



**Pivotal Energy Limited**

**TERMS AND CONDITIONS  
FOR CLIENT WORKS**

VERSION 6.0

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## Contents

1	DEFINITIONS AND INTERPRETATION .....	3
2	PROPOSAL AND ACCEPTANCE .....	10
3	DESIGNATED REPRESENTATIVES .....	10
4	SITE SURVEYS.....	10
5	PROPOSAL AND ACCEPTANCE .....	11
6	PRICE REVIEW .....	12
7	CONDITIONS PRECEDENT AND COMMENCEMENT.....	12
8	PIVOTAL'S OBLIGATIONS .....	14
9	THE CLIENT'S OBLIGATIONS.....	16
10	ACCESS TO THE WORKS.....	17
11	VARIATIONS .....	17
12	PROGRAMMING .....	20
13	EXTENSIONS OF TIME AND ADDITIONAL COST AND EXPENSE.....	20
14	COMPLETION AND TITLE RISK.....	22
15	DEFERRALS AND CANCELLATIONS .....	23
16	NETWORK OWNER DEFAULT .....	24
17	PAYMENT .....	24
18	SUSPENSION.....	25
19	DEFECTS.....	25
20	INDEMNITY .....	27
21	LIMITATION OF LIABILITY .....	27
22	INSURANCES.....	28
23	FORCE MAJEURE.....	28
24	TERMINATION.....	29
25	INTELLECTUAL PROPERTY.....	31
26	CONFIDENTIALITY.....	31
27	ENTIRETY OF AGREEMENT AND AMENDMENTS .....	32
28	WAIVER .....	32
29	ANTI-CORRUPTION.....	32
30	ASSIGNMENT AND SUB-CONTRACTORS.....	33
31	NOTICES.....	33
32	THIRD PARTY RIGHTS.....	33
33	SEVERABILITY .....	34
34	LAW AND DISPUTES.....	34

## 1. DEFINITIONS AND INTERPRETATION

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

- (a) **Acceptance** shall have the meaning ascribed to the term in Clause 2.4;
- (b) **Affiliate** 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.
- (c) **Affected Party** shall have the meaning ascribed to the term in Clause 23.2
- (d) **Asset** shall mean the Works or any Phase of the Works (up to and including the emergency control valve) upon completion including (without limitation) any Plant and Materials incorporated into the Works;
- (e) **Asset Value** means any sum paid or allowed by Pivotal or a Network Owner to the Client or any third party to purchase all or any part of the Asset.
- (f) **Background Intellectual Property** shall mean all intellectual property rights including inventions, patents, registered designs, trade marks (whether registered or unregistered), applications for any of the foregoing and the right to apply therefore in any part of the world, copyrights, rights in the nature of copyrights, moral rights, design rights, unregistered Community designs, database rights, topography rights, trade names, business names, logos, get-up, know how, and all or any similar or equivalent rights arising or subsisting in any country of the world, relating to the business, assets, operations or affairs of a Party;
- (g) **Client** means the party to which the Proposal is issued and who pays for the works.
- (h) **Client Designated Representative** means the person appointed as such in accordance with Clause 2.
- (i) **Commissioning** means purging to natural gas of those elements of the Works designed to convey or contain natural gas, and its pressurisation to normal operating pressure, energising of any electrical cables and equipment, pressurisation to normal operating pressure of any water pipes and associated equipment and any decontamination, cleaning,

preparation, and testing required prior to use of the completed Works.

- (j) **Conditions** means these terms and conditions.
- (k) **Conditions Precedent** means any of the condition's precedent set out in clause 7.3.
- (l) **Confidential Information** means any and all information, documents, technical reports, correspondence, data, records, and any other financial or commercial information (in any form electronic or otherwise) in connection with the Works, the performance of the Works or the business or affairs of either Party.
- (m) **Confirmation of Acceptance** means Pivotal's written acknowledgment and acceptance of payment.
- (n) **Construction Commencement Date** means a date specified in the Programme or advised by Pivotal to the Client in accordance with Clause 12.1 (subject in each case to any adjustment to such date in accordance with this Contract), being the date upon which Pivotal intends to commence construction of the Works, or where the Works are to be performed in phases, the date upon which Pivotal intends to commence construction of the first Phase of the Works.
- (o) **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.
- (p) **Contract** means the contract comprising the Proposal, these Conditions and any documents expressly incorporated therein.
- (q) **Electricity Network Owner** means a Distribution Network Operator, or an Independent Distribution Network Operator licensed under the Electricity Act 1989 (as amended) who has entered or will enter into an Electricity Network Agreement with Pivotal or any replacement Electricity Network Owner nominated by Pivotal.
- (r) **Electricity Network Agreement** means an agreement entered into or to be entered into between Pivotal 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 Pivotal 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 Contract to Pivotal 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.

