



Scottish Water Business Stream Limited  
Conditions of Contract  
for the  
Purchase of Goods and Services

MARCH 2019

## Contents

1. Definitions.....	3
2. Framework Agreement or Contract Conditions.....	4
3. Price and Payment .....	4
4. Specification .....	5
5. Delivery and risk.....	6
6. Warranties and liability .....	7
7. Rights .....	8
8. Confidentiality.....	8
9. Data Protection Act 1998 / GDPR.....	9
10. Prevention of Corruption .....	12
11. Anti-Slavery .....	12
12. Force Majeure .....	13
13. Publicity.....	13
14. Waiver .....	13
15. Governing Law .....	13

# 1. Definitions

**“Authorised Signatories”** means a member of the Management Team in Business Stream Authorised to approve time sheets and spend under Purchase Order.

**“Business Stream”** means Scottish Water Business Stream Limited Company Registration SC294924, and having its principal place of business at 7 Lochside View, Edinburgh Park, Edinburgh, EH12 9DH.

**“Confidential Information”** has the meaning specified in clause 8.1;

**“Contract”** means the Contract between Business Stream and You consisting of these conditions of contract, the Purchase Order and any general conditions and any other documents (or parts thereof) specified.

**“Data”** means all Data provided to You by Business Stream or collected, generated or otherwise processed by You as a result of, or in connection with the provision of the Services including without limitation all Personal Data.

**‘Data Breach’** means any security incident leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data. ‘Controller’ shall have the meaning given in the Data Protection Laws.

**‘Data Protection Laws’** means: (a) the Data Protection Act 1998; (b) from 25 May 2018, the General Data Protection Regulation (EU 2016/679) (‘GDPR’) and any national implementing laws, regulations and legislation which amends, re-enacts or replaces it from time to time; (c) the Electronic Communications (EC Directive) Regulations 2003, together with any legislation which replaces it; and (d) at all times, any other Data Protection Laws and Regulations applicable.

**‘Data Subject’** means an individual who is the subject of Personal Data.

**‘Data Subject Request’** means any request from a Data Subject for access to and Data that is his or her Personal Data, or concerning his or her rights to rectification, erasure, restriction or portability or otherwise in respect of it.

**“Deliverables”** means Goods, Services, Licensed IPR and/or Software (as the context requires and as described and quantified in the Purchase Order);

**“Ethical Supply Chain”** means a sustainable approach to Supply Chain Management.

**“Force Majeure”** means any one or more of the following events to the extent that such event(s) is/are beyond the reasonable control of the Party seeking to rely on it/them: riot, civil unrest, military action, terrorism, earthquake, storm, flood, inability to obtain supplies of power, fuel, or transport, exercise of emergency powers by any governmental authority.

**“Framework Agreement”** means a formal Contract that may be in place between You and Business Stream.

**“Goods”** means all Goods, materials, products, equipment and to the extent applicable computer Software and other intellectual property on any specified media. ‘Services’ means all activities set out on the Purchase Order or implied as being necessary to complete the provision of Goods in accordance with the requirements stated or referred to herein.

**“Good Industry Standards”** mean the exercise of the degree of skill, care, professional judgment, prudence and foresight which would be expected from companies who are skilled and experienced in conducting the same type of undertaking that provides the same or similar Services as those Services

“**IPR**” means all patents, designs and registered trademarks, and any applications for any of the foregoing and the right to apply for same, copyright, design rights, database rights, rights in the nature of copyright, trademarks, trade names and business names, moral rights, topography rights, utility model rights, rights in confidential and proprietary information, rights in inventions and discoveries, knowhow and any and all other industrial or intellectual property rights whatsoever which exist or arise anywhere in the world.

“**KPI’s**” means Key Performance Indicators determined during scope of Services to be performed under Contract.

‘**Losses**’ means claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and any other losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses).

‘**Personal Data**’ means any data relating to an identified or identifiable individual that are within the scope of protection as ‘Personal Data’ under the Data Protection Laws, as applicable. ‘Representative’ means employees, staff, agents, Sub-Processors, service providers and invitees of Your organisation, engaged or due to be engaged in the provision of the Services or required to carry out Your obligations under this Purchase Order.

