

Fusion Utility Networks Ltd

Terms & Conditions

Tel: 0844 384 3128

Fusion Utility Networks Ltd,
5200 Cinnabar Court,
Daresbury Park
Warrington
WA4 4GE

Company Registration No. 07501244

The Client's attention is particularly drawn to the provisions of clause 10 and clause 14.

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

Additional Charges: all and any charges charged by Fusion Utility Networks to the Client under the Contract in addition to the Charges including, without limitation, those charged pursuant to clause 4.3, clauses 4.5 to 4.9 (inclusive) or clause 10 which charges shall, where applicable, be charged on a labour, plant and materials basis **calculated in accordance with Fusion Utility Networks then current standard charge out rates.**

Attendance Schedule: the responsibilities and site attendances checklist issued by Fusion Utility Networks setting out the responsibilities of Fusion Utility Networks and the Client in connection with the provision of the Distribution Network.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Client to Fusion Utility Networks for the supply of the Works as set out in the Quotation and as varied in accordance with the terms of the Contract.

Client: the person, firm or company set out in the Order who engages Fusion Utility Networks to provide the Works.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 21.9.

Contract: the contract between Fusion Utility Networks and the Client for the supply of the Works and which shall include the Quotation, the Attendance Schedule, the Order and these Conditions.

Contract Sum: a sum equal to the aggregate of the Charges and any Additional Charges payable by the Client to Fusion Utility Networks the Contract less: (i) all and any non-contestable costs and charges charged by the Nominated IDNO, the Host DNO, the Nominated IGT, the Host GT and/or the Water Company and which form part of the Charges and/or the Additional Charges and (ii) all and any Additional Charges charged by Fusion Utility Networks to the Client as a result of the Client being in breach of, or not complying with, its obligations under the Contract.

Distribution Network: the Gas Distribution Network and/or the Electricity Distribution Network and/or the Water Distribution Network.

Documents: all drawings, reports, specifications, schedules and other information provided by Fusion Utility Networks or its subcontractors, consultants, agents or employees pursuant to or in connection with the Contract.

Electricity Distribution Network: the electricity distribution network detailed in the Quotation.

Force Majeure Event: an event beyond the reasonable control of Fusion Utility Networks including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Fusion Utility Networks or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

Fusion Utility Networks: Fusion Utility Networks Limited, a company registered in England and Wales under company number 07501244.

Gas Distribution Network: the gas distribution network detailed in the Quotation.

Host GT: the host gas transporter.

Host DNO: the host electricity distribution network operator.

Insurance Policies: the insurance policies to be effected and maintained by the Client pursuant to clause 15.2 together with such other insurance policies to be effected and maintained by the Client as detailed in the Quotation.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Maximum Build Programme: the maximum build programme (if any) detailed in the Quotation.

Nominated IDNO: the independent distribution network operator nominated by Fusion Utility Networks in respect of the Electricity Distribution Network or, if no such nomination is made, the Host DNO.

Nominated IGT: the independent gas transporter nominated by Fusion Utility Networks in respect of the Gas Distribution Network or, if no such nomination is made, the Host GT.

Order: the Client's written acceptance of the Quotation.

Permitted Disposal: a bona fide transfer or lease of land forming part of the Site made on arm's length terms in respect of: (i) any completed dwelling or commercial unit (including the freehold reversion of any completed block of dwelling or commercial units) together with any associated access and other land relating thereto; (ii) any land required for any apparatus which serves the Site (or part thereof); or (iii) the adoption of any roads on the Site.

Quotation: the quotation provided by Fusion Utility Networks to the Client in connection with the Works.

Site: the site detailed in the Quotation at which the Distribution Network is to be installed.

Water Company: the water company to which the Water Distribution Network shall be connected.

Water Distribution Network: the water distribution network detailed in the Quotation.

Works: the works expressly stated in the Quotation and/or the Attendance Schedule to be supplied by Fusion Utility Networks in relation to the provision of the Distribution Network at the Site.

1.2 In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or reenacted;

1.2.4 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;

1.2.5 A reference to **writing** or **written** includes faxes but not emails or text messages;

1.2.6 Any provisions contained in these Conditions relating to the Gas Distribution Network shall only apply if a gas distribution network is to be provided by Fusion Utility Networks as part of the Works;

1.2.7 Any provisions contained in these Conditions relating to the Electricity Distribution Network shall only apply if an electricity distribution network is to be provided by Fusion Utility Networks as part of the Works; and

1.2.8 Any provisions contained in these Conditions relating to the Water Distribution Network shall only apply if a water distribution network is to be provided by Fusion Utility Networks as part of the Works.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Client to engage Fusion Utility Networks to provide the Works in accordance with the Quotation, the Attendance Schedule and these Conditions.

