

# Bank of England

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

Last updated: March 2023

### 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.

### 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 14.21.
- 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 (Provision of Services) will not apply to the provision of the Goods. Where the Contractor is providing only Services under this Agreement, Clause 2 (Provision of Goods) will not apply to the provision of the Services. If the Contractor is providing Goods and Services under this Agreement, Clauses 2 and 3 will apply to the provision of the Goods and Services.

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## 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 a duly Authorised Representative of the Bank 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 seven (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

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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 thirty (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 its 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 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 2.5.2, the Bank shall be entitled (without prejudice to other rights and remedies) to either:

(a) have the Goods repaired or replaced by the Contractor (at the Bank's option) within seven (7) days of notice of such rejection with Goods which conform in all respects 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) 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 eighteen (18) months from delivery. If the Bank, within such guarantee period or within thirty (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.

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## 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 or, provided that the Bank gives reasonable notice to the Contractor of its intention to do so at any other Premises where all or any part of the Services are being performed.

### 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 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.

3.3.3 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 Practice](#), 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. If the Contractor and/or its Staff have access to Bank information and/or

systems, the Contractor shall comply and shall procure that all of its Staff comply, mutatis mutandis, with the Bank's [Our Code](#) (which is publicly available on the Bank's website) as in force and updated from time to time; guidance on compliance with Our Code for Bank suppliers, supplier staff and agency staff is available upon request.

## 3.4 Remedies for Non-Conforming Services

3.4.1 In the event that the Bank becomes aware of a Contractor Default, and such failure is not caused by the Bank, then the Bank may elect, in addition to any other remedies that may be available to it, either under this Agreement or otherwise, one or more of the following remedies:

3.4.1.1 the Bank may, by notice, require the Contractor, at the Contractor's own expense, promptly to remedy any Default in performing the Services; or

3.4.1.2 the Bank may 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 Default in performing the Services.

3.4.2 If the Contractor fails to remedy or re-perform any non-conforming Services pursuant to Clause 3.4.1, within seven (7) days after the 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.

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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 thirty (30) days after the notice is given to the Contractor, then the Bank may terminate this Agreement in accordance with Clause 12.5.

## 4. Security and Access to Premises¶¶

- 4.1 The Contractor shall comply with the Bank's Security Requirements (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.
- 4.2 Access to the Bank's Premises shall not be exclusive to the Contractor but shall be limited to such Staff as are necessary to the performance 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.
- 4.3 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 and/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.

4.4 If and when directed by the Bank, the Contractor shall provide a list of the names and business addresses of all persons whom 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.

4.5 Failure by the Contractor to comply with the provisions of Clause 4.4, 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 this Agreement.¶¶

## 5. Contractor Equipment

5.1 The Contractor shall provide all the Equipment necessary for the provision of the Services and shall at all times maintain sufficient stocks of the Equipment to enable it to meet the Bank's requirements.

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

5.3 The Contractor shall ensure that the Equipment supplied to the Bank under this Agreement:

5.3.1 shall be of satisfactory quality and fit for the purposes of the Services and the Bank's use as anticipated by this Agreement; and

5.3.2 are properly packed and secured in such a manner so as to enable it to reach the Bank's Premises in good condition.

5.4 Title and risk in all Equipment shall remain with the Contractor and the Bank shall have no liability for any loss of or

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- damage to any Equipment unless and to the extent that the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or Default of the Bank.
- 5.5 Without limiting any other right or remedy that the Bank may have, the Bank shall have the power at any time during the provision of the Services to order in writing that the Contractor:
- 5.5.1 remove from the Bank's Premises any Equipment which in the opinion of the Bank is either hazardous, noxious or not in accordance with this Agreement; and/or
- 5.5.2 repair or replace the rejected Equipment at the Contractor's risk and expense within a reasonable period of time but in any event within seven (7) days of being requested to do so; and/or
- 5.5.3 substitute proper and suitable materials, plant and equipment; and/or
- 5.5.4 reduce or refund (as appropriate) the Charges in respect of the rejected Equipment in full (whether or not the Bank has previously required the Contractor to repair or replace the rejected Equipment).
- 5.6 The Bank may claim damages for any costs, expenses, or losses, resulting from the Contractor's provision of Equipment that is not in conformity with the terms of this Agreement.
- 5.7 On completion of the Services, the Contractor shall remove the Equipment and unused materials, and shall clear away from the Bank's Premises, all rubbish arising out of the Services, make good any damage caused to the Bank's Premises by the removal of the Equipment, and leave the Bank's Premises in a neat and tidy condition.
- 5.8 The Contractor shall make no delivery of Equipment or materials nor commence any work on the Bank's Premises without obtaining the Bank's prior Approval.
- 5.9 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.
- 5.10 The Contractor shall ensure that the Bank's Premises are appropriate to contain and operate the Equipment.
- 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. Staffing**
- 7.1 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 7.1.
- 7.2 The Contractor shall, both during and after the term of the Agreement, indemnify the Bank against all Employee Liabilities that may arise as a result of any claims brought against the Bank by any person where such claim arises from any act or omission of the Contractor or any Staff.

