Dated 2019

1. BANK OF ENGLAND

and

(2) [.]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Agreement for the provision of FM services (M&E, Cleaning & Security) at Bank of England Sports Centre Roehampton

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**THIS AGREEMENT** is made on [.] 2019 (“**Effective Date**”)

**BETWEEN**

(1) The Bank of England, whose principal place of business is at Threadneedle Street, London, EC2R 8AH (the “**Bank**”); and

(2) [.], a company incorporated in England and Wales under company number [.], whose registered office is at [.] (the “**Contractor**”).

**WHEREAS:**

1. The Bank is the central bank for the United Kingdom;
2. The Bank has a requirement for facilities management at its Premises;
3. The Bank wishes to procure the Services from the Contractor; and
4. The Bank and Contractor have agreed that the Contractor shall provide the Services to the Bank on the terms of this Agreement.

The Bank wishes to obtain and the Contractor is willing to supply the Services on the Terms attached. This Front Sheet together with the Contract Summary, Terms and Schedules (including any Annexes contained therein) constitute one agreement (the “**Agreement**”) and should be read in conjunction with each other so that the parties understand the terms on which the Services will be provided. Should a conflict or inconsistency arise between the provisions of this front sheet, the Contract Summary, a Clause in the Terms or a paragraph in the Schedules, the order of precedence shall be: (1) Schedule 2 (Specification); (2) the Terms; (3) the Schedules (other than Schedule 2); (4) this Front Sheet; and (5) the Contract Summary, but only to the extent required to resolve such conflict or inconsistency.

This Agreement will apply to the Contractor’s provision of the 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 12.1) and notice of objection and rejection of them is hereby given.

**EXECUTED** by the parties

|  |  |
| --- | --- |
| For and on behalf of the Governor and Company of **THE BANK OF ENGLAND** | For and on behalf of [.] |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**CONTRACT SUMMARY**

**Description**: Agreement for the provision of facilities management services as more particularly described in the Specification.

The Contractor shall provide the Services in accordance with the Specification (set out in Schedule 2) and Service Levels (summarised below and set out in Schedule 3). Any legal terms and conditions included by the Contractor in Schedules 2 or 3 shall have no effect in relation to the Services provided under this Agreement, which shall be solely governed by the Bank’s Terms set out herein.

**Premises**: Roehampton

**Term/duration**: Three (3) years

**Term extension(s)**: Two (2) successive periods of one (1) year each

**Commencement date**: [.] 2019

**Total Charges**:

The fixed Charges for the Services are as follows:

* Mechanical and Electrical Engineering Services: [.]
* Security Services: [.]
* Cleaning Services: [.]

The hourly rate Charges for additional services are as follow:

* Maintenance operative: [.]
* Security officer: [.]
* Cleaning operative: [.]

The total Charges and/or the basis on which variable Charges may be calculated are as specified in Schedule 4.

**Approved Expenses:** The Bank shall only reimburse reasonable out-of-pocket expenses incurred by the Contractor in performing the Services where Approved in advance by the Bank in writing (including email) and supported by valid receipts.

**Key Personnel:** [.]

**Service Levels:** as more specifically described in Schedule 3.

**Bank Division:** Property, Procurement and Security Division

**Bank Contract Manager**: Steve Mallinder, Senior Manager

**Contractor Contract Manager**: [.]

**Other special requirements:** None

**TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES (“Terms”)**

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1. CONSTRUCTION OF THE AGREEMENT
	1. 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.
	2. Each of the parties acknowledges and agrees that in entering into this Agreement and the documents referred to herein, 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. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
	3. Nothing in this Agreement shall operate to exclude any liability for fraud or fraudulent misrepresentation.
2. TERM OF THE AGREEMENT

This Agreement shall come into force on the Effective Date and shall remain in full force and effect for three (3) years until and unless either party exercises its rights to terminate in accordance with Clause 7.

At the end of the three (3) year term referred to in Clause 2.1, the Bank may extend the term of this Agreement by two (2) successive periods of one (1) year by giving not less than three (3) Months’ prior written notice to the Contractor.

1. PROVISION OF THE SERVICES
	1. The Services

The Contractor shall provide the Services during the Term in accordance with the Bank’s requirements as set out in the Specification and all applicable terms of this Agreement.

* 1. 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, at any other Premises where any part of the Services is being performed;

review the performance of the Services by the Contractor and the Key Personnel at any time during the Term;

reject any of the Key Personnel assigned to perform the Services if in its sole opinion, acting reasonably, such Key Personnel do not meet the standards established by the Bank as necessary for the performance of the Services or in the event that the Bank reasonably considers the performance, behaviour or attendance of the Key Personnel is or are unsatisfactory;

see curricula vitae of any candidates whom the Contractor proposes to appoint to perform the Services; and

interview the proposed candidate before such candidate commences the Services.

In the event that the Bank is not satisfied with any Key Personnel assigned or put forward to perform the Services, the Bank shall advise the Contractor in writing of the exact nature of the problems and the Contractor shall, if requested by the Bank, endeavour to find a suitable replacement.

Key Personnel shall not be released from providing the Services without the Approval of the Bank, except by reason of long-term sickness, termination of employment and other extenuating circumstances.

Any replacements to the Key Personnel shall be subject to the Approval of the Bank. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

The Bank shall not unreasonably withhold its Approval under Clause 3.2.3 or Clause 3.2.4. Such Approval shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Agreement which could be caused by a change in Key Personnel.

* 1. Standard of Services and Service Levels

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 this Agreement, the Contractor shall use the best applicable techniques and standards and execute this Agreement with all reasonable care, skill and diligence, and in accordance with good industry practice.

The Contractor warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.

The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval. The Bank’s decision on whether or not to grant Approval will be made in a timely manner.

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 this Agreement.

* + 1. Any period of absence of the Key Personnel apart from sickness or statutory holidays, is to be agreed in advance, with the Bank’s Contract Manager.
		2. Notwithstanding the performance of the Services by the Staff hereunder, the Contractor shall remain responsible for the acts and omissions of the Staff as if they were its own.
		3. The Contractor and its Staff are not entitled to the benefit of any employment contract rights granted to employees of the Bank nor to participate in any of the Bank’s grievance or disciplinary procedures nor any other policies or benefits associated with employees or granted to employees of the Bank.

The Contractor shall perform the Services in accordance with the Service Levels. In the event that the Services do not operate in accordance with the Service Levels, the Contractor shall without prejudice to any other rights and remedies of the Bank and as an adjustment to the Charges, credit the Bank with Service Credits calculated in accordance with Schedule 3.

All Service Credits shall be automatically credited to the Bank in the form of a deduction to the Charges and shall appear as such on the next invoice submitted by the Contractor to the Bank following the period in which the respective Service Credits accrued.

* + 1. In its provision of the Services, the Contractor shall and shall procure that all Staff shall comply with all Bank policies and procedures 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.

**Remedies for Non-Conforming Services**

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

the Bank may, by notice, require the Contractor, at the Contractor’s own expense, promptly to remedy any default or re‑perform any non‑conforming Services; or

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 or non-conforming Services provided always that any such withholding or recovery in relation to any failure to perform the Services shall, if applicable, be reduced by an amount equal to the Service Credit paid or owing by the Contractor (if any) in respect of the same failure.

If the Contractor fails to remedy the default or re‑perform any non‑conforming Services pursuant to Clause 3.4.1.1 within seven (7) days after notice thereof is given to the Contractor, the Bank may either remedy any default 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 costs so incurred by the Bank.

 In the event that the Contractor and/or the Staff materially, repeatedly or wilfully 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 seven (7) days after notice thereof is given to the Contractor, then the Bank may, in addition to any other remedies that may be available to it either under this Agreement or otherwise, terminate this Agreement in accordance with Clause 7.2.1.2.

* 1. Not Used
	2. Contractor Equipment

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

The Contractor shall make no delivery of Equipment nor commence any work on the Bank’s Premises without obtaining the Bank’s prior Approval.

The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. The Contractor shall ensure that the Bank’s Premises are appropriate to contain and operate the Equipment.

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

The Contractor shall ensure that all Equipment used in performance of the Services under this Agreement shall be:

* + - * 1. of satisfactory quality and fit for the purposes of the Services and the Bank’s use as anticipated by this Agreement, such that the Bank will be given on request calibration and PAT certificates; and
				2. properly packed and secured in such a manner so as to enable them to reach the Bank’s Premises in good condition.

Title and risk in all Equipment shall remain with the Contractor and the Bank shall have no liability for any loss of or 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. Title and risk in all on-site equipment that belong to the Bank shall remain with the Bank but the Contractor shall be liable for any loss of or damage to any equipment belonging to the Bank if and to the extent that the Bank is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Contractor or its Staff.

The Bank may at its option, and with the agreement of the Contractor, purchase any item of Equipment from the Contractor at any time, if the Bank considers that the item is likely to be required in the provision of the Services following the expiry or termination of this Agreement. The purchase price to be paid by the Bank shall be the fair market value or as otherwise agreed between the parties. For the avoidance of doubt this Clause is not intended to encompass Intellectual Property Rights, which are addressed in Clause 5.

Without limiting any other right or remedy that the Bank may have, the Bank shall have the power at any time during the progress of the Services to order in writing that the Contractor:

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;

repair or replace the rejected Equipment at the Contractor’s risk and expense within a reasonable period of time but in any event within 7 days of being requested to do so;

substitute proper and suitable materials, plant and equipment; and/or

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).

Notwithstanding the provisions of Clause 3.6.8, the Bank may claim damages for any other costs, expenses or losses resulting from the Contractor’s supply of Equipment that is not in conformity with the terms of this Agreement.

On completion of the Services, the Contractor shall remove the Equipment, but not any unused materials or equipment belonging to the Bank, 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.

* + 1. The Contractor shall be responsible for the cost of repairing any damage caused to any Premises as a consequence of the provision of the Services, including installation and dismantling / removal of the Equipment.
	1. 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 Services and shall pay the Bank any extra costs occasioned by any discrepancies, errors or omissions therein unless such discrepancies, errors or omissions are solely attributable to the Bank.

* 1. Inspection of Premises

Save as the Bank may otherwise direct, the Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of this Agreement to be carried out and be satisfied in relation to all matters connected with the performance of this Agreement (to the extent ascertainable).

Without prejudice to Clause 11.5, the Bank shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in Clause 3.8.1.

* 1. Monitoring of Performance of Services

The Contractor shall comply with the monitoring arrangements set out in Schedule 5 including, but not limited to, providing such data and information as the Contractor may be required to produce under this Agreement.

* 1. Work Permits

The Contractor shall be responsible for checking that its Staff are legally entitled to work in the United Kingdom and where appropriate have the required visa, work permit or permission issued by the appropriate UK authority to undertake work of the nature for which the Contractor is supplying them to the Bank.

