

Scottish Water Business Stream Limited

Solutions Terms and Conditions for the
provision of services and works

Dated Sept 2019



TABLE OF CONTENTS

1	Definitions	3
2	The Parties' Main Obligations.....	5
3	Instruction of the Works & Clients' Obligations	6
4	Suspension & Termination.....	6
5	Assignment and Sub-Contracting	8
6	General Provisions about the Contract.....	8
7	Notices	8
8	Applicable law	9
9	Dispute resolution	9
10	Exclusions & Limitations	9
11	Early Warning.....	10
12	Interpretation.....	10
	PART 1 Services and Works.....	11
1	Design / Standard of Care	11
2	Discrepancies / Priority of Documents.....	11
3	Statutory Requirements	12
4	CDM Regulations.....	12
5	Time for Performance/Programme	13
6	The Property	13
7	Variations	13
8	Co-operation & information.....	14
9	Key Personnel.....	14
10	Project Contracts	14
11	Copyright.....	14
12	Risk of Damage to Works & Insurances.....	15
13	Public & Employer's Liability and Insurance.....	15
14	PI Insurance.....	16
15	Confidentiality & Publicity	16
16	Data Protection	17
17	Freedom of Information	17
18	Anti-Slavery.....	18
19	Business Stream's General Obligations.....	18
20	Client's Approvals	18
21	Payment of the Contract Sum.....	18
22	Retention and Final Account.....	20
	PART 2 The Works	21
1	Materials, Goods & Workmanship	21
2	Utilities.....	21
3	Extension of Time	22
4	Completion, Testing, & Snagging	22
5	Damages for Late Completion.....	23
6	Defects Liability Period	24
7	Inspections & Tests.....	24
8	Other Works.....	24
9	Prolongation & Disruption	25

1 Definitions

In these Conditions, the following expressions shall have the following meanings, unless the ITT or the Proposal provides to the contrary, or the context requires otherwise:-

"Business Stream" means Scottish Water Business Stream Limited (Company No: SC294924) whose registered office is at 7 Lochside View, Edinburgh EH12 9DH, which includes its successors and permitted assignees;

"CDM Regulations" means the Construction (Design and Management) Regulations 2015, the L153 Guidance document issued by the Health and Safety Commission in connection with such Regulations, and all other codes of practice, guidelines, recommendations or safety procedures published from time to time by the Health & Safety Executive or approved by the Health & Safety Commission, in each case as amended, modified or re-enacted from time to time;

"Client" means the entity stated as "client" or "customer" (or similar term) in the Proposal, which includes their successors and permitted assignees;

Client's Design means the designs for the Works (including the selection or specification of materials) contained or referred to in the ITT or prepared by or on behalf of the Client and included or referred to in any of the other Contract Documents;

"Client's Representative" means the person so named in the ITT or other Contract Document or otherwise agreed between the Client and Business Stream as the "Client's Representative" (or similar) for the purposes of the Contract;

"Completion Date" has the meaning in clause 4 of Part 2 of the Schedule (*Completion, Testing & Snagging*);

"Conditions" means these conditions, as varied or supplemented by the Contract;

"Contract" means the contract between the Client and Business Stream constituted by the ITT, the Proposal, the Proposal Acceptance and any other documents specified or referred to in them, as varied from time to time in accordance with the Conditions;

"Contract Date" means the date of issue of the Proposal Acceptance or the date of the last qualified acceptance concluding a contract;

"Contract Documents" means the ITT, the Proposal, and the Proposal Acceptance and any other documents stated in any of them to be a "contract document", as varied from time to time in accordance with the Conditions;

"Contract Sum" means each and both of (1) the Fee and (2) (if the Client instructs Business Stream to Provide the Works) the Works Price, which in each case includes any adjustment made in accordance with the Conditions;

"Copyright Material" means all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information (including any software used to generate them) prepared by Business Stream or on its behalf in connection with the Services or the Works;

"Date for Completion" means the date when the Works are to be completed, as set out in the Contract, subject to any extension of time under clause 3 of Part 2 of the Schedule;

"Defects Liability Period" means the period of 12 months from the date of completion of the Works, or such other period as is stated in the ITT or Proposal;

"Design" means the design of the Works (in whole or in part as the case may be, and including the selection or specification of materials) to be undertaken by Business Stream as specified in the Proposal (excluding the Client's Design);

"Design Document" means each plan, sketch, drawing (including setting out drawings) calculation, specification, and other document prepared by (or on behalf of) Business Stream for or in connection with the Design, and includes those incorporated or referred to in any of the ITT, the Proposal, and any other Contract Document;

"Disruption Costs" has the meaning in clause 9 of Part 2 of the Schedule;

"Effective Date" means the date of commencement by Business Stream of any works or services within the scope of the Services or the Works, or if earlier, the date of the Proposal Acceptance;

"Fee" means the fees, expenses and disbursements payable by the Client to Business Stream for Providing the Services, as set out in the ITT or Proposal or other Contract Documents, including any adjustment made in accordance with the Conditions

"ITT" means the Client's request to Business Stream inviting the submission of a proposal, fee quote or tender for Providing the Services and the Works;

"Key Personnel" means the persons listed as such in the Contract Documents or as identified under clause 9 of Part 1 of the Schedule (*Key Personnel*)

"Other Works" has the meaning in clause 8 of Part 2 of the Schedule;

"Other Works Contractors" has the meaning in clause 8 of Part 2 of the Schedule;

"Principal Designer" means the person appointed by the Client from time to time to act as Principal Designer under the CDM Regulations for the Project;

"Programme" means Business Stream's programme document showing the critical path for the key activities in the Services or the Works, as set out in the Proposal, as updated from time to time in accordance with the Contract, or if no such programme is included in the Proposal, such programme as is agreed from time to time between Business Stream and the Client;

"Prohibited Materials" means any substances (including combinations of substances), materials, or procedures (including products which use such substances, combinations of substances, materials or procedures in its operation) which at the Contract Date:-

- (1) are not in accordance with British or applicable European standards and codes of practice;
- (2) the Building Research Establishment recommends are not used for building purposes or for the type of buildings or structures comprised in the Works or which the BRE identify as harmful to the health and safety of those constructing or using buildings or structures of the type comprised in the Works; or
- (3) do not comply with the guidelines or recommendations set out in the publication entitled "*Good Practice in the Selection of Construction Materials*" issued by the British Council for Offices (in the edition current at the time of specification or use);

"Project" means the project described in the ITT or Proposal or other Contract Documents;

"Project Contracts" means all or any agreements or contracts relating to the Project entered into or to be entered into between the Client and other persons having an interest in the Property (including funders of the Client) where copies have been disclosed to Business Stream prior to the Contract Date

"Property" means the property or site to which the Services relate, or at which the Works are to be carried out, as described in the ITT, the Proposal or other Contract Documents;

"Proposal" means Business Stream's proposal, fee quote, or tender for the Services and the Works preceding (but forming part of) the Contract;

"Proposal Acceptance" means the Client's acceptance of the Proposal, including emails, correspondence and other matters agreed as having contractual effect (but only including those qualifications of the Proposal expressly agreed between Business Stream and the Client and specified in that acceptance or otherwise in writing);

"Provide the Services" means to carry out and complete the Services in accordance with the Contract, which includes any Variations;

"Provide the Services and the Works" means to Provide the Services and to Provide the Works;

"Provide the Works" means to carry out and complete the Works in accordance with the Contract, which includes (1) exercising the Standard of Care to carry out the Design, to the extent stated in any of the Contract Documents and (2) Variations;

"Retention" means a sum (expressed as a percentage of the Works Price) to be withheld from each interim payment of the Works Price and being such percentage as is stated in the ITT or the Proposal, and if none is stated then no retention is applicable;

"Services" means the services specified in the Proposal, which includes any variation or addition made in accordance with the Contract;