2.2 The Order shall only be deemed to be accepted when Fusion Utility Networks issues a written acceptance of the Order or (if earlier) Fusion Utility Networks commences the provision of the

Works on behalf of the Client at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 2.3 The Contract constitutes the entire agreement between Fusion Utility Networks and the Client in connection with the Works. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Fusion Utility Networks which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Fusion Utility Networks, and any descriptions or illustrations contained in Fusion Utility Network's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 The Quotation shall not constitute an offer, and (unless expressly stated otherwise in the Quotation) is only valid for a period of one month from its date of issue.

3. FUSION UTILITY NETWORKS OBLIGATIONS

- 3.1 Subject to the Client complying with its obligations under the Contract, Fusion Utility Networks will:
- 3.1.1 Carry out (or procure that its subcontractors carry out) the Works in accordance with the Quotation and the Attendance Schedule in all material respects using goods and materials of a satisfactory quality and where appropriate, using a reasonable level of skill and care to be expected of a party performing the relevant aspects of the Works; and
- 3.1.2 Where the Works include any design work, carry out (or procure that its subcontractors carry out) that design work using the reasonable skill and care expected of a designer competent in providing designs for works of a similar kind to the design aspects of the Works.
- 3.2 Except where expressly stated in the Quotation to the contrary, the maximum capacity and connection characteristics in relation to the ultimate connection of the Distribution Network will be determined in accordance with the recommendations and requirements of the Nominated IDNO and the Host DNO (in respect of the Electricity Distribution Network), the Nominated IGT and the Host GT (in respect of the Gas Distribution Network) and the Water Company (in respect of the Water Distribution Network). The Works (and specifically any connections to be provided as part of the Works) will be designed, selected and/or specified (where Fusion Utility Networks is responsible for the same) in accordance with such recommendations and requirements and/or general accepted industry standards and practices that are applicable.
- 3.3 The Client acknowledges and agrees that whilst Fusion Utility Networks may provide guidance on the sort of information and/or data that it requires in order to assist the Client in determining the maximum capacity and/or characteristics of the Works or the Distribution Network and/or designing, selecting and/or specifying the requisite works and/or apparatus, Fusion Utility Networks does not accept responsibility for checking or verifying the accuracy, correctness, sufficiency and/or completeness of the information and/or data provided by the Client and does not accept any responsibility or liability for any mistakes or deficiencies in the determination of capacity or characteristics of the Works or the Distribution Network or any other aspects of the design, selection and/or specification of the Works or the Distribution Network which are or may be in any way attributable (in whole or in part) to inaccurate, incorrect, insufficient and/or incomplete information and/or data provided by the Client.

4. VARIATIONS TO THE WORKS

- 4.1 If the Client wishes to change the scope and/or execution of the Works and/or the Distribution Network, it shall submit details of the requested change to Fusion Utility Networks in writing and Fusion Utility Networks shall, within a reasonable time, provide a written estimate to the Client of:
- 4.1.1 The likely time required to implement the change;

- 4.1.2 Any necessary variations to the Charges arising from the change;
- 4.1.3 The likely effect of the change on the Quotation or the Attendance Schedule including, without limitation, any performance dates specified therein; and
- 4.1.4 Any other impact of the change on the Contract.
- 4.2 If the Client wishes Fusion Utility Networks to proceed with the change, Fusion Utility Networks shall have no obligation to do so unless and until the Client and Fusion Utility Networks have agreed the necessary variations to the Contract (including, without limitation, any changes to the Works, the Charges, the Attendance Schedule and the Quotation) to take account of the change and the Contract has been varied in accordance with clause 21.9.
- 4.3 Fusion Utility Networks may charge for the time it spends assessing any request for a change to the scope and/or execution of the Works and/or the Distribution Network from the Client on a labour, plant and materials basis calculated in accordance with Fusion Utility Networks then current standard charge out rates.
- 4.4 Fusion Utility Networks shall not be liable for any defects in the Works and/or the Distribution Network arising in connection with any variation to the Works and/or the Distribution Network where the defect is a result of a design issue in relation to the variation and the design of such variation was not carried out by Fusion Utility Networks or its subcontractors.
- 4.5 Fusion Utility Networks shall have the right to make any changes to the scope and/or execution of the Works and/or the Distribution Network which are necessary from time to time to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Works. Fusion Utility Networks reserves the right to make additional charges to the Client in respect of any such changes which are necessary from time to time to comply with any applicable law or safety requirement and shall notify the Client of any changes to the scope and/or execution of the Works and/or the Distribution Network and any additional charges arising from such changes.
- 4.6 Fusion Utility Networks shall have the right to make any changes to the scope and/or execution of the Works and/or the Distribution Network which are necessary from time to time to comply with any requirements and/or recommendations of the Nominated IDNO, Nominated IGT, the Water Company, the Host GT and/or the Host DNO. Fusion Utility Networks reserves the right to make additional charges to the Client in respect of any such changes and shall notify the Client of any such changes and additional charges.
- 4.7 Fusion Utility Networks shall have the right to make any changes to the scope and/or execution of the Works and/or the Distribution Network which are necessary from time to time to comply with any requirements and/or recommendations of the relevant local authority and/or any other authority in relation to the provision of the Works and/or the Distribution Network. Fusion Utility Networks reserves the right to make additional charges to the Client in respect of any such changes and shall notify the Client of any such changes and additional charges.
- 4.8 Fusion Utility Networks shall have the right to make any changes to the scope and/or execution of the Works and/or the Distribution Network which are necessary from time to time as a result of any drawings, reports, specifications or any other information provided by, or on behalf of, the Client to Fusion Utility Networks in connection with the Works and/or the Distribution Network either before or after the Commencement Date being or becoming incomplete and/or inaccurate (including, without limitation, any information relating to the anticipated or actual quantities of gas, electricity or water required in respect of the Distribution Network). Fusion Utility Networks reserves the right to make additional charges to the Client in respect of any such changes and shall notify the Client of any such changes and additional charges.
- 4.9 Fusion Utility Networks shall have the right to make any changes to the scope and/or execution of the Works and/or the Distribution Network in the event that any circumstances exist or arise which are inconsistent, or conflict, with any of the assumptions or qualifications made by Fusion Utility Networks in the Quotation or the Attendance Schedule. Fusion Utility Networks reserves