1. PAYMENT
	1. Charges

In consideration of the performance of the Contractor’s obligations under this Agreement by the Contractor, the Bank shall pay the Charges in accordance with the payment terms specified in this Clause 4.1 and Schedule 4, such amounts being inclusive of all costs, charges and expenses, including but not limited to, labour, transport, insurance, carriage and collection costs, attributable to the provision by the Contractor of the Services. The Contractor shall not be entitled to raise the Charges more than once per contract year. Any such increase shall not exceed the increase in CPI over the preceding twelve (12) Months. If the Contractor wishes to raise its Charges, it shall discuss and agree such increase with the Bank at the Commercial meetings described in Schedule 5 Paragraph 4.4 and such increase in Charges shall take effect from the next anniversary of the Effective Date. Any agreed increase in charges should be reflected in an equal percentage uplift of the remuneration of all Contractor Relevant Employees

The Contractor agrees to:

* + - 1. pay all Relevant Employees aged eighteen (18) or over not less than the London Living Wage, subject to the Parties agreeing a variation to this Agreement via the Change control procedure in Schedule 8 (Change Control) ; and
			2. increase the amount which it pays to affected Relevant Employees by the same amount as any increase to the London Living Wage within six (6) Months of the date on which any increase in the London Living Wage is officially announced; and
			3. notify all affected Relevant Employees of the date of the next increase within one (1) Month of the official announcement of any increase to the London Living Wage, unless the Relevant Employees have been previously notified by the Contractor about the date on which they will receive at least the increase in the London Living Wage;
			4. provide to the Bank on reasonable request all information necessary to enable the Bank to confirm that the Contractor is complying with its obligations under this Agreement; and
			5. provide to the Centre for Civil Society Limited (Company Number: 073333734) (being the entity responsible for setting the London Living Wage) any information requested and facilitate any meetings they may request to satisfy them that the London Living Wage programme is being complied with at the Bank and by the Contractor.

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.

The Contractor shall indemnify the Bank against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed 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.

Except as expressly set out in this Clause 4.1 and Schedule 4, the Contractor acknowledges and agrees that the Bank shall not be liable for the payment of any (i) taxes, fees, charges, disbursements or other expenses (whether imposed on the Contractor by a third party or otherwise) (“**Costs**”); or (ii) any increases in such Costs.

* 1. Payment and Tax

The Bank shall pay the undisputed sums due to the Contractor in cleared funds 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.

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.

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.

The Bank may reduce payment of the Charges in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Bank provided always that any such deduction or recovery in relation to any failure to adequately perform the Services shall, if applicable, be reduced by an amount equal to the Service Credit paid or owing by the Contractor (if any) in respect of the same failure.

The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate this Agreement under Clause 7.2.3 for failure to pay undisputed charges.

* 1. Recovery of Sums Due

The Bank may set off and retain any amount due to the Contractor against any amount owed to it by the Contractor under this Agreement.

1. INTELLECTUAL PROPERTY RIGHTS

All existing Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material belonging to a party prior to the Effective Date shall remain the property of that party (“**Foreground IPR**”). The owner of such Foreground IPR grants to the other party (which, for the avoidance of doubt and in respect of any licence granted to the Bank), its employees, staff, consultants and sub-contractors a licence to use any Foreground IPR, to the extent necessary for the provision or enjoyment of the Services.

The Contractor confirms to the Bank that it has the power, authority and right (i) to provide the 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 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 any such third party rights (including Intellectual Property Rights) in the Bank’s enjoyment of the Services as anticipated by this Agreement.

The Contractor shall, and shall ensure and procure that any Staff, forthwith disclose to the Bank all Intellectual Property Rights in any Developments which the Contractor and/or the Staff create and the Developments shall belong to and be the absolute property of the Bank automatically and without further formality on their coming into existence. Accordingly the Contractor hereby assigns and shall ensure and procure that the Staff assign absolutely for the full period of such Intellectual Property Rights and all possible renewals, reversions, revivals and extensions thereof (and thereafter insofar as may be or become possible) in perpetuity all Intellectual Property Rights arising in the course of the performance of the Services to the Bank by way of present assignment of future Intellectual Property Rights. The Contractor confirms that all rights arising in the course of the performance of the Services vest in the Bank.

The Bank hereby grants to the Contractor a non-exclusive, non-transferable, royalty free licence to load, execute and use any software included in or constituting Developments for the purposes only of providing Services to the Bank under this Agreement or any other contract between the Bank and the Contractor.

The Contractor shall, and shall ensure and procure that the Staff:

do anything reasonably necessary to confirm vesting of title in the Bank of any or all applicable Intellectual Property Rights in any or all countries relating to any Developments or other materials produced by the Contractor or the Staff pursuant to this Agreement;

waive all moral rights arising from any such original material so far as the Contractor and the Staff may lawfully do so in favour of the Bank and for the avoidance of doubt this waiver shall extend to the licensees and successors in title to the copyright in the said material; and

do nothing (whether by omission or commission) during this Agreement or at any time thereafter to affect or imperil the validity of any Intellectual Property Rights obtained, applied for or to be applied for by the Bank. The Contractor shall at the direction of the Bank, promptly render all assistance within its power to obtain and maintain such Intellectual Property Rights or any application for any extension thereof.

1. LIABILITIES
	1. Warranties and Representations

The Contractor warrants and represents that:

* + 1. the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Contractor;
		2. by entering into this Agreement and performing the obligations under it, neither it nor any of its Staff will be in breach of any express or implied term of any contractual or other obligation to any third party which is binding on them;
		3. the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
		4. 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;
		5. the Services shall be performed in compliance with all applicable Laws;
		6. the Contractor 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;
		7. it shall use reasonable endeavours to ensure that the Key Personnel assigned to perform the Services remain unchanged during the Term, unless agreed otherwise with the Bank in writing or unless changed by reason of long-term sickness, resignation, termination of employment subject to the prior approval of the Bank and other extenuating circumstances;
		8. any software forming part of the Services (or any media on which such software may be delivered) shall be free from viruses or other malicious code;
		9. any information that the Contractor is required to provide pursuant to this Agreement will be accurate to the best of the Contractor’s knowledge; and
		10. it has conducted all financial auditing and reporting activities in compliance in all material respects with the generally accepted accounting practices that apply to it in any country where it files accounts; it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and it has performed, and has not omitted, any act with respect to its financial accounting or reporting which could have an adverse effect on the Contractor’s ability as an on-going business concern or to fulfil its obligations under this Agreement.
	1. Limitation of Liability
		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 2 of the Supply of Goods and Services Act 1982 or for any liability that may not be limited or excluded by law.
		2. Subject always to Clause 6.2.1, in no event shall either party be liable to the other for:
			1. loss of profits, business, revenue, goodwill or anticipated savings; and/or
			2. indirect or consequential loss or damage.
		3. Subject always to Clauses 6.2.1 and 6.2.2, the Contractor’s annual aggregate liability under this Agreement for all Defaults (other than a Default governed by Clauses 3.10, 4.1.3, 5.1, 6.3, 11, 12.8 or 12.9, which shall be unlimited) shall in no event exceed the greater of five million pounds sterling (£5,000,000) or two hundred per cent (200%) of the Charges.
		4. Subject always to Clauses 6.2.1 and 6.2.2, the Bank aggregate liability under this Agreement shall in no event exceed the greater of fifty thousand pounds sterling (£50,000) and an amount equal to the Charges paid and payable by the Bank for the Services in the twelve Months preceding the date on which the liability arises.
	2. Indemnities

The Contractor shall indemnify and keep indemnified the Bank fully against all claims, proceedings, actions, damages, reasonable legal costs, expenses (including all interest, third party claims, fines or penalties and any legal or other professional costs) and any other liabilities whatsoever arising out of or in connection with any death or personal injury, loss of or damage to property or financial loss arising from any advice given or omitted to be given by the Contractor. This Clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage to property or financial loss was not caused or contributed to by its negligence or default, or the negligence or default of its Staff, or by any circumstances within its or their control.

The Contractor shall indemnify and keep indemnified the Bank against all actions, suits, claims, demands, losses, charges, damages, costs and expenses (including all interest, third party claims, fines or penalties and any legal or other professional costs) and any other liabilities which the Bank may suffer or incur as a result of or in connection with any Default of:

* + - 1. Clause 3.10;
			2. Clause 4.1.3
			3. Clause 5.1, except where and to the extent that any such claim relates to:
				1. designs furnished by the Bank; and
				2. the use of data supplied by the Bank which is not required to be verified by the Contractor under any provision of this Agreement;
			4. Clause 9
			5. Clause 11;
			6. Clause 12.8; and/or
			7. Clause 12.9.
	1. Claims procedure
		1. The Bank shall notify the Contractor in writing of any claim or demand brought against the Bank for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor shall:

consult the Bank on all substantive issues which arise during the conduct of such litigation and negotiations;

take due and proper account of the interests of the Bank; and

not settle or compromise any claim without the Bank’s prior written consent (not to be unreasonably withheld or delayed),

except that where the Bank determines that, for reputational reasons, it wishes to conduct all negotiations and any litigation arising in connection with any claim, then it shall be entitled to do so, and where the Bank so elects it shall be responsible for any final judgment awarded or settlement payments agreed and for paying its own legal costs.

The Bank shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Bank or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements on a solicitor and Bank basis) incurred in doing so.

The Bank shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Bank or the Contractor in connection with the performance of this Agreement unless failure to do so (in the Bank’s reasonable opinion) would be prejudicial to the Bank in any material respect.

If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Bank (not to be unreasonably withheld or delayed) either:

modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality to the Services, so as to avoid the infringement or the alleged infringement, provided that the Terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or

procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Bank.

At the termination of this Agreement the Contractor shall immediately return to the Bank all materials, work or records held, including any back-up media.

The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

* 1. Professional Indemnity Insurance

The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover. Such insurance to be held by the Contractor or by any agent, sub-contractor or consultant involved in the provision of Services with a limit of indemnity of not less than ten million pounds sterling (£1,000,000) for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of twelve (12) years following the expiration or earlier termination of this Agreement.

1. TERMINATION
	1. Termination on Change of Control and Insolvency

The Bank may terminate this Agreement by notice in writing with immediate effect where:

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 this Agreement; or

any relevant event occurs which in the reasonable opinion of the Bank could have a material adverse effect on the ability of the Contractor to perform any of its obligations under this Agreement (whether immediately or at a future time); or

the Contractor is an individual or a firm and a petition is presented for the Contractor’s bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor’s or firm’s affairs; or

the Contractor is a company, and the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or

any similar event occurs under the law of any other jurisdiction within the United Kingdom.

The Bank may only exercise its right under Clause 7.1.1.1 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.

If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Bank shall be entitled to terminate this Agreement by notice to the Contractor with immediate effect.

* 1. Termination on Default

Without prejudice to Clause 7.2.3, each party may terminate this Agreement, or terminate the provision of any part of this Agreement by written notice to the other party with immediate effect if that other party commits a Default and:

where the Default is capable of remedy, the defaulting party has not remedied the Default to the satisfaction of the first party 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;

the Default is not capable of remedy; or

the Default is a fundamental breach of this Agreement.

In the event that through any Default of the Contractor, data transmitted or processed in connection with this Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission.

The Contractor may terminate this Agreement if the Bank is in material breach of its obligations to pay undisputed charges by giving the Bank sixty (60) days’ notice specifying the breach and requiring its remedy. The Contractor’s right of termination under this Clause 7.2.3 shall not apply to non-payment of the Charges where such non-payment is due to the Bank exercising its rights under Clauses 4.2.4 or 4.3.