“**Premises**” means the location where the Service is to be performed, as specified in the Purchase Order.

“**Purchase Order**” means the document entitled as such whereby Business Stream, sets out its requirements of You to provide the Deliverables.

“**Services**” means the service on a time and materials basis, or minor works to be provided as specified in the Contract and shall where the content so specifies, include any Goods, articles and materials to be supplied thereunder.

“**Software**” the Software to be supplied (whether licensed or assigned) under an Agreement as described in the relevant Agreement and where relevant includes any Documentation supplied to aid use of such Software.

“**Specification**” means the description (if any) of the Goods or Services contained in or referred to in the Purchase Order.

“**Statute**” has the meaning set out in clause 6.2.

“**You**”/“**Your**” means the Supplier/Person to whom the Purchase Order is issued.

‘**Supervisory Authority**’ means any regulatory, supervisory, governmental or other competent authority with jurisdiction or oversight over the Data Protection Laws.

‘**Personnel**’ means employees, agents, sub-contractors, suppliers and invitees of Your organisation, engaged, or due to be engaged, in the supply of the Goods and/or the provision of the Services or otherwise carrying out, or required to carry out, Your obligations under the Contract.

## **2. Framework Agreement or Contract Conditions**

2.1 If this Purchase Order is issued with reference to a signed Framework Agreement or Contract then the referenced Framework Agreement or Contract (as the case may be) shall prevail. However, in all other cases these Conditions of Contract will apply.

## **3. Price and Payment.**

3.1 The price of the Deliverables shall be as stated on the Purchase Order and shall be firm and unchangeable for the duration of the term. No variation shall be allowed unless agreed in writing with Business Stream. Unless otherwise agreed in writing the price shall be a delivered price, including packing, delivery, import/export taxes and insurance, to the specified delivery point.

3.2 All prices shall be in Pounds Sterling.

3.3 Unless otherwise agreed in writing by Business Stream, You shall render an invoice retrospectively. The Deliverables should be to the satisfaction of Business Stream. Any invoice relating to Services must include all required appendices such as authorised timesheets and expenses (where agreed) signed by the Authorised Signatories. Value Added Tax where applicable will be shown separately as a strictly net extra. Business Stream's Purchase Order number must be quoted on all invoices and Business Stream will accept no liability whatsoever for invoices which do not comply with this condition. Any Invoices not meeting the criteria in clause 3.3 will be rejected and returned to You.

3.4 Payment shall be made within thirty (30) days following the receipt of an invoice with which Business Stream has no dispute.

3.5 Business Stream will be entitled to set off any amounts owed to Business Stream by You against any invoices presented.

## 4 Specification

4.1 If Goods are requested on the Purchase Order, then unless otherwise stated the Purchase Order is deemed to include the supply of all relevant documentation and certification, and of any commissioning of those Goods, necessary to enable Business Stream to use them for their intended purposes.

4.1.1 If Services are requested on the Purchase Order then, unless otherwise stated, the Purchase Order includes the complete performance of those Services including any employee instruction, manuals, scope of works including KPI's, knowledge transfer or certifications necessary to enable the Company to benefit from them for their intended purposes.

4.1.2 If Goods or Services are requested on the Purchase Order then, unless otherwise stated, the Purchase Order includes any legal rights necessary including IPR, to use those Goods or Services for their intended purposes.

4.2 The quantity, quality and description of Deliverables will be as specified in the Purchase Order and these conditions of contract, or as agreed by Business Stream in writing.

4.2.1 If You deliver quantities in excess of the quantity due, Business Stream shall have the right to accept at a reduced price or to reject the quantity in excess of that due. Business Stream shall not be obliged to accept delivery of the Goods prior to Business Stream's specified delivery date and if Business Stream shall do so;

4.2.1.1 Business Stream shall be entitled to charge storage to You, and

4.2.1.2 the date for payment shall be calculated according to the due delivery date and such payment terms as are specified in the Purchase Order.