"Standard of Care" means the skill and care reasonably to be expected of a competent and suitably qualified design consultant of the relevant discipline experienced in (1) providing Services similar to the Services and (in relation to the Design) (2) designing works similar to the Works, for projects similar in size, scope, complexity, nature and value to the Project;

"Statutory Requirements" means the requirements of:-

(1) any statute or subordinate legislation including (a) directly applicable provisions of the EC Treaty and any EC directive, (b) regulations under any Act of Parliament, including those made by the Scottish Parliament or Scottish Executive as the case may be, (c) the CDM Regulations and (d) statutory provisions relating to anti-corruption and equal opportunities;

(2) all planning permissions, listed building consents, and all other, controls, permissions, agreements, conditions, licences and approvals relating to town and country planning

(3) all road construction consents, building warrants, and all other relevant statutory consents or requirements, and

(4) any other consent, licence, approval or permission which the Client has brought to Business Stream's attention or of which, exercising the Standard of Care, Business Stream ought to be aware,

that in each case relates to or affects the Services or the Works;

"Variation" has the meaning in clause 7 of Part 1 of the Schedule;

"Working Day" means any day which is not a Saturday, Sunday or public holiday in London;

"Works" means the works for the Project described or referred to in the Contract Documents (including where relevant the Design and the selection of goods and materials);

"Works Price" means the sum payable to Business Stream by the Client for Providing the Works, as set out in the Proposal, which includes any adjustment made in accordance with the Conditions.

2 The Parties' Main Obligations

2.1 Business Stream undertakes to the Client:-

2.1.1 to Provide the Services and (if instructed) to Provide the Works, subject to and in accordance with the Conditions, and

2.1.2 that, in Providing the Services and carrying out the Design, Business Stream has exercised and will continue to exercise the Standard of Care.

2.2 Subject to the other provisions of the Conditions, Business Stream shall perform its obligations under the Contract and (exercising the Standard of Care) carry out the Design in accordance with:-

2.2.1 the Contract Documents;

2.2.2 the Statutory Requirements; and

2.2.3 instructions properly given to Business Stream by the Client under the Contract.

2.3 Business Stream will attend regular meetings with the Client and the Client's Representative to review the Services and the Works. The Client's Representative will notify Business Stream of the dates, times and places of the meetings, which shall be held no more frequently than monthly, unless stated otherwise in the Proposal.

2.4 The Client shall pay the Contract Sum to Business Stream in accordance with the Contract.

2.5 The parties shall:-

2.5.1 comply with their respective obligations in Part 1 of the Schedule,

- 2.5.2 if the Client instructs Business Stream to Provide the Works, comply with their respective obligations in Part 2 of the Schedule, and
 - 2.5.3 in any event, act as stated in the Contract and in a spirit of mutual trust and co-operation.
- 2.6 Any works or services performed by Business Stream for the Project prior to the Contract Date shall be treated as having been performed under the Conditions. All sums paid to Business Stream for any works or services within the scope of the Services or the Works prior to the Contract Date shall be treated as payments on account of the respective parts of the Contract Sum (but payments on account of the Fee shall not be treated as payments on account of the Works Price, and payments on account of the Works Price shall not be treated as payments on account of the Fee).

3 Instruction of the Works & Clients' Obligations

- 3.1 Business Stream shall not be under any obligation to Provide the Works until it has received a written instruction from the Client to do so. If the Client wishes a further proposal from Business Stream for the Works before instructing them, it shall request Business Stream to provide such a proposal. Any such proposal so provided shall be deemed to be included in the Proposal, and the Client's acceptance deemed to be included in the Proposal Acceptance. The Client shall issue a written instruction to Business Stream confirming whether Business Stream is required to Provide the Works.
- 3.2 The Client shall give Business Stream such access to the Property and its other premises and facilities as is required to allow Business Stream to Provide the Services and the Works, subject to Business Stream using reasonable endeavours to comply with the reasonable requirements of the Client regarding such access.
- 3.3 Where applicable, the Client will notify Business Stream of all relevant workplace policies and procedures in force (including health & safety and workplace security policies), as amended from time to time.

4 Suspension & Termination

- 4.1 The Client may at any time require Business Stream to suspend the Services or the Works (in whole or part) by giving written notice to that effect.
- 4.2 Where the Client has given such a notice of suspension, the Client may at any time within a period of 3 months from the date of the notice of suspension give written notice to Business Stream requiring Business Stream to resume Providing the Services and/or the Works as the case may be. If a notice of resumption is given, Business Stream shall as soon as reasonably practicable resume Providing the Services or Works.
- 4.3 If the whole of the Services or Works have been suspended and the Client has not required their resumption within such period of 3 months, either party may at any time thereafter by notice in writing terminate the Contract.
- 4.4 If the Client does not pay Business Stream any Notified Sum (or the sum due in a Pay Less Notice) (including the Final Notified Sum or the sum due under the Final Pay Less Notice) in full by the Final Date or the Final Payment Date as the case may be, or is otherwise in material breach of contract, Business Stream may (without prejudice to any other right or remedy) forthwith suspend the performance of any or all its obligations under the Contract, by giving written notice to the Client stating the grounds on which it intends to suspend performance.
- 4.5 Where Business Stream exercises its right of suspension, the Client shall pay to Business Stream (in addition to the Contract Sum and any other sums otherwise due, and without prejudice to Business Stream's other rights and remedies) a reasonable amount for the costs and expenses properly incurred by Business Stream as a result of the exercise of that right.
- 4.6 Any period during which performance is suspended in pursuance of or in consequence of the exercise of Business Stream's right of suspension, and the time taken for resumption following suspension, shall be disregarded in computing (for the purpose of any contractual time limits) the

- time taken by Business Stream to complete any work directly or indirectly affected by the exercise of that right (and where a contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly).
- 4.7 The Client may at any time by giving 10 Working Days' notice to Business Stream terminate the Contract (in whole or in part) if:-
- 4.7.1 Business Stream is in material breach of its obligations under the Contract and fails to remedy such breach within 20 Working Days following receipt of a written notice from the Client specifying the breach and requiring its remedy under express threat of termination; or
- 4.7.2 Business Stream goes into liquidation, has a receiving or administration order made against them, compounds with their creditors, or carries on business under a receiver, administrator, trustee or manager for the benefit of their creditors, or if any act is done or event occurs which (under any applicable laws) has a similar effect to any of these acts or events.
- 4.8 Business Stream may at any time upon giving 10 Working Days' notice to the Client terminate the Contract (in whole or in part) if:-
- 4.8.1 the Client is in material breach of its obligations under the Contract (including failure to make any payment as mentioned in Clause 4.4 of this Part of the Schedule) and fails to remedy such breach within 10 Working Days following receipt of a written notice from Business Stream specifying the breach and requiring its remedy under express threat of termination; or
- 4.8.2 the Client goes into liquidation, has a receiving or administration order made against them, compounds with their creditors, or carries on business under a receiver, administrator, trustee or manager for the benefit of their creditors, or if any act is done or event occurs which (under any applicable laws) has a similar effect to any of these acts or events.
- 4.9 Upon any termination of the Contract or suspension of the Services or the Works, Business Stream shall:-
- 4.9.1 bring the Services or the Works (or the relevant part) to an end in an orderly and timely manner;
- 4.9.2 within 20 Working Days deliver to the Client all Copyright Material not already delivered (whether in the course of preparation or completed) (insofar as).
- 4.10 Upon any termination of the Contract or suspension of the Services or the Works, the Client shall pay to Business Stream:-
- 4.10.1 that part of the Contract Sum which shall have accrued prior to the termination or suspension date and which is unpaid, or which will become due for works or services performed but not yet invoiced (and if the Services or the Works are resumed after suspension any such payment shall be treated as a payment on account of the relevant part of the Contract Sum); and
- 4.10.2 all sums payable by Business Stream to its sub-contractors and suppliers for works and services or goods and materials ordered by Business Stream but not yet invoiced (including any sums due as a result of cancellation of the relevant orders).
- 4.11 Upon termination of the Contract for the reason stated in Clause 4.8.1 of this Part of the Schedule (*Client's material breach*), the Client shall (in addition to the other sums payable under this clause) pay to Business Stream a reasonable sum by way of compensation for loss of profit, loss of contracts and other costs, losses and/or expenses arising out of or in connection with the termination of the Contract.

