.7 where expressly permitted under this Agreement.

31.2 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 Agreement. 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.

## **32 ENTIRETY OF AGREEMENT AND AMENDMENTS**

- 32.1 This Agreement constitutes the entire agreement between Fulcrum and the Client in connection with its subject matter and supersedes all prior representations, communications, agreements, negotiations and understandings whether oral or written concerning the subject matter of this Agreement.
- 32.2 Each of the Parties acknowledges and confirms that it does not enter into this Agreement on the basis of and does not rely upon and has not relied upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral written, express or implied) made or agreed to by any person (whether a Party or not) except those expressly set out in this Agreement.
- 32.3 The above does not apply to any statement representation or warranty made fraudulently or to any provision of this Agreement that was induced by fraud.
- 32.4 No amendment to this Agreement shall be binding on the Parties unless in writing and signed by both Parties.

## **33 WAIVER**

No term of this Agreement shall be considered waived by either Party unless such waiver is set out expressly in writing and signed by the Party waiving such term.

## **34 ANTI-CORRUPTION**

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.

## **35 ASSIGNMENT AND SUB-CONTRACTORS**

- 35.1 The Client may not assign, charge, mortgage or otherwise transfer any rights and/or obligations under this Agreement without Fulcrum's prior written consent, which consent may not be unreasonably withheld or delayed.
- 35.2 Fulcrum may assign, charge, mortgage or otherwise transfer any of its rights and/or obligations under this Agreement by notice in writing to the Client.
- 35.3 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 Agreement.
- 35.4 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 Agreement

## **36 NOTICES**

- 36.1 Any notices or other communications between the Parties under this Agreement shall be given in writing or (where expressly permitted by the terms of this Agreement) confirmed in writing.

- 36.2 Unless otherwise agreed or the contrary is provided in this Agreement, any such notice of communication shall be respectively addressed and sent by personal delivery, email or registered post, recorded delivery or pre-paid first class post to the address and/or other relevant contact details set out in the Firm Quotation.
- 36.3 Any such notice or communication shall be deemed to have been duly delivered and received:
- 36.3.1 at the actual time of delivery if delivered personally;
  - 36.3.2 at the time of transmission if by email; or
  - 36.3.3 three (3) Working Days subsequent to the date of posting if sent by registered post, recorded delivery or pre-paid first class post.

### 37 THIRD PARTY RIGHTS

Notwithstanding references in any provision of this Agreement to a third party (whether by name, description or as a member of a class), the Parties do not intend such provision to be enforceable by the third party in its own right. No party other than a Party to this Agreement shall have any right to enforce any provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

### 38 SEVERABILITY

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.

### 39 PRICE FLUCTUATIONS

- 39.1 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.
- 39.2 Fulcrum shall have no responsibility or liability for any loss to the extent it is a consequence of or arises from:
- 39.2.1 any delay by the Client in complying with its obligations to pay any Trade Tariff under clause 39.1;
  - 39.2.2 any delay in the Plant and Materials being delivered to the Site caused by:
    - 39.2.2.1 any requirement for the Plant and Materials to obtain approval to pass through any border crossing into the United Kingdom;



39.2.2.2 disruption to transport networks (including road, sea, air or rail freight networks) arising from delays at any land border crossing, sea port or airport.

39.3 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:

39.3.1 **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;

39.3.2 **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;

39.3.3 **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;

#### 40 CORRUPT ACTS

40.1 In performing its obligations under this Agreement, neither Fulcrum or the Client shall:

40.1.1 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;

40.1.2 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;

40.1.3 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

40.1.4 do, or omit to do, any act that will cause or lead the other Party to be in breach of the Mandatory Requirements.

#### 41 DATA PROTECTION

41.1 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).

41.2 The Parties acknowledge and agree that:

- 41.2.1 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 Agreement, and for the purposes of proper liaison and communication of each Party in relation to this Agreement ("**Administration Purposes**");
  - 41.2.2 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
  - 41.2.3 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.
- 41.3 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.
- 41.4 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 Agreement and the expressions "controller" and "processor" used in those provisions and incorporated in this Agreement pursuant to this clause 41.4 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 Agreement are as set out in this Agreement 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 Agreement and as otherwise agreed between the Parties pursuant to this clause 41.4.

## **42 DOMESTIC REVERSE CHARGE**

- 42.1 In this clause 42, the following definitions shall apply:
- 42.1.1 HMRC means HM Revenue & Customs;
  - 42.1.2 Order means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892);
  - 42.1.3 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
  - 42.1.4 Supply means a supply made for VAT purposes under or in connection with this Agreement by Fulcrum and Supplies shall be construed accordingly.

42.2 Unless it has notified Fulcrum to the contrary prior to this Agreement becoming binding on the Parties, the Client confirms that:

42.2.1 it is not CIS registered; and

42.2.2 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 42 changes.

42.3 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:

42.3.1 the Reverse Charge did apply in respect of those Supplies, and

42.3.2 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.

42.4 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:

42.4.1 the Reverse Charge did not apply in respect of those Supplies, and

42.4.2 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.

#### **43 GOVERNING LAW**

These terms and conditions are subject to English Law and the jurisdiction of the English Courts

#### **44 ADJUDICATION**

If a dispute or difference arises under this agreement either party may refer such dispute or difference to adjudication, and such adjudication shall be subject to the terms of Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended).

## **Schedule 1 - Works and/ or matters not forming part of the Plant and Materials or Works**

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

- 1 supply and installation of any Meter housing or backboard;
- 2 supply and installation of any Meter. For the avoidance of doubt, the services to be installed by Fulcrum will terminate at the Supply Point;
- 3 provision of any temporary supplies;
- 4 inspection, installation or alteration of any Outlet;
- 5 provision, erection or dismantling of any scaffolding, raised platform or other access system required in connection with the Works;
- 6 making good cosmetic surfaces, plasterwork and decoration;
- 7 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;
- 8 diversion of any existing apparatus, cable, duct, pipe-work, drain or infrastructure;
- 9 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;
- 10 provision and installation of any ducting or laying any supply pipe or communication pipe between the location of each Supply Point and the point of connection to the relevant main;
- 11 provide and install any required ducting and any supply pipe or communication;
- 12 construction or formation of any point of entry and/or associated supporting structure for any supply pipe or other applications into any building;
- 13 reinstating any original surface (including without limitation any paving, mosaic, coloured tarmac, or tiles) other than within a Highway. Where the Firm Quotation expressly includes reinstatement beyond any Highway, Fulcrum will reinstate metalled surfaces with tarmac only or alternatively (at Fulcrum's discretion and without imposing any responsibility upon Fulcrum to prevent any damage) Fulcrum may relay any undamaged modules removed upon excavation and left adjacent to the excavation;
- 14 performance of the Works or the design thereof so as to avoid interruption to the conveyance of gas, electricity or water to the Supply Point during the conduct of the Works or in the course of any future maintenance of the Works;
- 15 any internal works at a Plot associated with Telecommunications or Fibre Optic; and
- 16 any works and/or matters excluded in the Firm Quotation.

## **Schedule 2 - Works and Services prohibited by Law**

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

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

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