Dated 2017

**(1) BANK OF ENGLAND**

**and**

**(2) [*CONTRACTOR*]**

**AGREEMENT** **relating to**

**data collection, data validation and PLAUSIBILITY CHECKING/xbrl processing**

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**THIS AGREEMENT** is made on 2017 (the “**Effective Date**”)

**BETWEEN**

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

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

**WHEREAS**

(A) The Bank has an existing platform which enables financial institutions to submit regulatory and statistical financial data to the Bank via a web portal, referred to by the Bank as the “BEEDS Portal”. The Bank now wishes to upgrade or replace that platform.

(B) The Bank therefore placed a contract notice [NUMBER] on [DATE] in the Official Journal of the European Union seeking expressions of interest from potential suppliers for the provision and support of a data collection system, which could be used by the Bank for its existing and future data collection requirements.

(C) Following receipt of expressions of interest, the Bank invited potential suppliers (including the Supplier) to negotiate to provide the Services set out in this Agreement and following evaluation of final bids received selected the Contractor to provide the Services.

(D) This Agreement sets out the requirements for the System, the Services to be provided by the Supplier, and the terms and conditions applicable along with the procedure to be followed to increase the functionality of the System and/or change or increase the Data Collections which are collected by the Bank.

(E) The Bank wishes to obtain and the Contractor is willing to perform certain Services on the terms and conditions set out below.

**NOW THEREFORE**, in consideration of the mutual covenants contained in this Agreement and intending to be legally bound, the parties agree as follows:

1. DEFINITIONS AND INTERPRETATION
   1. Definitions

In this Agreement, the definitions and interpretation provisions set out in Schedule 1 (Definitions) shall apply.

* 1. Interpretation

In this Agreement, the following rules of interpretation shall apply:

* + 1. unless the context otherwise requires, the masculine includes the feminine, and the neuter includes the masculine and the feminine;
    2. unless the context otherwise requires, the singular includes the plural and vice versa;
    3. references 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;

a reference to a statute or statutory provision shall include all subordinate legislation made under that statute or statutory provision;

* + 1. 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;

the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement (and therefore any reference to this Agreement includes the Schedules);

a reference to writing or written includes fax and e-mail;

any obligation on a party not to do something includes an obligation not to allow that thing to be done; and

any words following the terms: “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

* 1. Clauses and Schedules

References in this Agreement to ‘Clauses’ and ‘Schedules’ are to the clauses and schedules of this Agreement unless otherwise stated. In the event of any conflict or inconsistency between any provision of the Clauses and any provision of the Schedules, the former shall prevail, but only to the extent of the conflict or inconsistency. 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.

* 1. Construction of the Agreement

This agreement (the “**Agreement**”) is constituted bythese terms and conditions and all Schedules referred to herein (including the Annexes and other documents referred to in the Schedules), which collectively shall constitute a single agreement. The supply of all Services to the Bank by the Contractor is subject to this Agreement.

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.

Each party acknowledges that in entering into this Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other party in relation to the subject-matter of this Agreement at any time before its signature (together “**Pre-Contractual Statements**”), other than those which are set out in this Agreement. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

Nothing in this Clause 1.4 shall operate to exclude any liability for fraud or fraudulent misrepresentation.

1. CONDITIONS PRECEDENT AND TERM OF THE AGREEMENT
   1. It shall be a condition precedent of this Agreement that if required by the Bank the Contractor shall procure the delivery of a fully executed Parent Company Guarantee in favour of the Bank in substantially the form set out in Schedule 17 (Parent Company Guarantee) (“Guarantee”) on or before the Commencement Date, by the ultimate parent of the Contractor (or such other member of the Contractor’s group of companies as proposed by the Contractor provided that the Bank consents (such consent not to be unreasonably withheld or delayed) (the “Guarantor”).

It shall be a condition precedent upon the Bank’s obligations under clause 9 (Payment) of this Agreement that:

the parties shall execute and comply with their respective obligations under the NCC Single Licensee Software Escrow Agreement contained within Schedule 11 (Escrow);

The Contractor shall ensure at all times during the term that NCC are paid in full for the escrow services provided in respect of the NCC Single Licensee Software Escrow Agreement.

The Bank undertakes not to unreasonably withhold or delay in entering into the Escrow Agreement.

This Agreement shall come into force on the Effective Date and shall remain in full force and effect until the expiry of four (4) years from the Go Live Date (“**Initial Term**”) until and unless either party exercises its rights to terminate in accordance with Clause 12.

At the end of the Initial Term referred to in Clause 2.3, the Bank may extend the terms of this Agreement by a maximum of two (2) successive periods of two (2) years by giving not less than three (3) Months’ prior written notice to the Contractor.

1. IMPLEMENTATION and MIGRATION SERVICES
   1. Implementation Services Generally

With effect from the Effective Date, the Contractor shall provide the Implementation Services in accordance with the Bank’s requirements as set out in the Specification, Schedule 3 (Implementation Services and Transition), and the Transition Plan and with all applicable terms of this Agreement. The Contractor shall perform the Implementation Services and Transition so as to cause minimal disruption to the business of the Bank.

In relation to the Implementation Services, the Contractor will ensure that all Milestones are achieved by their respective Milestone Dates.