* + 1. Without limiting what constitutes a Default for the purposes of this Agreement, the parties acknowledge that the Bank may exercise its rights under Clause 7.2.1.2 where:

pursuant to Clause 3.2.2, the Bank, acting reasonably, considers that it is not appropriate for the Contractor to source replacement Key Personnel;

Clause 3.4.3 applies;

the Contractor or Staff fails to comply with Clause 5;

the Contractor fails to comply with Clause 6.1.10;

Clause 8.4 applies;

Clause 11.5.5 applies;

the Contractor fails to give effect to or maintain the necessary insurances required under Clauses 6.5 or 12.2;

the Contractor, its Staff or anyone else acting on the Contractor’s behalf (in all cases whether or not acting with the Contractor’s knowledge) breaches any of Clauses 12.8.1 – 12.8.7 (inclusive);

Clause 12.12.8 applies; or

the Contractor or any Staff commits fraud in relation to this Agreement.

* 1. Termination for Force Majeure

Without prejudice to Clause 12.12.8, should a Force Majeure Event under Clause 12.12 persist for a period of sixty (60) days or more, then either party shall be entitled to terminate this Agreement forthwith and the Clauses of this Agreement relating to the consequences of termination thereupon take effect.

* 1. Voluntary Termination by the Bank

The Bank may terminate this Agreement or any part thereof at any time on or before expiry of the Term by complying with its obligations under this Clause 7.4 including (for the avoidance of doubt) in circumstances where an ineffectiveness order has been issued by a court of competent jurisdiction.

If the Bank wishes to terminate this Agreement or any part thereof under this Clause 7.4, it must give written notice to the Contractor stating that:

the Bank is terminating this Agreement or the relevant part thereof under this Clause; and

this Agreement or the relevant part thereof will terminate on the date falling twenty (20) Working Days after the date of receipt of the notice or on the date specified in the ineffectiveness order (if applicable).

This Agreement or the relevant part thereof will terminate on the date falling twenty (20) Working Days after the date of receipt of the notice referred to in Clause 7.4.2 or on the date specified in the ineffectiveness order (if applicable).

* 1. Consequences of Termination

The provisions of Clauses 1, 5, 6, 7, 9, 11, 12.15, 12.16, 12.17, 12.18, 12.19, 12.20, 12.21, 12.22 and 12.23 and any other provision that by implication is intended to come into or continue in force on or after shall remain in full force and effect.

Where the Bank terminates this Agreement under Clause 7.2.1, or terminates the provision of any part of this Agreement under that Clause, and then makes other arrangements for the provision of Services, the Bank shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Bank throughout the remainder of the Term. Where this Agreement is terminated under Clause 7.2.1, no further payments shall be payable by the Bank to the Contractor until the Bank has established the final cost of making those other arrangements. Nothing in this Clause 7.5.2 shall limit the Bank’s general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this Clause.

* 1. Recovery upon Termination

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

In the event that this Agreement is terminated or expires, each party shall return to the other party or (at the election of the other party) destroy and certify destruction of all property belonging to the other party then in its possession.

After termination or expiry of this Agreement howsoever caused, the Contractor shall continue to co-operate with the Bank to such reasonable extent as may be necessary to clarify or explain any reports or recommendations made by the Contractor. Where the Contractor reasonably considers that such co-operation would require a substantial commitment from the Contractor, it will be entitled to charge the Bank at the Contractor’s then current daily rates provided that the Contractor notifies the Bank prior to the commencement of such co-operation that such services will be chargeable and the Bank agrees to such charges, save that where assistance is to be provided by the Contractor following termination caused by the Contractor’s Default, this assistance shall be solely at the Contractor’s cost.

1. CONTRACTUAL REASSURANCE
	1. Without prejudice to any other rights or remedies of the Bank, if at any time after the Effective Date:
		1. the Contractor or any member of the Contractor’s group issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects such that under any scenario the Contractor’s group’s net profit for the current or any future financial year would be reduced below 10% of the average preceding three (3) years’ profits;
		2. there is a public investigation by a judicial or regulatory body with competent jurisdiction into actual or alleged improper financial accounting or reporting, suspected fraud or any other impropriety of the Contractor or any member of the Contractor’s group;
		3. the Contractor or any other member of the Contractor’s group is given notice by the relevant lender that it has committed a material breach of any covenants to its lenders;
		4. the Contractor’s shares or any other member of the Contractor’s group whose shares may be publicly traded are suspended from trading or cease to be traded on any exchange on which the Contractor’s shares are traded other than in circumstances connected to the solvent re-organisation of the Contractor where such re-organisation is on terms previously Approved by the Bank;
		5. any publicly available audit report issued in respect of any audited financial statements of the Contractor or the Contractor’s group is qualified in any material adverse respect;
		6. the Contractor is given notice of breach of any material agreement to which it is a party or, in the case of an agreement under which funds have been made available to or are then outstanding from the Contractor, early or accelerated repayment is demanded of all or any of such funds (and the Contractor hereby undertakes in favour of the Bank to notify the Bank in writing of any such breach or circumstances as soon as possible upon becoming aware of it);
		7. the Contractor or the Contractor’s group effects a restructuring or other reorganisation or arrangement with its creditors generally or any class of its creditors the primary purpose, or one of the main purposes, of which is to reschedule any of its indebtedness or avoid the Contractor or any member of the Contractor’s group becoming insolvent; or
		8. the Bank serves notice on the Contractor that as at the date of such notice it has a reasonable basis for believing that there is a significant possibility of the Contractor becoming insolvent at some time during the six (6) Months following that date,

(each a “**Contractual Reassurance Event**”) then the Contractor shall notify the Bank within ten (10) Working Days of the relevant event, setting out the matters giving rise to suchContractual Reassurance Event or, in the event that the Bank becomes aware of a Contractual Reassurance Event before it receives such a notification from the Contractor, the Bank may serve a notice on the Contractor, setting out the matters giving rise to such notice (each being a “**Contractual Reassurance Notice**”). Any such notice shall state on its face that it is a Contractual Reassurance Notice served under this Clause 8.1.

* 1. As soon as possible following the service of a Contractual Reassurance Notice (or, if the Bank becomes aware of any of the circumstances referred to in Clauses 8.1.1 – 8.1.8 (inclusive) without the service of a Contractual Reassurance Notice, upon the Bank’s written notification), the parties shall arrange a meeting between the Contract Manager and Managing Director of the Contractor and the Contract Manager (or his representative) of the Bank in order to discuss the matters referred to in the Contractual Reassurance Notice or notified to the Bank under this Clause and the Contractor’s on-going ability to comply fully with its obligations under this Agreement.
	2. Where the Contractor is unable to demonstrate to the reasonable satisfaction of the Bank that it is capable (or will be capable) of complying fully with its obligations under this Agreement, the Bank may, without prejudice to its other rights and remedies under this Agreement:
		1. require the Contractor to provide such further information and take such steps as the Bank may reasonably require in order to satisfy itself as to the Contractor’s ability to continue to fulfil and invest in the performance of its obligations under this Agreement;
		2. require the Contractor’s Chief Financial Officer to update the Bank as to its financial standing on a Monthly basis;
		3. increase its monitoring of the Contractor’s performance of its obligations under this Agreement for such period as the Bank may specify by notice in writing to the Contractor and, following such notification, the Contractor shall provide all necessary access and co-operation to enable the Bank to exercise such rights; and/or
		4. require the Contractor to provide to the Bank for its Approval a plan setting out in writing how the Contractor will ensure that the continuity of the Services in accordance with this Agreement will be maintained in the light of the relevant Contractual Reassurance Event.
	3. Where:
		1. the Bank (acting reasonably) is not satisfied, following the exercise of its increased monitoring rights under Clause 8.3.3, that the Contractor will be able to continue to comply in all material respects with its obligations under this Agreement;
		2. the Bank (acting reasonably) does not Approve the plan referred to in Clause 8.3.4 and the parties subsequently fail to agree such reasonable amendments to the plan as would make it acceptable to the Bank within five (5) Working Days of the Bank’s notification; or
		3. the Contractor fails to provide the Bank with a plan as required by Clause 8.3.4 within ten (10) Working Days of the Bank’s request for the same or fails to comply with the terms of any plan which is Approved by the Bank under Clause 8.3.4,

then, in each case, the Bank may exercise its right of termination under Clause 7.2.1.2 of this Agreement by giving notice in writing to the Contractor.

1. STAFF TRANSFER

The parties acknowledge that the commencement and subsequent expiry or termination of this Agreement may constitute a relevant transfer for the purposes of the employment regulations. The provisions of Schedule 9 (Staff Transfer) will apply to this Agreement..

1. [NOT USED]
2. PROTECTION OF INFORMATION

**Confidentiality**

Except to the extent set out in this Clause 11 or where disclosure is expressly permitted elsewhere 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.

* + 1. Clause 11.1.1 shall not apply to the extent that:

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 11.3;

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

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

such information was already in the public domain at the time of disclosure other than by a breach of this Agreement; or

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

* + 1. The Contractor may only disclose the Bank’s Confidential Information to Staff who are directly involved in the provision of the 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.
		2. 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.
		3. 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.
		4. The Receiving Party shall deliver up any Confidential Information belonging to the Disclosing Party, including all copies, immediately upon the termination or expiry of this Agreement (or at any earlier time upon written request by the Disclosing Party).
		5. 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.
		6. Nothing in this Clause shall prevent the Bank:
			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

* + - 1. disclosing any Confidential Information obtained from the Contractor:

(a) to any government department or any other contracting authority. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or

(b) to any person engaged in providing any services to the Bank for any purpose relating to or ancillary to this Agreement,

provided that in disclosing information under this Clause 11.1.8.2 the Bank discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

* + 1. No provision of this Agreement shall require the delivery or destruction of any computer records or electronic files containing Confidential Information which have been created pursuant to the Bank’s standard archiving and back up procedures. The Bank (as applicable) will continue to be bound by the confidentiality obligations imposed on it under this Agreement with respect to such retained Confidential Information.
		2. Nothing in this Clause 11.1 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.
		3. 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.
		4. The obligations in this Clause 11.1 in respect of the Bank’s Confidential Information shall continue in force without limit in time and shall survive termination of this Agreement. If at any time after a period of five (5) years the Contractor does not wish to retain the Bank’s Confidential Information, it may inform the Bank who in their sole opinion may request the Contractor return or destroy to the Bank’s satisfaction, all such Confidential Information. The obligations in this Clause in respect of the Contractor’s Confidential Information shall continue for two (2) years following the termination of this Agreement.