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## 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 8) in accordance with its own established internal procedures;
- (c) all obligations of the Contractor pursuant to this 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 provided to the reasonable satisfaction of the Bank;
- (f) the Goods and/or Services shall comply with any particulars specified in the Purchase Order;
- (g) 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;
- (h) 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
- (i) 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 in 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 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.

9.1.3 The Contractor shall indemnify the Bank against any liability, including any interest, penalties, or costs incurred, which is levied, demanded or imposed on the Bank, at any time, in respect of and to the extent of the Contractor's failure to account for or pay any value added tax, or other tax liabilities relating to payments made to or incurred by the Contractor under this Agreement.

## 9.2 Payment and Tax

9.2.1 The Bank shall consider and verify all invoices submitted in a timely fashion and pay the undisputed sums due to the Contractor within thirty (30) days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the reasonable satisfaction of the Bank. Interest shall be payable on any undisputed late payment under this Agreement, at the rate of two per cent (2%) above the Bank of England base rate from time to time, in force from the date on which such amount fell due until payment, whether before or after judgment.

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9.2.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services, and shall be supported by any other documentation required by the Bank's Contract Manager to substantiate the invoice.

9.2.3 Where the Contractor enters into a sub-contract with a sub-contractor for the purpose of performing this Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to that sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.

9.2.4 The Bank may reduce payment in respect of any Goods or Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Bank.

9.2.5 The Contractor shall not suspend the supply of the Goods or Services unless the Contractor is entitled to terminate this Agreement under Clause 12.6 for failure to pay undisputed charges.

9.2.6 The Contractor shall be liable for paying the Staff and for making any deductions required by law, including in respect of income tax, national insurance, and equivalent contributions in the relevant territory relating to the provision of the Services.

9.2.7 The Contractor shall (and shall procure that any subcontractor, agent or third party supplier shall) comply with all laws applicable to the employment of the Staff,

including without limitation work permits and immigration (as set out in Clause 7), pension, employee pay and benefits, discrimination, termination, leave entitlements, customs, foreign payment or other similar requirements.

## 9.3 Intermediaries Legislation

9.3.1 The Contractor undertakes that it shall not (and shall procure that any subcontractors, agents, or third party suppliers shall not) engage, whether directly or indirectly, any Staff to perform personally or be under an obligation to perform personally any Services for the Bank in connection with this Agreement under arrangements involving a person or entity falling within section 61N, subsections (9), (10) or (11) of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") (such person or entity being an "Intermediary" and such member of Staff being an "Intermediary Worker").

9.3.2 The Contractor represents and warrants that it is not an Intermediary as at the date of this Agreement and undertakes not to become an Intermediary during the term of the Agreement.

9.3.3 The Contractor shall indemnify and keep the Bank indemnified against:

9.3.3.1 any liability for national insurance contributions, income tax, levies or any other liability to taxation (together with any interest, costs, charges, or penalties) arising out of or in connection with payments made by the Bank in respect of

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any Staff or other person employed or engaged in the provision of the Services (whether such person is employed or engaged directly by the Contractor, or via any Staff, a subcontractor, agent or otherwise); and

itself is not responsible for providing any work to such Staff; and

9.3.4.2 is not accredited by the Freelancer and Contractor Services Association.

9.3.3.2 any other costs, claims, liabilities, or expenses (including legal expenses on an indemnity basis), arising out of or in connection with the Contractor's breach of its obligations, warranties, and undertakings contained in Clauses 9.3.1 and 9.3.2 above.

This Clause 9.3.3 shall survive termination or expiration of this Agreement.

9.3.4 The Contractor undertakes that it shall not (and shall procure that any subcontractor, agent or third party supplier shall not) provide to the Bank, whether directly or indirectly, any Staff that are employed or engaged by a Prohibited Umbrella Company. For the purposes of this Clause 9.3.4, a "**Prohibited Umbrella Company**" means any entity that:

9.3.4.1 employs or engages the Staff on behalf of any third party, where such a third party will provide the services of such Staff to its clients and the entity

## 10. Intellectual Property Rights

10.1 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's Intellectual Property Rights or other rights through the Bank's enjoyment of the Goods and/or Services as anticipated by this Agreement.