The Contractor shall be responsible for the overall management of the Implementation Services and Transition and shall keep the Implementation Services and Transition on schedule in accordance with the timetable set out in the Transition Plan. The Contractor will identify and resolve, or assist the Bank in the identification and resolution of, any problems encountered in the timely completion of each task identified in the Transition Plan, whether the task is the responsibility of the Contractor or the Bank.

The Contractor shall provide the Bank with weekly progress reports that describe in reasonable detail the current status of the Implementation Services and Transition, indicate the progress of the work being performed, identify any actual or anticipated problems or delays, assess the impact of such problems or delays on the Contractor’s provision of the Services and describe all actions being taken or to be taken to remedy such problems or delays. The weekly reports shall also include the current version of the Risks and Issues Log. At the same time as submission of the weekly progress reports, the Contractor shall also supply an updated version of the Implementation Project Plan showing progress made that week.

Without prejudice to any other requirement of this Agreement, the Contractor shall ensure that the Implementation Services are completed and the System is capable of Go Live.

* 1. Migration Services Generally
     1. With effect from the Effective Date, the Contractor shall provide the Migration Services in accordance with the Bank’s requirements as set out in the Specification, Schedule 3 (Implementation Services and Transition), and the Outline Migration Plan and with all applicable terms of this Agreement. The Contractor shall perform the Migration Services so as to cause minimal disruption to the business of the Bank.

In relation to the Migration Services, the Contractor will ensure that all Milestones are achieved by their respective Milestone Dates.

The Contractor shall be responsible for the overall management of the Migration Services and shall keep the Migration Services and on schedule in accordance with the timetable set out in the outline Migration Plan. The Contractor will identify and resolve, or assist the Bank in the identification and resolution of, any problems encountered in the timely completion of each task identified in the Outline Migration Plan, whether the task is the responsibility of the Contractor or the Bank.

The Contractor shall provide the Bank with weekly progress reports that describe in reasonable detail the current status of the Migration Services, indicate the progress of the work being performed, identify any actual or anticipated problems or delays, assess the impact of such problems or delays on the Contractor’s provision of the Services and describe all actions being taken or to be taken to remedy such problems or delays. The weekly reports shall also include the current version of the Risks and Issues Log. At the same time as submission of the weekly progress reports, the Contractor shall also supply an updated version of the Migration Project Plan showing progress made that week.

* 1. Other Remedies for Non-Conforming Implementation Services, Migration Services or Additional Services

In the event that the Contractor and/or the Staff fail to perform the Implementation, Migration or Additional 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 exercising any other rights or remedies that may be available to it under this Agreement or otherwise, to require the Contractor, at the Contractor’s own expense, promptly to remedy any default or re‑perform any non‑conforming Implementation, Migration or Additional Services.

If the Contractor fails to remedy the Default or re‑perform any non‑conforming Implementation, Migration or Additional Services pursuant to Clause 3.3.1 within fourteen (14) days or such other period agreed in writing between the parties after notice thereof is given to the Contractor, 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; and

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 reasonable costs so incurred by the Bank.

1. REQUIREMENTS ANALYSIS AND SOLUTION DESIGN
   1. Requirements Analysis Process

Following the Effective Date, the Bank and the Contractor will participate in Requirements Analysis Workshops as required by the Bank. At such Requirements Analysis Workshops, the Bank and the Contractor will discuss the SOUR to ascertain whether additional granularity is required to fully describe the Bank’s requirements. Where greater granularity is required, this will be discussed. The Requirements Analysis Workshops will be minuted by the Contractor, with such minutes being submitted to the Bank for Approval. Following such Requirements Analysis Workshops, the Contractor will produce a draft Requirements Analysis Document, which will map any updates and additional detail to the original SOUR requirements, for the Bank’s Approval (as described below). The Contractor shall ensure that there is full traceability from that set of requirements back to the SOUR.

The Contractor shall submit to the Bank as part of the Services a Requirements Analysis Document in accordance with the Transition Plan and Outline Migration Plan for acceptance in accordance with the agreed written acceptance criteria as established per Schedule 4 (Acceptance) or that are authorised by the Bank during the Requirements Analysis Workshops. The Bank shall review the Requirements Analysis Document against such agreed written acceptance criteria and shall provide the Contractor with one of the following responses:

written acceptance of the Requirements Analysis Document;

written rejection of the Requirements Analysis Document against the agreed written acceptance criteria and to grant the Contractor such further periods of time as the Bank reasonably believes appropriate, during which the Contractor shall be required to re-submit a revised Requirements Analysis Document within a specified timeframe. The re-submitted Requirements Analysis Document will then either be accepted or rejected by the Bank in accordance with the processes set out in Clauses 4.1.2.1 and 4.1.2.3 respectively; or

following rejection of the Requirements Analysis Document (or any part thereof as the case may be) at least twice consecutively in accordance with Clause 4.1.2.2, final written rejection of the Requirements Analysis Document, whereby the Contractor shall be deemed to be in irredeemable Default thereon, and the Bank will, without prejudice to any other remedies available to it, be entitled to terminate the Agreement in accordance with Clause 12.2 and to obtain a refund of all Charges paid in association with the preparation of that Requirements Analysis Document.