- 4.12 Termination of the Contract howsoever arising shall be without prejudice to the rights and remedies of each party for any negligence, omission, breach of contract or other default of the other party prior to such termination.
- 4.13 Business Stream's liability following termination shall not exceed the amount specified in Clause 10 (*Exclusions & Limitations*).

5 Assignment and Sub-Contracting


- 5.1 Subject to the other provisions of this clause, neither party may assign transfer, novate, or charge their interest in the Contract (in whole or in part), nor any of their rights, remedies or obligations under the Contract, to any person without the prior written consent of the other party.
- 5.2 Notwithstanding Clause 5.1, consent shall not be required for any assignment:-
 - 5.2.1 in security or for any re-assignment on redemption of a security;
 - 5.2.2 to a person providing finance to Business Stream or the Client as applicable; or
 - 5.2.3 to any company which is controlled by either party or which is in the same group of companies as the assignor, and where either the assignee is of equivalent financial standing as the assignor, or the assignor grants to the other party a guarantee of the assignee's obligations in terms satisfactory to the other party (acting reasonably).
- 5.3 The parties agree that they shall not assert that any permitted assignee is precluded from recovering any loss resulting from breach of the Contract by reason that the assignee is not an original party to the Contract.
- 5.4 Business Stream may sub-contract any part of the Services or the Works without requiring the consent or approval of the Client, but shall nevertheless remain liable to the Client for Providing the Services and the Works as if no sub-contracting had occurred.
- 5.5 Business Stream may not sub-contract the whole of the Services or the Works without the consent of the Client. Even if such consent is given, Business Stream shall remain liable to the Client for Providing the Services and the Works as if no sub-contracting had occurred.

6 General Provisions about the Contract

- 6.1 The Contract supersedes any previous agreement (whether written or oral) between the parties for any of the matters covered by the Contract.
- 6.2 All additions, amendments and variations to the Contract shall be binding only if in writing signed by or on behalf of both the Client and Business Stream.
- 6.3 The Conditions shall continue to bind each party insofar as and for as long as may be necessary to give effect to its respective rights and obligations, notwithstanding that:-
 - 6.3.1 the Contract or the employment of Business Stream is suspended or terminated; or
 - 6.3.2 the Services or the Works and/or the Project are completed.
- 6.4 If any term of the Contract is invalid or unenforceable, the remainder of the Contract shall not be affected. Each term of the Contract shall be valid and enforceable to the fullest extent permitted by law.

7 Notices

- 7.1 Any notice to be given under the Contract shall be in writing and shall be served in accordance with any provisions in the ITT or the Proposal, failing which, in accordance with the other provisions of this clause.
- 7.2 Notices shall be sent to any address or contact number specified in the ITT or the Proposal for service of notices, failing which to each party's registered office (or in the absence of a registered office, its primary business address).

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- 7.3 Notices served by post shall be served by first class recorded delivery (or equivalent). Notices served by email shall be served upon the persons or email addresses specified in the ITT or the Proposal or upon such other person as is notified from time to time.
- 7.4 Notices shall be deemed to have been served:-
- 7.4.1 at the time of delivery if personally delivered;
 - 7.4.2 if posted, at the expiration of 48 hours after the envelope containing the notice was delivered into the custody of the postal authorities;
 - 7.4.3 at the time of receipt if served by fax;
 - 7.4.4 if sent by e-mail, with a confirmed receipt of delivery, on the Working Day on which transmitted,

in each case subject to proof to the contrary, and in addition, a notice given in accordance with this clause but received on a day which is not a Working Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Working Day.

8 Applicable law


The applicable law governing the validity construction and performance of the Contract shall be the law of the country where the Property is situated, unless stated to the contrary in the Proposal.

9 Dispute resolution

- 9.1 Subject to the other provisions of this clause, all disputes, claims or proceedings between the parties shall be subject to the exclusive jurisdiction of:-
- 9.1.1 the courts of England and Wales if the Property is situated anywhere other than Scotland, and
 - 9.1.2 if the Property is situated in Scotland, or the Proposal so specifies, the Scottish Courts (and if it is competent to bring proceedings in the Court of Session, the parties prorogate the exclusive jurisdiction of the Court of Session),
- to which in each case, the parties irrevocably submit.
- 9.2 Each party has the right to refer disputes under the Contract at any time for adjudication in accordance with the statutory scheme for adjudication under the Housing Grants, Construction & Regeneration Act 1996 (as amended).
- 9.3 The statutory scheme for adjudication shall be modified as follows:-
- 9.3.1 The Adjudicator Nominating Body shall be the RICS (the Scottish Branch for Properties situated in Scotland) (unless specified to the contrary in the ITT or the Proposal); and
 - 9.3.2 The Adjudicator shall give reasons for its decision whether or not any party specifically requests him to do so.
- 9.4 Where the Contract leaves any matter to the decision of any person, the adjudicator or the Courts shall not be prevented from making any finding necessary to establish whether such decision was correctly made or from establishing what decision should have been made, and giving effect thereto as if no decision had been made.

10 Exclusions & Limitations

- 10.1 Business Stream's liability to the Client whether in contract, delict (including negligence), breach of statutory duty or otherwise shall not exceed in aggregate the amount stated in the Proposal, or if none is stated, the total amount of the Contract Sum.

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- 10.2 Except as expressly stated otherwise in the Conditions, neither party shall be liable to the other for any indirect, special or consequential loss and in any case shall not be liable for loss of profit, loss of production, loss of contracts, loss of use, loss of business, and loss of business opportunity.
 - 10.3 This clause shall not exclude or limit either party's liability for death or personal injury caused by negligence or for fraudulent misrepresentation.
 - 10.4 No action or proceedings under or in connection with the Contract shall be commenced against Business Stream after the expiry of 12 years from completion of (1) the Services or (2) (if the Works are instructed) the Works.

11 Early Warning

- 11.1 The parties may give each other early warning of any matter that could affect the Contract, the Contract Sum, the Services or the Works ("**Early Warning Notice**").
- 11.2 If required by one party, the other shall attend meetings with the other party (and other interested parties) to consider any matters in an Early Warning Notice, and to consider how best to deal with such matters ("**Early Warning Meeting**"). Business Stream may update any risk register for the Services or the Works or the Project to record the outcome of any Early Warning Meeting or otherwise to take account of matters in an Early Warning Notice.

12 Interpretation

In the Contract:-

- 12.1 References to "*the Property*", "*the Works*", and "*the Project*" include references to any part or parts thereof.
- 12.2 Where any matter or thing is to be done under the Contract by the Client, it may be done on the Client's behalf by the Client's Representative or other agent whose details have been notified to Business Stream, and references to "by the Client" and similar expressions shall be construed as meaning "by or on behalf of the Client or the Client's Representative".
- 12.3 Words importing the singular only shall also include the plural and vice versa; the masculine gender shall include all other genders, and vice-versa; and words importing persons shall include firms and corporations.
- 12.4 References to any clause or condition without further specification shall be construed as a reference to the clause of the Conditions so numbered.
- 12.5 Headings shall not form part of or affect the interpretation of the Conditions.
- 12.6 The words "*include*", "*including*" and similar words shall be construed without limiting the generality of the expressions to which they relate.
- 12.7 References to any statute or statutory instrument shall include and refer to any statutory amendment or re-enactment thereof from time to time and for the time being in force.
- 12.8 The words of the Conditions shall bear its natural meaning. No terms shall be construed *contra proferentem*.