10.2 Except as expressly set out in this Agreement:

10.2.1 the Bank shall not acquire any right, title, or interest, in or to the Contractor Background IPRs; and

10.2.2 the Contractor shall not acquire any right, title, or interest in or to the Intellectual Property Rights of the Bank or its licensors, including the Bank Background IPRs, the Foreground IPRs, and the Intellectual Property Rights in the Bank Data.

10.3 The Contractor shall have no right to use any of the Bank's names, logos or trade marks, on any of its products or services without the Bank's prior written consent.

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- 10.4 The Contractor acknowledges and agrees that the Foreground IPRs shall be owned by the Bank. The Contractor hereby assigns to the Bank absolutely by way of present and future assignment, with full title guarantee, the Foreground IPRs, including but not limited to any that are comprised in any Deliverables, together with the right to bring, make, oppose, defend, appeal proceedings, claims, or actions, and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of such Foreground IPRs whether occurring before, on, or after the date of this Agreement.
- 10.5 The Contractor grants to the Bank a perpetual, irrevocable, non-exclusive, royalty-free, worldwide and sub-licensable licence, to use (including but not limited to the right to load, execute, store, transmit, display and copy) the Contractor Background IPRs as necessary for the Bank to enjoy the full benefit of the Goods and Services supplied under this Agreement.
- 10.6 The licence granted under Clause 10.5 shall take effect on the date that the relevant Contractor Background IPRs are first made available to the Bank by or on behalf of the Contractor. The Bank may grant a sub-licence of its rights under Clause 10.5 to any third party.
- 10.7 The Bank grants to the Contractor a limited, non-exclusive, royalty-free, non-transferable licence to use the Bank Background IPR, the Foreground IPRs, and the Intellectual Property Rights in the Bank Data, during the term of this Agreement solely to the extent necessary for the Contractor to perform its obligations under this Agreement (the "**Licensed Materials**") provided that the Contractor shall not, without the Bank's prior written consent, use the Licensed Materials for any other purpose or for the benefit of any persons other than the Bank.
- 10.8 All Intellectual Property Rights in the Bank Data shall vest in the Bank or its licensors.
- ## 11. Liabilities and Indemnities
- ### *Limitation of Liability*
- 11.1 Nothing in this Agreement will operate to exclude or restrict one party's liability (if any) to the other for:
- 11.1.1 death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
- 11.1.2 its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
- 11.1.3 breach of its obligations arising under section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982; or
- 11.1.4 any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 11.2 Subject always to Clauses 11.1, 11.4 and 11.5, the Contractor's aggregate annual liability for all Defaults shall in no event exceed:
- 11.2.1 in respect of any claim arising out of a breach of Clauses 13.12-13.18 (Data Protection), the greater of two million pounds (£2,000,000) or Four hundred percent (400%) of the Charges paid and payable during the Term; and

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- 11.2.2 in respect of all other Liability, the greater of one million pounds (£1,000,000) or two hundred per cent (200%) of the Charges paid and payable during the Term.
- 11.3 Subject always to Clauses 11.1 and 11.4, the Bank's aggregate liability for all Bank Defaults shall in no event exceed:
- 11.3.1 the greater of ten thousand pounds (£10,000) or one hundred per cent (100%) of the Charges paid and payable during the Term.
- 11.4 The financial limit on the Contractor's liability for Default set out in Clause 11.2 shall not apply to liability arising pursuant to Clauses 7.1 and 7.2 (Staffing), 9.1.3 (Value Added Tax), 9.3 (Intermediaries), 11.6 (IPR Indemnity), 13.1 (Confidentiality), and 14.8 (Corruption).
- 11.5 Subject always to Clause 11.1, in no event shall either party be liable to the other for any:
- 11.5.1 loss of profits, business, revenue, goodwill, opportunity, anticipated savings or bargain (in each case whether direct, indirect or consequential); and/or
- 11.5.2 indirect, consequential or special loss.
- IPR Indemnity**
- 11.6 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, 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**
- Term**
- 12.1 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.
- 12.2 At the end of the term referred to in Clause 12.1, the Bank may extend the term of this Agreement for the period set out in the Purchase Order by giving not less than three (3) months' prior written notice to the Contractor.
- Termination on Change of Control and Insolvency**
- 12.3 The Bank may terminate this Agreement by notice in writing with immediate effect where:
- 12.3.1 There is a Change of Control of the Contractor; or
- 12.3.2 The Contractor suffers an Insolvency Event; or
- 12.3.3 any similar event occurs under the law of any other jurisdiction within the United Kingdom.
- 12.4 The Bank may only exercise its right under Clause 12.3.1 within six (6) months of it becoming aware of 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.
- Termination on Default**
- 12.5 The Bank may terminate this Agreement by written notice to the Contractor with

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immediate effect if the Contractor commits a Default and if:

12.5.1 where the Default is capable of remedy, the Contractor has not remedied the Default to the satisfaction of the Bank within thirty (30) days, or such other period as may be agreed, after issue of a written notice specifying the Default and requesting it to be remedied;

12.5.2 the Default is not capable of remedy; or

12.5.3 the Default is a fundamental breach of this Agreement.