* + 1. Following written acceptance of the Requirements Analysis Document (or each part thereof as the case may be) by the Bank, the Contractor shall submit to the Bank a final version of this document.
  1. Solution Design Process

Once accepted in accordance with the provisions of Clause 4.1.2.1, the Contractor shall use the relevant parts of the Requirements Analysis Document as a base for creating the Solution Design Document which the Contractor shall submit to the Bank for acceptance in accordance with the written acceptance criteria as set out in Schedule 4 (Acceptance) or as otherwise agreed between the parties. For the avoidance of doubt, parts of the Requirements Analysis Document which do not interoperate with the Solution Design Document sufficiently to require work on the Solution Design Document to require waiting for such parts of the Requirements Analysis Document (such as, for example, those relating only to Migration) shall not be required to be fully completed before work commences on the Solution Design Document. The Bank shall review the Solution Design Document against such written acceptance criteria and shall provide the Contractor with one of the following responses five (5) Working Days following its receipt of such document:

written acceptance of the Solution Design Document;

written rejection of the Solution Design Document against the agreed written acceptance criteria and to grant the Contractor such further periods of time as the Bank reasonably believes appropriate, during which the Contractor shall be required to re-submit a revised Solution Design Document within a specified timeframe. The re-submitted Solution Design Document will then either be accepted or rejected by the Bank in accordance with the processes set out in Clauses 4.2.1.1 and 4.2.1.3 respectively; or

following rejection of the Solution Design Document at least twice in accordance with Clause 4.2.1.2, written rejection of the Solution Design Document, whereby the Contractor shall be deemed to be in irredeemable Default, and the Bank will, without prejudice to any other remedies available to it, be entitled to terminate the Agreement in accordance with Clause 12.2.

* + 1. Following written acceptance of the Solution Design Document by the Bank, the Contractor shall submit to the Bank a final version of this document.
  1. Configuration Document

When the Contractor submits to the Bank a final version of the Solution Design Document, the Contractor shall also submit to the Bank a Configuration Document in accordance with the Transition Plan and Outline Migration Plan.

* 1. Specifications and Improvements

On the day that the Contractor has submitted to the Bank the final versions of all of the Requirements Analysis Document, the Solution Design Document and the Configuration Document, all these documents collectively together will supersede the relevant pre-existing Specifications to the extent inconsistent with the requirements of Schedule 2 (Statement of User Requirements) and will be deemed to form part of the Specification from this point in time onwards.

1. ACCEPTANCE
   1. Acceptance Process

The Implementation Services and Migration Services shall be required to meet the acceptance criteria set out in Schedule 4 (Acceptance) before being accepted by the Bank. The Bank shall notify the Contractor in writing of acceptance, such notification not to be unreasonably withheld or delayed, with the date on which such criteria were met in all material respects. Acceptance of the Implementation Services and Migration Services may be completed in stages as indicated in Schedule 4 (Acceptance).

The Bank shall conduct Acceptance Tests and other acceptance procedures in accordance with the Transition Plan and Outline Migration Plan and the respective responsibilities of the parties in the performance of such tests and procedures shall be as specified in Schedule 4 (Acceptance).

* 1. Acceptance Tests

In accordance with the Transition Plan and Outline Migration Plan, once the parties agree that relevant elements of the Implementation Services and Migration Services are ready for the commencement of Acceptance Testing, the Contractor shall prepare for Acceptance Tests and notify the Bank when ready. On being so notified, the Bank or the Contractor (as appropriate) shall conduct the relevant Acceptance Tests and, if the relevant acceptance criteria specified in Schedule 4 (Acceptance) are met in all material respects, the Bank shall notify the Contractor of acceptance as specified in Clause 5.1.1 above.

If Acceptance Tests show that the Implementation Services or Migration Services (or any part of thereof) do not meet the acceptance criteria set out in Schedule 4 (Acceptance) in all material respects, the Bank shall notify the Contractor of such failure without undue delay. The Contractor shall thereupon undertake all necessary steps to rectify such failure including the provision of additional or substitute Implementation Services or Migration Services at no additional cost to the Bank and re-submit the failing part of the Implementation Services or Migration Services for re-testing. If the relevant acceptance criteria are met in all material respects, the Bank shall notify the Contractor of acceptance as specified in Clause 5.1.1 above.

* 1. Failure to gain acceptance

If the Implementation Services or Migration Services (or any part of thereof), which are the subject of the Acceptance Test have failed to meet the required acceptance criteria specified in Schedule 4 (Acceptance) in all material respects by the relevant date specified in the Transition Plan or Outline Migration Plan as applicable, if any, the Contractor shall be deemed to be in Default and without prejudice to any other remedies available to the Bank it shall be entitled in respect of such failure to:

grant such further periods of time as the Bank reasonably deems appropriate, during which the Contractor shall be required to submit or re-submit any failing Implementation Services or Migration Services, as appropriate, to the relevant Acceptance Tests or acceptance procedures in accordance with this Clause 5; or

agree to retain such of the failing Implementation Services or Migration Services as it may decide, and pay a reduced part of the Charges or such other sum as may be agreed between the parties for such items as are retained; or

reject any failing part(s) of the Implementation Services or Migration Services provided that the Bank will only be able to exercise this right following the grant of two (2) periods of time pursuant to Clause 5.3.1.1, reduce the Charges by a sum of money equivalent to the part of the Charges to be paid therefore and have a third party provide such part(s) of the Implementation Service or Migration Service; or

terminate the Agreement (in whole or in part) under the provisions of Clause 12.2 provided that the Bank will only be able to exercise this termination right following the grant of three (3) periods of time pursuant to Clause 5.3.1.1.