the right to make additional charges to the Client in respect of any such changes and shall notify the Client of any such changes and additional charges.

5. CLIENT'S WARRANTIES AND OBLIGATIONS

5.1 By signing and returning the Order, the Client warrants, represents and undertakes that:

5.1.1 It is the legal and beneficial owner of and/or and has all relevant and necessary rights over all land that is required for Fusion Utility Networks to provide the Works and the Distribution Network in accordance with the Contract and for Fusion Utility Networks to exercise all or any of its rights under the Contract; and

5.1.2 All drawings, reports, specifications and other information provided by the Client or its subcontractors, consultants, agents or employees in connection with the Works and/or the Distribution Network (whether before or after the Commencement Date) is and will be true, accurate and complete.

5.2 The Client shall (or shall procure that a suitably qualified third party shall):

5.2.1 Comply with or, as the case may be, carry out its obligations and/or responsibilities set out in the Quotation and/or the Attendance Schedule; and

5.2.2 Carry out and complete all works (in a good and workmanlike manner and in accordance with any specification included in the Quotation and/or the Attendance Schedule or any drawings, reports, specifications or other information attached or referred to in either of them) which are stated to be the Client's responsibility in order to enable Fusion Utility Networks to carry out the Works including, but not limited to, making the Site ready as appropriate to enable Fusion Utility Networks to carry out the Works on the agreed start date without delay.

5.3 The Client shall:

5.3.1 Fully co-operate, and shall procure that its employees, agents, consultants and subcontractors fully co-operate, with Fusion Utility Networks and its employees, agents, consultants and subcontractors in all matters relating to the Works and/or the Distribution Network provide for Fusion Utility Networks and its employees, agents, consultants and subcontractors, in a timely manner and at no charge, access to the Site and any other land/or facilities as reasonably required by Fusion Utility Networks in connection with carrying out the Works;

5.3.2 Provide, and shall procure that its employees, agents, consultants and subcontractors provide, Fusion Utility Networks and its employees, agents, consultants and subcontractors with such information as they may reasonably require in order to carry out the Works, and ensure that such information is true, complete and accurate;

5.3.3 Immediately inform Fusion Utility Networks if any of the drawings, reports, specifications or other information provided to Fusion Utility Networks or its employees, agents, consultants or subcontractors by the Client or any of the Client's employees, agents, consultants or subcontractors (either before or after the Commencement Date) in respect of the Contract, the Works and/or the Distribution Network is or becomes untrue and/or inaccurate and/or incomplete; and

5.3.4 Immediately inform Fusion Utility Networks if any variations and/or amendments are required to the scope and/or execution of the Works and/or the Distribution Network including, without limitation, any alterations to the layout of the Site and/or number of buildings and/or building type and/or the anticipated or actual capacities of gas, electricity or water required in respect of the Distribution Network.