- (s) **Electricity Works** means any part of the Works comprising installation and Commissioning of electrical cables, connections and associated equipment.
- (t) **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.
- (u) **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 Pivotal or any replacement gas transporter nominated by Pivotal.
- (v) **Gas Transporter Agreement** means an agreement entered into or to be entered into between Pivotal 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 Pivotal 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 Contract to Pivotal 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.
- (w) **Gas Works** means any part of the Works comprising installation, connection and/or Commissioning of gas service pipes and/or mains and associated equipment.
- (x) **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.
- (y) **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.
- (z) **Legislation** means all statutes, statutory instruments, by-laws, regulations and directives relevant to the Works or this Contract or that affect either Party in performance of its obligations under this Contract.
- (aa) **Meter** means any device(s) to record the volume of gas, water or

electricity passing or intended to pass through the Supply Point and, in connection with such recording, to control such gas, water or electricity.

- (bb) **Meter Asset Manager** means anyone adopting a Meter.
- (cc) **Network** means a gas or water pipeline or electricity cable or system of such pipelines and/or cables designed or installed so that either one or alternatively several buildings can be connected to such pipeline, cable, or system, including any and all associated mains and service pipes and associated plant and equipment.
- (dd) **Network Agreements** means any of the Gas Transporter Agreement, Electricity Network Agreement and Water Self Lay Agreement.
- (ee) **Network Owner** shall mean the owner of a Network.
- (ff) **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 Proposal.
- (gg) **Nominated Energy Supplier** means an energy supplier nominated by the Client in the Proposal or otherwise pursuant to this Contract.
- (hh) **Normal Working Hours** means the hours of 7.30 am and 5.30 pm on any day during which the clearing banks in the City of London are open.
- (ii) **Notice of Adjustment for Variation** has the meaning ascribed to the term in Clause 10.3.
- (jj) **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.
- (kk) **Non-Contestable Work** means:
  - (i) any planning, design, approval, connection, commissioning, metering, inspection, monitoring, testing or other work or service required in connection with the Works, and
  - (ii) any reinforcement or increase in capacity of any Network required by reason of or in connection with the Works that is executed or to be executed by or on behalf of a Network Owner other than pursuant to an agreement between Pivotal and the relevant Network Owner for such work or service to be carried out or performed by Pivotal.

- (ll) **Outlet** means all pipe, cables and facilities utilising any supply installed or to be installed downstream of any Meter.
- (mm) **Party** means the Client or Pivotal (as the case may be) and Parties means both of them.
- (nn) **Phase of the Works** means each phase (if any) identified in the Proposal or Programme or otherwise agreed in writing between the Parties.
- (oo) **Plant and Materials** means items intended to be incorporated into the Works.
- (pp) **Pivotal** means Pivotal Energy Limited (Company Number 7523666) whose registered office is at Florence House, St Marys Road, Hinckley, Leicestershire, LE10 1EQ.
- (qq) **Premises** shall mean the premises, property, lands, waters and other places on, under, in or through which the Works or any part of the Works are to be performed, including areas for temporary storage, accommodation and welfare facilities, as more particularly described in the Proposal and where applicable, a plan showing the boundaries of the site being appended thereto;
- (rr) **Price** means the total price for the Works and as adjusted in accordance with this Contract.
- (ss) **Price Review Date** has the meaning ascribed to the term in Clause 6.
- (tt) **Programme** means the programme for the Works (including any Phase(s) of the Works) as identified or detailed in the Proposal, notified by Pivotal to the Client under clause 12.1, adjusted in accordance with these Conditions or otherwise agreed in writing between the Parties.
- (uu) **Proposal** shall mean the Proposal forming part of this Contract, identifying the Works, the Price for completing the works, payment terms and methods and any of the excluded items detailed in Clause 5 that are to be included in the Price. The Proposal will be issued by Pivotal and addressed to the Client together with any other documents expressly incorporated therein.

