



TERMS AND CONDITIONS FOR THE PROVISION OF GOODS AND/OR SERVICES

Last updated: June 2019

Recitals:

- A. The terms and conditions set out below (including these Recitals) will govern purchases by the Bank of England (the “Bank”) of Goods and/or Services from the Contractor (“Terms and Conditions”).
- B. These Terms and Conditions will not apply where the Bank and the Contractor have a pre-existing agreement for the supply of particular goods and/or services described in those agreements.
- C. Each Purchase Order together with the Terms and Conditions attached constitute one agreement (the “Agreement”) and should be read in conjunction with each other so that the parties understand the terms on which the Goods and/or Services will be provided. Should a conflict or inconsistency arise between the Purchase Order and the Terms and Conditions, the provisions of the Purchase Order shall prevail to the extent of the conflict or inconsistency. Each Purchase Order will be regarded as a separate agreement.
- D. This Agreement will apply to the Contractor’s provision of Goods and/or Services to the exclusion of any other terms that the Contractor seeks to impose or incorporate or that are implied by trade, customer, practice, or course of dealing. Accordingly, this Agreement shall override any additional, inconsistent or conflicting terms or any purchase order, quotation, confirmation, invoice, acknowledgement, release or other written correspondence. Any such additional or different terms are hereby deemed material alterations (that have not been agreed pursuant to Clause 14.1) and notice of objection and rejection of them is hereby given.

In consideration of the mutual covenants contained in the Terms and Conditions and intending to be legally bound, the parties agree as follows:

1. Scope

- 1.1 This Agreement shall apply only to the provision of the Goods and/or Services as specified on the Purchase Order. Definitions are set out in Clause 14.19.
- 1.2 This Agreement (together with the documents referred to in it) constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters.
- 1.3 Each of the parties acknowledges and agrees that in entering into this Agreement (together with the documents referred to in it) it does not rely on, and shall have no remedy in respect of any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. Nothing in this Agreement shall exclude any liability for fraud or fraudulent misrepresentation.
- 1.4 Where the Contractor is providing only Goods under this Agreement, Clause 3 will not apply to the provision of those Goods. Where the Contractor is providing only Services under this Agreement, Clause 2 will not apply to the provision of those Services. If the Contractor is providing Goods and Services under this Agreement, Clauses 2 and 3 will apply to the provision of those Goods and Services.

2. Provision of Goods

2.1 The Goods

- 2.1.1 The quantity, quality and description of the Goods shall be as specified in the Purchase Order.

- 2.1.2 The Contractor shall ensure that the Goods shall be fully compatible with the Bank’s requirements as set out in the Purchase Order.
- 2.1.3 The Bank relies on the skill and judgment of the Contractor in the supply of the Goods and the execution of the Agreement.

2.2 Delivery

- 2.2.1 The Contractor shall deliver the Goods at the times and dates and to the Premises as specified in the Purchase Order.
- 2.2.2 Unless otherwise stated in the Purchase Order, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are delivered to the Premises, accepted and signed for by the Bank. Where the Goods are collected by the Bank, the point of delivery shall be when the Goods are loaded on the Bank’s vehicle, accepted and signed for by the Bank.
- 2.2.3 Except where otherwise provided in the Agreement, delivery shall include the unloading, stacking and/or installation of the Goods (as appropriate) by the Staff or the Contractor’s suppliers or carriers at such place as the Bank or duly authorised person shall reasonably direct.
- 2.2.4 The Bank shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Bank elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Contractor to remove them within 7 days



of receipt by the Contractor of such notice and to refund to the Bank any expenses incurred by the Bank as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Bank shall be entitled to dispose of such Goods and to charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor until they are collected by or on behalf of the Contractor or disposed of or purchased by the Bank, as appropriate.

2.2.5 The Bank shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated on the Purchase Order.

2.2.6 Unless expressly agreed otherwise in the Purchase Order, the Bank shall not be obliged to accept delivery by instalments. If, however, the Bank does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Bank, entitle the Bank to terminate the whole of any unfulfilled part of the Agreement without further liability to the Bank.

2.3 Title and Risk

Title and risk in the Goods shall without prejudice to any other rights or remedies of the Bank pass to the Bank at the time of acknowledgement of delivery.

2.4 Damage in Transit

On dispatch of any consignment of the Goods, the Contractor shall send to the Bank at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods are either damaged in transit or having been placed in transit fail to be delivered to the Bank, the Bank shall either elect to reject the consignment; or require the Contractor to repair or replace the damaged Goods, and deliver the repaired or replaced Goods in accordance with the timescales specified in the Purchase Order provided that the Bank has notified the Contractor within 30 days of delivery or the notified date of delivery about such damage or non-delivery.

2.5 Inspection, Rejection and Guarantee

2.5.1 The Contractor shall permit the Bank or authorised representatives to make any inspections or tests which may reasonably be required and the Contractor shall afford all reasonable facilities and assistance free of charge at the Contractor's premises. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Bank of any rights or remedies in respect of the Goods and, in

particular, the Bank retains the right to reject the Goods.