4.3 Any free-issued materials, tools and components used directly or indirectly in the performance of the Contract or any other assets of Business Stream in Your possession, or the subject of the Contract shall remain at all times the property of Business Stream and shall be identified and clearly marked by You, and recorded as such in all documentation. You shall maintain all such articles in good order and condition and shall use such materials solely in connection with the Contract. You shall notify Business Stream of any surplus materials remaining after completion of the Contract, and shall dispose of them as Business Stream may direct. Waste of materials arising from bad workmanship or Your negligence shall be made good at Your expense.

4.4 You have sole responsibility for complying with all applicable regulations and other legal and regulatory requirements concerning performance of the Contract, and for ensuring that Business Stream can, in compliance likewise, fully utilise the Deliverables for their intended purposes.

4.5 Business Stream will be allowed to inspect any Contract Goods during (and Your Premises for) manufacture and storage, so long as Business Stream request an inspection by reasonable notice. If, as a result of the inspection, Business Stream is not satisfied that the quality of the Goods or the standards of their manufacture, storage or handling fails to conform with the Contract, You will take such steps as are necessary to ensure compliance. If, after that, Business Stream are still not satisfied Business Stream can cancel the Contract without penalty.

4.6 If, before performance has occurred in the relevant respect, Business Stream notify You in writing of any change in desired Specification (including as to quality and time frame) You will respond as follows. Business Stream appreciate that a change may affect the Contract price, or may even be unachievable. If the change would reduce costs, the Contract price will reduce to fairly reflect that saving. If the change would increase costs You may notify Business Stream promptly, in writing, of a proposed revision of the Contract price fairly and proportionately reflecting any unavoidable such increased cost. You and Business Stream will then use reasonable efforts to agree the revised terms in full, including price, pending which the Contract variation will take effect. If the change would for any reason be unachievable You may notify Business Stream of that promptly and in writing, with reasons: again, both parties will then use reasonable efforts to reach a mutually acceptable Contract variation.

4.7 Failing notice under one of the two preceding clause 4.5 & 4.6 any proposed change will be deemed to have been accepted, and the Contract will be deemed to have been varied with immediate effect to reflect the requested Specification change with no price increase. What amounts to "prompt" notice for this purpose will depend on feasibility for You and urgency for Business Stream, but not in any case later than 48 hours (excluding hours of days which are Saturdays, Sundays or are recognised bank holidays in Scotland) from our notice of proposed change. In no event, agreed or not, will Business Stream be liable to You in respect of any Contract variation for more than a reasonable and proportionate reflection of such increased costs as You could not reasonably have been expected to avoid. The Contract price will not in any circumstance increase except with the express written agreement of Business Stream under, or referring explicitly to, this sub-section.

4.8 To protect the business, Business Stream may need, sometimes urgently, information as to precisely how Deliverables were performed, and as to all relevant activities of any suppliers or sub-contractors of Yours. You will meet any reasonable such request as soon as reasonably practicable, and will keep records adequate for that purpose for at least two years after completion of Performance. Without limitation, these records must provide full traceability for all Goods, components or Services comprised in, or used in making, any Contract Deliverables which are in any respect safety-critical. They must also demonstrate compliance of the Contract works with all legal or regulatory requirements quality and Performance standards.

## **5 Delivery and risk**

5.1 Any Goods will be delivered to, and any Services performed at, the address and on the date stated in the Purchase Order. This may be a Business Stream or a Customer Site, or else under section 5.2, should be unless stated otherwise, during standard business hours.

5.2 If Business Stream specify the date or delivery address after placing the Purchase Order, Business Stream will give You reasonable notice of the details. If no date is given, then supply will be as soon as reasonably practicable.

5.3 The date of delivery of any Goods, and the performance of any Services, will be of the essence of this Contract.

5.4 A packing note quoting the number of the Purchase Order must accompany each delivery or consignment of Goods and must be displayed prominently.

5.5 Where Deliverables are to be supplied in instalments, the Contract is still to be treated as a single Contract. If You fail to deliver or perform any instalment Business Stream may treat the whole Contract as repudiated.