- (vv) **Reasonable and Prudent Operator** and **RPO** means a person seeking in good faith to perform its contractual obligations, and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight that is reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions.
- (ww) **Reinforcement Costs** means any sums paid or to be paid by Pivotal in respect of the cost of any reinforcement of any Network upstream of the Works and required in connection with or by reason of the Works.
- (xx) **Site** shall have the same meaning as premises.
- (yy) **Site Survey** means a non-intrusive visual survey of the Site or other survey specified in the Proposal.
- (zz) **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, or
  - (ii) any permit required under the Traffic Management Act 2004, or any regulations made under that Act,
- Or in each case any modification re-enactment or replacement of any such section or act.
- (aaa) **Substantial Completion** means the completion of the Works, or where applicable any Phase of the Works (including in each case any Commissioning), with the exception of any reinstatement and any other parts of the Works to be carried out following Commissioning.
- (bbb) **Supply Point** means
- (i) for gas, termination within the meter housing at the emergency control valve.
  - (ii) for electricity, termination within the meter housing at the connection block.
  - (iii) for water, termination of the communication pipe prior to connection with the supply pipe (normally within 300 mm of the boundary).



- (ccc) **TeCSA Adjudication Rules** means the procedural rules for adjudication of the Technology and Construction Solicitors Association.
  - (ddd) **Variation** means any addition to, deduction from, or other change or variation to the Works or performance of the Works in accordance with Clause 11.
  - (eee) **Water Company** means the company appointed as the water undertaker for the relevant area in accordance with the Water Industry Act 1991 (as amended).
  - (fff) **Water Self Lay Agreement** means an agreement entered into or to be entered into between Pivotal 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 Pivotal 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 Contract to Pivotal 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.
  - (ggg) **Water Works** means any part of the Works comprising installation, connection and/or Commissioning of water supply pipes and associated equipment.
  - (hhh) **Works** means the works and/or design services detailed in the Proposal, taking into account any Variation but excluding in each case any Non-Contestable Work.
  - (iii) **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.
- 1.1 In this Contract, references to the singular include the plural and vice versa.
- 1.2 Unless otherwise stated references to clauses shall mean clauses of these Conditions.

- 1.3 Headings are inserted in these Conditions for convenience only and do not form part of and shall not affect the interpretation or construction of these Conditions.
- 1.4 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.
- 1.5 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 any other document emanating from the Client.

## **2 PROPOSAL AND ACCEPTANCE**

- 2.1 The Proposal is issued subject to the provisions of this Clause 2.
- 2.2 The Proposal is personal to the Client and may not be assigned without consent in writing from Pivotal.
- 2.3 If the Client wishes to proceed with the Proposal, the Client must make payment to Pivotal within the period of validity specified in the Proposal (or within such other period as may be agreed in writing between the Parties).
- 2.4 Acceptance and formation of this Contract shall take place on receipt of payment by the client, in line with the payment plan confirmed within the proposal. The Proposal may be withdrawn by Pivotal at any time prior to Acceptance. Pivotal shall have no obligation to the Client and no obligation to enter into this Contract pending issue of the Confirmation of Acceptance.

## **3 DESIGNATED REPRESENTATIVES**

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

## **4 SITE SURVEYS**

- 4.1 Where the Proposal indicates that Pivotal was unable to gain access to carry out a Site Survey prior to issuing the Proposal, the Proposal 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 Proposal.

## 5 PROPOSAL, ACCEPTANCE AND SUPPLIER NOMINATION

- 5.1 The Contract shall become binding on the Parties on the date when Pivotal receives payment, within the period of validity specified in the Proposal (or within such other period as may be agreed in writing between the Parties).
- 5.2 If Pivotal receives payment of the Price, outside the period of validity specified in the Proposal (or within such other period as maybe agreed in writing between the Parties), the Proposal payment shall be treated as an offer from the Client that Pivotal may at its sole and absolute discretion accept. In such circumstances, this Contract shall become binding on the Parties on the date Pivotal receives payment, unless formally declined by Pivotal.
- 5.3 If the Works or any part of them are incomplete on the Price Review Date, subject to Clause 6 Pivotal may adjust the Price for the Works or revise any other element of the Proposal and shall notify the Client in writing of any changes. Pivotal may also amend withdraw or request the repayment of any Asset Value (or any part of it). Pivotal shall be under no obligation to commence or continue with the Works until any increase in the Price has been paid by the Client.
- 5.4 The Client must nominate and enter into an agreement with their chosen energy supplier. Pivotal do not take any responsibility or liability for ensuring a supply contract is in place.
- (a) The Client will enter into such agreements with and accept such terms as the Nominated Energy Supplier may require.
- (b) Following completion and hand over of each property comprised in the Client's development, the Client will forward to the Nominated Energy Supplier 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.
- (c) 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 Pivotal will be entitled to:
- (i) reduce the Asset Value pro rata (on the basis that the total discount identified in the Proposal is apportioned equally across all Supply Points and that all Supply Points are to be supplied by the Nominated Energy Supplier); and