- 5.4 The Client shall:
- 5.4.1 Obtain and maintain (at its own cost) all necessary licences, permissions, approvals, consents, wayleaves, servitudes, easements, rights transfers and/or leases of land which may be required in order for Fusion Utility Networks to carry out the Works or which may be required in connection with the adoption, operation and/or maintenance of the Distribution Network;
 - 5.4.2 Inform Fusion Utility Networks in writing without delay about any matters relating to the Site (including, but not limited to, boundary disputes, restrictive covenants, easements, tree preservation orders, physical obstructions, adverse ground conditions, pollution, contamination or any other hazard) which might affect Fusion Utility Networks ability to carry out the Works. Fusion Utility Networks shall not be responsible for any delays or problems with carrying out the Works (including inability to carry out the Works) which arise as a result of any of the matters covered in this clause to the extent that Fusion Utility Networks was not fully informed of them in writing prior to the Commencement Date;
 - 5.4.3 Ensure that the Site (and any other land required to be used and/or accessed in connection with the Works) is clear and free from all adverse physical obstructions, adverse ground conditions, pollution, contamination or any other similar hazards or obstructions;
 - 5.4.4 Comply with its statutory obligations in relation to the Works and/or the Site including, but not limited to, in relation to health and safety;
 - 5.4.5 Inform Fusion Utility Networks and its employees, agents, consultants and subcontractors of all health and safety rules and regulations that apply at the Site and any other land to be used and/or accessed by Fusion Utility Networks and/or its employees, agents, consultants and subcontractors in connection with the Works;
 - 5.4.6 Keep, maintain and insure all and any of Fusion Utility Networks or its employees' agents' consultants' or subcontractors' goods, materials and equipment located at the Site in safe custody and shall not (and shall procure that the Client's employees, agents, consultants and subcontractors shall not) dispose of or use any such goods, materials or equipment other than in accordance with Fusion Utility Networks written instructions. The Client acknowledges that ownership of all goods, materials and equipment purchased by Fusion Utility Networks and/or Fusion Utility Networks subcontractors, agents or consultants which are to form part of the Works and/or the Distribution Network shall remain with Fusion Utility Networks until Fusion Utility Networks has received all sums due from the Client on any account (except where Fusion Utility Networks agrees alternative provisions to the contrary with the Client in writing in relation to any particular items) and where such goods, materials or equipment are stored at the Site, the Client shall ensure that they are clearly marked as Fusion Utility Networks property and will permit Fusion Utility Networks access to the Site at any time to take possession of such goods, materials or equipment in the event of non-payment by the Client;
 - 5.4.7 Upon request by Fusion Utility Networks or the Nominated IDNO, provide details to Fusion Utility Networks or the Nominated IDNO (as appropriate) of its chosen electricity supplier (such supplier to be licensed by Ofgem) in respect of the Electricity Distribution Network;
 - 5.4.8 Upon request by Fusion Utility Networks or the Nominated IGT, provide details to Fusion Utility Networks or the Nominated IGT of its chosen gas shipper (such shipper to be licensed by Ofgem) in respect of the Gas Distribution Network;
 - 5.4.9 Upon request by Fusion Utility Networks, provide confirmation that it has entered into an agreement with the Water Company in connection with the water supply for the Water Distribution Network (and provide Fusion Utility Networks with a copy of such agreement upon request); and
 - 5.4.10 Upon request by Fusion Utility Networks enter into such adoption agreements and other statutory documentation as may reasonably be required in connection with the adoption of the Distribution

Network or part thereof (and provide Fusion Utility Networks with a copy of such agreements or other documentation upon request).

6. CLIENT DEFAULT

6.1 If Fusion Utility Networks performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

6.1.1 Fusion Utility Networks shall, without limiting its other rights or remedies, have the right to suspend performance of the Works until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent that the Client Default prevents or delays Fusion Utility Networks performance of any of its obligations; and

6.1.2 Fusion Utility Networks shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Fusion Utility Networks failure or delay to perform any of its obligations as set out in this clause 6.1; and

6.1.3 The Client shall reimburse Fusion Utility Networks on written demand for any costs or losses sustained or incurred by Fusion Utility Networks arising directly or indirectly from the Client Default.

7. TIMING OF THE WORKS

7.1 Fusion Utility Networks shall use its reasonable endeavours to meet any performance dates specified in writing by Fusion Utility Networks to the Client, but any such dates shall be estimates only and the Client acknowledges that there are many factors beyond the control of Fusion Utility Networks which can impact upon the progress of the Works, for instance third party suppliers failing to supply components required for the Works on time and adverse weather conditions.

7.2 Time shall not be of the essence for performance of the Works.

7.3 Fusion Utility Networks will be entitled to an extension of time equivalent to the delay incurred in carrying out the Works in the event of any delay which arises as a result of:

7.3.1 A failure by the Client to comply with any of its obligations under the Contract;

7.3.2 Subject always to clause 4, the client requiring variations to the Works and/or the Distribution Network and Fusion Utility Networks agreeing to such variations;

7.3.3 Any defect occurring in the Works and/or the Distribution Network which is mainly due to weather conditions (including, but not limited to, frost), ground movement, misuse or damage by the Client or third parties;

7.3.4 Any changes in statutory and/or regulatory regimes relevant to the Works and/or the Distribution Network;

7.3.5 Unforeseen adverse weather conditions, physical conditions, adverse ground conditions, pollution, contamination or any other such hazards or obstructions whether on the Site or any other land required to be used and/or accessed in order to carry out the Works;

7.3.6 A Force Majeure Event;

7.3.7 Suspension by Fusion Utility Networks of the performance of its obligations under the Contract as permitted by the Contract; and/or

7.3.8 Any act, omission or direction of the Nominated IDNO, the Host DNO, the Nominated IGT, the Host GT and/or the Water Company (including any change in the design of the Works and/or the Distribution Network at their direction).