5.6 Business Stream may reject any Goods or Services which are not fully in accordance with the Contract. For Goods, this may not occur until after Business Stream has had a reasonable time to inspect or consider the relevant Deliverables following supply and, in the case of latent defect, a reasonable time after the defect becomes apparent. For Services, this may be at any time during delivery of the Contract where KPI's have not been met and remedies have not led to resolution.

5.7 If any Deliverables are not supplied on or by the agreed date then, remedies should be available to Business Stream and will be defined through negotiation to reach a reasonable resolution as soon as it has been identified that the agreed date will not be met. Remedies may include but not be limited to cost reduction or additional Goods or Services.

5.8 Property and ownership of any Goods will pass to Business Stream on delivery unless Business Stream has paid in whole or in part for the Goods in advance. In that case it will pass to Business Stream as soon as the Goods have (or, if Goods are being assembled for Business Stream, each successive component of the Goods has) been appropriated to the Contract.

5.9 If Business Stream supply any articles to You, e.g. for modification or copying, they stay our property at all times. Those articles must be kept confidential and secure and Business Stream can enter Your Premises at any time on reasonable notice to ensure that this is so. While those articles are in Your custody You must not use them, copy them or disseminate them, electronically or otherwise, except in the performance of our Contract. Business Stream retain copyright and any other available IPR in any plans, design drawings, computer programs, compilations of Data, Specifications or the like which Business Stream supply to You. You must indemnify Business Stream against any Losses caused to Business Stream, and account to Business Stream for any profit which You make, through breach of this provision.

5.10 If any performance occurs on the Premises of Business Stream or their Customer, this sub-section will apply. You will ensure that Good Industry Standards are adopted for the health and safety both of Your Personnel and of any other individuals affected by Your actions. Business Stream may refuse or terminate access to any individual whom Business Stream reasonably consider undesirable to have on ours or our Customer Premises. Your Personnel must, while on Business Stream or a Business Stream Customer Premises, comply with all reasonable requirements as to security, health and safety routines, times and areas of access, and otherwise. You will be responsible to Business Stream on a full indemnity basis for all damage and injury caused by Your Personnel.

5.11 Subject to clause 3.1 all pricing should reflect fully paid delivery to the agreed destination. If the Contract terms refer to incoterms, these will bear defined meanings in the current edition of incoterms, these defined meanings will apply unless expressly stated otherwise.

5.12 Business Stream will not be bound to return to You any packaging or packing material, but if any relevant requirement for packaging recycling applies, You will take materials back free of charge on request.

## **6 Warranties and liability**

6.1 You warrant that:

6.1.1 that the Goods shall conform to the Contract, are of good material and workmanship, are free from defects, are of satisfactory quality and are fit for purpose.

6.1.2 The warranty given under clause 6.1.1 shall be in effect for a period of two (2) years after date of acceptance of the Goods by Business Stream and this and any additional warranties and guarantees given to Business Stream by You shall survive inspection, test, acceptance and payment, and shall benefit Business Stream, its successors, assignees and customers. If a standard manufacturers' Warranty applies and is greater than two (2) years then the manufacturers' warranty prevails.

6.1.3 You warrant that the Goods shall be free from any lien and/or encumbrance.

6.1.4 any Deliverables will comply with all statutory requirements and regulations, and with all normally applicable quality standards, relating to their sale or supply; and

6.1.5 any Services will be performed by appropriately qualified and trained Personnel and meet Good Industry Standards; and

6.1.6 neither the sale and supply of any Deliverable, nor its proper use by Business Stream for an intended purpose, will breach any property rights in or about that Deliverable, including IPR, of any other person.

6.2 All warranties, conditions and other terms implied by Statute or common law in favour of Business Stream will apply to any Deliverables bought from You.

6.3 You warrant that the Deliverables will be suitable for the intended purposes required by Business Stream, save only for any unsuitability which You have, as soon as might reasonably have been expected of You (and in any case before starting Performance) expressly notified to us.

6.4 If You fail to comply with any obligation under the Contract Business Stream will be entitled, at the discretion of the business, reject any Deliverable. You will not be entitled to receive payment for that Deliverable.