THIS is the SCHEDULE referred to in the foregoing CONDITIONS

**PART 1
SERVICES AND WORKS**

This part of the Schedule applies to both Providing the Services and (if the Works are instructed) Providing the Works.

1 Design / Standard of Care

- 1.1 Subject to the other provisions of the Contract, Business Stream undertakes to the Client to Provide the Services, and (if instructed) carry out and complete the Design (including the preparation of the Design Documents) exercising the Standard of Care.
- 1.2 Where the Works are instructed, Business Stream warrants to the Client that, exercising the Standard of Care, it has reviewed the ITT and the Client's Design for the purposes of preparing the Proposal, but the parties agree that Business Stream is not liable for:-
 - 1.2.1 the Client's Design, and
 - 1.2.2 defects in the Works or the Design or any failure to achieve any performance requirements specified in the Contract Documents to the extent caused by or attributable to the Client's Design (including any defects in it), whether or not Business Stream could have identified any such defects or failures prior to completing the Works.
- 1.3 Notwithstanding any other provision of the Contract to the contrary (including the Proposal, ITT or the Contract Documents), Business Stream does not warrant or undertake that the Works when completed will be fit for any particular purpose or that the Services or the Works will meet any specific requirements of the Client (whether or not disclosed to Business Stream or which Business Stream could have ascertained).

2 Discrepancies / Priority of Documents

- 2.1 If there is any discrepancy, conflict or inconsistency between the Conditions and any of the Contract Documents, the Conditions shall prevail.
- 2.2 If there is any discrepancy, conflict or inconsistency between any of the Contract Documents, the following shall prevail (in order of priority):-
 - 2.2.1 the Proposal;
 - 2.2.2 the Conditions;
 - 2.2.3 the Proposal Acceptance;
 - 2.2.4 the Design Documents
 - 2.2.5 the other Contract Documents.
- 2.3 Except for any provision made in the Proposal expressly qualifying a specific term of these Conditions, nothing contained in the Contract Documents shall override, modify or affect the application or interpretation of the Conditions.
- 2.4 If either party finds any divergence between or amongst the Conditions and the Contract Documents, they shall immediately give to the other party written notice specifying the divergence. The Client shall instruct Business Stream how to deal with the divergence, and such instruction shall give rise to an extension of time under clause 3 of Part 2 of the Schedule (*Extension of Time*), and entitlement to additional payment under clause 9 of Part 2 of the Schedule (*Prolongation & Disruption*).

3 Statutory Requirements

- 3.1 In complying with its obligations under the Contract and Providing the Services and the Works, Business Stream shall exercise the Standard of Care to:-
- 3.1.1 comply with all applicable Statutory Requirements, and
 - 3.1.2 not cause or contribute to any breach of the Statutory Requirements by the Client.
- 3.2 Business Stream warrants and undertakes to the Client that (exercising the Standard of Care, and subject to clause 2 of Part 1 of the Schedule (*Discrepancies etc*) and the other provisions of this clause), the Design complies and will comply with the Statutory Requirements.
- 3.3 If Business Stream receives notification of any Statutory Requirements applying to the Project, it shall send copies to the Client.
- 3.4 To the extent that
- 3.4.1 Business Stream is in breach of any Environmental Laws in the course of Providing the Services or the Works, or
 - 3.4.2 the Design or the completed Works are in breach of any Environmental Laws, and
 - 3.4.3 such breach is caused by or contributed to by the Client or the Client's Design,
- the Client shall indemnify Business Stream against all expenses, liabilities, losses, claims and proceedings arising from such breach (including clean-up, remediation, legal and environmental consultancy, third party action and regulatory action costs).
- 3.5 For the purposes of this clause, "**Environmental Laws**" means all laws, guidance and codes of practice of any regulatory authority regarding the protection of organisms (including humans), ecosystems and habitats (including structures), air (including within structures and below ground), water (including underground and in wells, boreholes, pipes or other media) and land (including sub-surface strata, sea and river beds, wetlands and flood plains) or releases, escapes, production, processing, treatment, storage, transport or disposal of substances that could potentially be harmful to any of them (including by way of vibration, noise, electricity, heat or other radiation) and including, in the case of humans, offence to any of the senses or harm to property.

4 CDM Regulations

- 4.1 Where the CDM Regulations apply to the Services or the Works, Business Stream warrants and undertakes to the Client that:-
- 4.1.1 it has complied and shall continue to comply with the requirements, obligations and prohibitions imposed on Business Stream under the CDM Regulations
 - 4.1.2 it has the skills, knowledge and experience, and the organisational capability, necessary to comply with their obligations under the Contract and the CDM Regulations,
 - 4.1.3 it shall liaise and co-operate with the Principal Designer, the Client's other consultants and (if Business Stream is not the Principal Contractor) the Principal Contractor to enable them to discharge their functions under the CDM Regulations and
 - 4.1.4 it shall liaise and co-operate with the Client to enable them to discharge their duties under the CDM Regulations
- 4.2 The Client warrants and undertakes to Business Stream that it has complied and shall continue to comply with the requirements, obligations and prohibitions imposed on it under the CDM Regulations, and shall give Business Stream such information as is necessary to enable them (and where applicable, the Principal Contractor) to discharge their functions under the CDM Regulations.

5 Time for Performance/Programme

5.1 Exercising the Standard of Care, Business Stream shall:-

5.1.1 Provide the Services, and

5.1.2 (where the Works are instructed) Provide the Works regularly and diligently and provide the drawings, details, specifications, and other design information required for the Design as set out in the Contract Documents

in each case having due regard to the Programme and (in the case of the Works) so as to complete the Works by the Date for Completion, in each case subject always to extensions of time under clause 3 of Part 2 of the Schedule (*Extension of Time*).

5.2 If at any time Business Stream is prevented or delayed in Providing the Services or the Works for any reason Business Stream shall notify the Client.

6 The Property

6.1 The Client grants to Business Stream a non-exclusive licence to enter and occupy the Property for such periods and at such times as may be necessary to enable Business Stream to perform its obligations under the Contract (including Providing the Services and the Works).

6.2 Business Stream shall take all reasonable precautions to prevent (1) trespass on the Property or (2) the Services or the Works causing a nuisance.

6.3 The Client shall be responsible for obtaining (at its own cost) all approvals and arrangements for access over neighbouring property (including oversailing rights for cranes) if necessary for Business Stream to Provide the Services or the Works.

6.4 Business Stream shall take reasonable and proper precautions to avoid damage to any adjoining or neighbouring property whilst Providing the Services or the Works.

7 Variations

7.1 The Client may vary the Services or the Works from time to time ("**Variation**"). Variations include additions, omissions and variations to the Services or the Works. No Variation shall vitiate the Contract.

7.2 The parties shall comply with any change control procedure specified in the Contract Documents for dealing with Variations.

7.3 If the Contract Documents do not specify any change control procedure, Business Stream shall not make any Variation except:-

7.3.1 with the prior written approval of the Client, or

7.3.2 as otherwise permitted by any other provision of the Contract or Contract Documents (including clause 1.2 of Part 2 of the Schedule (*substitution of materials*)).

7.4 The Client shall pay to Business Stream an additional sum for all Variations, either in such amount as is expressly agreed between the parties, or failing such agreement, at rates or on such basis as is applicable taking into account the rates or other bases of payment specified in the Proposal or the other Contract Documents, and Business Stream shall be entitled to an extension of time under clause 3 of Part 2 of the Schedule (*Extension of Time*).

7.5 The Client may instruct Business Stream to proceed with Variations even if there is no prior agreement on changes to the Contract Sum and/or the Date for Completion. The Client's Representative shall then assess the change to the Contract Sum and/or the Date for Completion on a fair and reasonable basis, using any rates or prices specified or referred to in the Contract Documents.