12.6 The Contractor may terminate this Agreement if the Bank is in material breach of its obligations to pay undisputed charges by giving the Bank ninety (90) days' notice specifying the breach and requiring its remedy. The Contractor's right of termination under this Clause 12.6 shall not apply to non-payment of the charges where such non-payment is due to the Bank exercising its rights under Clause 9.2.4.

## **Termination for Substantial Modification and Mandatory Exclusions**

12.7 The Bank may terminate this Agreement on written notice to the Contractor if the Bank considers any of the following circumstances have arisen:

12.7.1 where there is a modification to this Agreement which would have required the Bank to conduct a new procurement procedure in accordance with the Public Contracts Regulations 2015;

12.7.2 where the Bank has become aware of any of the circumstances detailed in regulation 57(1) or 57(2) of the Public Contracts Regulations 2015 that apply to the Contractor at the date of this Agreement;

and this Agreement shall terminate on the date specified in the Bank's notice.

## **Consequences of Termination**

12.7.3 The provisions of Clauses 8, 10, 11, 12, 13, 14.17, 14.18, 14.19 and 14.20 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.

12.7.4 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.

12.7.5 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 Confidentiality**

13.1 Except to the extent set out in this Clause 13 or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:

13.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

13.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

13.2 Clause 13.1 shall not apply to the extent that:

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- 13.2.1 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 pursuant to Clause 14.7;
- 13.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 13.2.3 such information was obtained from a third party without the obligation of confidentiality;
- 13.2.4 such information was already in the public domain at the time of disclosure other than by a breach of this Agreement; or
- 13.2.5 such information is independently developed without access to the other party's Confidential Information.
- 13.3 The Contractor may only disclose the Bank's Confidential Information to Staff who are directly involved in the provision of the Goods and 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.
- 13.4 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.
- 13.5 Where it is considered necessary in the opinion of the Bank, the Contractor shall ensure that the Staff or such professional advisors or consultants, as may be provided with or otherwise have access to the Bank's Confidential Information, sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 13.6 The Receiving Party shall, upon written request by the Disclosing Party, deliver up any Confidential Information, including all copies, belonging to the Disclosing Party.
- 13.7 The Receiving Party shall immediately inform the Disclosing Party if it becomes aware of the possession, use or knowledge of any of the Confidential Information by any unauthorised person, whether during or after the Term and shall provide such reasonable assistance as is required by the Disclosing Party to deal with such event.
- 13.8 Nothing in this Clause 13 shall prevent the Bank:
- 13.8.1 disclosing any Confidential Information for the purpose of:
- (a) the FOIA and/or the Environmental Information Regulations;
  - (b) the examination and certification of the Bank's accounts; or
  - (c) 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
- 13.8.2 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

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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 this Agreement,

provided that in disclosing information under this Clause 13.8.2, the Bank discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.

13.9 Nothing in this Clause 13 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this 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.

13.10 Notwithstanding any other clause in this Agreement, the Disclosing Party will be entitled to seek equitable relief to protect its interests in any Confidential Information which the Receiving Party discloses or attempts to disclose, including but not limited to preliminary and permanent injunctive relief. Nothing in this Agreement will be construed to limit any other remedies available to the parties.

13.11 The obligations in this Clause 13 in respect of the Bank's Confidential Information shall continue in force for the period specified in the Purchase Order and, in the event that no such period is specified in the Purchase Order, without limit in time and shall survive termination of this Agreement.

## **Data Protection**

13.12 Each party agrees that it shall duly observe all its obligations under the Data

Protection Legislation which arise in connection with this Agreement.

13.13 With respect to the parties' rights and obligations under this Agreement, the parties agree that the Bank is the controller and that the Contractor is the processor in respect of the processing described in the PO Terms Data Processing Annex (as completed in respect of this Agreement).

13.14 The Contractor shall, upon request by the Bank, promptly provide notification to Bank of the location of all Bank Data held by the Contractor, and the Contractor shall not process or cause to be processed personal data outside the United Kingdom except in circumstances: i) where the recipient is located in an EEA country; or ii) where the recipient is located in a non-EEA country but the data protection regime in that country is considered "adequate" for the purposes of UK data protection laws; or iii) with the Bank's prior written consent (where appropriate safeguards for the protection of the personal data are in place and with the Contractor having fulfilled all Bank requirements to enable such processing).