If after the Bank grants three (3) or more extensions of time under the provisions of Clause 5.3.1.1 and the Contractor has thereafter failed to meet the relevant acceptance criteria following expiry of this extended period, the Bank shall be entitled, at that time, to exercise any remedies to which it is entitled under this Clause 5.3.

A grant of additional time under the provisions of Clauses 5.3.1 shall not imply any change in the timetable set out in Schedule 3 (Implementation Services and Transition) nor be interpreted to mean that any Milestone Dates or the Go Live Date have been or shall be changed, unless a change to such date has been explicitly agreed by the parties in writing.

* 1. Warranty

Following the Bank’s Approval of the Contractor’s successful delivery of each of the Implementation Services and Migration Services, the Contractor shall ensure that in each case the Implementation Services and Migration Services continue to meet the relevant acceptance criteria from that date until [*one hundred and eighty (180) days*] after the Bank’s aforementioned Approval and the Contractor will promptly rectify any notified defects without charge to the Bank. This warranty will be without prejudice to the Bank’s other rights and remedies under this Agreement or otherwise.

1. Services General
   1. Maintenance and Support Services

As from the Go Live Date, the Contractor shall provide the Maintenance and Support Services in accordance with the Bank’s requirements as set out in the Specifications, and with all applicable terms of this Agreement.

* 1. Timeliness of Services

The signing by the Bank’s Project Manager (or his representative) of time sheets shall not be construed as implying the Contractor’s compliance with the Agreement.

If required by the Bank, the Contractor shall increase or decrease the amount of the Services being provided or add or remove Services promptly, on reasonable notice. Any such Changes shall be effected through the Change Control Procedure. There shall be no minimum quantities with respect to the Services or resources provided by the Contractor other than that as set out in Schedule 2 (Statement of User Requirements) and Schedule 5 (Charges) respectively.

* 1. Additional Services

The Contractor undertakes to perform, at any time during the Term of this Agreement, such Additional Services as may be agreed by the Contractor and the Bank pursuant to the Agreement and the Change Control Procedure (as set out in Schedule 7 (Change Control Procedure). Any applicable Charges for Additional Services shall be calculated on the basis set out in Schedule 5 (Charges).

The Contractor shall perform any Additional Services as agreed by the parties in accordance with all applicable provisions of this Agreement, subject to any changes agreed pursuant to the Change Control Procedure in Schedule 7 (Change Control Procedure).

* 1. Service Standards

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

The introduction of new methods or systems which affect the provision of the Services in accordance with the terms of the Agreement shall be subject to prior Approval.

* 1. Monitoring of Performance of Services

The Contractor shall comply with its obligations and the related monitoring arrangements set out in Schedule 8 (Governance).

* 1. Change Control Procedure

The process for changing, reducing or adding to the Services (including the provision of any Additional Services) or implementing changes, orders, amendments, additions or replacements to the Services or to the Agreement will be as set out in Schedule 7 (Change Control Procedure).