6.5 If any Contract Deliverable does not comply with all Contract requirements Business Stream can demand that You provide a remedy within seven days or, at our sole discretion, Business Stream can reject the remedy and demand the repayment of any sum already paid for them.

6.6 Business Stream will not be liable to You for any delay or failure to perform any of Business Streams' obligations under this Contract if the delay or failure was due to a cause beyond the reasonable control of Business Stream.

6.7 If any Contract Goods or rights were bought or obtained by You from a third party then any benefits or indemnities that You hold from that other party, in respect of those items, will be held on trust for Business Stream.

6.8 You will insure Yourself, and keep insured until Performance is complete, against all normal insurance risks relevant to Your work for or with Business Stream, on terms and for amounts consistent with normal business prudence. You will demonstrate to Business Stream the terms and currency of any such insurance on request.

6.9 You will indemnify Business Stream and keep indemnified upon written demand against any cost, claim, expense or liability arising from any risk for which You are responsible under this Contract.

6.10 You warrant that all Deliverables come from an Ethical Supply Chain and that this can be demonstrated if Business Stream should perform an audit of Your Supply Chain.

## 7 Rights

7.1 Any rights which You are Contracted to supply must be provided to Business Stream in accordance with sections 7.2 to 7.4 as applicable.

7.2 This sub-section will apply to the following types of Contract right: where the Contract expressly identifies particular rights as covered by it; where the rights in question are evidently not unique to our Deliverable (for instance You evidently supply the same thing, in the relevant respect, to others); or if those rights evidently derive from a third party of whom the same would be true (for instance You supply software on what You have told Business Stream is a proprietary third party platform). In those cases Business Stream are not to expect full ownership of those rights. You will however validly licence those rights to Business Stream, or procure them to be validly licensed to Business Stream, on the following terms: assignable; royalty-free; covering usage for any likely intended purpose; and free of any obligation on Business Stream save such as Business Stream expressly agree in the Contract or as are the minimum reasonably necessary for the maintenance of the right in question.

7.3 If You carry out any development work at our request and wholly or primarily at our expense Business Stream will own all IPR generated by that work.

7.4 You will do anything reasonably required by Business Stream, during or after performance, to perfect any transfer or licence of rights to Business Stream under this section or to assist Business Stream in registering or authenticating (but not at Your cost enforcing or defending) those rights.

## 8 Confidentiality

8.1 You shall each ensure that all confidential information which comes into Your possession or control pursuant to or in the course of the negotiation, implementation or performance of this Contract relating to the products, services, processes, procedures, operation or management or otherwise to the affairs of Business Stream (or of any Affiliated Company, customer or supplier of the other), including for the avoidance of doubt any such information which is marked as confidential or otherwise designated as confidential (whether orally or in writing) or which by its nature is clearly confidential ("**Confidential**

**Information**”) shall not be disclosed to any third party except where disclosure is expressly permitted by the provisions of this Agreement, or with the express prior written consent of Business Stream.

8.2 Upon termination of this Contract, You shall ensure that all documents and other materials (including material on disks and tape) containing Confidential Information supplied or made available to it by or on behalf of Business Stream shall be returned (together with all copies thereof) to Business Stream, and that any electronic copies of such Confidential Information are permanently deleted from its information technology systems.

8.3 Subject to clause 8.4, where Confidential Information is disclosed by You as permitted under clause 8.1, You shall (without prejudice to its obligations under this clause 8) take all reasonable steps to secure that the person to whom information is disclosed:

8.3.1 is aware of Your obligations under this clause 8 in relation thereto; and

8.3.2 is bound by obligations of confidentiality at least as onerous as those imposed on You by this clause 8.

8.4 for the avoidance of doubt You will be responsible for ensuring compliance by Your employees, independent contractors and subcontractors with Your obligations under this clause 8.