- 7.4 The Client acknowledges and agrees that Fusion Utility Networks shall not be liable for any costs, expenses or other liabilities suffered or incurred by the Client as a result of, or in connection with, any delay in the performance of their respective obligations by the Nominated IDNO and/or the Host DNO (in respect of the Electricity Distribution Network) the Nominated IGT and/or the Host GT (in respect of the Gas Distribution Network) or the Water Company (in respect of the Water Distribution Network).

8. ADOPTION AND OWNERSHIP OF THE DISTRIBUTION NETWORK

- 8.1 The Client acknowledges and agrees that:

8.1.1 The Nominated IGT and Host GT shall be the gas transporter and meter asset owners in respect of the Gas Distribution Network; and

8.1.2 The Nominated IDNO and Host DNO shall be the electricity distribution network operators in respect of the Electricity Distribution Network.

- 8.2 The Client acknowledges and agrees that, following completion of the Works:

8.2.1 The Gas Distribution Network shall become the property of the Nominated IGT and the Host GT and that the Nominated IGT and the Host GT will be responsible for the operation and maintenance of the Gas Distribution Network;

8.2.2 The Electricity Distribution Network shall become the property of the Nominated IDNO and the Host DNO and that the Nominated IDNO and the Host DNO will be responsible for the operation and maintenance of the Electricity Distribution Network; and

8.2.3 The Water Distribution Network shall become the property of the Water Company and that the Water Company shall be responsible for the operation and maintenance of the Water Distribution Network, and the Client undertakes to inform all successors in title to the Site (or any part thereof) of such ownership and responsibility.

9. DISPOSAL OF THE SITE

- 9.1 If the Client disposes (by way of lease, transfer, sale or otherwise) of its interest in the Site or any part thereof (other than pursuant to a Permitted Disposal) prior to the adoption of:

9.1.1 The Electricity Distribution Network (or the relevant part thereof) by the Nominated IDNO; and/or

9.1.2 The Gas Distribution Network (or the relevant part thereof) by the Nominated IGT, the Client shall procure that the relevant successor in title shall appoint or accept the appointment of the Nominated IDNO as the independent distribution network operator in respect of the Electricity Distribution Network and the Nominated IGT as the independent gas transporter and meter asset owner in respect of the Gas Distribution Network.

- 9.2 If the Client disposes (by way of lease, transfer, sale or otherwise) of its interest in the Site (or any part thereof) prior to completion of the Works other than pursuant to a Permitted Disposal, it shall enter into, and procure that the person acquiring such interest enters into, a deed of novation in a form reasonably satisfactory to Fusion Utility Networks pursuant to which the engagement of Fusion Utility Networks to provide the Works and the Client's obligations and liabilities under the Contract (in each case in relation to the part of the Site disposed) are novated from the Client to the person acquiring the Client's interest in such part of the Site disposed.

If the Client fails to provide Fusion Utility Networks with such deed of novation and the person who acquires the Client's interest in the relevant part of the Site does not wish to engage Fusion Utility Networks to provide the Works on terms no less favourable than those agreed with the Client, the Client will be liable to Fusion Utility Networks for all losses Fusion Utility Networks incurs including loss of profit, loss of revenue, unrecoverable costs and expenses and any consequential losses as a result of Fusion Utility Networks not being permitted to carry out the Works (or the relevant part thereof) on the terms of the Contract.

- 9.3 If the Client disposes (by way of lease, transfer, sale or otherwise) of its interest in the Site or any part thereof, the Client shall procure that such disposal will be subject to all and any rights, licences, permissions, approvals, consents, wayleaves, servitudes, easements which are required to be provided or acquired by the Client under the Contract.

10. ADDITIONAL CHARGES

- 10.1 Unless expressly stated otherwise in the Quotation or otherwise agreed by Fusion Utility Networks in writing, the following are not included in the Charges and shall be payable by the Client in addition:

10.1.1 All and any non-contestable costs and/or charges charged by the Nominated IDNO, the Host DNO, the Nominated IGT, the Host GT and/or the Water Company in connection with the Distribution Network including, without limitation, any connection costs, infrastructure charges, inspection and/or approval fees and any costs relating to reinforcement works;

10.1.2 Where any of the costs and charges referred to in clause 10.1.1 are expressly stated in the Quotation, or otherwise agreed in writing by Fusion Utility Networks, as being included in the Charges, any increase to such costs and charges imposed by the Nominated IDNO, Nominated IGT, the Water Company, the Host GT and/or the Host DNO following the date of the Quotation; and

10.1.3 Any costs incurred by Fusion Utility Networks in connection with obtaining any necessary planning permissions, licences, easements, wayleaves, land transfers or any similar rights, consents or permissions in connection with the provision of the Works and/or the Distribution Network.