- (ii) issue an invoice to the Client for any outstanding amount due following reduction of the 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 Pivotal's invoice.

## **6 PRICE REVIEW**

6.1 In the event that the Works or any Phase(s) of the Works continue beyond twelve months from the date of the Proposal the following provisions apply.

- (a) A Price Review Date will occur on the date immediately following expiry of 12 months from the date of the Proposal and thereafter on each anniversary of that date.
- (b) On each Price Review Date any part of the Price that has not yet fallen due to Pivotal will be adjusted in accordance with the change identified by the Retail Prices Index since the date of the Proposal or (where there has been a previous Price Review Date) since the last Price Review Date.

## **7 CONDITIONS PRECEDENT AND COMMENCEMENT**

7.1 Notwithstanding any other provision of this Contract, Pivotal shall have no obligation to:

- (a) commence or continue to provide the Works (including any design)
- (b) procure or continue to procure any Plant and Materials or other goods or materials required in connection with the Works; or
- (c) schedule, seek agreement for or confirm to the Client any Construction Commencement Date.
- (d) at any time when any of the Conditions Precedent are not fulfilled.

7.2 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 7 and shall be without prejudice to Pivotal's right not to continue with any such activity or obligation at any time when the Conditions Precedent are not fulfilled.

7.3 The following are the Conditions Precedent:

- (a) Pivotal has entered into each of the Network Agreements relating to the Works and each such agreement remains in full force and effect.
- (b) Pivotal's employment under any of the Network Agreements has not been terminated for any reason.

- (c) No statutory, regulatory, technical or other matter has or may prevent commencement or continuation of the Works.

Any approval, authorisation or consent required from the Network Owner or Meter Asset Manager has been given.

- (d) The Client has made payment in full (free from any set-off or deduction) of any part of the Price stated in the Proposal 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 5.3 or 17.3.

- (e) Any Street Works Licence or consent required in connection with the Works has been obtained.

- (f) 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.

- (g) Any planning permission or Site Survey has been obtained.

- (h) Any Non-Contestable Works have been performed to the extent necessary to enable the Works to progress.

- (i) The Network Owner, Meter Asset Manager or any other relevant statutory body has approved the design of the Works.

- (j) The Client has complied with its obligations under Clause 8; and

- (k) 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 Pivotal of all contract reference numbers generated by the relevant suppliers.

7.4 If at any time any of the Conditions Precedent are not fulfilled for a period of 2 months Pivotal 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.

## 8 PIVOTAL'S OBLIGATIONS

- 8.1 Pivotal 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).
- 8.2 Subject to Clause 7 Pivotal shall use reasonable endeavours to:
- (a) enter into the Network Agreements and obtain any approval, authorisation or consent required under such agreements; and
  - (b) obtain any required Street Works Licence; and
  - (c) liaise with any Network Owner for the purpose of co-ordinating any Non-Contestable Works.
- 8.3 Pivotal 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; and
  - (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; and
  - (c) comply with all reasonable Site rules agreed between the Parties; and
  - (d) comply with the terms of any permission, licence or consent required in connection with the Works and notified to Pivotal by the Client prior to the Parties entering into this Contract or forming part of any permission, licence or consent obtained by Pivotal 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.
- 8.4 The following works and/or matters shall not form part of the Works or otherwise form part of Pivotal's obligations under this Contract unless expressly and separately identified in the relevant Proposal as falling within the scope of Pivotal's obligations and/or the Works or comprised in a Variation:
- (a) supply and installation of any Meter housing or backboard; and
  - (b) supply and installation of any Meter. For the avoidance of doubt, the services to be installed by Pivotal will terminate at the Supply Point; and
  - (c) provision of any temporary supplies; and