13.15 Notwithstanding anything to the contrary in this Agreement, to the extent the nature of the Services requires the Contractor to process Bank personal data as a processor (with the Bank acting as controller), the Contractor shall:

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

13.15.2 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);

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- 13.15.3 only carry out such processing in accordance with the Bank's documented instructions (for these purposes, the Bank instructs the Contractor to only process personal data to the extent, and in such manner, as is necessary for the provision of the Services);
- 13.15.4 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;
- 13.15.5 assist the Bank in its obligations under Articles 32, 33 and 34 of the UK GDPR, taking into account the nature of processing and the information available to the Contractor;
- 13.15.6 assist the Bank in carrying out data protection impact assessments and related consultations with the Information Commissioner's Office taking into account the nature of processing and the information available to the Contractor;
- 13.15.7 not subcontract or allow any other entity to perform any data processing 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);
- 13.15.8 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);
- 13.15.9 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;
- 13.15.10 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, and taking into account the nature of the processing, provide assistance by appropriate technical and organisational measures, insofar as this is possible, 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;
- 13.15.11 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;
- 13.15.12 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. At no additional cost, upon reasonable notice allow the Bank and its respective auditors or Authorised Representatives to conduct audits or inspections during the term of the Agreement which will include providing access to the aforementioned records and logs and premises, materials, resources and

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personnel of Contractor and the Contractor's sub-processors used in connection with the provision of the Services, and provide all reasonable assistance in order to assist the Bank in exercising its audit rights under this clause. The purposes of an audit pursuant to this clause include assessing whether the Contractor has complied with the provisions of this clause and the obligations set out in the Data Protection Legislation;

13.15.13 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 UK Law; and

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

13.16 Notwithstanding anything to the contrary in this Agreement, the Bank and Contractor both acknowledge and agree that the Contractor is a controller in respect of all processing of personal data other than processing identified pursuant to Clause 13.13. In relation to this processing for which the Contractor is a controller, the Contractor agrees:

13.16.1 to only carry out such processing for the purposes of providing the Services and any other purposes that the Bank gives prior authorisation to in writing with reference to this clause;

13.16.2 to comply with Data Protection Legislation at all times;

13.16.3 to 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, including at a minimum, measures that meet the standard of Good Industry Practice; and

13.16.4 to notify the Bank without undue delay (in writing providing such detail as reasonably possible) if it becomes aware of a personal data breach relating to the Services.

13.17 to provide reasonable assistance to the Bank in relation to its compliance with Data Protection Legislation.

13.18 If the Bank and Contractor are joint controllers in respect of any processing activity or activities, Contractor, prior to such processing, shall promptly inform the Bank of instances of personal data processing it undertakes as a joint controller with the Bank and Bank and Contractor shall agree to additional contractual terms that apply to the joint controller processing and that set out the allocation of responsibility between the parties in respect of UK GDPR and any other Data Protection Legislation as required. The obligations set out in sub-clauses 13.16.1 to 13.16.4 shall be subject to such additional terms in respect of the joint controller processing activity or activities only.

## ***Freedom of Information***

13.19 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 it to comply with its relevant disclosure obligations. The Bank shall be responsible, in its absolute discretion, for deciding whether any information is exempt from disclosure under FOIA and

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the Environmental Information Regulations.

## **Publicity and Branding**

- 13.20 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.
- 13.21 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 13.20 by all its Staff and professional advisors.
- 13.22 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.

## **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**

- 14.2.1 Any notice or request required or permitted to be given or made under this Agreement shall be in writing and sent to the address notified by each party in the Purchase Order or such other address as may be notified by either part to the other.
- 14.2.2 Such notice or request shall be deemed to have been served and received: (i) if delivered by hand, at

the time and date of delivery; (ii) if sent by recorded delivery or registered post, forty eight (48) hours from the date of posting (such date as evidenced by postal receipt or similar); or (iii) if sent by registered airmail, five (5) days from the date of posting (such date as evidenced by postal receipt or similar).

- 14.2.3 Convenience copies of such notices (which shall not constitute notice under this clause) may be sent via e-mail and shall be deemed to have been given on the date sent by e-mail to the email address identified in the Purchase Order if sent during normal business hours of the recipient, and on the next Working Day if sent after the normal business hours of the recipient (in each case once confirmation delivery is received).

## **14.3 Insurance**

- 14.3.1 The Contractor shall, at its own cost, effect and maintain with a reputable insurance company a policy or policies of insurance providing an appropriate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of this Agreement for the Term (as a whole), and for a period of six (6) years afterwards, including death or personal injury, loss of or damage to property (whether Equipment or otherwise) or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 14.3.2 The Contractor shall produce to the Bank, on request, copies of all insurance policies referred to in this Clause 14 or the Contractor's

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insurer's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## 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 Equality and Discrimination

14.5.1 The Contractor shall, and shall procure that the Staff shall, perform its respective obligations under this Agreement in accordance with:

14.5.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

14.5.1.2 the Bank's equality and diversity policy as may be amended from time to time, copies of which will be provided by the Bank

to the Contractor at the Contractor's written request; and

14.5.1.3 any other requirements and instructions which the Bank reasonably imposes in connection with any equality obligations imposed on the Bank at any time under applicable equality Law.