**Data Protection**

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

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

* + - 1. promptly inform the Bank of instances of personal data processing it undertakes on the Bank’s behalf, including the nature of the personal data and category of data subjects;
			2. promptly inform the Bank if at any time it has cause to believe that the Bank’s instructions infringe Data Protection Legislation;
			3. provide contact details of its data protection officer or other designated individual with responsibility for data protection and privacy (and promptly notify the Bank if those contact details change);
			4. only carry out such processing in accordance with the Bank’s documented instructions;
			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);
			6. implement appropriate technical and organisational measures to ensure the ongoing confidentiality, integrity and availability of personal data and otherwise protect it against unauthorised or unlawful disclosure or accidental destruction, damage or loss;
			7. assist the Bank in carrying out a data protection impact assessment where an assessment is required with regard to the type and nature of processing;
			8. not subcontract or allow any other entity to perform any data processing obligations without the Bank's prior written consent (such consent shall be conditional on the Contractor procuring that such sub-processor is bound by appropriate data protection terms);
			9. ensure the reliability of all Staff who have or will have access to the personal data (having also made such Staff aware of their obligations of confidentiality);
			10. promptly refer to the Bank any requests, notices or other communications from data subjects, the Information Commissioner or any other law enforcement authority and in no event respond directly to any request, notice or communication unless expressly authorised in writing by the Bank to do so;
			11. provide such information to the Bank (or take such other action) as the Bank may reasonably require, and within the timescales reasonably specified by the Bank, to allow the Bank to comply with the rights of data subjects, including but not limited to subject access rights, to liaise with the Information Commissioner, or to respond to notices served by the Information Commissioner;
			12. notify the Bank without undue delay (and in any event within 24 hours) after becoming aware of a personal data breach, and not contact data subjects or the Information Commissioner directly in the event of a personal data breach unless expressly authorised in writing by the Bank to do so;
			13. at no additional cost, keep or cause to be kept full and accurate records and logs relating to all processing of personal data on behalf of the Bank and, upon reasonable notice, grant the Bank and its auditors and agents a right of access to and to take copies of such records in order to assess whether the Contractor has complied with the provisions of this clause and the obligations set out in the Data Protection Legislation;
			14. at the end of the Term or earlier termination of this Agreement, at the Bank’s request, delete or return (at the Bank’s discretion) all personal data to the Bank and delete any copies of such personal data except where required to retain any copies by Law; and
			15. not (by any knowing, wilful or negligent act or omission) place the Bank in breach of the Data Protection Legislation.

**Freedom of Information**

* + 1. The Contractor acknowledges that the Bank are subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Bank to enable the Bank to comply with their Information disclosure obligations.
		2. The Contractor shall (and shall procure that its Staff shall):
			1. transfer to the Bank all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
			2. provide the Bank with a copy of all Information in its possession or power in the form that the Bank requires within five (5) Working Days (or such other period as the Bank may specify) of the Bank’s request; and
			3. provide all necessary assistance as reasonably requested by the Bank to enable the Bank to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
		3. The Bank shall be responsible for determining in their absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
		4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised in writing to do so by the Bank.
		5. The Contractor acknowledges that (notwithstanding the provisions of this Clause 11.3) the Bank may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA (“**Code**”), be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
			1. in certain circumstances without consulting the Contractor; or
			2. following consultation with the Contractor and having taken their views into account,

provided always that where Clause 11.3 applies the Bank shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

* + 1. The Contractor shall ensure that all Information is retained for disclosure and shall permit the Bank to inspect such records as requested from time to time.
		2. The Contractor acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Bank may be obliged to disclose it in accordance with Clause 11.3.5.
		3. For the purposes of Clause 11.3, Schedule 6 contains a list of information which the Contractor reasonably considers is exempt from the disclosure requirements under the FOIA. The Contractor acknowledges that notwithstanding the fact that it has identified Commercially Sensitive Information, the Bank may nevertheless be required to disclose such Commercially Sensitive Information pursuant to a Request for Information.

**Publicity and Branding**

* + 1. The Contractor shall not, without the prior written consent of the Bank:
			1. make any press announcements or publicise this Agreement or its contents or the fact that the Contractor is providing Services to the Bank in any way; or
			2. use the Bank’s name or brand in any promotion or marketing or announcement of orders.
		2. The Contractor shall take all reasonable steps to ensure that all of its Staff comply with the provisions of this Clause 11.
		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 Services) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
		4. This Clause 11.4 shall remain in force notwithstanding termination or expiry of this Agreement.

**Security**

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 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.

* + 1. The Contractor shall comply with all reasonable security requirements of the Bank (including those set out in their respective security policies as amended or updated 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. All such activity will be subject to general monitoring by the Bank’s security department. The Contractor shall if requested sign and abide by the Bank’s Declaration of Secrecy.
		2. 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 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.
		3. 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.
		4. Failure by the Contractor to comply with the provisions of Clause 11.5.4 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 this Agreement.

**Business Continuity and Disaster Recovery**

* + 1. The Contractor shall take all reasonable precautions to ensure that there is no disruption to the provision or receipt of the Services.
		2. The Contractor shall comply with the Bank’s business continuity and recovery time frames which are notified to the Contractor from time to time or which are set out in a Schedule in order to allow the Bank to maintain business as usual.
		3. The Contractor shall undertake regular risk assessments in relation to the provision of the Services not less than once every six (6) Months and shall provide the results of, and any recommendations in relation to, those risk assessments to the Bank promptly in writing following each review.
		4. The Contractor shall establish, maintain, comply with, and review its own internal business continuity and disaster recovery processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising. The Contractor shall also document and maintain a business continuity plan which demonstrates how it will comply with the Bank’s business continuity and recovery time frames as required in Clause 11.6.1. The Contractor shall test this plan on a regular basis and in any event not less than once in every twelve (12) Month period. Following each test, the Contractor shall send the Bank a written report summarising the details of the tests and their results and shall promptly implement any actions or remedial measures which the Bank considers to be necessary as a result of those tests.
		5. In the event of any disruption to the provision or receipt of the Services and subject to the express prior approval from the Bank (such approval to be pro-actively sought by the Contractor where appropriate), the Contractor shall immediately implement the disaster recovery plan and maintain regular communication with the Bank in respect of such implementation.

**Bank Data**

* + 1. All Intellectual Property Rights in the Bank’s data shall vest in the Bank or its licensors.
		2. The Contractor shall take all precautions necessary to preserve the integrity of any Bank data and to prevent any corruption, loss or unauthorised disclosure of the Bank data.
1. GENERAL

**Amendments**

Except as otherwise explicitly provided in this Agreement, this Agreement shall not be amended except with the prior written approval of:

an authorised signatory of the Bank (on behalf of the Bank); and

an authorised signatory of the Contractor (on behalf of the Contractor),

and formalised in accordance with Schedule 8.

* 1. Notices and Communications
		1. Any notice or request required or permitted to be given or made under this Agreement shall be in writing and sent to:

**The Bank**:

For the attention of: Roehampton Site Manager Address: Bank of England Sports Centre, Bank Lane off Priory Lane, Roehampton, London SW15 5JQ

**The Contractor**:

For the attention of: [•]

Address: [•]

or such other address as may be notified by either party to the other.

* + 1. 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; (iii) 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).
	1. Insurance

The Contractor shall 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, 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.

The Contractor shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

The Contractor shall produce to the Bank, on request, broker’s letters for all insurance policies referred to in this Clause or the Contractor’s 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.

The Contractor shall notify the Bank immediately in writing of any anticipated or actual event or circumstances which may lead or has led to the Contractor being unable to meet its obligations under this Clause (including without limitation, any relevant insurance lapsing or being terminated or the cover under such insurances being reduced or modified).

The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in this Agreement.

**Relationship of the Parties**

* + 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.
		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.

**Equality and Discrimination**

The Contractor shall, and shall procure that the Staff, comply with any applicable anti-discrimination legislation in force from time to time and with 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.

**Health and Safety**

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 statutory rules and regulations 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.

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.

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.

* + 1. 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 are properly trained in manual handling.

**Environmental Considerations**

* + 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.
		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.
		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 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. Without prejudice to the generality of the foregoing, the Contractor shall:
			1. comply with all reasonable stipulations of the Bank aimed at minimising the packaging in which any products supplied by the Contractor to the Bank as part of performance of the Services, are supplied;
			2. promptly provide such data as may reasonably be requested by the Bank from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the Bank under or pursuant to this Agreement;
			3. comply with all obligations imposed on it in relation to the Services the subject of this Agreement by the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and the Packaging (Essential Requirements) Regulations 2003 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC);
			4. label all products supplied to the Bank under this Agreement, and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation;
			5. promptly provide all such information regarding the environmental impact of any products supplied or used under this Agreement as may reasonably be required by the Bank to permit informed choices by end users; and
			6. where goods are imported into the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 the Contractor shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the goods in addition to any other obligations he may have pursuant to the said Regulations.
		4. The Contractor shall meet all reasonable requests by the Bank for information evidencing the Contractor’s compliance with the provisions of Clause 12.7.3.

**Prevention of Corruption**

* + 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:

the Bribery Act 2010;

the Anti-Terrorism, Crime and Security Act 2001;

the US Foreign Corrupt Practices Act of 1977; and

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

(“**Anti-Bribery Law**”).

Without limiting Clause 12.8.1, 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.

Without limiting Clauses 12.8.1 and 12.8.2, the Contractor represents, warrants and undertakes that it and its Staff will:

adhere to and comply with the Bank of England Supplier Code of Practice Key Principles and, where required, with the Bank’s “Our Code”, which the Contractor hereby confirms and warrants it shall adhere to and comply with; and

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.

Without limiting Clause 12.8.3, 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 12.8.3.1 and 12.8.3.2.

Without limiting Clause 12.8.1, 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:

* + - 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

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.

Without limiting Clause 12.8.5, 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 12.8.5.1 and 12.8.5.2.

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 12.8, 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.

* + 1. Notwithstanding Clause 12.21, any dispute relating to:
			1. the interpretation of this Clause 12.8 inclusive; or
			2. the amount or value of any financial or other advantage

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

**Prevention of Fraud**

The Contractor shall take all reasonable steps, in accordance with good industry practice and any policies and procedures that the Bank may from time to time notify to it, to prevent fraud by Staff and the Contractor (including its shareholders, members and directors or any third parties acting on their behalf) in connection with the receipt of monies from the Bank.

The Contractor shall notify the Bank immediately if it has reason to suspect that any fraud has occurred or is likely to occur.

**Bank Property**

* + 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.
		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.
		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.
		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.
		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.
		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 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.

**Assignment and Sub-contracting**

* + 1. The Contractor may not sub‑license, assign, novate, or transfer this Agreement or any of its rights or obligations, or declare a trust, in whole or in part (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.
		2. Sub-contracting any part of this 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.
		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 12.1 above.
		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.

**Disruption and Force Majeure**

* + 1. The Contractor shall take reasonable care to ensure that in the execution of this Agreement it does not disrupt the operations of the Bank, its employees or any other contractor employed by the Bank.

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. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure Event.

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

The Contractor cannot claim relief from a Force Majeure Event to the extent that it is required to comply with the Bank’s business continuity and recovery time frames set out in its own business continuity plan but has failed to do so (unless this failure is also due to a Force Majeure Event affecting the operation of such business continuity plan).

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.

* + 1. The Contractor shall immediately inform the Bank of any actual or potential industrial action, whether such action be by its Staff or others, which affects or might affect its ability at any time to perform its obligations under this Agreement.
		2. In the event of industrial action by the Staff or the Contractor’s suppliers the Contractor shall seek the Bank’s Approval to its proposals to perform its obligations under this Agreement.
		3. If the Contractor’s proposals referred to in Clause 12.12.7 are considered insufficient or unacceptable by the Bank, then this Agreement may be terminated by the Bank by notice in writing with immediate effect.
		4. Notwithstanding Clause 12.12.2, if there is a security alert relating to the Bank’s Premises which prevents or delays the Contractor or its Staff from performing the Services, the Contractor shall be entitled to a reasonable extension of time in order to deliver the Services but shall not be entitled to any additional Charges.

**Legislative Change**

The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Charges as the result of a Change in Law (save that where any Change in Law would increase the cost of providing the Services to the Bank by more than ten per cent (10%), the Contractor may propose an amendment to the Charges, pursuant to Clause 12.1, which the Bank shall consider in good faith).