2.5.2 The Bank may by written notice to the Contractor reject any of the Goods which fail to conform to the Approved Sample or fail to meet the requirements set out in the Purchase Order. Such notice shall be given within a reasonable time after delivery to the Bank of the Goods concerned. If the Bank rejects any of the Goods pursuant to this Clause the Bank shall be entitled (without prejudice to other rights and remedies) either:

(a) to have the Goods repaired or replaced by the Contractor (at the Bank's option) within 7 days of notice of such rejection with Goods which conform in all respects with the Approved Sample or with the requirements set out in the Purchase Order and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

(b) to treat the Agreement as discharged by the Contractor's breach and require a refund from the Contractor in respect of the Goods concerned together with payment of any additional expenditure over and above the price reasonably incurred by the Bank in obtaining other goods in replacement.

2.5.3 The issue by the Bank of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.

2.5.4 Unless agreed otherwise, the Contractor shall guarantee the Goods for the shorter of 12 months from putting into service or 18 months from delivery. If the Bank, within such guarantee period or within 30 days thereafter, gives notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Bank may have) as quickly as possible remedy such defects (whether by repair or replacement as the Bank shall elect) without cost to the Bank.

2.5.5 Any Goods rejected or returned by the Bank as described in Clause 2.5.2 shall be returned to the Contractor at the Contractor's risk and expense.

2.6 Labelling and Packaging

The Goods shall be packed and marked in a proper manner and in accordance with the Bank's instructions and any statutory requirements and any requirements of the carriers. In particular all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.



3. Provision of Services

3.1 The Services

The Services shall be as specified in the Purchase Order. The Contractor shall provide the Services in accordance with the Service Levels and any other Bank requirements set out in the Purchase Order.

3.2 Review of Services

The Bank shall be entitled to inspect and examine the performance of the Services at the Bank's Premises at any reasonable time provided that the Bank gives reasonable notice to the Contractor of its intention to do so.

3.3 Standard of Services

3.3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of work has not been specified in the Agreement the Contractor shall use the best applicable techniques and standards and execute the Agreement in accordance with good industry practice.

3.3.2 The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.

3.3.3 The signing by the Bank's Contract Manager (or his representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Agreement.

3.3.4 In its provision of the Services, the Contractor shall and shall procure that all Staff shall comply with all Bank policies and procedures, including the Bank's [Supplier Code of Conduct](#), as in force from time to time. The preceding shall include but not be limited to the Bank's security, IT, HR, diversity, publicity, environmental and health and safety policies and procedures.

3.4 Remedies for Non-Conforming Services

3.4.1 In the event that the Contractor and/or the Staff fail to perform the Services, or any of them, in accordance with this Agreement, and such failure is not caused by the Bank, then the Bank may either:

- (a) require the Contractor, at the Contractor's own expense, promptly to remedy or re-perform any non-conforming Services; or
- (b) withhold payment to the Contractor or recover as a sum of money due from the Contractor the Charges or any portion thereof that are allocable to the non-conforming Services.

3.4.2 If the Contractor fails to remedy or re-perform any non-conforming Services pursuant to Clause 3.4.1(a) within 7 days after notice is given to the Contractor, the Bank may either

remedy or re-perform the non-conforming Services itself or have them remedied or re-performed by a third party on its behalf, and in either case the Contractor shall pay the reasonable costs so incurred by the Bank.

3.4.3 In the event that the Contractor materially and repeatedly fails to perform the Services or any of them in accordance with this Agreement, and such failure is not remediable or, if remediable, is not remedied within 30 days after notice is given to the Contractor, then the Bank may terminate this Agreement in accordance with Clause 12.3.

4. Time of the Essence

Time of delivery shall be of the essence and failure to deliver the Goods and/or Services within the time promised or specified shall enable the Bank (at the Bank's option) to (i) release itself from any obligation to accept and pay for the Goods and/or Services; and/or (ii) cancel all or part of the Agreement.

5. Contractor Equipment

5.1 The Contractor shall provide all the equipment necessary for the provision of the Goods and/or Services.

5.2 The Contractor shall make no delivery of equipment, materials nor commence any work on the Bank's Premises without obtaining the Bank's prior Approval.

5.3 All equipment brought onto the Bank's Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of equipment when no longer required at its sole cost. The Contractor shall ensure that the Bank's Premises are appropriate to contain and operate the equipment.

5.4 The Contractor shall maintain all items of its equipment within the Bank's Premises in a safe, serviceable and clean condition.

5.5 All equipment provided by the Contractor shall be at the risk of the Contractor and the Bank shall have no liability for any loss of or damage to such equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Bank.