14.5.2 The Contractor shall, and shall procure that the Staff shall, take all necessary steps, and inform the Bank of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

## 14.6 Health and Safety

14.6.1 The Contractor acknowledges that it has been supplied with a copy of the Bank's rules and procedures regarding health and safety. The Contractor agrees to comply with those rules when on the Bank's Premises, and any reasonable additional rules made known to the Contractor from time to time by the Bank together with all applicable Law regarding these matters that are in force from time to time. The Contractor will be responsible for procuring that its Staff who are involved in providing the Services also comply with these rules and regulations.

14.6.2 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

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hazards to the attention of the Staff and will instruct those persons in connection with any necessary associated safety measures.

14.6.3 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.

14.6.4 If any Services are being performed which involve lifting or moving equipment at the Bank's Premises, the Contractor shall have the responsibility to ensure that it and its Staff who are involved in providing the Services take advantage of the manual handling training which is made available on the Bank's intranet.

## 14.7 Environmental Considerations

14.7.1 The Contractor shall, when working on the Bank's Premises, perform this Agreement in accordance with the Bank's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

14.7.2 The Contractor shall, unless otherwise agreed with the Bank, insofar as any products supplied under this Agreement comprise or include electrical or electronic equipment, manage the said equipment and associated

consumables at their end of life to facilitate recovery, treatment and recycling in accordance with the Waste Electrical and Electronic Equipment Directive 2002/96/EC and provide any information which the Bank may reasonably require from time to time regarding the costs of such activity.

14.7.3 The Contractor shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the Services that are the subject of this Agreement. Where the provisions of any such legislation are implemented by the use of voluntary contracts or codes of practice, the Contractor shall comply with such contracts or codes of practice as if they were incorporated into English law subject to those voluntary contracts or codes being cited in the tender documentation

## 14.8 Prevention of Bribery and Corruption

14.8.1 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:

14.8.1.1 the Bribery Act 2010;

14.8.1.2 the Anti-Terrorism, Crime and Security Act 2001;

14.8.1.3 the US Foreign Corrupt Practices Act of 1977; and

14.8.1.4 any equivalent Laws in the territory in which the Contractor or its Staff perform services for the Bank,

**("Anti-Bribery Law").**

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14.8.2 Without limiting Clause 14.8.1, the Contractor represents, warrants and undertakes that it shall procure that its Staff and any other third party that performs Services on its behalf will comply with the Anti-Bribery Law.

14.8.3 Without limiting Clauses 14.8.1 and 14.8.2, the Contractor represents, warrants and undertakes that it and its Staff will:

14.8.3.1 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, which the Contractor hereby confirms and warrants it shall adhere to and comply with; and

14.8.3.2 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.

14.8.4 Without limiting Clause 14.8.3, the Contractor represents warrants and undertakes that it shall procure that its Staff and any other third party that performs the Services comply with the obligations as set out in Clause 14.8.3.1 and 14.8.3.2.

14.8.5 Without limiting Clause 14.8.1, 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:

14.8.5.1 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

14.8.5.2 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.

14.8.6 Without limiting Clause 14.8.5, the Contractor represents, warrants and undertakes that it shall procure that its Staff and any other third party that performs services comply with the obligations as set out in Clauses 14.8.5.1 and 14.8.5.2.

14.8.7 The Contractor shall not enter into this Agreement if it has knowledge that, in connection with it, the Contractor or its Staff have acted contrary to any obligation set out in this Clause 14.8, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Bank before execution of this Agreement.

14.8.8 Notwithstanding Clause 14.19, any dispute relating to:

14.8.8.1 the interpretation of this Clause 14.8 inclusive; or

14.8.8.2 the amount or value of any financial or other advantage,

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shall be determined by the Bank and the decision shall be final and conclusive.

## 14.9 Bank Property

14.9.1 Where the Bank for the purpose of this Agreement issues Bank Property free of charge to the Contractor such 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 this Agreement.

14.9.2 Any Bank Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Bank otherwise within seven (7) days of receipt.

14.9.3 The Contractor shall maintain all Bank Property in good order and condition and shall use Bank Property solely in connection with this Agreement and for no other purpose without prior Approval.

14.9.4 The Contractor shall promptly notify the Bank's Contract Manager of any surplus Bank Property remaining after termination or expiry of this Agreement and shall dispose of it as the Bank may direct. Waste of Bank Property arising from bad workmanship or negligence of the Contractor or any Staff shall be made good at the Contractor's expense. Without prejudice to any other rights of the Bank, the Contractor shall deliver up Bank Property whether

processed or not to the Bank on demand.