7.6 Any work instructed under any provisional sums specified in the ITT or Proposal Acceptance will be valued in accordance with the valuation provisions of the Contract, or if there are no such provisions, on a fair and reasonable basis using any rates or prices specified or referred to in the Contract Documents.

8 Co-operation & information

8.1 In Providing the Services and the Works, Business Stream shall:-

8.1.1 keep the Client informed about progress;

8.1.2 co-operate with the Client and (if requested by the Client) with any other consultants, sub-contractors, and suppliers engaged on the Project; and

8.1.3 liaise with the Client's Representative.

8.2 If specified in the ITT, Business Stream shall act as the principal design consultant for the Project.

9 Key Personnel

9.1 If the Key Personnel are not identified in the Proposal & the Client so requests, Business Stream shall inform the Client in writing of the names, status and responsibilities of Business Stream's key staff to be employed in Providing the Services or the Works.

9.2 Business Stream shall not remove any of the Key Personnel from the Services or the Works, without obtaining the Client's prior written consent.

9.3 The Client may (after consultation with Business Stream) require the removal of any of the Key Personnel if their performance or conduct is or has been unsatisfactory. Business Stream shall thereafter remove such person and replace him with another properly qualified & experienced person.

10 Project Contracts

10.1 Exercising the Standard of Care, Business Stream shall Provide the Services and the Works and perform its other obligations under the Contract taking into account the Client's obligations under the Project Contracts so that no act, omission or default of Business Stream shall cause or contribute to any breach of the Project Contracts by the Client, but only to the extent that copies have been disclosed to Business Stream.

10.2 If the Client requires Business Stream to comply with clause 10.1 of this Part of the Schedule for any Project Contracts or other documents that were not disclosed to Business Stream prior to the Contract Date, such a requirement shall be treated as a request to perform additional works and Business Stream shall be entitled to an extension of time under clause 3 of Part 2 of the Schedule and an adjustment to the Contract Sum (including under clause 9 of Part 2 of the Schedule (*Prolongation & Disruption*)).

11 Copyright

11.1 Business Stream as beneficial owner grants to the Client an irrevocable, royalty-free, non-exclusive licence to use and to reproduce all Copyright Material for any purpose whatsoever connected with the Project (excluding any extension or redevelopment of the Property).

11.2 Such licence includes the right to grant sub-licences and is transferable to third parties without consent.

11.3 Business Stream shall provide copies of the Copyright Material to the Client upon request. The Client shall pay Business Stream's reasonable copying charges for such copies.

11.4 Business Stream shall not be liable for any use of the Copyright Material which is not a use for which it was originally prepared and provided.

11.5 This clause shall continue to be effective notwithstanding the termination for any reason of the Contract or the abandonment of the Project.

12 Risk of Damage to Works & Insurances

- 12.1 The Works, including all work executed and all unfixed materials and goods delivered to and intended for the Works, shall as regards loss or damage be at the risk of the Client until the Completion Date.
- 12.2 Business Stream shall take all reasonable precautions to prevent loss or damage from fire and other risks on the Property and to minimise the amount of any such loss or damage.
- 12.3 Unless the Proposal states otherwise, the Client shall insure
- 12.3.1 the Works, including all work executed and all unfixed materials and goods delivered to and intended for the Works, and
- 12.3.2 the Property
- at its cost, in accordance with this clause.
- 12.4 Such insurance shall be:-
- 12.4.1 against loss or damage by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion and other risks typically covered by a "contractor's all-risks" policy;
- 12.4.2 for the full reinstatement value of (1) the Property and (2) the Works plus 12 per cent of the to cover professional fees (or such other percentage as may be stated in the Contract Documents or otherwise agreed);
- 12.4.3 on the basis that Business Stream, their Sub-Contractors and suppliers, the Client (and if requested by the Client, any Third Party having an interest in the Property) are named as co-insured;
- 12.4.4 taken out with a reputable insurer.
- 12.5 The Client shall produce
- 12.5.1 documentary evidence that the insurances required by this clause are being properly maintained, as and when reasonably required to do so by Business Stream, and
- 12.5.2 a waiver of the insurers' rights of subrogation against Business Stream, their Sub-Contractors and suppliers in terms acceptable to Business Stream, acting reasonably
- 12.6 Neither the Client nor Business Stream shall do anything which might render the insurance policies void or voidable, and shall carry out their respective obligations under the Conditions in a manner that complies with the terms of such insurances (in Business Stream's case, only insofar as such terms have been notified to them).
- 12.7 After any inspection required by the insurers following a claim under such insurance, Business Stream shall with due diligence restore or replace work or materials or goods damaged and dispose of any debris and proceed with and complete the Works.

13 Public & Employer's Liability and Insurance

- 13.1 Business Stream shall be liable for and shall indemnify the Client against any expense, liability, loss, claim or proceedings arising under any statute or at common law in respect of personal injury to or the death of any person arising out of or in the course of, or by reason of Providing the Services or the Works, except to the extent that it is due to any act or neglect of the Client or of any person for whom the Client is responsible.
- 13.2 Business Stream shall take out and maintain for the duration of the Services (or the Works if instructed) with a reputable insurance company:-




- 13.2.1 third party and public liability cover for each and every claim or series of claims and for such amount of indemnity as is specified in the ITT or the Proposal, failing which that Business Stream considers is adequate to cover its responsibilities under the Contract and
- 13.2.2 employer's liability insurance cover for such limit of indemnity as Business Stream considers is adequate to cover its responsibilities under the Contract.
- 13.3 Business Stream shall produce documentary evidence that the insurances required by this clause are being properly maintained, as and when reasonably required to do so by the Client.
- 13.4 Without prejudice to the Client's other obligations, the Client shall take out and maintain for the duration of the Project with reputable insurance companies carrying on business in the European Union third party and public liability insurance and employer's liability insurance, in each case for such amounts, on such basis and terms as the Client may reasonably require and which comply with Statutory Requirements.
- 13.5 This clause shall continue to apply notwithstanding the termination for any reason of the Contract or of Business Stream's employment under it or the abandonment of the Project.

14 PI Insurance

- 14.1 Where the Services include the design of any part of the Works, or the ITT requires professional indemnity insurance to be maintained for the provision of the Services, and/or the Works include the design of the Works, Business Stream shall take out and maintain professional indemnity insurance in accordance with this clause.
- 14.2 Such professional indemnity insurance shall:-
 - 14.2.1 be underwritten by a reputable insurance company licensed to carry professional indemnity insurance;
 - 14.2.2 be for the limit of indemnity stated in the ITT or the Proposal (or if none is stated, for such amount as Business Stream considers is adequate to cover their responsibilities under the Contract);
 - 14.2.3 be either on (1) an "each and every claim" basis, or (2) in the aggregate, subject to such automatic reinstatements as Business Stream are able to obtain on reasonable costs and terms.
- 14.3 The foregoing obligations shall:-
 - 14.3.1 apply for a period expiring 12 years after (1) completion of the Services or (2) if the Work are instructed, practical completion of the Works; and
 - 14.3.2 be subject to such insurance continuing to be available to Business Stream in the PI insurance market upon reasonable terms and at commercially reasonable premium rates.
- 14.4 Business Stream shall produce documentary evidence that the insurances required are being properly maintained, as and when reasonably required to do so by the Client.
- 14.5 This clause shall continue to apply notwithstanding the termination for any reason of the Contract or the abandonment of the Services, or the Works.