- (d) inspection, installation or alteration of any Outlet; and
- (e) provision, erection or dismantling of any scaffolding, raised platform or other access system required in connection with the Works; and
- (f) making good cosmetic surfaces, plasterwork and decoration; and
- (g) relocation, protection, replacement or any avoidance of damage to growing plants, provided that Pivotal will take reasonable care to avoid or minimise damage to such plants; and
- (h) diversion of any existing apparatus, cable, duct, pipework, drain or infrastructure; and
- (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; and
- (j) provision and installation of any ducting or laying any water supply pipe or communication pipe between the location of each Supply Point and the point of connection to the relevant main; and
- (k) provide and install any required ducting and any water supply pipe or communication; and
- (l) construction or formation of any point of entry and/or associated supporting structure for any supply pipe or other applications into any building; and
- (m) reinstating any original surface (including without limitation any paving, mosaic, coloured tarmac, or tiles) other than within a Highway. Where the Proposal expressly includes reinstatement beyond any Highway, Pivotal will reinstate metalled surfaces with tarmac only or alternatively (at Pivotal's discretion and without imposing any responsibility upon Pivotal to prevent any damage) Pivotal may relay any undamaged modules removed upon excavation and left adjacent to the excavation; and
- (n) 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; and
- (o) any works and/or matters excluded in the Proposal.
- (p) Notwithstanding any other provision of this Contract any works or commissioning that cannot lawfully be undertaken
- (a) prior to adoption of the relevant part(s) of the Works by a Network Owner; or

- (b) other than by or on behalf of a Network Owner.

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

## 9 THE CLIENT'S OBLIGATIONS

9.1 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 Pivotal 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 Network Owner, and provide copies of the same to Pivotal.
- (c) grant or procure permission to enable Pivotal, 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 Pivotal may reasonably require for performance of the Works or any Phase of the Works or to carry out a Site Survey and ensure that Pivotal, 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 Pivotal's relevant guidelines, health and safety policies, and reasonable instructions and directions.

9.2 Save where the Proposal 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 Pivotal'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) during performance of the Works, report any suspected interference with the Works (or any part thereof) or any Plant and Materials or Equipment to Pivotal promptly and provide all necessary Site security for the protection of the Works, Plant and Materials or Equipment from loss or damage.
- (g) provide in advance of commencement of the Works line and level for installation of the Works to comply with NJUG version 7.
- (h) promptly rectify any damage to the Works or Asset caused by the Client or any third party. Pivotal may amend, withdraw or request repayment of any Asset Value if a Network Owner withdraws or reduces any Asset Value payable to Pivotal as a consequence of damage to the Works or Asset; and
- (i) perform any other actions required for Pivotal to provide the Works.

## **10 ACCESS TO THE WORKS**

- 10.1 Pivotal shall afford the Client together with any other person(s) nominated by the Client and approved by Pivotal 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 Pivotal may reasonably impose and shall ensure that any such nominated persons comply with such rules and regulations.

## **11 VARIATIONS**

- 11.1 The Client may request in writing a Variation to the Works or any part. Subject to the following provisions of this Clause 10 and any approval required from a Network Owner, the Works shall be varied in accordance with such Variation unless Pivotal, acting reasonably, objects to the Variation in writing, in which case the Variation shall not proceed.

- 11.2 If:

- (a) the Network Owner or Meter Asset Manager requires Pivotal to make any change to the Works or the design of the Works or a Network Owner requires that Pivotal make any such change or requires reinforcement of the existing Network; or
- (b) there is any error, omission or inaccuracy in or change to:
  - (i) any assumption or other information set out in the Proposal; 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 Pivotal'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 Pivotal 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 or Clause 4.1 applies; or
- (f) in the opinion of Pivotal, 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 Pivotal 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 Pivotal's control, or the Client instructs temporary reinstatement to be carried out by Pivotal; or
- (i) there is any excess pipework, cabling or other Plant and Materials required by the Client over and above that included in the Proposal, or any existing pipework or cabling is not adequate for the purposes of the Works;

Pivotal shall notify the Client in writing of such change or other matter.

Any such change or matter shall automatically constitute a Variation.