14.9.5 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 this Agreement, in accordance with the Bank's reasonable security requirements as required from time to time.

14.9.6 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 14.9.6 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 five (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 this Agreement.

## 14.10 Assignment and Sub-contracting

14.10.1 The Contractor may not sublicense, 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.

14.10.2 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

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omissions of its sub-contractors as though they are its own.

14.10.3 The Bank may upon notice to the Contractor license, assign, novate, transfer or declare a trust of this Agreement or any of its rights or obligations, in whole or in part, to a third party. If doing so increases the burden of the Contractor's obligations under this Agreement and the Contractor can evidence this to the reasonable satisfaction of the Bank, the Contractor shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed under Clause 14.1 above.

14.10.4 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. In the event that this Agreement, in whole or in part, is assigned or otherwise transferred to or assumed by a third party, the third party will agree to be bound by the Terms of this Agreement and the assigning, transferring or disposing party will guarantee such third party's compliance.

## 14.11 Disruption and Force Majeure

14.11.1 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.

14.11.2 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.

14.11.3 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, it shall notify the other party by the most expeditious method then available and shall inform the other party of the period which it is estimated that such failure or delay shall continue.

14.11.4 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.

## 14.12 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 the full particulars of any such conflict of interest which may arise.

## 14.13 Anti-Slavery

14.13.1 The Contractor shall, and procure that each of its sub-contractors shall, comply with:

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14.13.1.1 the Modern Slavery Act 2015 (“**Slavery Act**”); and

the supply chain of all Services provided to the Bank regarding the Agreement; and

14.13.1.2 the Bank’s anti-slavery policy as provided to the Contractor from time to time (“**Anti-slavery Policy**”).

14.13.2.5 implement a system of training for its employees to ensure compliance with the Slavery Act.

14.13.2 The Contractor shall:

14.13.2.1 implement due diligence procedures for its sub-contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;

14.13.2.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Bank from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;

14.13.2.3 prepare and deliver to the Bank each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;

14.13.2.4 maintain a complete set of records to trace

## 14.14 Non-Solicitation

14.14.1 Each party agrees that it shall not, and shall procure that its respective affiliates shall not, directly or indirectly, solicit or procure (otherwise than by general advertising or the operation of Transfer of Undertakings (Protection of Employment) Regulations 2006) any employees or contractors (including the Staff) of the other party or its affiliates who are directly employed or engaged in connection with the provision of the Services under this Agreement whilst such persons are so employed or engaged and for a period of six (6) months thereafter.

14.14.2 If either party is in breach of Clause 14.14.1, the breaching party shall pay the other party a sum equivalent to twenty per cent (20%) of the annual base salary payable by the breaching party in respect of the first year of the relevant employee’s employment with the breaching party. The parties agree that the amount referred to in this clause represents a reasonable pre-estimate of the loss and damage which the non-breaching party would suffer in the event of a breach of Clause 14.14.1.

## 14.15 Cumulative Remedies

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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.

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 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.

## 14.17 Audit Rights

14.17.1 The Contractor shall keep and maintain until six (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.

14.17.2 The Contractor shall allow the Bank by its own employees or duly Authorised Representatives at all reasonable times and upon reasonable notice to inspect and take copies of or extracts from such

## 14.18 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.

## 14.19 Dispute Resolution Procedure

14.19.1 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. Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents.

14.19.2 If the parties fail to resolve the dispute internally within twenty (20) Working Days of receipt of such Dispute Notice, 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.

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14.19.3 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.

14.19.4 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.

14.19.5 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.

## 14.20 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.

## 14.21 Definitions

**"Approval"** and **"Approved"** means the written consent of the Bank's Contract Manager, such consent to only be acceptable in the form of email where expressly permitted in this Agreement.

**"Authorised Representative(s)"** means an individual who has been appointed as an authorised representative of the Bank or the Contractor (as applicable).

**"Bank Background IPRs"** means:

(a) Intellectual Property Rights owned by the Bank before the date of this Agreement; and/or

(b) Intellectual Property Rights created by the Bank (or on the Bank's behalf) independently of this Agreement during the term of this Agreement;

**"Bank Data"** means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Bank; and/or (ii) which the Contractor is required to generate, process, store, or transmit, under this Agreement (including any data relating to the Services in the possession or control of the Contractor); or

(b) any personal data which the Contractor processes on behalf of the Bank;

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

**"Change of Control"** means a circumstance where any person or group of persons acting in concert gains direct or indirect Control of a party to this Agreement and the result of which impacts adversely and materially on the performance of this Agreement. For the purposes of this definition, 'acting in concert' means, in respect of a group of persons, that such persons pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate control of the relevant party;