5.6 The Bank shall have the power at any time during the provision of the Goods and/or Services to order in writing that the Contractor:

- (a) remove from the Bank's Premises any equipment which in the opinion of the Bank is either hazardous, noxious or not in accordance with the Agreement; and/or
- (b) substitute proper and suitable materials, plant and equipment.

5.7 On completion of the delivery of the Goods and/or Services, the Contractor shall remove any equipment, materials and/or rubbish arising out of the provision of the Goods and/or Services and shall leave the Bank's Premises in a neat and tidy condition.



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6. Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Bank by the Contractor in connection with the provision of Goods and/or Services and shall pay the Bank any extra costs occasioned by any discrepancies, errors or omissions therein.

7. Work Permits

The Contractor shall be responsible for checking that its Staff are legally entitled to work in the United Kingdom and where appropriate have the required visa, work permit or permission issued by the appropriate UK authority to undertake work of the nature for which the Contractor is supplying them to the Bank. The Contractor further agrees to indemnify the Bank against all claims, costs and damages howsoever arising from any breach of this Clause. This Clause will not be subject to the liability limit expressed in Clause 11.

8. Warranties and Representations

8.1 The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Contractor;
- (b) it shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
- (c) all its obligations pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (d) the Goods and/or Services comply with all Laws;
- (e) the Goods and/or Services shall be to the reasonable satisfaction of the Bank;
- (f) the Goods shall conform in all respects with any sample Approved by the Bank (“**Approved Sample**”) or, in the absence of a sample, all Goods supplied shall be within the normal limits of industrial quality;
- (g) the Goods and/or Services shall comply with any particulars specified in the Purchase Order;
- (h) the Goods shall be free from defects in design, materials and workmanship and be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Bank;
- (i) any software forming part of the Goods or Services (including any media on which it may be delivered) shall be free from viruses or other malicious code; and
- (j) it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its

business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.

9. Payment

9.1 Charges

- 9.1.1 In consideration of the performance by the Contractor of its obligations under the Agreement, the Bank shall pay the Charges in accordance with the payment terms specified in this Clause 9 and the Purchase Order.
- 9.1.2 The Charges are exclusive of Value Added Tax. The Bank shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by Law, from time to time.

9.2 Payment and Tax

- 9.2.1 The Bank shall pay the undisputed sums due to the Contractor within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Bank. Interest shall be payable on any undisputed late payment at a rate of 2% above the base rate of the Bank of England from time to time in force from the date on which such amount fell due until payment, whether before or after judgment.
- 9.2.2 The Bank may reduce payment in respect of any Goods and/or Services which the Contractor has either failed to provide or has provided inadequately.
- 9.2.3 The Contractor shall not suspend the supply of the Goods and/or Services unless the Contractor is entitled to terminate the Agreement under Clause 12.3.2 for failure to pay undisputed charges.
- 9.2.4 The Bank may set off and retain any amount owed to it by the Contractor against any amount due to the Contractor under this Agreement or under any other agreement between the Contractor and the Bank.
- 9.2.5 Where the Contractor or any Staff are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Contractor shall:

(a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

(b) indemnify the Bank against any income tax, national insurance, apprenticeship levy and social security contributions and any other liability,



deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Contractor or any Staff.

9.2.6

In the event that any one of the Staff is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Contractor shall ensure that its contract with the relevant worker includes the following requirements:

(a) that the worker must comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration;

(b) that the worker must comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to national insurance contributions in respect of that consideration;

(c) that the Bank may, at any time during the Term, request that the worker provide information which demonstrates how the worker complies with the above requirements (a) and (b), or why those requirements do not apply to it. In such case, the Bank may specify the information which the worker must provide and the period within which that information must be provided;

(d) that the worker's contract may be terminated at the Bank's request if:

(i) the worker fails to provide information requested by the Bank within the time specified by the Bank: and/or

(ii) the worker provides information which the Bank considers is inadequate to demonstrate how the worker complies with requirements (a) or (b) or confirms that the worker is not complying with those requirements; and

(e) that the Bank may supply any information it receives from the worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

10. Intellectual Property Rights

10.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material furnished to or made available to the Contractor by the Bank shall remain the property of the Bank or its licensors.

10.2 The Contractor warrants that it has the power, authority and right (i) to provide the Goods and/or Services to the Bank without infringing or violating the rights (including Intellectual Property Rights) of any third party and (ii) for the Bank to fully enjoy the Goods and/or Services provided by the Contractor as anticipated by this Agreement without infringing or violating the rights (including Intellectual Property Rights) of any third party. The Contractor warrants that it will not knowingly, wilfully or negligently cause the Bank to be in breach of such third party Intellectual Property Rights or other rights through the Bank's enjoyment of the Goods and/or Services as anticipated by this Agreement.