- 11.3 Subject to the following, Pivotal shall be entitled to make a fair and reasonable adjustment to the Price in respect of any Variation.
- (a) Pivotal shall advise the Client in writing of any adjustment to the Price ("Notice of Adjustment for Variation") as soon as reasonably practicable following Pivotal becoming aware of such Variation.
  - (b) Within five (5) days of receipt of such notice the Client shall notify Pivotal 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 11.3(b):
    - (i) in the case of a Variation requested by the Client, Pivotal 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 Pivotal pursuant to Clause 11.3 (d(i))).
  - (e) If the Client notifies non-acceptance of the adjustment to the Price in accordance with Clause 11.3(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 Pivotal either to proceed with the Variation or withdraw it and if Pivotal 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.

## 12 PROGRAMMING

12.1 Subject to Clause 6.1 save where such dates are specified in the Programme Pivotal will schedule and confirm to the Client in writing:

- (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
- (c) any other dates required pursuant to the Proposals; and

Unless the Proposal 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.

12.2 The Client acknowledges and agrees that its ability to comply with the Programme and the Construction Commencement Dates is dependent upon the Client fulfilling its obligations under Clause 8.

## 13 EXTENSIONS OF TIME AND ADDITIONAL COST AND EXPENSE

13.1 If Pivotal 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 Pivotal is or will be liable to pay to the Network Owner 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) Pivotal encounters any ground or physical conditions or Contamination that could not reasonably have been foreseen by Pivotal (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 Pivotal's risk pursuant to this Contract.
- (j) any suspension pursuant to Clause 18.
- (k) any delay caused by the Network Owner or Meter Asset Manager which is not due to Pivotal's negligence or breach of contract and any delay due to any breach or failure by the 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 Proposal in accordance with Clause 5.2.
- (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 Pivotal's negligence or breach of contract.
- (p) compliance with the traffic management or road closure requirements of a statutory body.
- (q) any other matter that could not reasonably have been foreseen by Pivotal (acting as an RPO) as at the date of formation of this Contract.

Pivotal shall notify the Client in writing of such increased cost and expense and/or time, and the provisions of Clause 12.2 shall apply.

13.2 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 15.1 or 13.3; and
  - (ii) an uplift equal to 20% 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) Pivotal 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 13.1, 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.
- 13.3 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 5 (five) and save as agreed in respect of connection of services to show homes) and:
- (a) Pivotal is requested to attend Site to connect services to fewer than 5 (five) Supply Points in any one visit and agrees to attend: or
  - (b) having attended Site Pivotal is unable to connect services to a minimum of 5 (five) Supply Points because the Site is not ready, or the Client has failed to comply with its obligations under this Contract.

Pivotal shall be entitled to an adjustment in the Price and an extension of time in accordance with clause 13.2.

## **14 COMPLETION AND TITLE/RISK**

- 14.1 Upon Substantial Completion, Pivotal 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.
- 14.2 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 Pivotal unless and until:
- (a) such title vests in the Network Owner in accordance with the Network 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.
- 14.3 Save to the extent any loss or damage is caused by the negligence or breach of contract by Pivotal, the Works on Site will at all times be at the Client's risk.

- 14.4 The Client will, at its own cost, assist Pivotal and do all such things as are necessary, including (without limitation) performing its obligations pursuant to Clause 8 and this Clause 14 to enable the Network Owner to obtain title to the Works with full title guarantee free from any encumbrances, liens or charges whatsoever.
- 14.5 The Client shall at its own cost execute or (where appropriate) procure that any third party executes any agreements and deeds that:
- (a) Pivotal and/or the Network Owner requires to enable the Network Owner to obtain title to the Works or otherwise to adopt the Asset.
  - (b) are required to enable the Network Owner to operate and maintain the Asset; and
  - (c) 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).

## 15 DEFERRALS AND CANCELLATIONS

- 15.1 A deferral may occur in the following circumstances:
- (a) The Client may defer the Construction Commencement Date or any other commencement date by giving Pivotal notice in writing.
  - (b) Pivotal 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.
- 15.2 In the event of a deferral under clause 15.1 the Client shall pay:
- (a) Pivotal's appropriate deferral fee, current at the date of the deferral. The Client may request a copy of Pivotal's schedule of deferral fees at any time; and
  - (b) Costs incurred by Pivotal 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).