**"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

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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 Background IPRs"** means:

(a) Intellectual Property Rights owned by or licensed to the Contractor before the date of this Agreement; and/or

(b) Intellectual Property Rights created by the Contractor (or on the Contractor's behalf) independently of this Agreement from the date of this Agreement;

which in each case is or will be used before or during the performance of this Agreement;

**"Control"** means:

(a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(i) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of that party; or

(ii) appoint or remove all, or the majority, of the directors or other equivalent officers of that party; or

(iii) give directions with respect to the operating and financial policies of the relevant party with which the directors or other equivalent officers of that party are obliged to comply; or

(b) the holding beneficially of more than 50 per cent of the issued share capital of the relevant party (excluding any part of that issued share capital that carries no right to participate, or no right to participate beyond a specified amount, in a distribution of either profits or capital);

**"Data Protection Legislation"** means all applicable data protection and privacy legislation and regulation in force from time to time including the UK GDPR; the Data Protection Act 2018 ("**DPA 2018**") (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**"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.

**"Employee Liabilities"** means all liabilities, costs, claims, demands, fines, or expenses (including reasonable legal and other professional expenses) payments, wages, actions, proceedings, compensation, awards, interest, loss, damages, penalties, liabilities for income tax to be collected through the Pay As You Earn Scheme and any primary and secondary National Insurance Contributions, and costs of investigation, litigation, settlement, and judgment.

**"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.

**"Equipment"** means any equipment necessary for the provision of the Services by the Contractor.

**"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

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Commissioner or relevant government department in relation to such legislation.

**"Force Majeure Event"** means any cause or event preventing or delaying the performance by a party of its obligations under this Agreement 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, fire, flood, cyclone, hurricane, typhoon, tidal wave, whirlwind, storm and other extreme adverse weather conditions; or (iv) failure of a utility service or transport or telecommunications network or the internet; or (v) outbreak of disease, epidemic or pandemic, provided that any act, omission, event, happening or non-happening will only be considered a Force Majeure Event if it is: (i) not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees (or, in the case of the Contractor, its Staff); and (ii) could not have reasonably been foreseen at the time of execution of this Agreement.

**"Foreground IPRs" means:**

(a) all Intellectual Property Rights in any Goods or Services created by the Contractor (or by a third party on behalf of the Contractor) in connection with this Agreement; and/or

(b) Intellectual Property Rights arising as a result of the performance of the Contractor's obligations under this Agreement;

**"Goods"** means the goods to be provided by the Contractor as specified in the Purchase Order;

**"Good Industry Practice"** means any activity or circumstance, the exercise of that degree of professionalism, skill, diligence and prudence which would be expected from a skilled and experienced party engaged in the same type of activity as the Contractor under the same or similar circumstances;

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

**"Information Commissioner"** means the UK Information Commissioner's Office (and any replacement or successor body from time to time).

**"Insolvency Event"** means the occurrence of any one or more of the following events in relation to the Contractor:

(a) the Contractor becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent;

(b) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the Contractor;

(c) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the Contractor and/or over all or any part of the assets of the Contractor;

(d) the Contractor enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally;

(e) anything equivalent to any of the events or circumstances listed in limbs (a) to (d) (inclusive) occurs in any applicable jurisdiction; or

(f) ceases to trade or appears, in the reasonable opinion of the Bank, to be likely to cease to trade.

**"Intellectual Property Rights"** means: (i) patents, rights to inventions, designs, copyright and related rights, database rights, trade marks, related goodwill and

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the right to sue for passing off and/or unfair competition –and trade names, in each case whether registered or unregistered; (ii) proprietary rights in domain names; (iii) the right to use, and protect the confidentiality of, confidential information (including knowhow and trade secrets); (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world;

**“Goods”** mean the goods as defined in the Purchase Order.

**“Law(s)”** means any applicable law, statute, bye-law, regulation, order, regulatory policy, rule of court, delegated or subordinate legislation or directives or requirements of any regulatory body with which the Contractor is bound to comply.

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

**“PO Terms Data Processing Annex”** means the details of the processing of personal data to be carried out by the Contractor as agreed by the Bank and the Contractor.

**“Purchase Order”** means the purchase order to which this Agreement relates and which sets out details of the Goods and/or Services to be provided by the Contractor and other relevant details, including the Charges, the payment terms and delivery times and dates.

**“Quality Standards”** means the relevant 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.

**“Security Requirements”** means the security requirements made available to the Contractor pursuant to this Agreement before or after the date of this Agreement;

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

**“Services”** means the services to be provided as defined 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.

**“UK GDPR”** means the General Data Protection Regulation as applicable as part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended).

**“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.