10.3 If any new Intellectual Property Rights are created by the Contractor in the provision of the Services or as an output of the Services, then all such Intellectual Property Rights shall vest in the Bank. The Contractor hereby assigns (or shall procure the assignment) to the Bank, with full title guarantee, title to and all rights and interest in such Intellectual Property Rights. The Contractor shall at the request of the Bank execute all such documents and do all such further acts as the Bank may require to perfect this assignment. The Bank shall grant the Contractor a non-exclusive, non-transferable licence during the term of the Agreement, to use such Intellectual Property Rights to the extent necessary to enable the Contractor to provide the Services.

11. Liabilities and Indemnities

11.1 Limitation of Liability

11.1.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 and/or Section 2 of the Supply of Goods and Services Act 1982.

11.1.2 Subject always to Clause 11.1.1, in no event shall either party be liable to the other for loss of profits, business, revenue, goodwill or anticipated savings and/or any indirect or consequential loss or damage.

11.1.3 Subject always to Clauses 11.1.1 and 11.1.2, the Contractor's aggregate annual liability for all Defaults (other than a Default governed by Clause 7, Clause 9.2, Clause 10.2, Clause 11.2.2, Clause 13 and Clause 14.7, which shall be unlimited) under or in connection with this Agreement shall in no event exceed the greater of one million pounds (£1,000,000) or two hundred per cent (200%) of the Charges.

11.1.4 Subject always to Clauses 11.1.1 and 11.1.2, the Bank's aggregate liability under the Agreement for Defaults shall in no event



exceed the greater of ten thousand pounds (£10,000) or one hundred per cent (100%) of the Charges.

11.2 Indemnities

- 11.2.1 The Contractor shall indemnify and keep indemnified the Bank fully against all claims, actions, losses, liabilities, costs and expenses (including all interest, penalties and legal and other professional costs) whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by a Contractor Default.
- 11.2.2 The Contractor shall indemnify and shall keep indemnified the Bank against all claims, actions, losses, liabilities, costs and expenses (including all interest, penalties and legal and other professional costs) which the Bank may suffer or incur as a result of or in connection with any breach of Clause 10.2, except to the extent that such claim relates to designs furnished by the Bank or the use of data supplied by the Bank which is not required to be verified by the Contractor under any provision of the Agreement.

12. Term and Termination

12.1 Term

- 12.1.1 This Agreement shall come into force on the date set out in the Purchase Order and shall remain in full force and effect for the period set out in the Purchase Order unless and until either party exercises its right to terminate in accordance with this Clause 12.
- 12.1.2 At the end of the term referred to in Clause 12.1.1, the Bank may extend the term of this Agreement for the period set out in the Purchase Order by giving not less than 3 months' prior written notice to the Contractor.

12.2 Termination on Change of Control and Insolvency

- 12.2.1 The Bank may terminate the Agreement by notice in writing with immediate effect where:
- 12.2.1.1 the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or
- 12.2.1.2 the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes

any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or

- 12.2.1.3 the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- 12.2.1.4 where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 12.2.1.5 any similar event occurs under the law of any other jurisdiction within the United Kingdom.

- 12.2.2 The Bank may only exercise its right under Clause 12.2.1.1 within six months of it becoming aware of such a change of control occurring and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Bank's Contract Manager immediately when any change of control occurs.

12.3 Termination on Default

- 12.3.1 The Bank may terminate this Agreement by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:
- 12.3.1.1 the Contractor has not remedied the Default to the satisfaction of the Bank within 30 days, or such other period as may be specified by the Bank, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 12.3.1.2 the Default is not capable of remedy; or
- 12.3.1.3 the Default is a fundamental breach of the Agreement.



12.3.2 The Contractor may terminate this Agreement if the Bank is in material breach of its obligations to pay undisputed charges by giving the Bank 90 days' notice specifying the breach and requiring its remedy. The Contractor's right of termination under this Clause 12.3.2 shall not apply to non-payment of the charges where such non-payment is due to the Bank exercising its rights under Clause 9.2.2.

12.4 Consequences of Termination

12.4.1 The provisions of Clauses 8, 10, 11, 12.4.1, 13.1, 13.2.1, 13.4, 14.15, 14.16, 14.17 and 14.18 and any other provision that by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

12.4.2 Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Contractor and the Bank accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either party to recover any amount outstanding at such termination or expiry.

12.4.3 In the event that this Agreement is terminated or expires, each party shall return to the other party all property and information (including all Confidential Information) belonging to the other party then in its possession or control or (at the other party's election) certify destruction of the same.

13. Protection of Information

13.1 Confidentiality

13.1.1 Except to the extent set out in this Agreement, each party shall treat the other party's Confidential Information as confidential and safeguard it accordingly and not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

13.1.2 Clause 13.1.1 shall not apply to the extent that:

13.1.2.1 such disclosure is a requirement of Law placed upon the Disclosing Party, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations;

13.1.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

13.1.2.3 such information was obtained from a third party without the obligation of confidentiality;

13.1.2.4 such information was already in the public domain at the time of

disclosure otherwise than by a breach of this Agreement; or

13.1.2.5 such information is independently developed without access to the other party's Confidential Information.