**Conflicts of Interest**

* + 1. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Bank under the provisions of this Agreement. The Contractor will immediately disclose to the Bank full particulars of any such conflict of interest which may arise.
		2. The provisions of this Clause 12.14 shall apply during the continuance of this Agreement and indefinitely after its termination.

**Non Solicitation**

* + 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 Regulations) 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.
		2. Each party agrees that if it breaches the provisions of Clause 12.15.1 by successfully soliciting or procuring any employee or contractor (including the Staff) of the other party (the “**New Joiner**”) (otherwise than by general advertising or the operation of Transfer Regulations), it 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 New Joiner’s employment.
		3. The parties agree that the amount referred to in Clause 12.15.2 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 12.15.1.

**Waiver**

The rights and remedies provided by this Agreement may be waived only in writing and signed by or on behalf of an authorised signatory of the Bank or an authorised signatory of the Contractor (as appropriate) 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.

Unless a right or remedy of the Bank is expressed to be an exclusive right or remedy, the exercise of it by the Bank is without prejudice to the Bank’s other rights and remedies. 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.

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

 **Cumulative Remedies**

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

**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 negotiation 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.

**Audit Rights**

* + 1. The Contractor shall keep and maintain until six (6) years after this Agreement has been completed, or as long a period as may otherwise be agreed between the parties, full and accurate records of this Agreement including the Services provided under it, the Charges due to the Contractor and all payments made by the Bank under this Agreement.
		2. The Contractor shall allow the Bank by the Bank’s own employees or duly authorised agents at all reasonable times and upon reasonable notice to inspect and take copies of or extracts from such records to the extent reasonably necessary for the purpose of verifying the proper performance by the Contractor of its obligations pursuant to this Agreement and the amounts due to the Contractor hereunder.
		3. The Contractor shall allow the Bank’s own employees or its duly authorised agents, at any time and upon twenty-four (24) hours’ notice, to enter the Contractor’s premises for the purposes of inspecting and carrying out any enquiries necessary to investigate a breach (or apparent breach) of Clause 11.5 that the Bank has reasonable grounds to believe to have occurred or will occur. The Bank shall only conduct such a security audit upon the written authorisation of the Head of Division (Property, Procurement and Security Division) and a copy of which shall be provided to the Contractor at the time or, if practicable, before this Clause 12.19.3 is exercised. The Bank shall pay the costs of the audit unless the audit finds that a breach of Clause 11.5 has occurred, in which case the Contractor shall be responsible for the costs of the audit, including reimbursing the Bank on an indemnity basis for all of the Bank’s costs incurred in the course of the audit.

**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.

**Dispute Resolution Procedure**

* + 1. The parties shall attempt to resolve any disputes (other than those relating to the termination of this Agreement in whole or in part) arising under or in relation to this Agreement in the following manner (“**Dispute Resolution Procedure**”):
			1. either party shall submit the dispute to the Contract Managers, who shall meet within five (5) Working Days of notification of the dispute to gather and analyse any information relevant to the resolution of the dispute and negotiate in good faith in an effort to resolve the dispute;
			2. if the Contract Managers determine in good faith that resolution through continued discussions does not appear likely within five (5) Working Days of the original referral, the matter shall be referred to the Site Manager (or equivalent) of each party to attempt to negotiate a resolution of the dispute. The Site Managers shall meet within five (5) Working Days of notification of the dispute to negotiate in good faith in an effort to resolve the dispute; and

if the Site Managers determine in good faith that resolution through continued discussions does not appear likely within ten (10) Working Days of the original referral, 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.

* + 1. The specific format for the discussions shall be determined at the discretion of the parties, but may include the preparation of agreed statements of fact or written statements of position.
		2. Proposals and information exchanged during the informal proceedings described in this Clause between the parties shall be privileged, confidential and without prejudice to a party’s legal position in any formal proceedings. All such proposals and information, as well as any conduct during such proceedings, shall be considered settlement discussions and proposals, and shall be inadmissible in any subsequent proceedings.
		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.
		4. Subject to Clause 12.21.7, the parties agree that they shall not commence legal proceedings until the Dispute Resolution Procedure has been exhausted.
		5. The Contractor shall continue to provide the Services in accordance with the terms of this Agreement until a dispute has been resolved.
		6. 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.

**Several Liability**

Unless expressly provided otherwise in this Agreement, the liability of the Bank for their obligations under this Agreement shall be several and extend only to any loss or damage arising out of their own breaches.

**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 and construed in accordance with English law and, subject to the terms of this Agreement, the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts to settle all such disputes or claims.

SCHEDULE 1

INTERPRETATION

* 1. **Definitions**

“**Approval**”, “**Approve**” 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;

“**Assets**” means the on-Premises plant, assets and installations that are subject to the Services, including those identified in the list of Asset in the appendix to Schedule 2 (Specification);

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

“**Change in Law**” means any change in Law, which impacts on the performance of the Contractor’s obligations under this Agreement which comes into force after the Effective Date;

“**Charges**” means the charges set out in Schedule 4;

“**Commercially Sensitive Information**” means any information identified by the Contractor pursuant to Clause 10, comprising information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business or which the Contractor has indicated to the Bank that, if disclosed by the Bank, would cause the Contractor significant commercial disadvantage or material financial loss;

“**Concept**” has the meaning given to it in Schedule 2 (Specification);

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

“**Consumables**” has the meaning given to it in the Specification;

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

“**Data Protection Legislation**” means the Data Protection Act 2018, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, the Privacy and Electronic Communications Directive 2002/58/EC, and all applicable Laws relating to processing of personal data and privacy as amended or replaced from time to time, including where applicable the guidance and codes of practice issued by the Information Commissioner, and all references to ‘personal data’, ‘processing’, ‘pseudonymisation’, ‘controller’, ‘processor’, ‘personal data breach’, and ‘cross-border processing’ shall be construed accordingly.

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

“**Deliverables**” means the documents, reports, software, specifications, projects or any items of work to be supplied under the Specification;

“**Developments**” means all inventions, improvements, modifications, processes, formulae, models, designs, prototypes and sketches, drawings, plans, reports, ideas, know-how, data, techniques, documentation, Deliverables, software (whether human- or machine-readable) or specifications thereof or other matters which the Contractor and/or the Staff alone or with one or more others may make, devise or discover during the Term or which pertain to, result from or are suggested by any work which the Contractor and/or the Staff have done or may hereafter during the Term do for the Bank;

“**Disclosing Party**” has the meaning given to it in the definition of “Confidential Information” in this paragraph 1.1;

“**Dispute Resolution Procedure**” means the dispute resolution procedure set out in Clause 12.21;

“**Effective Date**” means the date set out on the first page of this Agreement;

“**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 the Contractor’s equipment, plant, materials, tools etc. and Consumables used in the performance of its obligations under this Agreement;

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

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

“**Information**” has the meaning given under Section 84 of the FOIA;

“**Intellectual Property Rights**” means (whether registered or unregistered) copyrights, patents, utility models, trademarks, service marks, goodwill, design rights, database rights, semiconductor topography rights, proprietary information rights, proprietary rights in domain names, knowhow and rights to apply for registration, applications, extensions and renewals in relation to any of these rights and all other rights of a similar nature or having an equivalent effect as may exist anywhere in the world now or in the future;

“**Key Personnel**” means those persons named in the Specification and/or Contract Summary as being key personnel;

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

“**London Living Wage**” means the London Living Wage as set by the Greater London Authority or any successor body;

 “**Month**” means calendar month and “**Monthly**” shall be construed accordingly;

“**Normal Working Hours**” means the hours identified in Schedule 2 (Specification) during which the Services (respectively) shall predominantly be provided by the Contractor;

“**Premises**” means the Bank of England Sports Centre, Bank Lane, off Priory Lane, Roehampton, London SW15 5JQ (“**Roehampton**”), being the location where the Services are to be performed;

“**Quality Standards**” means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or other reputable body, that a leading company within the Contractor’s relevant industry or business sector would be expected to comply with, and as may be further detailed in Schedule 2;

“**Receiving Party**” has the meaning given to it in the definition of “Confidential Information” in this paragraph 1.1;

“**Relevant Employees**” means all of the Contractor’s employees excluding apprentices or interns who provide a service to or on behalf of the Bank involving two or more hours of work in any given day in a week, for eight or more consecutive weeks in a year on the Bank’s premises or property occupied by the Bank;

“**Replacement Contractor**” means any third party service provider appointed by the Bank from time to time, to provide any services which are substantially similar to any of the Services, and which the Bank receives in substitution for any of the Services following the termination or partial termination of this Agreement, whether those services are provided by the Bank internally and/or by any third party;

“**Request for Information**” means a request for information or an apparent request under the FOIA or the Environmental Information Regulations;

“**Service Credits**” means the service credits set out in Schedule 3;

“**Service Levels**” means the service levels set out in Schedule 3;

“**Services**” means the services to be provided as specified in the Specification;

“**Specification**” means the description of the Services to be provided under this Agreement and attached as Schedule 2;

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

“**Term**” means the period of duration of this Agreement in accordance with Clause 2.1 and any extensions agreed pursuant to Clause 2.2;

“**Transfer Regulations**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006; and

“**Working Day**” means, for cleaning and maintenance any day other than 25 December, 26 December and 1 January, and for security 365 days a year (or 366 days a year in the case of a leap year).

* 1. **Gender**

As used in this Agreement unless the context otherwise requires, the masculine includes the feminine, and the neuter includes the masculine and the feminine.

* 1. **Number**

As used in this Agreement unless the context otherwise requires, the singular includes the plural and vice versa.

* 1. **Subsequent Enactments**

References in this Agreement to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument or as contained in any subsequent re‑enactment thereof.

* 1. **Headings**

The headings in this Agreement are for the convenience of the parties only, and are in no way intended to affect, describe, interpret, define or limit the scope, extent, intent or interpretation of this Agreement or any provision of this Agreement.

* 1. **Clauses and Schedules**

References to Clauses and paragraphs are to Clauses in the Terms and paragraphs in the Schedules (or Annexes). In the event of any conflict or inconsistency between any provision of the front sheet, Contract Summary, Terms or Schedules, the order of precedence shall be: (1) Schedule 2 (Specification); (2) the Terms; (3) the Schedules (other than Schedule 2); (4) the Front Sheet; and (5) the Contract Summary, but only to the extent of the conflict or inconsistency. Further (and subject to the preceding), in the event of any conflict or inconsistency between the Schedules, the later in time shall prevail, but only to the extent of the conflict or inconsistency.