* 1. Co-operation
     1. The Contractor shall, and shall procure that its subcontractors shall, co-operate fully with the Other Contractors and with the Bank and provide such cooperation, support, assistance and information as is necessary in order:
        1. to ensure the orderly provision of the Services;
        2. to facilitate the delivery of the services provided by the Other Contractors;
        3. to undertake all such tasks and activities as may reasonably be necessary to integrate the System and Services with all other relevant systems and services of the Other Contractors;
        4. work together with the Other Contractors, the Bank in good faith to ensure systems integration and interfacing where the Services are subject to inter-party dependencies;
        5. where necessary, assist with any acceptance testing and/or any quality assurance analysis to be undertaken by the Bank or the Other Contractors; and
        6. promptly provide the Other Contractor with all relevant information (including details of all operating environments, system constraints, all relevant information concerning interfacing, interoperation and operating parameters that may be reasonably required by the Other Contractor) that they may need to provide their services to the Bank.
     2. Where the Contractor becomes aware of any issue or incident affecting its Services and that issue or incident could impact the performance of the services provided by the Other Contractors, the Contractor shall promptly notify the Bank of such issue or incident.
     3. The Contractor agrees to work together with the Other Contractors in order to identify and notify each other of any dependencies on each other that may arise following the Effective Date (whether by virtue of a change to this Agreement or any other agreement or otherwise) or which may have been previously unidentified.
  2. Quality Plan
     1. The Contractor will ensure that a plan compliant with this Clause 6.8 (“Quality Plan”) is documented and agreed at the start of the Term, amended and agreed as appropriate throughout the Term, and that the procedures for ensuring quality which are defined in the Quality Plan are followed throughout the Term.
     2. The Contractor shall ensure that the Bank is always in possession of the latest copy of the Quality Plan.
     3. The Contractor will maintain a Quality Plan throughout the Term.
     4. The Contractor will ensure that the Quality Plan contains details of:
        1. the Contractor’s general approach to ensuring high standards and quality;
        2. the Contractor’s specific approach to ensuring high standards and quality to the Bank and in each specific aspect of the Service and System delivery; and
        3. the Contractor’s specific approach to providing robust management oversight and availability for the duration of the contract.
     5. The Contractor must review the Quality Plan processes yearly, or more frequently and on an ad hoc basis as and when issues arise, to ensure that problems are rectified and the Service is improved over the Term.
     6. If Service Levels are not being met, the Contractor must conduct internal reviews to ensure that the Services improve and the Service Levels are achieved.
  3. Service Failures and Contractor Improvement Plan
     1. The Contractor must notify the Bank of any Service Failure, as soon as it becomes aware of it. The Bank may notify the Contractor of any Service Failure.
     2. Whenever a notification is made by the Contractor under Clause 6.9.1 or by the Bank having identified a Service Failure, the Contractor shall, as soon as possible and at its own cost, without prejudice to the party’s other rights and remedies under this Agreement and unless notified to the contrary in writing by the Bank, re-perform the relevant Services (if applicable) and provide all such additional resources as are reasonably necessary in order to rectify the identified Service Failures and to prevent the reoccurrence.
     3. Where the Contractor fails to rectify any Service Failure within thirty (30) days of having been notified of such Services Failure in accordance with 6.9.2 above, the Bank shall be entitled to require the Contractor to prepare an Improvement Plan for such Service Failure. In such circumstances, the Contractor shall submit an Improvement Plan to the Bank for Approval as soon as possible taking into account the impact on the Bank’s business and in any event not later than ten (10) Working Days after the Bank’s request under this Clause 6.9.3.
     4. The Bank shall not unreasonably withhold its Approval of an Improvement Plan prepared by the Contractor. If the Bank does not Approve any Improvement Plan it shall inform the Contractor of its reasons within five (5) Working Days and the Contractor shall take those reasons into account in the preparation of a further revised version of the Improvement Plan, which shall be resubmitted to the Bank as soon as possible taking into account the impact on the Bank’s business and in any event not later than five (5) Working Days of the rejection of the first version of the Improvement Plan. If the Bank does not Approve any revised version of the Improvement Plan it shall either give the Contractor an opportunity to issue a further version of the Improvement Plan (in which case the process in this Clause 6.9.4 shall be repeated) or without prejudice to and in addition to its other rights and remedies and at its absolute discretion commence steps to terminate this Agreement pursuant to Clause 12.2.
     5. Following Approval by the Bank of any Improvement Plan the Contractor shall implement and comply with the Improvement Plan.
     6. If the Contractor fails to successfully implement any Improvement Plan and to demonstrate to the reasonable satisfaction of the Bank that the relevant Service Failure has been permanently addressed, the Bank may choose, without prejudice and in addition to its other rights and remedies and at its absolute discretion, to allow the Contractor to prepare, agree and implement a second Improvement Plan.
     7. If the Contractor fails to successfully implement any second Improvement Plan and to demonstrate to the satisfaction of the Bank that the relevant Service Failure has been permanently addressed, the Bank may choose, without prejudice and in addition to its other rights and remedies and at its absolute discretion:
        + 1. to provide suggestions to the Contractor for a third Improvement Plan for the remedy of the relevant Service Failure which the Contractor shall, at its sole discretion, be entitled to adopt and carry out or reject. If the Contractor decides to follow the Bank’s suggestions, it shall do so on the basis that the corrective actions are at the Contractor’s risk and the Contractor shall not be entitled to any relief in the event that such remedial actions do not rectify the Service Failure;
          2. to commence step-in proceedings in accordance with Clause 6.10; or
          3. to serve notice to the Contractor of a Default which is incapable of remedy pursuant to Clause 12.2.1.2.
     8. For the avoidance of doubt, notwithstanding any other provision of this Agreement, all activities pursuant to this Clause 6.9 to rectify any Service Failure shall be wholly at the Contractor’s expense and at no additional Charge to the Bank.
  4. Step-In

Without prejudice to any of the Bank’s other rights and remedies under the Agreement or at law, the Bank may, in its sole discretion exercise the rights specified in Schedule 16 (Step-in) where:

* + 1. the Bank has reasonably determined that a breach by the Contractor, which the Contractor has not following a reasonable period of notice from the Bank remedied or rectified, of any of its obligations under the Agreement has occurred which has created, or may result in, a material interruption or disruption in the provision of aspects of the Services; or
    2. required to do so for regulatory or compliance reasons; or
    3. a Force Majeure Event has occurred which prevents the Contractor from providing a material proportion or aspect of the Services in conformance with the requirements of the Agreement for a period of [twenty four (24)] hours or more.

1. SERVICE LEVELS
   1. The Contractor shall perform the Services in accordance with the Service Levels. In the event that the Services do not operate in accordance with their Service Levels, the Contractor shall as an adjustment to the Charges, credit the Bank with Service Credits calculated in accordance with Schedule 6 (Service Levels and Service Credits).
   2. 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, or if no further invoices shall be payable, the Service Credits shall be refunded to the Bank on demand.
2. STAFF
   1. Staff Generally

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 reasonably necessary for the proper performance of the Services.

* 1. Key Personnel

The Contractor shall ensure that the Key Personnel undertake the roles specified in Schedule 15 (Key Personnel), for the period set out therein.

The Contractor shall not cease to provide or change any individuals performing the role of Key Personnel without the agreement of the Bank, except the Data Protection Officer (as defined in Clause 16.2) and except as permitted under this Clause 8.2 or following the expiry of the period where that Key Personnel must be retained as set out in Schedule 15 (Key Personnel).

The Bank shall be entitled to:

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

receive advance written notice from the Contractor of the identity of the Key Personnel the Contractor proposes should work on the Services (or particular areas of the Services);

reject any of the Key Personnel assigned to perform the Services if in its reasonable opinion such Key Personnel do not meet the standards required by the terms of this Agreement or in the event that the Bank reasonably considers the behaviour or attendance of the Key Personnel is or are unsatisfactory; and

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

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

ensure that a rejected individual is not used to perform any of the Services (or, as the case may be, to perform those aspects of the Services to which the Bank’s rejection relates); and

provide curricula vitae to the Bank of any alternative Key Personnel proposed.