13.1.3 The Contractor may only disclose the Bank's Confidential Information to the Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

13.1.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Bank's Confidential Information received other than for the purposes of this Agreement.

13.1.5 Where it is considered necessary in the opinion of the Bank, the Contractor shall and shall ensure that the Staff or such professional advisors or consultants as may be provided with or have access to the Bank's Confidential Information sign a confidentiality undertaking to the Bank's satisfaction before commencing work in connection with the Agreement.

13.1.6 The Contractor shall immediately inform the Bank if it becomes aware of the possession, use or knowledge of any of the Bank's Confidential Information by any unauthorised person and shall provide such reasonable assistance as is required by the Bank to deal with such event.

13.1.7 Nothing in this Clause shall prevent the Bank:

13.1.7.1 disclosing any Confidential Information for the purpose of:

(i) the examination and certification of the Bank's accounts;

(ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Bank has used its resources; or

(iii) the FOIA and/or the Environmental Information Regulations; or

13.1.7.2 disclosing any Confidential Information obtained from the Contractor:

(a) to any government department or any other contracting authority. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities



on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or

- (b) to any person engaged in providing any services to the Bank for any purpose relating to, or ancillary to, the Agreement provided that they are made aware of these obligations of confidentiality.

13.1.8 The Contractor shall take all precautions necessary to preserve the integrity of any Bank Confidential Information and to prevent any corruption, loss or unauthorised disclosure of Bank Confidential Information.

13.1.9 Nothing in this Clause 13.1 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

13.2 Data Protection

13.2.1 Each party warrants that it shall duly observe all its obligations under the Data Protection Legislation which arise in connection with this Agreement and ensure the protection of the rights of data subjects.

13.2.2 To the extent the nature of the Services requires the Contractor to process Bank personal data as a data processor (with the Bank acting as data controller), the Contractor shall:

13.2.2.1 promptly inform the Bank of instances of personal data processing it undertakes on the Bank's behalf, including the nature of the personal data and category of data subjects;

13.2.2.2 promptly inform the Bank if at any time it has cause to believe that the Bank's instructions infringe Data Protection Legislation;

13.2.2.3 provide contact details of its data protection officer or other designated individual with responsibility for data protection and privacy (and promptly notify the Bank if those contact details change);

13.2.2.4 only carry out such processing in accordance with the Bank's documented instructions;

13.2.2.5 not process or cause to be processed that personal data outside the European Economic Area except with the Bank's prior written consent (with

the Contractor having fulfilled all Bank requirements to enable such processing);

13.2.2.6 implement appropriate technical and organisational measures to ensure the ongoing confidentiality, integrity and availability of personal data and otherwise protect it against unauthorised or unlawful disclosure or accidental destruction, damage or loss;

13.2.2.7 assist the Bank in carrying out a data protection impact assessment where an assessment is required with regard to the type and nature of processing;

13.2.2.8 not subcontract or allow any other entity to perform any data processing obligations without the Bank's prior written consent (such consent shall be conditional on the Contractor procuring that such sub-processor is bound by appropriate data protection terms);

13.2.2.9 ensure the reliability of all Staff who have or will have access to the personal data (having also made such Staff aware of their obligations of confidentiality);

13.2.2.10 promptly refer to the Bank any requests, notices or other communications from data subjects, the Information Commissioner or any other law enforcement authority and in no event respond directly to any request, notice or communication unless expressly authorised in writing by the Bank to do so;

13.2.2.11 provide such information to the Bank (or take such other action) as the Bank may reasonably require, and within the timescales reasonably specified by the Bank, to allow the Bank to comply with the rights of data subjects, including but not limited to subject access rights, to liaise with the Information Commissioner, or to respond to notices served by the Information Commissioner;

13.2.2.12 notify the Bank without undue delay (and in any event within 24 hours) after becoming aware of a personal data breach, and not contact data subjects or the Information Commissioner directly in the event of a personal data breach unless expressly authorised in writing by the Bank to do so;



13.2.2.13 at no additional cost, keep or cause to be kept full and accurate records and logs relating to all processing of personal data on behalf of the Bank and, upon reasonable notice, grant the Bank and its auditors and agents a right of access to and to take copies of such records in order to assess whether the Contractor has complied with the provisions of this clause and the obligations set out in the Data Protection Legislation;

13.2.2.14 at the end of the Term or earlier termination of this Agreement, at the Bank's request, delete or return (at the Bank's discretion) all personal data to the Bank and delete any copies of such personal data except where required to retain any copies by Law; and

13.2.2.15 not (by any knowing, wilful or negligent act or omission) place the Bank in breach of the Data Protection Legislation.

13.3 Freedom of Information

The Contractor acknowledges that the Bank is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Bank to enable them to comply with its relevant disclosure obligations. The Bank shall be responsible, in their absolute discretion, for deciding whether any information is exempt from disclosure under FOIA and the Environmental Information Regulations.