 SCHEDULE 2

**SPECIFICATION**

[As per specification published with tender, and any added value from Contractor’s tender response]

SCHEDULE 3

SERVICE LEVELS AND SERVICE CREDITS

[As per service levels published with tender and Contractor’s service credit tender response]

SCHEDULE 4

CHARGES

[As per Contractor’s tender response]

SCHEDULE 5

MONITORING AND GOVERNANCE

* 1. **Purpose**
		1. This Schedule describes the principles and procedures by which the relationship between the Bank and the Contractor shall be governed in respect of this Agreement and governance relating to the Services.
		2. This Schedule aims to deal with, in particular, how the parties will interact with one another on a day-to-day basis with a view to managing the implementation of this Agreement, including the delivery of the Services, maintaining a working relationship between the parties, maintaining a working relationship between the Bank, the Contractor and all sub-contractors approved by the Bank in writing, and the type, content and frequency of Agreement review meetings that shall be held.
		3. Each party will appoint individuals to the relevant roles described in this Schedule and will ensure that those individuals comply with the roles and responsibilities described herein.
		4. For the avoidance of doubt, nothing in this Schedule will oblige the Bank or Contractor to appoint individuals to work in the roles in paragraph 3 of this Schedule on a full time basis or to the exclusion of other work functions. Furthermore, neither the Bank nor the Contractor will be prohibited from appointing one person to one or more than one role set out in paragraph 3 of this Schedule, unless this would mean that the same individual would appear more than once on the same escalation path.
	2. Partnership Principles
		1. Both parties shall use reasonable endeavours to co-operate with each other in the performance of their respective obligations under this Agreement and to develop and sustain a mutually beneficial long-term relationship.
		2. The parties acknowledge that the following are the Bank’s objectives with respect to the delivery of the Services and that the Contractor shall through the delivery of the Services enable these objectives to be achieved where possible:
		3. to enable the Bank to continue to improve its processes and services to its business;
		4. to present the Bank through presentation of its premises in a manner commensurate to the standing of the Bank and to create and maintain a safe, clean and pleasant working environment for its staff, members and Bank Visitors; and
		5. to enable the Bank to realise business efficiency and cost savings / benefit realisation wherever possible.
		6. The Contractor will take its direction from the Bank in all its dealings under this Agreement including, but not limited to, dealings with its sub-contractors.
	3. Roles and Responsibilities of Key Governance Team Members
		1. The Bank’s Contract Manager shall have primary operational responsibility for the management of this Agreement for the Bank and shall be the primary Bank point of contact for this Agreement throughout the Term.
		2. The responsibilities of the Bank’s Contract Manager shall include:
			1. Contractor relationship management and overseeing the Contractor’s adherence to the following objectives: delivering the Services and Agreement commitments within cost targets and meeting all relevant Service Levels and the Bank’s needs as contracted;
			2. overseeing all Agreement management and administrative activities;
			3. financial management;
			4. monitoring Contractor compliance with obligations set out in this Agreement;
			5. approving (or declining) all work requests that are in excess of the Charges;
			6. evaluating Service Credits and approving (or declining) any action plans resulting from failures to provide Services in accordance with the Service Levels;
			7. ensuring receipt and review of all Contractor reports required in relation to this Schedule and this Agreement;
			8. assisting with negotiations related to all Changes to this Agreement that are required during the Term and reviewing and approving (or declining) Change Requests; and
			9. people management.
		3. The Contractor shall appoint an account manager dedicated to the provision of Services to the Bank (“Contract Manager”).
		4. The Contractor’s Contract Manager shall:
			1. have primary operational responsibility for the management of this Agreement for the Contractor;
			2. ensure the provision of the Services and all Agreement commitments; and
			3. be the primary Contractor point of contact for this Agreement throughout the Term.
		5. The responsibilities of the Contractor’s Contract Manager shall include:
			1. managing the overall relationship between the Contractor and the Bank and working with the Bank’s Contract Manager to manage and meet commitments, requirements and expectations;
			2. ensuring that the Contractor fulfils all of its obligations under this Agreement;
			3. attending review meetings with the Bank on at least a quarterly basis at a time and place to be specified by the Bank;
			4. ensuring that all Service Levels and relevant timelines are met;
			5. working with the Bank’s Contract Manager to establish, manage and meet Agreement commitments, requirements and expectations;
			6. working with the Bank’s Contract Manager to align the delivery of the Services with the strategic needs of the Bank, such activities shall be performed with the approval and in conjunction with the Bank Contract Manager;
			7. managing and resolving issues regarding the Services;
			8. managing relationships with the Contractor’s sub-contractors;
			9. ensuring that adequate governance arrangements are in place within the Contractor’s organisation for the delivery of the Services;
			10. informing the Bank of any new corporate capabilities and developments within the Contractor organisation and propose ideas and solutions that shall provide on-going benefit to the Bank;
			11. being responsible for the management of the Contractor’s responsibilities, input and deliverables with respect to the provision of the Services;
			12. establishing and building a close working relationship with the Bank’s Contract Manager; and
			13. working with the Bank’s Contract Manager with respect to any variations to the terms of this Agreement and processing Contract Amendments.
1. **Regular monitoring meetings**

The following meetings shall be held at the following intervals:

* 1. Day to day site meetings with an on-site representative from each of the parties (as nominated by each party from time to time);
	2. Monthly operational meetings between the Bank’s Contract Manager and the Contractor’s Contract Manager, such meetings to be held at Bank of England Sports Centre Roehampton or such other place as the Bank may reasonably nominate with the time and date of such meetings to be agreed between the parties. At the Monthly operational meetings, the parties shall review the previous Month’s performance and other matters arising, attendees to include the Contractor Head of Operations, the Contractor Technical Manager and the Contractor Venue Manager plus representatives of the Bank of England. Monthly Concept statistics will also be discussed at the Monthly meeting.
	3. The Bank and Contractor Contract Managers will meet on a quarterly basis or sooner at the Bank’s request, to discuss the provision of the Services. Fixed agenda items for each such meeting will be:
	+ Service performance;
	+ Compliance with Service Levels;
	+ Formal quality inspection audits (which will be completed on a quarterly basis by the Contractor’s Technical Manager and representatives of the Bank of England);
	+ Review of the control parameters of the BMS system analysis of utility consumption, which will be undertaken with the overall objective of pro-actively managing the site plant in order to reduce utility consumption together with driving a culture of energy consciousness amongst all site staff; and
	+ Discussion and approval of Change Requests (if any); and
	1. Commercial meetings between a representative of the Bank’s procurement division, the Bank’s Contract Manager and the Contractor’s Contract Manager to discuss the performance of the Services in the preceding year and any changes required going forward. These meetings shall be held in January of each contract year at Roehampton or such other place as the Bank may reasonably nominate at a time and date to be agreed between the parties.
1. **Monitoring information**
	1. The Contractor will maintain and provide to the Bank a range of databases and management information (“Monitoring Information”), including but not limited to:
* An up to date register of Staff, including full training records;
* A review of staffing matters, shifts, changes;
* Health and safety issues / incidents
* Health and safety risk assessments;
* Accident records;
* A maintenance and testing schedule, including servicing of all equipment and Bank assets;
* A review of the PPM schedule and periodical works
* KPI / service levels / quality reports;
* Review of CAFM reports (as per Concept which is maintained by the BoE);
* Operational issues, including a review of security, cleaning and maintenance
	1. The Contractor will produce for the Bank such other Service-related reports as the Bank may reasonably require from time to time.
	2. The Contractor shall make all Monitoring Information available to the Bank in electronic format at the frequency identified above or otherwise upon request and will be subject to discussion at any regular monitoring meetings identified in paragraph 4.

SCHEDULE 6

COMMERCIALLY SENSITIVE INFORMATION

[Contractor to complete this Schedule, including Contractor’s pricing information]SCHEDULE 7

[NOT USED]

SCHEDULE 8

CHANGE CONTROL

1. **DEFINITIONS USED IN THIS SCHEDULE**
	1. In this Schedule:

“**Change**”means any change to this Agreement (including a change to any of the Services and/or a change relating to the provision of additional services) or to any document referred to in this Agreement;

“**Change Request**”means a written request or suggestion for a Change, that is served by one party on the other, and complies with paragraph 3 of this Schedule;

“**Contract Amendment**”means a written agreement for a Change, which has been signed by both parties, and is in substantially the form set out in Annex A to this Schedule;

“**Issuing Party**”means the party that issues a Change Request;

“**Mandatory Change**” means each of:

1. a Minor Change to the Schedules that is necessary as a result of the automatic operation of obligations in this Agreement;
2. a Change that is necessary to comply with any Change in Law and is chargeable in accordance with Clause 12.13; and
3. any other Change expressly designated as a Mandatory Change by this Agreement, or otherwise by the parties in writing.

“**Minor Change**” means either:

* + 1. a cosmetic Change (changing the words but not the meaning of this Agreement, and having no impact on the Charges); or
		2. a Change to the Schedules (including any Annex) that is necessary as a result of the automatic operation of obligations in this Agreement;

“**Non-Chargeable Change**”means a Change, to the extent that it is:

* + 1. necessary because of a Change in Law and is non-chargeable in accordance with Clause 12.13; or
		2. any other Change expressly designated as a Non-ChargeableChange by this Agreement, or otherwise by the parties in writing; and

“**Recipient Party**”means the party in receipt of a Change Request from the Issuing Party.

1. **Principles and Scope**
	1. All proposals for Changes shall be discussed and agreed by the parties in accordance with this Schedule.
	2. Until a Change is made in accordance with this Agreement, the parties shall continue to perform this Agreement in compliance with its terms prior to such Change.
	3. Any discussions that may take place between the parties in connection with a Change Request shall, before signature of a resultant Contract Amendment, be without prejudice to the rights of either party.
	4. Any work undertaken by or on behalf of the Contractor which has not been authorised in advance by a Contract Amendment, or otherwise agreed in writing (including as to the cost implications thereof) by the Bank, shall be undertaken entirely at the expense and liability of the Contractor.
	5. Changes to working practices or procedures which are not detailed in this Agreement and which therefore do not have a contractual implication may be made without reference to this Schedule, and shall be documented (where appropriate) as part of the relevant working practices or procedures.
2. **Change Requests**
	1. Either party may, at any time, serve a Change Request on the other. Each Change Request must:
		1. be addressed to, and served on, the Recipient Party’s nominated person (in the case of each party, their respective Contract Managers);
		2. give a title to the proposed Change;
		3. set out the reasons for the Change Request;
		4. provide as much detail as reasonably practicable of the proposed Change (including an initial assessment of the likely contractual changes required); and
		5. categorise the proposed Change as one or more of the following:

3.1.5.1 a Minor Change;

3.1.5.2 a change to Services or scope of Services;

3.1.5.3 a change to a process or procedure within this Agreement;

3.1.5.4 a change to Service Levels or performance/quality targets;

3.1.5.5 a change to the Charges or the basis of charging;

3.1.5.6 a change to any of the wording of this Agreement; and/or

3.1.5.7 any other change.

* 1. The Contractor shall promptly allocate a sequential number to each Change Request (whether issued by the Contractor or the Bank).
	2. The Contractor shall maintain a status log of all open and closed Change Requests.
1. **Responses to Change Requests**
	1. Within fifteen (15) days (or such other period as may be agreed by the parties (and neither party shall unreasonably withhold or delay its agreement to a time extension proposed by the other party in this regard)) after receipt of a Change Request, the Recipient Party shall evaluate the Change Request and, as appropriate (and in writing), either:

4.1.1 request further information and/or discussions relating to the proposed Change (in which case, the Issuing Party shall, to the extent reasonable, promptly provide the requested information and/or both parties shall promptly engage in the requested discussions); or

4.1.2 (where the Bank is the Recipient Party) request the Contractor to prepare a draft Contract Amendment in relation to the proposed Change; or

4.1.3 (where the Contractor is the Recipient Party) draft and provide to the Bank a draft Contract Amendment in relation to the proposed Change; or

4.1.4 (subject to paragraphs 4.1.1 to 4.1.3) notify the Issuing Party of its rejection of the Change Request.

1. **Discussion of Change Requests**
	1. Mandatory Changes

 5.1.1 To the extent that any Change Request or proposed Contract Amendment wording is necessary to implement a Mandatory Change, no party may withhold or delay its agreement thereto.