10.2 Fusion Utility Networks reserves the right to make additional charges to the Client in the event that:

10.2.1 Any defects occur in the Works and/or the Distribution Network, which are mainly due to weather conditions (including, but not limited to, frost), ground movement, misuse or damage by the Client or third parties and Fusion Utility Networks agrees to rectify such defects;

10.2.2 The cost of labour and/or goods or materials required by Fusion Utility Networks in connection with the provision of the Works and/or the Distribution Network increases following the date of the Quotation;

10.2.3 The Works are not commenced within six months after the date of the Quotation and such delay in the commencement of the Works is not caused by any act or omission of Fusion Utility Networks or any of its employees, agents, consultants or subcontractors;

10.2.4 The Works are not completed within the Maximum Build Programme or, if there is no Maximum Build Programme, 18 months of the Commencement Date and such delay in the completion of the Works is not caused by any act or omission of Fusion Utility Networks or any of its employees, agents, consultants or subcontractors;

10.2.5 Any of the qualifications or assumptions made by Fusion Utility Networks and set out in the Quotation and/or the Attendance Schedule are or become incorrect or inaccurate;

10.2.6 Any other works in addition to the Works are carried out by Fusion Utility Networks or any of its employees, agents, consultants or subcontractors at the request of the Client and a variation to the Charges has not been made in respect of such works pursuant to clause 4.

11. PAYMENT OF THE CHARGES AND ADDITIONAL CHARGES

- 11.1 In consideration of the provision of the Works, the Client shall pay the Charges and all and any Additional Charges in accordance with this clause 11.

- 11.2 The Client shall pay the Charges in the instalments set out in the Quotation or, if no instalments are set out therein, at intervals of not less than one month that reflect the progress of the Works, beginning one month after the Commencement Date.
- 11.3 Each invoice submitted by Fusion Utility Networks for the Charges and/or any Additional Charges (or any part thereof) shall state the sum that Fusion Utility Networks considers to be due and the basis on which that sum has been calculated. The due date for payment shall be the date on which the invoice is received by the Client.
- 11.4 No later than five days after payment becomes due, the Client shall notify Fusion Utility Networks of the sum that the Client considers to have been due at the due date for payment and the basis upon which that sum is calculated.
- 11.5 The final date for payment shall be 14 days after the date on which the payment is due.
- 11.6 Unless the Client has served notice under clause 11.7, the Client shall pay Fusion Utility Networks the sum referred to in the Client's notice under clause 11.4 or, if the Client has not served notice under clause 11.4, the sum referred to in the invoice submitted by Fusion Utility Networks pursuant to clause 11.3 (such sum being, in this clause 11, the "**notified sum**") on or before the final date for payment of the relevant invoice.
- 11.7 Not less than seven days before the final date for payment, the Client may give Fusion Utility Networks notice that it intends to pay less than the notified sum (in this clause 11, a "**pay less notice**"). Any pay less notice shall specify both the sum that the Client considers to be due on the date the notice is served and the basis on which that sum is calculated.
- 11.8 Where a pay less notice is given, the payment to be made by the Client on or before the final date for payment shall not be less than the amount stated in such pay less notice.
- 11.9 All amounts payable by the Client under the Contract shall be made in full and in cleared funds to a bank account nominated in writing by Fusion Utility Networks. Time for payment shall be of the essence of the Contract.
- 11.10 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Fusion Utility Networks to the Client, the Client shall, on receipt of a valid VAT invoice from Fusion Utility Networks, pay to Fusion Utility Networks such additional amounts in respect of VAT as are chargeable on the supply of the Works at the same time as payment is due for the Charges or, as the case may be, the Additional Charges.
- 11.11 Without limiting any other right or remedy of Fusion Utility Networks, if the Client fails to make any payment by the final date for payment, Fusion Utility Networks shall have the right to charge interest on the overdue amount at the rate of 8% per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the final date for payment until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly and the Client shall pay such interest on demand.
- 11.12 Without limiting its other rights or remedies, Fusion Utility Networks shall have the right to suspend the provision of the Works under the Contract or any other contract between the Client and Fusion Utility Networks if the Client fails to pay any amount due under this Contract (together with any VAT properly charged thereon) in full by the final date for payment by giving not less than seven days' notice to the Client of its intention to do so and stating the grounds or ground on which it intends to suspend performance and may suspend such provision until payment of the relevant amount is received by Fusion Utility Networks in full.
- 11.13 Where Fusion Utility Networks exercises its right of suspension under clause 11.12, Fusion Utility Networks shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by Fusion Utility Networks as a result of the exercise of such right.

11.14 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off, abatement or counterclaim against Fusion Utility Networks in order to justify withholding payment of any such amount in whole or in part. Fusion Utility Networks may, without limiting its other rights or remedies, set-off any amount owing to it by the Client against any amount payable by Fusion Utility Networks to the Client.

11.15 The Client shall be responsible for paying all other fees, duties and levies in relation to the Works, the Distribution Network and/or the Site save as expressly stated otherwise in the Contract.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights in or arising out of or in connection with the Works and/or the Distribution Network shall, as between the parties, be owned by Fusion Utility Networks including, without limitation, the copyright in any Documents.