- 15.3 In the event of a deferral, Pivotal 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 15.2 above required as a consequence of the deferral. Pivotal 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 Pivotal including, but not limited to, the requirement to obtain or renew statutory consents, licences and permits.
- 15.4 The Client may request the cancellation of the Works by notice in writing to Pivotal. If Pivotal accepts the request, the following shall apply:
- (a) If the request is received by Pivotal 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 15.4 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 Pivotal 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 15.4(a), the difference shall be refunded to the Client within 28 days.
  - (b) If the request is received by Pivotal 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 15.4 shall exclude any adjustment to the Price in respect of Asset Value) together with any Reinforcement Costs incurred by Pivotal or the Network Owner and any Asset Value, less any amount previously paid.

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

- 15.5 In the event that any sums become payable by the Client under this Clause 15.4, those sums shall be payable in accordance with Clause 15.4 (a).

## **16 NETWORK OWNER DEFAULT**

- 16.1 In the event that a Network Owner defaults under the terms of any of the Network Agreements, Pivotal may (where practicable and with the Client's agreement, such agreement not to be unreasonably withheld or delayed) and subject to the terms of the relevant Network Agreement enter into an alternative Network Agreement with an alternative Network Owner.
- 16.2 Subject to clause 20.1, Pivotal 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.

## **17 PAYMENT**

- 17.1 In consideration of the performance by Pivotal of its obligations under this Contract the Client will pay to Pivotal the Price (plus VAT as applicable) and any further sums to be paid by the Client under this Contract.
- 17.2 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 Proposal (or otherwise notified by Pivotal 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 Proposal (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 Pivotal on that specific date or on the date of the commencement or completion.
  - (c) If Pivotal 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 11.3.
- 17.3 Where any adjustment is made to the Price in accordance with this Contract, Pivotal shall be entitled to request payment from the Client in full immediately for any increase.
- 17.4 Any sum payable pursuant to a request for payment issued under Clause 17.3 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.
- 17.5 If payment under clause 17.2 or 17.4 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 three per cent (3%) per annum above the Royal Bank of Scotland base rate in force from time to time, compounded quarterly until the date of payment. Addition of such interest shall be without prejudice to any other right or remedy Pivotal 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 Pivotal.

## **18 SUSPENSION**

- 18.1 In the event that the Client is in breach of any of the payment provisions of this Contract, Pivotal 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 Pivotal in its absolute discretion shall decide, until the Client has rectified such breach.

## **19 DEFECTS**

- 19.1 Subject to the following provisions of this Clause 19 and Clause 21, Pivotal 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 Pivotal 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.
- 19.2 The Client shall promptly notify Pivotal in writing of any breach of Clause 19.1 and give Pivotal a reasonable opportunity to rectify such defect. The Client shall provide such access to the Site as Pivotal reasonably requires in order to conduct such rectification. The sole liability of Pivotal for any breach shall be to rectify any such defect at its own cost.
- 19.3 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 Contract will be subject to the approval, instruction, direction and control of the Network Owner. Pivotal 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 Contract.
- 19.4 Pivotal shall not be liable to the Client for any defect in the Works unless the Client has given Pivotal an opportunity to rectify in accordance with this Clause 19. Where Pivotal is given such an opportunity but fails to rectify such defect within a reasonable time taking into account the provisions of Clause 19.3 above, Pivotal's sole liability to the Client in respect of the defect and such failure shall be the reasonable direct cost incurred by the Client in rectifying such defect.
- 19.5 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 Pivotal 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 19.2, the Network Owner's instruction shall take precedence and Pivotal shall notify the Client in writing of the same. Any work performed by Pivotal 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 19.5. The Client agrees to grant Pivotal and the Network Owner such access as either Party reasonably requires for the inspection and testing of the Works and any defects corrected by Pivotal pursuant to the Network Agreement.

19.6 Notwithstanding any other provision of this Clause 19 or this Contract and without extension to any applicable period of limitation, Pivotal's liability for defects in the Works, whether under this contract or otherwise, shall expire in accordance with the following provisions:

- (a) 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) No action or proceedings under or in respect of this Contract shall be brought against Pivotal after expiry of the periods referred to in 19.6(a) above.

## **20 INDEMNITY**

20.1 Pivotal 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 Pivotal its employees, agents or subcontractors.

20.2 The Client shall keep Pivotal 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 Pivotal as a result of or in connection with any claim made against Pivotal 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.

## **21 LIMITATION OF LIABILITY**

21.1 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.

21.2 Subject to clauses 16.2, 19.2, 21.3 and 21.4 Pivotal'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 Price. All warranties (whether implied by statute or otherwise) on the part of Pivotal in relation to the Works other than those expressly set out in this Contract are excluded.