 5.1.2 To the extent that any Change Request or proposed Contract Amendment wording relates to (but is not necessary to implement) a Mandatory Change: (i) no party may unreasonably withhold or delay its agreement thereto; and (ii) no party shall make an unreasonable proposal in connection therewith.

* 1. Other Changes

The Contractor may not unreasonably withhold or delay its agreement to any Change Request or proposed Contract Amendment wording (and the Contractor shall not make an unreasonable proposal in connection therewith), to the extent that such Change Request or proposed wording relates to a change to the quantity of the Service being provided (e.g. the number of Staff made available to provide the Services) (not being a Mandatory Change) but this does not include extending the Services to providing a different service and/or service component to that as set out in the Specifications.

5.3 Further consultation and discussion

 5.3.1 The parties (where appropriate consulting other interested parties) shall discuss each Change Request and (subject to paragraphs 4.1.1 to 4.1.3 above) decide whether to proceed further with the proposed Change. Neither party may unreasonably refuse to provide (or unreasonably delay providing) information reasonably requested by the other to substantiate any of its proposals as to the wording of any Contract Amendment.

 5.3.2 If the parties decide to proceed further, they shall work together in good faith to agree a Contract Amendment as a formal variation to this Agreement.

1. **Contract Amendments**
	1. Each Contract Amendment shall include the following (except to the extent not relevant to the proposed Change):

6.1.1 full details of the proposed Change, expressed as changes (including any deletions and/or additions) to the wording of this Agreement, including without limitation, details of:

6.1.1.1 the likely impact, if any, of the Change on other aspects of this Agreement;

6.1.1.2 (subject to paragraph 6.2) any changes to the Charges, where applicable, calculated in accordance with Schedule 4;

6.1.1.3 any documentation to be provided;

6.1.1.4 any training to be provided; and

6.1.1.5 working arrangements;

6.1.2 an implementation plan for the proposed Change, including, where relevant, proposals for a test plan and the date by which any changes to the Services will be ready for use;

6.1.3 a back-out plan in case the Change is unsuccessful;

6.1.4 details of any other additional resources expected to be required or provided;

6.1.5 details of any other additional costs or risks likely to result from the Change; and

6.1.6 any foreseeable impact that the Change may have on existing Services.

* 1. This paragraph 6 relates to Contract Amendments, to the extent they give effect to Non-Chargeable Changes. No such Contract Amendment shall provide for any increase in the Charges (but it may, for the avoidance of doubt, provide for a decrease in the Charges).
	2. Once agreed, the Contractor shall sign two copies of the Contract Amendment and provide both to the Bank within two (2) Working Days (or such other period as may be agreed between the parties). The Bank shall sign both copies of the Contract Amendment within two (2) Working Days (or such other period as may be agreed between the parties) of receipt thereof from the Contractor, and shall return one of these to the Contractor.
	3. The Contractor shall maintain a record of all Contract Amendments.
	4. Once implemented, each Contract Amendment (except to the extent it only relates to Minor Changes) will be reviewed for success, and for lessons learnt. If the parties agree that the Change was unsuccessful, the parties may agree to implement the back-out plan to reverse the Change.

**Annex A: CONTRACT AMENDMENT**

**CONTRACT AMENDMENT NUMBER [**•**]**

**to the Agreement dated [**•**] between the Bank and the Contractor (the “Original Agreement”) as modified by Contract Amendment[s] [insert previously agreed contract amendment Nos.]**

**This CONTRACT AMENDMENT** is made the [•] day of [•]

between the Bank of Englandwhose principal place of business is at Threadneedle Street, London, EC2R 8AH (the “**Bank**”) and [•] whose registered office is at [•] (the “**Contractor**”).

WHEREAS the parties are parties to the Original Agreement and now wish to amend the Original Agreement on the terms of this Contract Amendment.

IT IS AGREED as follows

1. With effect from the [•] day of [•] the Original Agreement shall be amended as set out in Clause 3 hereof.
2. Save as herein amended all other terms and conditions of the Original Agreement shall remain in full force and effect.
3. In consideration of the sum of [one pound sterling (£1) / the Charges set out at Clause 4 hereof [•]], payable by the Bank to the Contractor (receipt and sufficiency of which is hereby acknowledged) the amendments set out at Clause 4 hereof shall be effective from the date of this Contract Amendment.
4. The amendments to the Original Agreement are as follows:

[•]

|  |  |
| --- | --- |
| For and on behalf of the Governor and Company of **THE BANK OF ENGLAND** | For and on behalf of **[.]** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**SCHEDULE 9**

STAFF TRANSFER

1. PURPOSE OF THIS SCHEDULE

This Schedule sets out the parties’ respective rights and obligations in relation to the application of the Transfer Regulations to this Agreement.

1. APPLICATION OF TRANSFER REGULATIONS ON THE COMMENCEMENT DATE
	1. The Parties agree that on the Commencement Date there is a transfer of undertaking from the Previous Supplier to the Contractor to which the Transfer Regulations apply. The Contractor shall comply with its obligations under the Transfer Regulations and the Bank will use its reasonable endeavours to ensure that the Previous Supplier observes and complies with its obligations to inform and consult with employee representatives under Regulation 13 of the Transfer Regulations.
	2. As between the parties, the Bank shall be responsible for remuneration, benefits, entitlements and outgoings for the Existing Employees, including (but not limited to) all wages, holiday pay, bonuses, commissions, PAYE payments, National Insurance contributions, pension contributions and termination costs (“**Employee Costs**”) incurred or accruing up to the Commencement Date. From and including the Commencement Date, the Contractor shall be responsible for all Employee Costs and neither the Bank nor the Previous Supplier shall bear any responsibility for the same.
	3. The Bank shall request that the Previous Supplier:
		1. provide Employee Information relating to all Existing Employees and as required by the Transfer Regulations update such Employee Information prior to the Commencement Date. To the extent compliant with Data Protection Legislation, the Bank shall disclose such Employee Information received from the Previous Supplier to the Contractor; and
		2. cooperate with the Bank and the Contractor to the extent reasonably necessary to facilitate smooth migration of Services and Existing Employees.

3 OUTGOING SERVICE TRANSFER OBLIGATIONS

3.1 The Agreement envisages that, subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part, or otherwise) resulting in the Services or related services being undertaken by the Bank or a Replacement Contractor. Such change in the identity of the supplier of such services shall be a “**service transfer**”. The parties acknowledge that a service transfer will be a relevant transfer for the purposes of the Transfer Regulations and in such event, the Bank, or a Replacement Contractor, may inherit liabilities in respect of the transferring employees. Accordingly, the Employment Regulations will apply.

3.2 The Contractor will effect a smooth transfer of any Staff engaged or to be engaged in the provision of the Services working at the Premises under any contract of employment, other employment relationship or collective agreement so that their employment transfers:

* + 1. at the Commencement Date, to the Contractor; and
		2. at expiry or termination of this Agreement, to the Bank or the Replacement Contractor.

3.3 The Contractor agrees that on the termination or expiry of this Agreement, if there is a transfer of an undertaking to the Bank or to a Replacement Contractor to which the Transfer Regulations (or its successor) applies, the Contractor will observe and comply with its obligations to inform and consult with employee representatives under the Transfer Regulations (or the corresponding provision in any successor legislation) and shall cooperate with the Bank and, if applicable, the selected Replacement Contractor to the extent necessary to facilitate smooth migration of the Services.

3.4 The Contractor agrees, subject to compliance with the Data Protection Legislation that within 20 Working Days of the earliest of:

* + 1. receipt of a notification from the Bank of a service transfer or intended service transfer; or
		2. receipt of the giving of notice of early termination of this Agreement or any part thereof; or
		3. the date which is twelve (12) Months before the end of the term; or
		4. receipt of a written request of the Bank at any time (provided that the Bank shall only be entitled to make one (1) such request in any six (6) Month period),

it will provide a provisional list of Staff and relevant staffing information (“**Provisional Staff List**”) to the Bank or, at the direction of the Bank, to a Replacement Contractor and it will provide an updated Provisional Staff List at such intervals as are reasonably requested by the Bank.

3.5 At least fifteen (15) Working Days prior to the service transfer date, the Contractor shall prepare and (subject to compliance with Data Protection Legislation) provide, or as appropriate procure that the Contractor party shall prepare and provide, to the Bank or, at the direction of the Bank or the Replacement Contractor, a final list of Staff subject to the Transfer Regulations together with all Employment Information, which shall be complete and accurate in all material respects (the “**Final Staff List**”). The Final Staff List shall identify which of the Staff named are transferring employees.

3.6 Subject to compliance with the Data Protection Legislation, the Bank shall be permitted to use and disclose the Provisional Staff List, the Final Staff List, all associated Employment Information and other Staff information for informing any tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services.

3.7 Upon reasonable request by the Bank and subject to compliance with the Data Protection Legislation, the Contractor shall provide and shall procure that each contractor party shall provide, the Bank or at the request of the Bank, the Replacement Contractor, with access (on reasonable notice and during Normal Working Hours) to such employment records as the Bank reasonably requests and will allow the Bank or the Replacement Contractor to have copies of any such documents.

3.8 The Contractor warrants that the Provisional Staff List, the Final Staff List, the Employment Information and all other Staff information will be true and accurate in all material respects.

3.9 From the date of the earliest event referred to in paragraphs 3.4.1 to 3.4.4 above, the Contractor agrees that it will not, and agrees to procure that each Contractor party will not, other than in the ordinary course of business, assign any person to the provision of the Services (or the relevant part) which is the subject of a service transfer who is not listed in the Provisional Staff List and will not, other than in the ordinary course of business, without the prior written consent of the Bank:

* + 1. increase the total number of employees listed on the Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed;
		2. vary or purport, permit or promise to vary the terms and conditions of employment or employment policies applicable to any employees listed on the Provisional Staff List;
		3. increase the proportion of working time spent on the Services (or the relevant part) by any of Staff save for fulfilling assignments and projects previously scheduled and agreed;
		4. give notice to terminate, or terminate, the employment of any employees listed on the Provisional Staff List;
		5. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provisional Staff List;
		6. replace any person listed on the Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Provisional Staff List save for:
			1. the execution of assigned operations as detailed in 3.9.1 and 3.9.3; and/or
			2. replacing voluntary resignations or Staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces; and
		7. The Contractor will promptly notify, or as appropriate will procure that the Contractor party will promptly notify the Bank or, at the direction of the Bank, the Replacement Contractor of any notice to terminate employment given by the Contractor or any contractor party or received from any persons listed on the Contractor's provisional staff list regardless of when such notice takes effect.

3.10 Within seven (7) Working Days following the service transfer date, the Contractor will provide to the Bank or any Replacement Contractor, in respect of each person on the Final Staff List who is a transferring employee:

* + 1. their Employee Information;
		2. the most recent Month's copy pay slip data;
		3. details of cumulative pay for tax and pension purposes;
		4. details of cumulative tax paid;
		5. tax code;
		6. details of any voluntary deductions from pay; and
		7. bank/building society account details for payroll purposes.