12.2 The Client may copy and use the Documents for any purpose relating to the Works and/or the Distribution Network provided that Fusion Utility Networks is not liable for the use of such Documents for any other purpose other than that for which they were prepared. The Client shall indemnify Fusion Utility Networks against any costs, claims, damages, losses, liabilities, fines or expenses made against or incurred by Fusion Utility Networks as a result of any breach by the Client of this clause 12.2.

12.3 Fusion Utility Networks may immediately suspend the further copying and/or use of the Documents by the Client pursuant to clause 12.2 if the Client is in default of any of its payment obligations under clause 11. The Client acknowledges and agrees that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on Fusion Utility Networks obtaining a written licence from the relevant licensor on such terms as will entitle Fusion Utility Networks to license such rights to the Client.

13. CONFIDENTIALITY

13.1 The Client shall keep in strict confidence the Quotation and all other technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by Fusion Utility Networks or any of its employees, agents, consultants or subcontractors, and any other confidential information concerning Fusion Utility Networks business or its products or its services which the Client may obtain. The Client shall restrict disclosure of such confidential information to such of its employees, agents, consultants or subcontractors as need to know it for the purpose of discharging the Client's obligations under the Contract, and shall ensure that such employees, agents, consultants or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Client. This clause 13 shall survive termination of the Contract.

14. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

14.1 Nothing in these Conditions shall limit or exclude Fusion Utility Networks liability for:

14.1.1 Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

14.1.2 Fraud or fraudulent misrepresentation; or

14.1.3 Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

14.1.4 Any other liability which cannot be limited or excluded by applicable law.

- 14.2 Subject to clause 14.1, Fusion Utility Networks shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise arising under or in connection with the Contract for:
- 14.2.1 Loss of profits;
- 14.2.2 Loss of sales or business;
- 14.2.3 Loss of agreements or contracts;
- 14.2.4 Loss of anticipated savings;
- 14.2.5 Loss of or damage to goodwill;
- 14.2.6 Loss of use or corruption of software, data or information;
- 14.2.7 Any indirect or consequential loss.
- 14.3 Subject to clauses 14.1, 14.2 and 14.5, Fusion Utility Networks total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to a sum equal to the greater of the insurance cover effected by Fusion Utility Networks and actually available to meet the claim in question; and
- 14.3.1 That part of the Contract Sum which relates or can fairly be attributed to the part of the Works in respect of which the claim is made.
- 14.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.5 Fusion Utility Networks will not be liable to the Client under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, unless the relevant claim made by the Client against Fusion Utility Networks is commenced (meaning a claim form is issued and served on Fusion Utility Networks) before the expiry of 24 months following the earlier of: (i) energisation of the Distribution Network; and (ii) termination of the Contract.
- 14.6 This clause 14 shall survive termination of the Contract.

15. CLIENT INDEMNITY AND INSURANCE

- 15.1 The Client shall indemnify and hold Fusion Utility Networks harmless against any costs, claims, liabilities, losses (including loss of profits, loss of business, depletion of goodwill and similar losses), damages, expenses or fines made against or incurred or paid by Fusion Utility Networks as a result of or in connection with any death or personal injury which arises as a consequence of the negligence, breach of contract or other breach of duty of the Client or any of the Client's employees, agents, consultants or sub-contractors.
- 15.2 Without limiting the Client's liability to Fusion Utility Networks under the Contract and unless agreed otherwise by a duly authorised representative of Fusion Utility Networks, the Client shall effect and maintain for the period referred to in clause 15.3 at its own cost the following insurance policies:
- 15.2.1 Public Liability Insurance with a limit of indemnity per claim of not less than £1 million or such other amount stated in the Quotation.

- 15.3 The Client shall effect and maintain the Insurance Policies at all times whilst the Works are being provided under the Contract and for such further period as is necessary to ensure that insurance is provided for all the Client's liabilities arising under the Contract usually covered under the Insurance Policies irrespective of when any claim in relation to any such liability is made.
- 15.4 The Insurance Policies shall be effected and maintained with reputable insurance companies.
- 15.5 The insurance premiums and all excess payments applicable to the Insurance Policies shall at all times be the responsibility of the Client.
- 15.6 The Client shall not take, or fail to take, any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurance Policies.
- 15.7 The Client shall provide to Fusion Utility Networks on request:
- 15.7.1 Copies of all Insurance Policies (including all documents evidencing any amendments, extensions or variations to such insurances); and
- 15.7.2 A certificate of continuance as evidence that the premiums payable under all Insurance Policies have been paid and that the Insurance Policies are in full force and effect.
- 15.8 Renewal certificates in relation to the Insurance Policies shall be obtained as and when necessary and copies shall be forwarded to Fusion Utility Networks as soon as possible but in any event at least 10 Business Days before the renewal date.
- 15.9 If the Client is in breach of clause 15.2, Fusion Utility Networks may pay any premiums required to keep any of the Insurance Policies in force or itself procure such Insurance Policies. In either case, Fusion Utility Networks may recover such premiums from the Client together with all expenses incurred in procuring such insurance as a debt.
- 15.10 This clause 15 shall survive termination of the Contract.