8.5 nothing in this clause 8 shall apply:

8.5.1 to any disclosure or use by You of Confidential Information to which Business Stream has consented in writing;

8.5.2 to any Confidential Information which:

8.5.2.1 before it is obtained by You is in the public domain; or

8.5.2.2 after it is obtained by You enters the public domain,

In either case otherwise than as a result of a breach by You of Your obligations under this clause 8;

8.5.3 to the disclosure of any Confidential Information to any person if and to the extent that You are required to make such disclosure to such person, and such disclosure is made in good faith:

8.5.3.1 in compliance with any Law; or

8.5.3.2 in response to a requirement of a Regulator or of any stock exchange or the Panel on Take-overs and Mergers;

8.5.4 to the disclosure of any Confidential Information lawfully in the possession of You before the disclosure of that Confidential Information to it under or in connection with this Agreement.

8.6 You will not make public the fact that You have entered into this Contract or the subject matter of this Contract without the prior written consent of Business Stream.

8.7 The obligations of confidentiality in this clause 8 will continue in full force after this Contract expires or is terminated for any reason.

## **9. Data Protection Act 1998 / GDPR**

For the purposes of the Data Protection Laws Business Stream is the Controller and You are the Processor of any Personal Data comprised in the Data and that this Clause 9 constitutes a Data processing agreement to the extent required by the Data Protection Laws.

9.1 You shall comply with all applicable requirements of the Data Protection Laws and shall not do anything, omit to do anything or permit anything to be done which might lead to or cause a breach by Business Stream or You of the Data Protection Laws; or a Data Breach.

9.2 You shall obtain and maintain throughout the term all certifications, evidence of compliance with codes of conduct, registrations and notifications that it is obliged to obtain and maintain pursuant to any relevant Data Protection Laws in respect of providing the Deliverables.

9.3 You shall only process Personal Data to the extent they relate to: (i) the types of Personal Data; (ii) the categories of Data Subject; (iii) the nature and purpose of such processing; (iv) and only for the duration, all as set out in the Purchase Order or otherwise instructed by Business Stream in writing.

9.4 You shall only process Personal Data in connection with the provision of the Deliverables in accordance with:

(i) Business Stream's Data Protection Policy as updated from time to time; and (ii) Business Stream's written instructions from time to time, unless You are required to process such Personal Data for other reasons under the laws of Scotland, England or Wales, or of the European Union (or a member state of the EEA) to which You are subject. If You are required to process such Personal Data for these other reasons, You shall inform Business Stream before carrying out the processing, unless prohibited by relevant law.

9.5 You shall immediately inform Business Stream if you believe that Business Stream's instructions infringe the Data Protection Laws.

9.6 You shall not engage any third party, to carry out processing of Data in connection with the Services ("Sub-Processor") without the express prior written approval of Business Stream. You shall ensure that any Sub-Processor is obliged to comply with terms equivalent to those set out in this Clause 9. You remain fully liable to Business Stream for any acts or omissions of any Sub-Processor.

9.7 You shall keep full and detailed records of any processing of Personal Data comprised in the Data carried out by You and Your Sub-Processors, and a general description of the security measures used in relation to the Personal Data;

- (i) deal promptly and properly with all enquiries from Business Stream relating to the processing of Personal Data comprised in the Data by You and Your Sub-Processors;
- (ii) co-operate with any Supervisory Authority in the course of all of its enquiries and abide by the advice of the any Supervisory Authority with regard to the processing of Personal Data comprised in the Data. You shall inform the Controller of all its dealings with the Supervisory Authority with respect to the processing of Personal Data comprised in the Data and shall put forward the representations of Business Stream on behalf of Business Stream in any such dealings;
- (iii) at Business Stream's request, provide to Business Stream a copy of all of or a sub-set of the Data held by You in the format and on the media reasonably specified by Business Stream; and
- (iv) promptly provide all necessary assistance, at no additional cost to Business Stream, to allow each Controller to prepare any necessary Data protection impact assessment or to undertake any necessary Data protection consultations.

9.8 You shall have in place, and shall maintain throughout the term of the Contract, all appropriate technical and organisational security measures to ensure that Your processing of Personal Data comprised in the Data is in accordance with the requirements of the Data Protection Laws and protects the rights of Data Subjects, including any measures set out in in the Purchase Order or otherwise notified by Business Stream in writing.