**4 CONTRACTOR OBLIGATIONS**

* 1. In connection with a relevant transfer under this Schedule, the parties agree that:

4.1.1 the Contractor will and shall procure that any Contractor party will, perform and discharge all of its obligations in respect of all the transferring employees and their representatives for its own account up to and including the service transfer date. The Contractor will indemnify the Bank and any Replacement Contractor against all employee liabilities arising from the Contractor’s or any contractor party’s failure to perform and discharge any such obligation and against any employee liabilities in respect of the transferring employees arising from or as a result of:

* + - 1. any act or omission by the Contractor or Contractor party occurring on or before the service transfer date or any other matter, event or circumstance occurring or having its origin before the service transfer date save simply for accrual of service before that date;
			2. all and any employee liabilities in respect of all emoluments and outgoings in relation to the transferring employees (including without limitation Employment Costs) payable in respect of any period on or before the service transfer date;
			3. any claim arising out of the provision of, or proposal by the Contractor or any Contractor party to offer any change to any benefit, term or condition or working condition of any transferring employee arising on or before the service transfer date;
			4. any claim made by or in respect of any person employed or formerly employed by the Contractor or any Contractor party other than a transferring employee for which it is alleged the Bank or any Replacement Contractor may be liable by virtue of this Agreement and/or the Transfer Regulations;
		1. The Contractor will indemnify the Bank and any Replacement Contractor against all employee liabilities arising from:
			1. any act or omission of the Contractor or any Contractor party in relation to its obligations, or in respect of an award of compensation, under the Transfer Regulations except to the extent that the liability arises from the Bank or a Replacement Contractor’s failure to comply with Regulation 13(4) of the Transfer Regulations; and
			2. any statement communicated to or action done by the Contractor or any Contractor party to, or in respect of, any transferring employee on or before the service transfer date regarding the service transfer which has not been agreed in advance with the Bank in writing subject to the timely availability of the Bank, the Contractor or Contractor party to verify, amend or negotiate the content of such statements.

4.2 The Contractor will indemnify the Bank and any Replacement Contractor in respect of any employee liabilities arising from any act or omission of the Contractor or any contractor party in relation to any other staff who is not a transferring employee during any period whether before, on or after the service transfer date.

4.3 If any person who is not a transferring employee claims or it is determined that their contract of employment has been transferred from the Contractor or any Contractor party to the Bank, or a Replacement Contractor pursuant to a relevant transfer for the purposes of the Transfer Regulations, or claims that their employment would have so transferred had they not resigned, then:

* + 1. the Bank or the Replacement Contractor will, within seven (7) Working Days of becoming aware of that fact, give notice in writing to the Contractor;
		2. the Contractor may offer (or may procure that a Contractor party may offer) employment to such person within twenty-one (21) Working Days of the notification by the Bank or the Replacement Contractor;
		3. if such offer of employment is accepted, the Bank or the Replacement Contractor shall immediately release the person from their employment;
		4. if after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Bank or the Replacement Contractor may within seven (7) Working Days give notice to terminate the employment of such person;
		5. subject to the Bank or the Replacement Contractor acting in this way or in such other way as may be agreed between the Contractor and the Bank or the Replacement Contractor, the Contractor will indemnify the Bank and the Replacement Contractor against:
			1. all employment liabilities arising out of such termination or otherwise arising out of the employment of such person by the Bank or a Replacement Contractor; and/or
			2. any employment costs (if any) associated with the employment of such person by the Bank or the Replacement Contractor up to the date of termination of such persons employment.
		6. If such person is neither re-employed by the Contractor or any Contractor party nor dismissed by the Bank or the Replacement Contractor within the time scales set out in this paragraph 4.3, such person will be treated as a transferring employee.
	1. The Contractor shall indemnify the Bank and any Replacement Supplier against:
		1. any claim or demand made by any Staff arising out of their employment with the Contractor;
		2. any Employment Liabilities arising from or as a consequence of:
			1. any proposed changes to the terms and conditions of employment the Contractor makes or considers making on or after the Commencement Date;
			2. any Existing Employee informing the Bank or the Previous Supplier that they object to being employed by the Contractor;
			3. any change in identity of the Existing Employees’ employer as a result of the operation of the Transfer Regulations or as a result of any proposed measures the Contractor takes or considers taking on or after the Commencement Date; and
			4. any failure by the Contractor to meet any and all Employee Costs from and including the Commencement Date; and
		3. any claims, liabilities, demands, awards, costs or expenses (including any fines, penalties, legal costs or other professional costs) suffered or incurred by the Bank arising from or in connection with:
			1. the employment or termination of employment of any Staff;
			2. any failure by the Contractor to comply with its obligations under the Transfer Regulations; or
			3. any failure by the Contractor to provide complete and accurate Employee Information.

5 BANK INDEMNITY

5.1 Subject to paragraph 5.1, the Bank shall indemnify the Contractor against any direct losses incurred by the Contractor in connection with any claim or demand made by any Existing Employee arising out of their employment with the Previous Supplier. This indemnity shall apply provided that such claim arises from and to the extent of any act, fault or omission of the Bank or the Previous Supplier in relation to that Existing Employee prior to the Commencement Date (except where such act, fault or omission arises as a result of the Supplier’s failure to comply with the Transfer Regulations) and any such claim is not in connection with the transfer of the Services by virtue of the Transfer Regulations on the Commencement Date.

* 1. The Contractor shall be liable for and shall indemnify and keep indemnified the Bank and the Previous Supplier against any Employment Liabilities arising from or as a consequence of:
		1. any proposed changes to the terms and conditions of employment the Contractor makes or considers making on or after the Commencement Date;
		2. any Existing Employee informing the Bank or the Previous Supplier that they object to being employed by the Contractor;
		3. any change in identity of the Existing Employees’ employer as a result of the operation of the Transfer Regulations or as a result of any proposed measures the Contractor takes or considers taking on or after the Commencement Date; and
		4. any failure by the Contractor to meet any and all Employee Costs from and including the Commencement Date.

6 MUTUAL OBLIGATIONS

6.1 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to a relevant transfer for the purposes of the Transfer Regulations will be fulfilled.

6.2 The Bank will assume (or will procure that the Replacement Contractor, as the case may be, will assume) the outstanding obligations of the Contractor in relation to the transferring employees in respect of accrued holiday entitlements and accrued holiday remuneration to the service transfer date. In consideration, the Contractor will pay to the Bank (or the replacement contractor as the case may be) within fourteen (14) days of the service transfer date the full amount necessary to enable the Bank or the Replacement Contractor to meet the cost of providing any such untaken holiday entitlements and remuneration as at the service transfer date. The Bank or the Replacement Contractor, as the case may be, will reimburse the Contractor any amount paid by the Contractor before the service transfer date in respect of holidays taken in excess of any transferring employee's entitlement to paid holiday in respect of the period ending on the service transfer date.

7 THIRD PARTY RIGHTS

The parties agree that the Contracts (Right of Third Parties) Act 1999 shall apply to paragraphs 4, 6 and 9 of this Schedule to the extent necessary that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the replacement contractor by the Contractor under those paragraphs 4, 6 and 9 in its own right pursuant to Clause 1(1) of this Act.

8 PROVISIONS WHERE TRANSFER REGULATIONS DO NOT APPLY

 The following provisions shall apply in the event of a service transfer to which the Transfer Regulations do not apply:

* 1. the Bank or the Replacement Contractor can, in its discretion, make to any of the employees listed on the Contractor's provisional staff list or any staff assigned to the services an offer, in writing, to employ that employee under a new contract of employment to take effect on the day after the termination referred to in paragraph 8.2 below of this Schedule or at the earliest reasonable opportunity;
	2. when the offer has been made by the Bank or Replacement Contractor and accepted by any employee or worker, The Contractor shall and shall procure that any contractor party shall, permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Contractor, which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
	3. if the employee does not accept an offer of employment made by the Bank or Replacement Contractor, the employee shall remain employed by the Contractor (or the Contractor party, as the case may be) and all employee liabilities in relation to the employee shall remain with the Contractor or relevant contractor party; and
	4. if the Bank or the Replacement Contractor does not make an offer to any employee on the Contractor's provisional staff list or any staff, then that employee and all employee liabilities in relation to that employee remains with the Contractor.

9 CONDUCT OF CLAIMS

9.1 This paragraph 9 shall apply to the conduct of the Contractor when claims are made by a third party against the Bank who has (or claims to have) the benefit of an indemnity granted by the Contractor under this Schedule.

9.2 If the Bank receives any notice, demand, letter or other document concerning any claim for which it appears that the Bank is, or may become entitled to, indemnification under this Schedule (“**Claim**”), the Bank shall give notice to the Contractor as soon as reasonably practicable and in any event within ten (10) Working days of receipt of the same.

9.3 Subject to paragraphs 10.4, 10.5 and 10.6, on the giving of a notice by the Bank pursuant to paragraph 10.2 above, where it appears that the Bank is or may be entitled to indemnification from the Contractor in respect of all (but not part only) of the liability arising out of the claim, the Contractor shall (subject to providing the Bank with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the claim in the name of the Bank at the its own expense and take conduct of any defence, dispute, compromise or appeal of the claim and of any incidental negotiations relating to the claim. If the Contractor does elect to conduct the claim, the Bank shall give the Contractor all reasonable co-operation, access and assistance for the purposes of such claim and, subject to paragraph 10.5 below, the Bank shall not make any admission which could be prejudicial to the defence or settlement of the claim without the prior written consent of the Contractor.

* 1. With respect to any claim conducted by the Contractor pursuant to paragraph 9.3 above:
		1. the Contractor shall keep the Bank fully informed and consult with it about material elements of the conduct of the claim;
		2. the Contractor shall not bring the name of the Bank into disrepute;
		3. the Contractor shall not pay or settle such claim without the prior written consent of the Bank, such consent not to be unreasonably withheld or delayed; and
		4. the Contractor shall conduct the claim with all due diligence.

9.5 The Bank shall be entitled to have conduct of the claim and shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

* + 1. the Contractor is not entitled to take conduct of the claim in accordance with paragraph 9.3 above;
		2. the Contractor fails to notify the Bank of its intention to take conduct of the relevant claim within ten (10) Working Days of the notice from the Bank under paragraph 9.2 above or if the Contractor notifies the Bank that it does not intend to take conduct of the claim; or
		3. the Contractor fails to comply in any material respect with the provisions of paragraph 9.3 above.

**9.6 Sensitive claims**

9.6.1 With respect to any claim for which the Bank reasonably considers is likely to have an adverse impact on the general public's perception of the Bank (a “**Sensitive claim**”), the Contractor shall only be entitled to take conduct of any defence, dispute, compromise or appeal of the sensitive claim with the Bank's prior written consent. If the Bank withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the sensitive claim itself, it shall conduct the sensitive claim with all due diligence and if any failure to do so results in an increase in the amount recoverable by the Bank in respect of an indemnity under this Agreement, the Contractor shall only be liable to indemnify the Bank in respect of that amount which would have been recoverable by the Bank had it conducted the sensitive claim with all due diligence.

9.6.2 The Bank shall be free at any time to give written notice to the Contractor that it is retaining or taking over (as the case may be) the conduct of any claim, to which paragraph 9.6.1 above applies notwithstanding that it does not have the right to do so pursuant to paragraph 9.5 if, in the reasonable opinion of the Bank the claim is, or has become, a sensitive claim. In such cases, the provisions of paragraph 9.6.1 above shall apply.

**10 TAXATION**

If any payment by the Contractor under an indemnity in this Agreement is subject to income tax or corporation tax (or any tax replacing either or both of them) in the hands of the Bank (or a withholding made by the paying party in respect of tax), the Bank may demand in writing to the Contractor that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the Bank receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax or withholding.