15 Confidentiality & Publicity

- 15.1 Each party undertakers to the other not to disclose to any person or otherwise make use of any confidential information relating to the Project, Business Stream, or the Client without the prior written approval of the other party, except where necessary in the proper course of its duties or to its insurance or other professional advisers.
- 15.2 For the purposes of this clause, "*confidential information*" includes any information:-

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- 15.2.1 specified in any Contract Documents as confidential;
 - 15.2.2 belonging to Business Stream or the Client (whether oral, written or electronically recorded) concerning its respective businesses and affairs which is of a confidential nature; and
 - 15.2.3 any other information specifically identified by Business Stream as confidential or known to the Client as being held by Business Stream under a duty of confidentiality to a third party, whether or not relating to the Services or the Works.
- 15.3 Business Stream shall not, without the prior written approval of the Client, take or authorise the taking of any photographs of the Project for use in any publicity or advertising or publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Project or any part thereof.
- 15.4 This clause shall continue to apply notwithstanding the termination for any reason of the Contract or the abandonment of the Project.
- 16 Data Protection**
- 16.1 For the purposes of the Data Protection Act 2018 the Client consents to Business Stream processing personal data and sensitive personal data (as defined in the Data Protection Act 2018) relating to the Project or this Contract, whether in manual, electronic or any other form.
- 16.2 For this purpose, "*processing*" includes obtaining, recording, using and holding data, and the transfer of data to any other country either inside or outside the European Economic Area.
- 17 Freedom of Information**
- 17.1 The Client acknowledges that:-
- 17.1.1 Business Stream is subject to obligations under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and subsidiary or related legislation (collectively "**FOI**"), and
 - 17.1.2 Business Stream might be required to disclose information about the ITT, the Proposal, the Contract or any other recorded information to anyone who makes a valid request under FOI, and
 - 17.1.3 Business Stream is only entitled to withhold information if exemptions under the Act or Regulations apply, and
 - 17.1.4 Business Stream cannot automatically classify information as "confidential" or "commercial in confidence" to protect it from disclosure, even if the Client intimated that it is confidential when making it available.
- 17.2 If Business Stream receives a valid request for disclosure of information, Business Stream will decide if any exemptions apply so as to prevent disclosure. Business Stream will discuss this with the Client but will not be bound by any representations from the Client.
- 17.3 Business Stream may disclose information about the ITT, the Proposal, the Contract Sum, the Proposal Acceptance or the Contract, the scope of the Services, the specification of the Works, the terms and conditions of Contract, the quality and performance standards which have been set, and any other Contract Document so as to comply with FOI.
- 17.4 Business Stream may also disclose information about the Contract (including price information) to government bodies.
- 17.5 Any disclosure of information under this clause will be deemed not to be a breach of any confidentiality obligation imposed on Business Stream nor any other breach of contract by Business Stream.
- 17.6 This clause shall continue to apply notwithstanding the termination for any reason of the Contract or the abandonment of the Services or the Works.

18 Anti-Slavery

- 18.1 In performing their respective obligations under the Contract, the parties undertake to one another to comply, and to use reasonable endeavours to see that relevant subcontractors and suppliers comply, with:-
- 18.1.1 the Modern Slavery Act 2015;
 - 18.1.2 their own anti-slavery policies; and
 - 18.1.3 to the extent appropriate the respective anti-slavery policies of each party as notified to the other party from time to time.
- 18.2 Each party shall use reasonable endeavours to implement due diligence procedures for its direct subcontractors to see that there is no slavery or human trafficking in their respective supply chains.

19 Business Stream's General Obligations


- 19.1 Business Stream shall give the Client written reports about the Services or the Works, in the format and at the times specified in the ITT or any other Contract Documents, and in any case within 5 Working Days of request.
- 19.2 Business Stream shall give the Client such copies of the drawings details, specifications, calculations and related information for the Services or the Works as are specified in the Proposal.
- 19.3 In Providing the Services and the Works, Business Stream shall comply with the Client's workplace policies and procedures (including health and safety and workplace security policies) insofar as referred to in any Contract Documents and notified to Business Stream.

20 Client's Approvals

In the Contract, where the approval or consent of the Client is required it shall not be unreasonably withheld or delayed, and any consent or approval given by or on behalf of the Client's Representative shall be binding on the Client.

21 Payment of the Contract Sum

- 21.1 The Client shall pay the Contract Sum to Business Stream in instalments on the dates, or on completion of the stages, specified in the Proposal, and in accordance with this clause.
- 21.2 Business Stream shall submit an application for payment ("**Payment Application**") to the Client on or after:-
- 21.2.1 the date or dates specified in the Proposal; or
 - 21.2.2 the date or dates of completion of the stages specified in the Proposal; or
 - 21.2.3 if no dates or stages are specified, at monthly intervals on the last Friday of each month, commencing in the month after the Contract Date.
- 21.3 Each Payment Application shall be accompanied by the information required by the Contract Documents, and in any event shall include:-
- 21.3.1 specification of the sum that Business Stream considers will become due on the payment due date;
 - 21.3.2 the basis on which the sums are calculated;
 - 21.3.3 the grounds upon which such sums are claimed; and
 - 21.3.4 a statement of the Retention which the Client is entitled to deduct (if any).

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- 21.4 The date that the Client receives the Payment Application shall be the due date ("**Due Date**") for the purposes of the Contract. The final date for payment ("**the Final Date**") shall be 14 days after the Due Date.
- 21.5 No later than five days after the Due Date, the Client shall notify Business Stream of the sum that it considers to have been due at the Due Date and the basis on which that sum is calculated ("**Payment Notice**"). A certificate (including an interim certificate) issued by the Client's Representative meeting the requirements of this clause shall be the Payment Notice.
- 21.6 Subject to the other provisions of this clause, the Client shall pay to Business Stream on or before the Final Date:-
- 21.6.1 the sum stated as due in the Payment Notice; or
 - 21.6.2 if the Client has not served a Payment Notice, the sum referred to in the Payment Application,
- in each case referred to as the "**Notified Sum**".

Pay Less Notices

- 21.7 Not less than 5 days before the Final Date, the Client may give Business Stream notice that it intends to pay less than the Notified Sum (a "**Pay Less Notice**"). Any Pay Less Notice shall specify:-
- 21.7.1 the sum that the Client considers to be due on the date the notice is served; and
 - 21.7.2 the basis on which that sum is calculated.
- 21.8 If a Pay Less Notice is served, the Client shall pay to Business Stream on or before the Final Date the sum stated as due in the Pay Less Notice.

General

- 21.9 For the purposes of this clause, it is immaterial that the sum to be stated in any Payment Notice or Pay Less Notice as the case may be is zero and such notice shall nevertheless be served as required by this clause.
- 21.10 If any sum due under the Contract is not paid by the Final Date, the payer shall pay to the payee interest on the sum due at four per centum per annum above the base rate from time to time of The Royal Bank of Scotland plc for the period from and including the Due Date to and including the date of actual payment. The parties agree that such rate of interest is an adequate remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1988.
- 21.11 The Contract Sum is exclusive of VAT. In exchange for a valid, duly completed VAT invoice, the Client shall pay to Business Stream all VAT properly chargeable by Business Stream on the supply of any goods or services by Business Stream under the Contract.
- 21.12 Unless stated to the contrary in any of the Contract Documents, the Client is a "contractor" for the purposes of the construction industry tax deduction scheme under the Income And Corporation Taxes Act 1988 (as amended by Finance Act 2004) ("**the Act**"), in relation to which the following applies:-
- 21.12.1 the Client shall (notwithstanding any other provision of the Contract) comply with the requirements of the Act (and any regulations made under it) in relation to the tax deduction scheme set out in the Act;
 - 21.12.2 at least 1 Working Day before each Final Date, Business Stream shall either supply to the Client evidence that Business Stream is entitled to be paid without the statutory deduction; or, if Business Stream is unable to supply such evidence, notify the Client of the amount (if any) which should be included in such payment in respect of the direct cost to Business Stream (and any Sub-Contractor) of materials and goods used or to be used in carrying out the Works.