13.4 Publicity and Branding

13.4.1 The Contractor shall not in any way make any announcements or publicise this Agreement or its contents or the fact that the Contractor is providing Services to the Bank, or use the Bank's name or brand in any promotion, marketing or announcement of orders, without the prior written consent of the Bank.

13.4.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of this Clause 13.4 by all its Staff and professional advisors.

13.4.3 Each party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other party (including the Goods or Services as applicable) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

13.5 Security

13.5.1 Access to the Bank's Premises shall not be exclusive to the Contractor but shall be limited to such Staff as are necessary in the provision of the Goods and/or Services concurrently

with the execution of work by others. The Contractor shall co-operate free of charge with such others as the Bank may reasonably require.

13.5.2 The Contractor shall comply with all reasonable security requirements of the Bank (including those set out in the Bank's security policies as amended or updated by the Bank from time to time) while on the Premises and/or at all times during its performance of its obligations under this Agreement, and shall procure that all of its Staff shall likewise comply with such requirements. The Contractor shall if requested sign and abide by the Bank's Declaration of Secrecy.

13.5.3 The Bank reserves the right to refuse admission to any premises over which the Bank has control, to remove Staff from any premises over which the Bank has control and/or direct the Contractor to end the involvement in the provision of the Goods or Services by any of the Staff whom the Bank believes represents a security risk or does not have the required levels of training and expertise or where the Bank has other grounds for doing so. The decision of the Bank shall be final and it shall not be obliged to provide any reasons.

13.5.4 If and when directed by the Bank, the Contractor shall provide a list of the names and business addresses of all persons who it is expected may require admission to the Bank's premises in connection with the performance of this Agreement, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Bank may reasonably require.

13.5.5 Failure by the Contractor to comply with the provisions of Clause 13.5.4 within a reasonable time of written notice to do so will entitle the Bank to refuse admission to its premises to any person who has not been notified to the Bank in accordance therewith and will allow the Bank to terminate the Agreement.

14. General

14.1 Amendments

Except as otherwise explicitly provided in this Agreement, the Agreement shall not be amended except with the prior written approval of an authorised signatory of each party.

14.2 Notices and Communications

Any notice or request required or permitted to be given or made under this Agreement shall be in writing and to the address notified by each party. Such notice or request shall be deemed to have been served and received: if delivered by hand, at the time and date of delivery; or if sent by fax, at the time and date of the successful fax transmission report; if sent by recorded



delivery or registered post, 48 hours from the date of posting (such date as evidenced by postal receipt etc); and if sent by registered airmail, 5 days from the date of posting.

14.3 Insurance

The Contractor undertakes that for the duration of this Agreement, it has and shall maintain adequate insurance (including professional indemnity insurance where applicable) to cover its contractual liabilities under this Agreement. The Contractor shall produce copies of its insurance policies to the Bank upon request.

14.4 Relationship of the Parties

14.4.1 Nothing in this Agreement is intended to create a partnership, agency, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

14.4.2 The Contractor's status shall be that of an independent contractor and it is expressly understood that the Contractor is not an employee or servant of the Bank.

14.5 Health and Safety

14.5.1 The Contractor agrees to comply with the Bank's rules and procedures regarding health and safety when on the Bank's Premises, and any additional rules made known to the Contractor from time to time by the Bank together with all applicable statutory rules and regulations regarding these matters. The Contractor will be responsible for procuring that Staff also comply with these rules and regulations.

14.5.2 Either party shall notify the other as soon as practicable of any health and safety hazards at the Bank's Premises of which it becomes aware. The Contractor will draw these hazards to the attention of the Staff and will instruct those persons in connection with any necessary associated safety measures.

14.5.3 The Contractor shall report immediately to the Bank any accident or injury and any damage to the property of the Bank or to the property of any third parties occurring in or arising out of the performance of its obligations under this Agreement and any act, matter or thing which within its knowledge may have caused such accident or injury.

14.6 Environmental Considerations

The Contractor shall, when working on the Bank's Premises, perform the Agreement in accordance with the Bank's environmental policy and all applicable environmental laws and regulations in force from time to time in relation to the Goods and/or Services under this Agreement.

14.7 Prevention of Bribery and Corruption

14.7.1 The Contractor warrants and covenants that it and its Staff shall comply with any applicable Law in force from time to time regarding bribery, fraudulent acts and/or any other corrupt practice including (a) the Bribery Act 2010, (b) the Anti-Terrorism, Crime and Security Act 2001, (c) the US Foreign Corrupt Practices Act of 1977, and (d) any equivalent Laws in the territory in which the Contractor or its Associates perform services for the Bank ("Anti-Bribery Law").

14.7.2 Without limiting Clause 14.7.1 the Contractor represents, warrants and undertakes that it shall procure that its Staff and any other third party that perform the Services on its behalf will comply with the Anti-Bribery Law.