However, if, after three (3) attempts by the Contractor to provide replacement personnel who meets the Bank’s requirements under this Clause 8.2.4 and the Bank reasonably considers that the Contractor is not capable of finding an appropriate replacement to meet the standards required by the terms of this Agreement, then without prejudice to its other rights and remedies the Bank shall be entitled to terminate this Agreement.

Key Personnel shall not be released from providing the Services without the agreement 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 agreement of the Bank. Such replacements shall be of at least equal status and/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 agreement under Clause 8.2.5 or Clause 8.2.6. Such agreement 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. Staff Transfer

The Bank and the Contractor agree that it is not intended that the expiry or termination of the Services (in whole or in part) will give rise to a relevant transfer for the purposes of the Employment Regulations. If the Employment Regulations are applicable on the expiry or termination of the Services (in whole or in part), the provisions of Schedule 13 (Staff Transfers) shall be applicable.

* 1. Work Permits

The Contractor shall be responsible for checking that its Staff who are performing the Services in the United Kingdom are legally entitled to work in the United Kingdom and where appropriate all Staff shall have the required visa, work permit or permission issued by the appropriate UK authority to undertake work of the nature for which the Contractor is supplying them to the Bank. The Contractor further agrees to indemnify and keep the Bank fully indemnified against all claims, costs and damages howsoever arising from any breach of this Clause. This Clause 8.4 will not be subject to the liability limit expressed in Clause 11.2.

* 1. Staff Security Issues

All Staff whom the Contractor proposes to carry out or perform duties under the Agreement and who will be required, whilst carrying out some or all of that work or performing some or all of those duties to:

* + 1. enter the Bank’s premises or places where the Bank conducts its business;
    2. work with the Bank’s personnel for extended periods; or
    3. hold a particular kind of security clearance where details of such additional requirements have been notified to the Contractor by the Bank,

must be authorised by the Bank (including having passed the Bank’s Security Vetting Test) before carrying out that work or performing those duties, such authorisation by the Bank to be in compliance with the Bank’s security policies in force at the time.

* 1. Subject to any duties of confidence, the Bank will provide to the Contractor, in the form reasonably required by the Contractor, such information as the Contractor reasonably requests, from time to time for the purpose of allowing the Contractor to comply with any security requirements for the purposes of Clause 8.5
  2. Further Staff Provisions

The Contractor shall be liable for paying the Staff and for making any deductions required by law including in respect of income tax, National Insurance and equivalent contributions in the relevant territory relating to the provision of the Services and shall comply with all laws applicable to the employment or retention of the Staff, including without limitation work permits and immigration (as set out in Clause 8.4), customs, foreign payment or similar requirements and shall indemnify the Bank and keep the Bank fully indemnified for any such tax or contributions which the Bank may be required to pay or for any loss arising out of the Contractor’s failure to comply with this Agreement. This Clause will not be subject to the liability limit expressed in Clause 11.2.

1. PAYMENT
   1. Charges

In consideration of the performance of the Contractor’s obligations under the Agreement by the Contractor, the Bank shall pay the Charges in accordance with the payment terms specified in this Clause and Schedule 5 (Charges), such amounts being inclusive of all costs, charges and (subject to Clause 9.1.4) expenses, including but not limited to, labour, equipment, transport, insurance and carriage and collection costs, attributable to the provision by the Contractor of the Services.

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 and keep the Bank fully indemnified 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 relating to payments made to the Contractor under this Agreement. This Clause will not be subject to the liability limit expressed in Clause 11.2.

The Bank shall 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.

Except as expressly set out in this Clause 9.1 and Schedule 5 (Charges), 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 sums due to the Contractor in cleared funds within thirty (30) days of receipt of valid and undisputed invoices for Services delivered or performed in accordance with this Agreement, submitted in accordance with Schedule 5 (Charges) for the Charges. 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, including:

references to Change Request numbers where appropriate and, for the Maintenance and Support Services, it will contain a calculation of how the Quarterly Service Charge has been derived; and

where Charges have been incurred for any consultancy services and/or Additional Services, a detailed breakdown of the services provided along with any other documentation that is reasonably required by the Bank Project Manager to substantiate the invoice.

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

The Contractor shall not be entitled to suspend the supply of the Services.

The Contractor may neither, except in accordance with the Change Control Procedure, any mechanisms set out within Schedule 5 (Charges) and without prejudice to any fixed Charges detailed in this Agreement, increase any Charges more than once in any twelve (12) month period nor increase any Charges by a percentage that is greater than the UK Consumer Price Index (CPI) for the relevant twelve (12) month period.

* 1. Recovery of Sums Due

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

1. LICENCE TERMS AND INTELLECTUAL PROPERTY RIGHTS

Each party and/or its third party licensors retains ownership of any Intellectual Property Rights in any Material and Software, created by it and/or its third party licensors prior to or outside the scope of this Agreement (“**Pre-Existing Materials**”), and unless expressly agreed otherwise the parties agree that the Intellectual Property Rights in any enhancements and modifications to such Pre-Existing Materials carried out during the course of this Agreement are to vest in the party which owns such Pre-Existing Materials, regardless of who carries out such enhancements or modifications.