9.9 You shall ensure that access to the Data is limited to those Representatives who need access to the Data to meet Your obligations under the Contract; and to such part or parts of the Data and to the extent and manner as is strictly necessary for performance of that Representative's duties.

9.10 You shall ensure that all the Representatives who have access to the Data are aware of and have undertaken training in Data Protection Laws relating to handling such Data and all applicable Business Stream policies and procedures and comply with them; are aware of Your obligations and their personal duties and obligations under such Data Protection Laws and the Contract, including the obligations to keep the Data confidential; and are bound by an obligation of confidentiality.

9.11 You shall not and shall ensure that its Sub-Processors shall not transfer any Personal Data comprised in the Data to a country or territory outside the European Economic Area without the prior written consent of Business Stream.

9.12 Upon receipt of any of the following by You, You shall notify Business Stream immediately in writing, providing all known facts: (i) any enquiry, complaint, notice or other communication, which relates directly or indirectly to the processing of Personal Data comprised in the Data; (ii) any request for disclosure of Personal Data; (iii) any request or notice by a Data Subject to have Personal Data rectified, erased or any request or notice exercising any Data Subject's "right to be forgotten" or "right of "Data portability" under the GDPR; (iii) any order, penalty notice, fine or claim or order for suspension, ban on processing threatened or issued against You in its capacity as processor under the Data Protection Laws; or (iv) any Data Subject Request.

9.13 You shall provide Business Stream with full co-operation and assistance in relation to any request for disclosure of Personal Data comprised in the Data, Data Subject Request, complaint, notice or communication to enable Business Stream to respond to the same and shall apply appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Business Stream's obligation to respond to requests for exercising the Data Subject's rights under the Data Protection Laws.

9.14 At the request of Business Stream You shall submit for audit Your data processing facilities and Your technical and organisational measures referred to above and details of the technical and organisational measures in place.

9.14.1 You shall make available to Business Stream on request all information necessary to demonstrate full compliance by way of evidenced audits, including inspections, by an auditor approved by Business Stream in relation to the processing of Personal Data.

9.15 In the event of a Data Breach You shall immediately notify Business Stream in writing, providing all known facts of the Data Breach including, without limitation, a description of any Personal Data comprised in the Data affected, the cause of the Data Breach and details of any steps You has taken or is planning to take to mitigate the effects of the Data Breach; provide Business Stream with full co-operation and assistance in dealing with the Data Breach, in particular in relation to: (i) investigating the cause and effect of the Data Breach and containing and recovering any compromised Personal Data; (ii) resolving any Data privacy or security issues involving any Personal Data; (iii) making any authorised notifications to individuals affected by the Data Breach or to any Supervisory Authority or any other applicable regulator; and co-ordinating the management of public relations and public statements relating to a Data Breach. For the avoidance of doubt, You shall make no public statement in relation to a Data Breach without the prior written approval of Business Stream; and take all steps necessary to prevent a repeat of the Data Breach.

9.16 On the expiry or earlier termination of the Contract You shall and shall require that all Sub-Processors shall immediately cease processing the Data and, at Business Stream's option and direction, arrange for the prompt and safe return and/or destruction of all the Data together with all copies in its or its Sub-Processors possession or control and, where requested by Business Stream, certify (by a director of Your Organisation and/or its Sub-Processors (where applicable)) that such destruction and/or return has taken place. You shall not dispose, re-assign or re-use any equipment or any electronic, magnetic or other medium which is or has been used to store Data that has been generated, obtained, held, used or stored for

the purposes of the Contract without first ensuring that such Data has been entirely removed, or otherwise obliterated.

