THE BANK OF ENGLAND: TERMS AND CONDITIONS OF THE PROVISION OF GOODS AND/OR SERVICES

Last updated: 15 October 2013

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 as 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, custom, 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 The Contractor acknowledges and agrees that the Goods and/or Services procured under this Agreement are being procured by the Bank for and on behalf of itself and/or its subsidiary, the Prudential Regulatory Authority ("PRA"); and, unless otherwise stated, all references to the ‘Bank’ shall be construed accordingly.
1.2 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 14.20.
1.3 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constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and superseded, cancels and nullifies any previous agreement between the parties in relation to such matters.
1.4 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 or referred to in this Agreement which shall exclude any liability for fraud or fraudulent misrepresentation.
1.5 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 accept delivery by instalments, the Bank shall have the right, at its discretion, to treat the Agreement as having been terminated as 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 unfilled part of the Agreement without further liability to the Bank.

2.3 Title and Risk
2.3.1 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.
2.3.2 Damage in Transit
2.3.2.1 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 have been placed in transit fail to be delivered, 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 or an 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 with Goods which conform in all respects with the approved example 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 of the Contractor’s failure to give written 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
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.

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.

**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 the Goods and/or Services and shall pay the Bank any extra costs occasioned by any discrepancies, errors or omissions therein.

**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 the Services 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.

**Warranties and Representations**

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 and shall not be 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.

**Payment Charges**

9.1 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.

**Payment and Tax**

9.2.1 The Bank shall pay the undisputed sums due to the Contractor in cleared funds 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.
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 confirms to the Bank 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 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, furnish to the Bank 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 11.1.4 the aggregate liability of either party for all Defaults resulting in direct loss of or damage to the property of the other party or in connection with this Agreement shall in no event exceed one million pounds (£1,000,000).

11.1.3 Subject always to Clauses 11.1.1 and 11.1.4, the annual aggregate liability under the Agreement of either party for all Defaults other than a Default governed by Clause 7, Clause 11.2.1, Clause 11.2.2, Clause 13 and Clause 14.7, which shall be unlimited) shall in no event exceed the greater of one million pounds (£1,000,000) or two hundred per cent (200%) of the amount paid and payable by the Bank for the Goods and/or Services (as determined at the date on which the liability arises).

11.1.4 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 or any consequential loss or damage.

11.1.5 The Contractor acknowledges and agrees that:

11.1.5.1 it shall not bring any separate claims against the PRA and that all claims shall be brought against the Bank;

11.1.5.2 the exclusions and limitations of liability set out in this Clause 11.1 shall also apply to and within the United Kingdom and the Contractor with immediate effect if the Contractor commits a default.

11.2 Indemnities

11.2.1 The Contractor shall indemnify and keep indemnified the Bank for and on behalf of itself and the PRA 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, damage or expense caused directly or indirectly by a Contractor Default.

11.2.2 The Contractor shall indemnify and keep indemnified the Bank for and on behalf of itself and the PRA against all claims, losses, liabilities, costs and expenses (including all interest, penalties and legal and other professional costs) which the Bank and/or PRA 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 PRA or the use of data supplied by the Bank or PRA which is not required to be verified by the Contractor under any provision of the Agreement.

11.2.3 The Contractor acknowledges that the PRA shall be entitled to enforce the provisions set out in this Clause 11.2 and Clause 14.7.5 directly against the Contractor as a third party pursuant to the Contractor’s rights of Third Parties) Act 1999.

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.

12.1.2 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 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 is made a winding-up order, or the company makes a composition or arrangement with its 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 is made 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 state.

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 of any such change of control that occurs that 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 Contractor is in material breach of its obligations to pay undisputed charges by the Bank under Clause 8.

12.3.2 The Contractor may terminate this Agreement if the Bank is in material breach of its obligations to pay undisputed charges by the Bank giving the Bank 90 days’ notice specifying the breach and requesting it to be remedied. 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 8.

12.4 Consequences of Termination

12.4.1 The provisions of Clauses 8, 10, 11, 12.4.1, 13.1, 13.3, 13.4, 14.15, 14.16, 14.17, 14.18 and 14.19 and any other provision that by their terms or 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 (which, in the case of Contractor, shall include any PRA property or information furnished) 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 Contractor to make any relevant disclosure 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 and the PRA’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 or the PRA’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 or the PRA’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 or the PRA’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 or the Contractor from disclosing any Confidential Information to the extent applicable under the PRA.

13.1.7.1 disclosing any Confidential Information for the purpose of:

(a) the examination and certification of the Bank’s accounts;

(b) 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

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

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 or the PRA 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 or PRA Confidential Information and to prevent any corruption, loss or unauthorised disclosure of Bank or PRA Confidential Information.

13.1.9 Nothing in this Clause 13.1 shall prevent either party from using any technique, data 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 undertakes that it shall duly observe all its obligations under Data Protection Law which arise in connection with this Agreement to the extent applicable to the activities undertaken by each party. To the extent the nature of the Services requires the Contractor to process Bank personal data as a data processor, the Contractor shall:

13.2.1.1 only carry out such processing in accordance with the Bank’s instructions;

13.2.1.2 implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful disclosure or accidental destruction;

13.2.1.3 ensure the reliability of all Staff who have or will have access to the personal data and not subcontract any data processing obligations without the Bank’s prior written consent;

13.2.1.4 not (by any knowing, wilful or negligent act or omission) place the Bank in breach of Data Protection Law; and

13.2.1.5 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).

13.3 Freedom of Information

The Contractor acknowledges that the Bank and the PRA are subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Bank and the PRA to enable them to comply with that or relevant disclosure obligations. The Bank and the PRA shall be responsible, in their absolute discretion, to decide 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, without the prior written consent of the Bank make any press announcements or publicise this Agreement or its contents in any way, or use the Bank’s or the PRA’s name or brand in any promotion or 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 and the PRA (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 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

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 or procure for any agree to any financial or other advantage (including, but not limited to, any money or gift of any value), to:

- 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 assistance (by acting or refraining from acting in their official capacity), either directly or indirectly, in obtaining or retaining business for the Bank; or
- 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 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 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 Contractor in the 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 Contractor. 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 sale or 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.

14.10 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, or the other of the Force Majeure Event which give rise to or which are likely to give rise to any such failure or delay on its part or to that of any of its sub-contractors, then that party shall inform the other party of such failure or delay immediately.

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.

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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 he 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 shall 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 waivered in writing and by or on behalf of an authorized 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 remnant 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 and 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 the 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 a party to this Agreement or anyone 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 Severability
Unless expressly provided otherwise in this Agreement, the liability of the Bank and PRA for their obligations under this Agreement shall be several and extend only to any loss or damage arising out of their own breaches.

14.19 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.
“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.