All Intellectual Property Rights in the Data, Documentary Developments and Configurations shall be owned by the Bank from creation or to the extent that they do not vest automatically in the Bank, Clause 10.5 shall be applicable. The Contractor shall, and shall ensure and procure that any Staff, forthwith disclose to the Bank all Intellectual Property Rights in any Data, Documentary Developments and Configurations which the Contractor and/or the Staff create to enable the Data, Documentary Developments and Configurations to belong to and be the absolute property of the Bank.

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

do all things necessary to confirm vesting of title of any or all applicable Intellectual Property Rights in any or all countries relating to the Data, Documentary Developments and Configurations in the Bank;

waive all moral rights arising from any Data, Documentary Developments and Configurations 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 Intellectual Property Rights 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 with respect to any Data, Documentary Developments and Configurations. 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.

As between the Bank and the Contractor, all Intellectual Property Rights in the Collected Data shall be owned by the Bank.

To the extent that any Intellectual Property Rights in any item do not automatically vest by operation of law (or otherwise) in the party which is stated in this Clause 10 to take ownership:

* + 1. the other party hereby assigns both present and future Intellectual Property Rights in such items to transfer all interests and ownership of such rights to give effect to this Clause 10; and
    2. the other party will do all such things and sign all documents (and procure that its Staff shall do all such things and sign all documents, where applicable) necessary to transfer all interests and ownership of such rights to give effect to this Clause 10 both during and after termination of this Agreement.

Nothing in this Agreement 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, provided that in using such techniques, ideas or Know-how, such party does not:

* + 1. infringe the Intellectual Property Rights of the other party or any third party; or
    2. breach its obligations of confidence under this (or any other) Agreement.

The Bank grants to the Contractor and, to the extent necessary, to its Staff, or shall procure the grant of, a royalty-free, non-exclusive, non-transferable licence (or, where relevant, an appropriate sub-licence) to use the Collected Data, Data and the Bank-owned Intellectual Property Rights in items which are supplied by the Bank to the Contractor or are owned by the Bank pursuant to 10.2 to the extent necessary and for the sole purpose of providing the Services. The licence granted under this Clause 10.7, shall take effect on the date that the relevant Collected Data, Data or Bank-owned Intellectual Property Rights are first provided to or used by the Contractor and shall continue until the earlier of the date that item ceases to be used in the performance of the Services or the end of the Termination Assistance Period, upon which event, subject to Clause 10.8, the Contractor shall return or destroy (as elected by the Bank) all affected Collected Data, Data and/or other item containing the Bank-owned Intellectual Property Rights and certify that the item has ceased to be used, has been returned or has been destroyed.

Where the Contractor wishes to use the Configurations other than to the extent permitted pursuant to Clause 10.7, including in connection with the provision of services to third parties, then the Contractor shall make a written request to the Bank setting out the detail of the nature and purpose of the proposed use. The Bank agrees to consider any such request and may, at its sole discretion and subject to such conditions as it considers appropriate (which may include limitations to the extent, nature, purpose, territory and term of the use, limitations as to the elements of the Configurations which can be used, and a credit against the Charges payable by the Bank under this Agreement), permit the Contractor to make such use of the Configurations. Any such permitted use of any Configurations and any such applicable conditions shall be set out in writing and signed by an authorised representative of the Bank and an authorised representative of the Contractor (the “**Configurations Use Conditions**”). The Bank hereby grants to the Contractor and, to the extent necessary, to its Staff, a non-exclusive, non-transferable licence to use the Configurations to the maximum extent set out in and at all times subject to the Configurations Use Conditions.

Subject to the payment of the Licence Charges, the Contractor grants to the Bank and their sub-contractors, agents and representatives, a worldwide, [*perpetual*], royalty free (save as described in Clause 10.12), irrevocable, non-exclusive, transferrable, sub-licensable, licence to Use the Contractor Software, Contractor Materials, Third Party Software and Third Party Materials supplied by the Contractor, in connection with the Services and for the Bank’s internal purposes The licences granted under this Clause 10.9 shall take effect on the earlier of the date that the relevant Contractor Software, Contractor Material, Third Party Software or Third Party Material is first used by or on behalf of the Contractor to provide the Services or is made available to the Bank for Use in connection with the Services.

Subject to the payment of the Licence Charges, the Contractor grants to the Financial Institutions, a [*worldwide*], [*perpetual*], royalty free, irrevocable, non-exclusive, [*transferrable*], [*sub-licensable*], licence to use the Contractor Software, Contractor Materials, Third Party Software and Third Party Materials solely for the purposes of accessing the System and entering and uploading data to the System.

The Contractor shall, on request by the Bank, and in any event at any time upon the service of a termination notice or at any time within the six (6) Months prior to the expiry of the Term, promptly provide to the Bank a list of Contractor Material, Contractor Software, Third Party Material and Third Party Software licensed or otherwise supplied to the Contractor and used by it in relation to the Services. Otherwise, the Bank shall be entitled to make such requests no more than once every six (6) Months during the other applicable periods of the Term.

The Contractor warrants, represents and undertakes that:

* + 1. the receipt or use of the Services, Configured Software, Deliverables and Developments by the Bank or the Financial Institutions and the exercise of any licence which is granted by the Contractor hereunder shall not infringe the rights (including Intellectual Property Rights) of any third party;
    2. the Documentary Developments and Configurations do not contain any Contractor Pre-Existing Materials and may be freely assigned by the Contractor to the Bank; and
    3. the Implementation Services Charges, Maintenance and Support Services Charges, Migration Services Charges and Licence Charges are inclusive of all fees relating to the use of the Deliverables, Developments, Contractor Software, Contractor Material, the System, Third Party Software and the Third Party Material and that no other fees will be payable by the Bank.