21.12.3 If Business Stream is not able to supply the evidence referred to in this clause, the Client shall make the deduction required by the Act from the payment in question.

22 Retention and Final Account

22.1 This clause only applies where so stated in the ITT or the Proposal.

22.2 The Retention shall not be included in any Payment Application for instalments prior to completion of the Works. The Payment Application submitted after practical completion of the Works shall include payment of half of the amount retained throughout the course of the Works. The release of the second half of the retention shall be included in the Final Payment and paid in accordance with this clause.

22.3 The Client shall segregate the Retention from its other money, but is entitled to all interest earned on the Retention.

22.4 Within one month after the expiry of the Defects Liability Period, Business Stream shall submit a Payment Application with a draft final Account ("**the Final Account**") containing all documentation reasonably necessary for the calculation of the final amount to be paid under the Contract ("**Final Payment**"), including the payment of the final half of the Retention.

22.5 If Business Stream fails to submit a Final Account the Client may prepare one showing its calculation of the Final Payment and submit it to Business Stream.

22.6 The Due Date for payment of the Final Payment is 10 Working Days after the Client's receipt of the Final Account or Business Stream's receipt of the Client's Final Account as the case may be.

22.7 By not later than 5 days after the Due Date for the Final Payment, the Client's Representative shall issue a certificate ("**the Final Certificate**") stating:-

22.7.1 the total amount to be paid to Business Stream under the Contract;

22.7.2 the amount of all previous payments made by the Client;

22.7.3 the amount of the Final Payment remaining due to Business Stream or due to the Client as the case may be; and

22.7.4 the basis on which the Final Payment has been calculated,

and the Final Certificate shall be the Payment Notice for the Final Payment. The final date for payment of the Final Payment shall be 14 days after the Due Date ("**the Final Payment Date**").

22.8 Subject to the other provisions of this clause, the Client shall pay the Final Payment to Business Stream (or Business Stream shall pay to the Client as the case may be) on or before the Final Payment Date comprising:-

22.8.1 the sum referred to in the Final Certificate; or

22.8.2 if the Client's Representative has not served a Final Certificate, the sum referred to in the Final Account,

in each case referred to as the "**Final Notified Sum**".

22.9 Not less than 5 days before the Final Date, the party due to make the Final Payment may give to the other party notice (the "**Final Pay Less Notice**") that it intends to pay less than the Final Notified Sum, which shall specify:-

22.9.1 the sum that the paying party considers to be due on the date the notice is served; and

22.9.2 the basis on which that sum is calculated.

22.10 If a Final Pay Less Notice is served, the paying party shall pay the sum stated as due in that notice to the other party on or before the Final Payment Date.

PART 2 THE WORKS

This part of the Schedule applies ONLY where the Contractor is Providing the Works.

1 Materials, Goods & Workmanship

- 1.1 Subject to the other provisions of the Contract, Business Stream shall exercise the Standard of Care to see that all materials used in the Works shall be as described in the Contract Documents and in accordance with the appropriate British or European standards.
- 1.2 Business Stream may substitute alternatives to any of the materials or products described in the Contract Documents without the prior written approval of the Client where the alternative is of equivalent cost, quality and performance in use, and otherwise may only do so with the prior written approval of the Client.
- 1.3 The property in materials and goods intended for the Works shall vest in the Client upon delivery to the Property or if earlier when paid for by the Client.
- 1.4 Business Stream undertakes to the Client to exercise the Standard of Care:-
 - 1.4.1 not to specify or use any Prohibited Materials in the Works; and
 - 1.4.2 to specify, select and approve materials for use in the Works generally in accordance with the guidance contained in the current edition (at the time of specification or use) of the publication entitled "*Good Practice in the Selection of Construction Materials*" prepared by the British Council for Offices.
- 1.5 Business Stream will notify the Client in writing if it becomes aware, or has reason to suspect, that any Prohibited Materials have been or will be used in the Works by it or its Sub-Contractors.

2 Utilities

- 2.1 The Client shall with due diligence and having regard to the Programme & Business Stream's planned methodology & phasing of the Works discuss terms and negotiate with all relevant public and private utility companies and statutory suppliers ("**Utility Providers**") for the supply, installation and/or alteration as appropriate of all utilities required as part of the Works (which includes foul and surface water drainage and sewerage, and supplies of water, gas, electricity and communications) ("**Utilities**").
- 2.2 The Client shall place such orders and accept such quotes for the Utilities as are necessary for completion of the Works by the Date for Completion, and shall keep Business Stream fully informed in connection therewith. If such orders or acceptances or the works undertaken by any Utility Providers results in any delay to the completion of the Works or in any varied or additional work being required, it shall give rise to an extension of time under clause 3 of Part 2 of the Schedule (*Extension of Time*), and entitlement to additional payment under clause 9 of Part 2 of the Schedule (*Prolongation & Disruption*).
- 2.3 Where reasonably requested by Business Stream, the Client shall within 10 Working Days of receipt of the relevant engrossment, execute (or procure that the Client or the owner of the Property executes) in a self-proving manner such wayleaves, deeds of servitude or other agreements with the Utility Providers as are required for the provision of the Utilities, in terms acceptable to the Client, acting reasonably.
- 2.4 In Providing the Works, Business Stream shall, exercising the Standard of Care, take reasonable steps to:-
 - 2.4.1 maintain the operation of mains services to the same standard as applied prior to commencement of the Works; and
 - 2.4.2 avoid damage to the sewers, drains, pipes, cables, or other conduits in or across the Property as disclosed in the Contract Documents;

3 Extension of Time

- 3.1 Business Stream shall notify the Client as soon as they become aware of anything that might delay the completion of the Works beyond the Date for Completion.
- 3.2 The Client will grant an extension of time for completion of the Works (and will change the Date for Completion to a later date) if completion of the Works by the Date for Completion will not occur, or does not occur, for any of the following reasons:-
- 3.2.1 any delay in Business Stream being given access to the Property;
 - 3.2.2 breach, non-performance or delay by the Client or any of its respective servants or agents, including failure by the Client's Representative and Principal Designer in doing anything required of them by the Contract;
 - 3.2.3 Other Works being carried out;
 - 3.2.4 the carrying out by a local authority or statutory undertaker of work in pursuance of its statutory obligations in relation to the Works, or the failure to carry out such work (which includes work by Utility Providers under clause 2 of Part 2 of the Schedule);
 - 3.2.5 the instruction or carrying out of Variations;
 - 3.2.6 any instructions of the Client or the Client's Representative;
 - 3.2.7 suspension of some or all of Business Stream's obligations in accordance with the Conditions;
 - 3.2.8 any other circumstances outside Business Stream's control (whether or not they could reasonably have been foreseen at the Contract Date).
- 3.3 As soon as reasonably practicable after receiving the notices and information required by this clause, the Client's Representative acting fairly and reasonably shall assess the extension of time and shall notify Business Stream of its decision. The Date for Completion shall be changed to take account of any extension of time awarded.
- 3.4 Business Stream will take reasonable steps to reduce or eliminate the effect of all delays but is not required to accelerate the Works or change its methodology or re-programme or re-sequence the Works at its own cost.
- 3.5 The process in this clause shall be repeated as often as necessary.