21.3 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.

21.4 Pivotal 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.

## 22 INSURANCES

22.1 Pivotal 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.

## 23 FORCE MAJEURE

23.1 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.

23.2 If a party (the "Affected Party") is affected by Force Majeure in the performance of its obligations under this Contract, then:

the Affected Party shall on becoming aware of the Force Majeure give written notice to the other party, specifying the nature and extent of the Force Majeure;

the Affected Party will at all times use reasonable endeavours to mitigate the severity of the impact of the Force Majeure;

Subject to the provisions of this Clause 22, the date for performance of such obligations shall be postponed by a period equal to the delay caused by the Force Majeure; and

neither Party shall be entitled to payment from the other Party in respect of extra costs and expenses incurred by reason of the Force Majeure.

For the purposes of this Contract, Force Majeure means any of the following events or any combination of such events:

- war, civil war or armed conflict arising within and affecting the United Kingdom of Great Britain and Northern Ireland;
- nuclear, chemical or biological contamination of the Site;
- acts of terrorism;
- UK and/or global pandemic;
- substantial damage to the works arising from the effect of pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed, which materially affects either Party's ability to carry out its obligations under this Contract;
- fire or flood (other than fire or flood caused by the negligence, breach or default of the Affected Party);
- hurricanes, tornadoes and other exceptionally adverse weather conditions;
- official strike or lock out;
- refusal by a relevant authority to grant any Street Works Licence or planning permission (not being a planning permission that the Customer is required to obtain) required in connection with the Works or any part of the Works or delay in the grant of such licence or permission or the refusal to grant any such licence or permission other than on unreasonably onerous terms;
- shortage of fuel due to protests, blockades or other action of individuals or organisations, whether acting collectively or otherwise.

## **24 TERMINATION**

- 24.1 Pivotal 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 Proposal or have not been completed within six (6) months from the Date of Commencement.

24.2 Either Party may terminate Pivotal'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; or
- (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.

24.3 Notwithstanding any other right or remedy of the Parties under this Contract, in the event of termination under Clause 23 or this Clause 24, the Client shall pay to Pivotal (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 Pivotal, whether prior to the date of the Proposal 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 by Pivotal.
- (c) all further sums to which Pivotal is entitled under this Contract; and
- (d) save in the case of termination by the Client pursuant to Clause 24.2 the reasonable costs of cancelling any contracts, sub-contracts or orders for Plant and Materials or Equipment entered into or placed by Pivotal in connection with the Works for which Pivotal is liable and unable lawfully or contractually to avoid, together with any unpaid part of the Price.

## 25 INTELLECTUAL PROPERTY

25.1 Pivotal 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.

## 26 CONFIDENTIALITY

26.1 Each Party shall keep confidential all Confidential Information connected with the other Party or the business of the other Party that comes to its knowledge under or as a result of this 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 Pivotal needs to disclose such information to a Network Owner in connection with the Network 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 Pivotal (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.
- 26.2 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.

## **27 ENTIRETY OF AGREEMENT AND AMENDMENTS**

- 27.1 This Contract constitutes the entire agreement between Pivotal 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.
- 27.2 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.
- 27.3 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.
- 27.4 No amendment to this Contract shall be binding on the Parties unless in writing and signed by both Parties.

## **28 WAIVER**

- 28.1 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.



## **29 ANTI-CORRUPTION**

29.1 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.

## **30 ASSIGNMENT AND SUB-CONTRACTORS**

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

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

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

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

## **31 NOTICES**

31.1 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.

31.2 Unless otherwise agreed or the contrary is provided in these Conditions, any such notice of communication shall be respectively addressed and sent by personal delivery, 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 Proposal.

31.3 Any such notice or communication shall be deemed to have been duly delivered and received:

31.4 at the actual time of delivery if delivered personally.

31.5 at the time of transmission if by email; or

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

## **32 THIRD PARTY RIGHTS**

- 32.1 Notwithstanding references in any provision of this 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.

## **33 SEVERABILITY**

- 33.1 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.

## **34 LAW AND DISPUTES**

- 34.1 This Contract shall be governed by and construed in accordance with the laws of England.
- 34.2 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.
- 34.3 Any dispute between the Parties may be referred to adjudication in accordance with the TeCSA Adjudication Rules current at the date of referral.