## 10. Bribery and Corruption

- 10.1 You shall:
- 10.1.1 comply with all applicable laws, regulations, and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "**2010 Act**");
  - 10.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the 2010 Act if such activity, practice or conduct had been carried out in the UK;
  - 10.1.3 comply with Business Stream's anti-bribery policy as Business Stream may update it from time to time (the "**Anti-Corruption Policies**").
  - 10.1.4 have and shall maintain in place throughout the term of this Contract Your own policies and procedures, including but not limited to adequate procedures under the 2010 Act, to ensure compliance with clauses 10.1.1 to 10.1.3, and You will enforce them where appropriate;
  - 10.1.5 promptly report to Business Stream any request or demand for any undue financial or other advantage of any kind received by You in connection with the performance of this Contract;
  - 10.1.6 immediately notify Business Stream if a foreign public official becomes an officer or employee of Your company or acquires a direct or indirect interest in Your company (and You warrant that You have no foreign public officials as officers, employees or direct or indirect owners at the date of Your accepting the terms of this Contract).
  - 10.1.7 Provide to Business Stream within 5 Working Days of request such evidence of compliance with 2010 Act and Anti-Corruption Policies as Business Stream may reasonably request
- 10.2 You shall ensure that any person associated with You (including any sub-contractor and/or member of staff) who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on You in this clause 10. You shall be responsible for the observance and performance by such persons of terms equivalent to those imposed on You in this clause 10, and shall be directly liable to Business Stream for any breach by such persons of any terms equivalent to those imposed on You in this clause 10.
- 10.3 A breach by You of this clause 10 shall be deemed a material breach of this Contract not capable of remedy.
- 10.4 For the purpose of this clause 10, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the 2010 Act and the guidance issued under section 9 of the 2010 Act, sections 6(5) and 6(6) of the 2010 Act and section 8 of the 2010 Act respectively. For the purposes of this clause a person associated with You includes but is not limited to any sub-contractor.

## 11 Anti-Slavery

You shall, and shall ensure that each of Your sub-contractors shall, comply with the Modern Slavery Act 2015 and shall notify Business Stream as soon as practicable of any non-compliance.

Without prejudice to any other right Business Stream may have to terminate the Contract, Business Stream shall be entitled, at its sole discretion, to withhold any payments due to You and/or terminate the Contract for any breach by You of this Clause 11. To the extent permitted by law, You shall indemnify Business Stream from and against all damages, Losses, costs expenses (including but not limited to legal expenses) or other liabilities, suffered or incurred by Business Stream arising out of or in connection with any breach by You of this Clause 11 and all applicable laws, The Modern Slavery Act 2015.

11.1 When requested by Business Stream, You shall provide a list of the names of all persons who are or may be at any time concerned with the Contract or any part thereof. That list shall specify the capacities in which they are so concerned and shall give such other particulars as Business Stream may require.

11.2 You shall ensure that all of Your employees, and those of Your sub-contractors, are legally entitled to work in the United Kingdom. If requested by Business Stream, You will provide proof of such entitlement.

11.3 Your employees shall in no sense be regarded as employees of Business Stream, and You shall be liable for all necessary arrangements and the payment of income tax, national insurance contributions and other expenses associated with their employment that may become due as a result of the Contract.

11.4 You will agree to the terms of Business Stream's Anti-Slavery Policy.

## **12. Force Majeure**

12.1 Neither Business Stream nor You shall be liable or deemed to be in default on account of delaying any delivery or the performance of any other act under the Contract due to circumstances which could not have been reasonably contemplated or which are beyond the parties reasonable control.

12.2 The delaying party shall notify the other party immediately they become aware of a potential or actual Force Majeure situation. The delaying party shall provide the reasons for the delay and the likely duration of the delay and they shall be entitled to a reasonable extension of time for the performance of their contractual obligations.

## **13. Publicity**

Neither party shall without the written consent of the other (the giving of which consent shall be at the sole discretion of that party) advertise, publicly announce or provide to any other person information relating to the existence or details of the Contract or use the other party's name in any format for any promotion, publicity, marketing or advertising purpose.

## **14. Waiver**

Any failure by Business Stream to insist at any time upon Your performance of any of the terms, provisions or undertakings contained in the Contract or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of Business Stream's rights to require the future performance of any such term, provision or undertaking but Your obligation with regard to the same shall continue in full force and effect.

## **15 Governing Law**

The Contract shall be governed by and construed in accordance with Scots Law and any disputes arising shall be subject to the jurisdiction of the Scottish Courts.