4 Completion, Testing, & Snagging

- 4.1 The Client shall procure that the Client's Representative shall certify the date when in the opinion of the Client's Representative, the Works are practically complete. The certificate is the "**Completion Certificate**" and the date so certified is the "**Completion Date**".
- 4.2 Before the Completion Certificate can be issued, Business Stream shall carry out such performance or other tests of the as-installed Works as are required under the Contract Documents (if any) ("**Pre-Completion Tests**"), in relation to which the following provisions apply:-
- 4.2.1 Business Stream shall give the Client's Representative not less than 5 Working Days' notice of the date of the Pre-Completion Tests, and shall permit the Client and the Client's Representative to attend and witness the carrying out of the Pre-Completion Tests.
 - 4.2.2 Business Stream shall send the Client and the Client's Representative copies of the reports on the outcome of the Pre-Completion Tests within 3 Working Days of receipt by Business Stream if they are not issued immediately on completion of the relevant Tests.
 - 4.2.3 If the Pre-Completion Tests show that the Works meet the relevant criteria specified in the Contract Documents (or are within any specified or industry-standard or

- generally acceptable tolerances) the Client's Representative shall not be entitled to withhold or delay certification of practical completion on the grounds that the Works have not passed the Pre-Completion Tests.
- 4.2.4 If the Pre-Completion Tests show that the Works do not meet the relevant criteria specified in the Contract Documents (or are beyond any specified or industry-standard or generally acceptable tolerances):-
- 4.2.4.1 the Client's Representative shall be entitled (but not obliged) to withhold or delay certification of practical completion until the Works have passed the Pre-Completion Tests (but may certify Practical Completion and include in the Snagging List any rectification or Variations required for the Works to pass the Pre-Completion Tests),
- 4.2.4.2 where the reason that the Works have not passed the Pre-Completion Tests is that Business Stream have failed to carry out the Works in accordance with the Contract, Business Stream shall rectify the Works and repeat the Pre-Completion Tests so as to allow the Works to pass the Pre-Completion Tests, and
- 4.2.4.3 if the Works have not passed the Pre-Completion Tests for some other reason, the Client shall issue instructions to Business Stream with a view to the Works passing being modified so as to pass the Pre-Completion Tests, and such instructions shall be treated as a Variation under clause 7 of Part 1 of the Schedule (*Variations*) and give rise to an extension of time under clause 3 of Part 2 of the Schedule (*Extension of Time*) and an adjustment of the Contract Sum, including under clause 9 of Part 2 of the Schedule (*Disruption & Prolongation*).
- 4.3 The Client's Representative may certify the Completion Date even if there are snagging items, minor incomplete aspects of the Works or other outstanding items that do not prevent the Works from being taken over and used by the Client for the purposes referred to in the ITT ("**Snagging**").
- 4.4 The Client's Representative will describe the Snagging in a list ("**Snagging List**") and issue it along with the Completion Certificate.
- 4.5 Business Stream will carry out such works and do such things as are necessary (so long as within the scope of the Works) to complete and make good all Snagging within such time after the Completion Date as is reasonable and appropriate.
- 4.6 On completion of the Works, Business Stream shall clear away and remove from the Property all plant, machinery, surplus material, rubbish and temporary works of every kind and leave the Property in a clean and tidy condition.
- 5 Damages for Late Completion**
- 5.1 In this clause, "**Delay Damages**" means either:-
- 5.1.1 liquidated damages at the rate specified in the ITT or otherwise agreed between the Client and Business Stream; or
- 5.1.2 if liquidated damages are not payable, such damages as are payable at common law.
- 5.2 If Business Stream does not complete the Works by the Date for Completion and is not entitled to an extension of time under the Contract, Business Stream shall pay Delay Damages to the Client for the period from the Date for Completion up to (and including) the Completion Date. The Client's Representative shall notify Business Stream in writing of its assessment (if any) of the amount of the Delay Damages as soon as reasonably practicable after the Date for Completion has occurred without any extension of time having been given.
- 5.3 The Client may deduct the Delay Damages from any sums due to Business Stream, subject to giving any Pay Less Notice (as defined in clause 21.7 of Part 1 of the Schedule) required under these Conditions.

5.4 If Delay Damages exceed the sums payable to Business Stream, Business Stream shall pay the difference to the Client within 5 Working Days of demand.

6 Defects Liability Period

6.1 Business Stream will at its cost fix all defects in the Works that appear in the Defects Liability Period and that are due to Business Stream's failure to comply with the Contract ("**Defects**").

6.2 Business Stream will fix all Defects as quickly as possible after notification by the Client's Representative and in urgent cases within any reasonable time specified by the Client's Representative.

6.3 After the end of the Defects Liability Period for the Works, the Client's Representative will certify the date when Business Stream has completed and made good all Defects.

7 Inspections & Tests

7.1 The Client may inspect the Works and carry out any tests on the Works at any time subject to prior notification to Business Stream of at least 48 hours (except in case of emergency). Business Stream will give the Client's Representative reasonable assistance for such inspections and tests.

7.2 Business Stream will make all necessary arrangements to allow the Client to carry out inspections and tests at any off-site workshops or other places where any part of the Works is being made, or from where it is to be sent to the Property.

7.3 If completion of the Works is delayed or the progress of the Works is disrupted by reason of the operation of this clause, Business Stream shall be entitled to an extension of time under clause 3 of Part 1 of the Schedule and an adjustment to the Contract Sum (including under clause 9 of Part 2 of the Schedule (*Prolongation & Disruption*)).

8 Other Works

8.1 If the Client intends to carry out other works on the Property at the same time as the Works (including infrastructure and related works and the carrying out of fit-out works and the installation of fixtures, fittings and equipment) ("**Other Works**"), it shall give Business Stream as much advance notice as possible of that intention and of:-

8.1.1 the names and responsibilities of the contractor and suppliers engaged or to be engaged on the Other Works from time to time ("**the Other Works Contractors**") and

8.1.2 The times when the Other Works Contractors are expected to be undertaking the Other Works.

8.2 Subject to receiving appropriate notification, and the other provisions of this clause, Business Stream will permit the Other Works Contractors access to the Property for the carrying out and completion of the Other Works.

8.3 The Client shall:-

8.3.1 manage the interface between the Works and the Other Works, and use all reasonable endeavours to programme the Other Works, so that the Other Works do not cause any delay or disruption to the Works;

8.3.2 use reasonable endeavours to procure that the Other Works Contractors carry out the Other Works in such a way as to avoid any interference, obstruction, disruption, delay or disturbance to the Works, and if appropriate re-programme or change the sequencing of the Other Works so that the Works are not delayed or affected by the Other Works;

8.3.3 use reasonable endeavours to procure that the Other Works Contractors co-operate with Business Stream in managing the interface between the Works and the Other Works and co-ordinating the programme for the Other Works with the Programme.

8.4 If the Other Works or the Other Works Contractors cause any delay to the Works or disrupt the Works, Business Stream shall be entitled to an extension of time under Clause 3 of Part 2 of the Schedule and additional payment under clause 9 of Part 2 of the Schedule (*Prolongation & Disruption*).

9 Prolongation & Disruption

9.1 Subject to the other provisions of the Conditions, if the regular progress of the Works is delayed or disrupted by any of the matters in this clause resulting in Business Stream incurring additional costs that would not otherwise be incurred ("**Disruption Costs**"), Business Stream shall notify the Client's Representative in accordance with this clause.

9.2 The matters referred to are:-

9.2.1 any delay in Business Stream being given access to the Property;

9.2.2 breach, non-performance or delay by the Client or any of its respective servants or agents, including failure by the Client's Representative and Principal Designer in doing anything required of them by the Contract;

9.2.3 Variations made under clause 7 of Part 1 of the Schedule;

9.2.4 instructions issued under the Contract by the Client or the Client's Representative;

9.2.5 suspension of some or all of Business Stream's obligations in accordance with the Conditions;

9.2.6 any other matter which is not otherwise the Contractor's responsibility under the Contract.

9.3 Business Stream shall take reasonable steps to prevent or minimise any disruption or delay to the regular progress of the Works and to mitigate the Disruption Costs.

9.4 Within 10 Working Days of receiving the notification and information required by this clause, the Client's Representative will determine which of the Disruption Costs claimed by Business Stream are due by the Client, and shall notify the Client and Business Stream of the amount. The notified amount shall be added to the Contract Sum.

9.5 Disruption Costs may include interest on sums expended by Business Stream and finance charges.



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