14.7.3 Without limiting Clauses 14.7.1 and 14.7.2, the Contractor represents, warrants and undertakes that it and its Staff will (a) adhere to and comply with any policies or protocols notified to it by the Bank from time to time regarding bribery, fraudulent acts and/or any other corrupt practices, and (b) provide any information reasonably requested by the Bank from time to time in relation to ensuring compliance by the Bank with any law or Anti-Bribery Law; and

14.7.4 Without limiting Clause 14.7.1, the Contractor represents, warrants and undertakes that it and its Staff will not offer promise or agree to give any financial or other advantage (including, but not limited to, any money or gift of any value), to:

14.7.4.1 any official or employee of any government, governmental or regulatory agency or other public body (or any person acting in an official capacity for or on behalf of any government, governmental or regulatory agency or other public body) in return for such person assisting (by acting or refraining from acting in their official capacity), either directly or indirectly, in obtaining or retaining business for the Bank; or

14.7.4.2 any other person as an inducement or reward for the improper performance of any function or activity in relation to obtaining or retaining business for the Bank. In this context "improper performance" means performance which does not comply with any reasonable expectations of impartiality or good faith or otherwise, that are expected of the Contractor or its Staff.



14.7.5 The Contractor specifically shall indemnify the Bank against all costs, losses, damages or expenses (including, but not limited to third party claims, fines and penalties) incurred by or imposed upon the Bank due to any failure by the Contractor or its Staff to comply with any of its obligations under this Clause 14.7. The limitation of liability set out in Clause 11 shall not apply in respect of any liability which may arise under this Clause 14.7.

14.8 Bank Property

14.8.1 Where the Bank for the purpose of the Agreement issues Bank Property free of charge to the Contractor such Bank Property shall be and remain the property of the Bank. The Contractor shall not in any circumstances have a lien on the Bank Property and the Contractor shall take all reasonable steps to ensure that the title of the Bank to such Bank Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Agreement.

14.8.2 The Contractor shall ensure the security of all Bank Property whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Agreement, in accordance with the Bank's reasonable security requirements as required from time to time.

14.8.3 The Contractor shall be liable for any and all loss of or damage to any Bank Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Bank. The Contractor's liability set out in this Clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Bank. The Contractor shall inform the Bank's Contract Manager within 5 Working Days of becoming aware of any defects appearing in or losses or damage occurring to Bank Property made available for the purposes of the Agreement.

14.9 Assignment and Sub-contracting

14.9.1 The Contractor may not sub-license, assign, novate, or transfer this Agreement or any of its rights or obligations (including by way of sub-contracting) without the prior written consent of the Bank. Any attempt to assign, transfer or declare a trust without consent shall be null and void and shall be a breach of this Agreement by the Contractor.

14.9.2 Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

14.9.3 Where the Bank agrees that any of the Contractor's obligations may be sub-contracted, the Contractor shall include:

14.9.3.1 provisions having the same effect as clauses 9.2.1 and 9.2.2

14.9.3.2 provisions requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as clauses 9.2.1 and 9.2.2

14.10 Disruption and Force Majeure

14.10.1 The Contractor shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Bank, its employees or any other contractor employed by the Bank.

14.10.2 Neither party shall be liable to the other for loss or damage arising from a failure or delay on its part to perform any obligation under this Agreement where such failure or delay arises solely due to a Force Majeure Event.

14.10.3 If either of the parties shall become aware of circumstances of a Force Majeure Event which give rise to or which are likely to give rise to any such failure or delay on its part shall notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

14.10.4 Should a Force Majeure Event persist for a period of 60 days or more then either party shall be entitled to terminate this Agreement with immediate effect and the Clauses of this Agreement relating to the consequences of termination shall take effect.

14.10.5 The party affected by the Force Majeure Event shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

14.11 Conflicts of Interest

The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Bank under the provisions of this Agreement. The Contractor will immediately disclose to the Bank full particulars of any such conflict of interest which may arise.

14.12 Waiver

14.12.1 The rights and remedies provided by this Agreement may be waived only in writing and



signed by or on behalf of an authorised signatory of each party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

14.12.2 Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

14.12.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

14.13 Cumulative Remedies

The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any rights or remedies provided at law or in equity or otherwise under this Agreement.

14.14 Severability

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Bank and the Contractor shall immediately commence good faith negotiations to remedy such invalidity so that, as amended, it is legal and enforceable and, to the greatest extent possible, achieves the intended purpose of the original Agreement.

14.15 Audit Rights

14.15.1 The Contractor shall keep and maintain until 6 years after the Agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the Goods or Services (as applicable) provided under it, the Charges due to the Contractor and all payments made by the Bank under this Agreement.

14.15.2 The Contractor shall allow the Bank by its own employees or duly authorised agents at all reasonable times and upon reasonable notice to inspect and take copies of or extracts from such records to the extent reasonably necessary for the purpose of verifying the proper performance by the Contractor of its obligations pursuant to this Agreement and the amounts due to the Contractor hereunder.