16. FUSION UTILITY NETWORKS INSURANCE

Details of the insurance cover affected by Fusion Utility Networks is available upon written request.

17. TERMINATION

- 17.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 17.1.1 The other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing of the breach;
- 17.1.2 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;
- 17.1.3 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 other than (where a company) 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;
- 17.1.4 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;

- 17.1.5 The other party (being an individual) is the subject of a bankruptcy petition or order;
- 17.1.6 A creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 17.1.7 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);
- 17.1.8 A floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 17.1.9 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;
- 17.1.10 Any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.1.2 to clause 17.1.9 (inclusive);
- 17.1.11 The other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 17.1.12 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.
- 17.2 Without limiting its other rights or remedies, Fusion Utility Networks may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the final date for payment.
- 17.3 Without limiting its other rights or remedies, Fusion Utility Networks shall have the right to suspend provision of the Works under the Contract or any other contract between the Client and Fusion Utility Networks if the Client becomes subject to any of the events listed in clause 17.1.2 to clause 17.1.12 (inclusive), or Fusion Utility Networks reasonably believes that the Client is about to become subject to any of them.

18. CONSEQUENCES OF TERMINATION

- 18.1 On termination of the Contract for any reason:
 - 18.1.1 The Client shall immediately pay to Fusion Utility Networks all of Fusion Utility Networks outstanding unpaid invoices and interest and, in respect of Works and/or other services or works supplied by Fusion Utility Networks but for which no invoice has been submitted and/or any Additional Costs payable by the Client for which no invoice has been submitted, Fusion Utility Networks shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - 18.1.2 The Client shall return (or shall procure that there are returned) all and any goods, equipment and materials provided by Fusion Utility Networks or any of Fusion Utility Networks employees, agents, consultants or subcontractors which have not been fully paid for by the Client together with all and any Documents or other property provided by Fusion Utility Networks. If the Client fails to do so, Fusion Utility Networks may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose;
 - 18.1.3 The accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

18.1.4 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

19. ADJUDICATION

If the Contract is a "construction contract" as defined in Part II of the Housing Grants Construction and Regeneration Act 1996, either party may refer any dispute or difference arising under the Contract to adjudication in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998 (*SI 1998/649*) as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendments) (England) Regulations 2011 (*SI 2011/2333*) and the referring party shall request the Construction Industry Council to nominate an adjudicator.

20. RECRUITMENT OF FUSION UTILITY NETWORKS STAFF

20.1 The Client shall not employ, engage or otherwise procure services from, whether directly or indirectly, any person who has been an employee, agent, consultant or subcontractor of Fusion Utility Networks and who has been involved in the Works (whether in designing, managing or bringing into effect the same) or offer to do so other than through Fusion Utility Networks. The restriction in this clause shall apply for so long as the relevant person is employed or engaged by Fusion Utility Networks and for 12 months thereafter.

20.2 In the event that the Client does engage a person previously employed or engaged by Fusion Utility Networks in circumstances amounting to a breach of clause 20.1 the Client shall pay to Fusion Utility Networks an amount equal to 25% of the total payments made to the relevant person in the first 12 months of their employment or engagement by the Client (or which would have been made had the employment or engagement lasted that long, calculated based on the average monthly earnings or other payments to the relevant person over the period for which the relevant person was employed or engaged), including employer's national insurance contributions in relation to that person where appropriate.

20.3 This clause 20 shall survive termination of the Contract.

21. GENERAL

21.1 Inconsistent terms

If any of the provisions of these Conditions, the Quotation and/or the Attendance Schedule are inconsistent, the following order of precedence shall apply in respect of such inconsistency:

21.1.1 The Quotation;

21.1.2 These Conditions; and 21.1.3 the Attendance Schedule,
save in respect of clause 14 which shall always apply.

21.2 **Force majeure**

21.2.1 Fusion Utility Networks shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

21.2.2 If the Force Majeure Event prevents Fusion Utility Networks from providing any of the Works for more than twelve weeks, Fusion Utility Networks shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

21.3 **Assignment and subcontracting**

21.3.1 Fusion Utility Networks may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

21.3.2 Save as permitted by clause 21.3.3, the Client shall not, without the prior written consent of Fusion Utility Networks, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

21.3.3 The Client may subcontract its obligations under the Contract (other than its obligations under clause 11) and the Client acknowledges and agrees that such subcontracting will not relieve the Client of its obligations or liabilities to Fusion Utility Networks under the Contract.

21.4 **Notices**

21.4.1 Any notice required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid firstclass post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

21.4.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

21.4.3 This clause 21.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause 21.4, "writing" shall not include emails or text messages and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail or text message.

21.5 **Waiver**

21.5.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.

No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

21.5.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

21.6 **Severance**

21.6.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

21.6.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

21.7 **No partnership**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

21.8 **Third parties**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

21.9 **Variation**

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by a duly authorised officer or employee of Fusion Utility Networks.

21.10 **Governing law and jurisdiction**

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and subject to clause 19, the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.