14.16 Third Party Rights

Except where expressly provided to the contrary, this Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person who is not named at the date of this Agreement as a party to it or any person who claims rights under the Contracts

(Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself a trustee of the rights under it for the benefit of any third party. The parties to this Agreement reserve the right to rescind or vary this Agreement without the consent of any third party who is expressly entitled to enforce this Agreement.

14.17 Dispute Resolution Procedure

14.17.1 The parties shall attempt to resolve any dispute (other than a dispute relating to the termination of this Agreement in whole or in part) arising under or in relation to this Agreement by internal escalation procedures.

14.17.2 If the parties fail to resolve the dispute internally within 20 Working Days then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution's (CEDR's) Model Mediation Procedure.

14.17.3 In the event that the parties fail to agree the resolution of the dispute at the end of the mediation, either party may then invoke legal proceedings to seek determination of the dispute.

14.17.4 The Contractor shall continue to provide the Goods and/or Services in accordance with the terms of this Agreement until a dispute has been resolved.

14.17.5 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

14.18 Governing Law and Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by English law and, subject to the terms of this Agreement, the parties submit to the exclusive jurisdiction of the English courts to settle all such disputes or claims.

14.19 Definitions

“**Approval**” and “**Approved**” means the written consent of the Bank's Contract Manager.

“**Approved Sample**” has the meaning given to it in Clause 8.1(f).

“**Bank Property**” means any property, other than real property, issued or made available to the Contractor by the Bank in connection with the Agreement.

“**Charges**” means the charges set out in the Purchase Order.

“**Confidential Information**” means all information (whether written, oral or by another means and whether directly or indirectly) relating to the disclosing party (“**Disclosing Party**”) whether created before or after the date of this Agreement including, without limitation, information relating to the Disclosing Party's: (i) Intellectual Property Rights, personal data,



software, products, systems, operations, processes, plans or intentions, product information, know-how and market opportunities; and (ii) business, identity and affairs and the business, identity and affairs of its directors, officers, employees, customers and potential customers, suppliers, agents, or sub-contractors and the like, which comes into the possession of the other party (“**Receiving Party**”) and any market sensitive information.

“**Contract Manager**” means the Bank’s contract manager or the Contractor’s contract manager specified on the Purchase Order, or such other representatives as nominated by the parties (in writing) from time to time.

“**Contractor**” means the party providing Goods and/or Services to the Bank as identified in the Order Form.

“**Data Protection Legislation**” means the Data Protection Act 1998, the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, the Privacy and Electronic Communications Directive 2002/58/EC, and all applicable Laws relating to processing of personal data and privacy as amended or replaced from time to time, including where applicable the guidance and codes of practice issued by the Information Commissioner, and all references to ‘personal data’, ‘processing’, ‘pseudonymisation’, ‘controller’, ‘processor’, ‘personal data breach’, and ‘cross-border processing’ shall be construed accordingly.

“**Default**” means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors (or, in the case of Contractor, any Staff) in connection with or in relation to the subject matter of the Agreement and in respect of which such party is liable to the other.

“**Environmental Information Regulations**” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“**Force Majeure Event**” means any cause or event affecting or delaying the performance by a party of its

obligations arising from acts, omissions, events, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, sabotage, terrorism or threat thereof; (ii) any act of state or other exercise of sovereign, judicial or executive prerogative by any competent government authority; or (iii) any act of God, earthquake, tempest, cyclone, hurricane, typhoon, tidal wave, whirlwind, storm and other extreme adverse weather conditions. Any act, omission, event, happening or non-happening will only be considered a Force Majeure Event if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.

“**Information**” has the meaning given under section 84 of the FOIA.

“**Intellectual Property Rights**” means copyrights, patents, utility models, trade marks, service marks, design rights, (whether registered or unregistered), database rights, semiconductor topography rights, proprietary information rights and all other similar proprietary rights as may exist anywhere in the world now or in the future.

“**Goods**” means any such goods as are to be supplied by the Contractor (or by the Contractor’s sub-contractor) under the Agreement as specified in the in the Purchase Order.

“**Law**” means any applicable law, statute, bye-law, regulation, order, regulatory policy, rule of court, delegated or subordinate legislation.

“**Premises**” means the location where the Goods are to be delivered and/or Services are to be performed, as specified in the Purchase Order.

“**Quality Standards**” means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or other reputable body that a leading company within the Contractor’s relevant industry or business sector would be expected to comply with.

“**Service Levels**” means the service levels (if any) set out in the Purchase Order.

“**Services**” means the services to be provided as specified in the Purchase Order.

“**Staff**” means employees, directors, officers, independent contractors and agents of the Contractor or any of its sub-contractors or agents employed or engaged in any way in the performance of the Contractor’s obligations under this Agreement.

“**Working Day**” means any day other than a Saturday, a Sunday or a day which is a common law or statutory bank holiday in England and Wales.