Failure by the Contractor (or the Staff) to comply with this Clause 10 shall constitute a breach of this Agreement entitling the Bank to terminate in accordance with Clause 12.2.

1. LIABILITIES
   1. Warranties and Representations

The Contractor warrants and represents that:

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;

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;

all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

the Services and the System comply with the Specification;

the Services shall be performed in compliance with all applicable Laws;

all Data and Collected Data which is supplied for upload onto the System will be maintained in a complete and accurate manner from the point of receipt by the System and throughout the processing, handling and use of that Collected Data through the System;

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;

the Configured Software, Third Party Software and 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 and shall not infringe the Intellectual Property Rights of any third party; and

The Contractor undertakes, warrants and represents that it will provide and maintain the levels of security on all Collected Data and Data as set out in Schedule 12 (Environments and Security).

* 1. Limitation of Liability

Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or for any other liability which cannot be excluded or limited by law.

* + 1. Subject always to Clause 11.2.1, and without prejudice to the Bank’s obligations under Clause 9.1.1, under no circumstances shall the total aggregate liability of the Bank to the Contractor (however arising) under or in relation to this Agreement including (but not limited to) liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise, exceed the greater of a sum equal to one hundred per cent (100%) of the total Charges payable.
    2. Subject always to Clause 11.2.1, and 11.2.4, under no circumstances shall the total aggregate liability of the Contractor to the Bank (however arising) under or in relation to this Agreement, including (but not limited to) liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise, exceed the greater of one hundred and fifty per cent (150%) of the total Charges payable or £5,000,000 (five million pounds Sterling).

The limitation of liability set out in Clauses 11.2.3 and 11.2.5 shall not apply in respect of any liability for the Contractor which may arise under any of the following clauses and for which the Contractor’s liability shall be unlimited:

Clauses 8.3 to 8.6 (inclusive) and Schedule 13 (Staff Transfer);

Clause 9.1.3 (Contractor’s failure to pay VAT);

Clause 10.12 (Contractor’s IPR warranty);

Clause 11.3 (Indemnities);

Clause 16.1 (Confidentiality); and

Clause 16.2 (Data Protection).

Subject always to Clauses 11.2.1 and 11.2.4, under no circumstances shall either party be liable to the other for any of the following types of loss or damage arising under or in relation to this Agreement (whether arising for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise):

* + - 1. any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
      2. any indirect or consequential loss or damage whatsoever,

even if that party was aware of the possibility that such loss or damage might be incurred by the other.

* + 1. The parties agree that if the Bank terminates the Agreement pursuant to Clause 12.1 (Termination for Change of Control or Insolvency) or Clause 12.2 (Termination for Default), the following costs will be considered to be direct Losses of the Bank and shall be recoverable by the Bank from the Contractor:
       1. the reasonable costs of the Bank associated with exiting the Agreement; and
       2. the reasonable costs of procuring and establishing Replacement Services.
  1. Indemnities

The Contractor shall indemnify and keep the Bank fully indemnified against all losses, claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever (including, for the avoidance of doubt any claims made by or sums payable to third parties and any regulatory fines which may be levied) that the Bank may incur or suffer arising out of, or in relation to, any:

breach by the Contractor of any of its confidentiality obligations under the Agreement;

breach of the warranty at Clause 10.12.1;

breach of the warranty at Clause 11.1.1.5;

breach of the warranty at Clause 11.1.1.6; and

any breach of the Contractor’s obligations under Clause 16.2.

The Contractor shall indemnify and keep indemnified the Bank on behalf of itself against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Bank may suffer or incur as a result of or in connection with any breach of Clause 10.2 except where any such claim relates exclusively to:

designs furnished by the Bank; or

the use of Data supplied by the Bank which is not required to be verified by the Contractor under any provision of the Agreement.

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 any the Deliverables, Developments, Contractor Material, Contractor Software or the Third Party Material 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 such items, provided always that the Contractor:

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

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

shall 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 Banks so elects. In such instances, the Bank shall consult the Contractor on all substantive issues which arise during the conduct of such litigation and negotiations.

The Bank shall at the request and cost of the Contractor afford to the Contractor 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 Deliverables, Developments, Contractor Material, Contractor Software, the Third Party Material in connection with the performance of the Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements whether internal or external) incurred in doing so.

Subject to Clause 11.3.3, 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 the Agreement.

If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the 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, 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.

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

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

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

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

where 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 or outside of the United Kingdom.

The Bank may only exercise its right under Clause 12.1.1.1within 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 Project Manager immediately when any change of control occurs.

* 1. Termination on Default

The Bank may terminate the Agreement (in whole or in relation to the relevant affected portions of the Services), by written notice to the Contractor with immediate effect if the Contractor commits a material Default and if:

the Contractor has not remedied the Default to the satisfaction of the Bank within thirty (30) days, or such other period as may be reasonably specified by the Bank, after issue of a written notice specifying the Default and requesting it to be remedied; or

the Default is not capable of remedy.

In the event that through any Default of the Contractor, data transmitted or processed in connection with the Agreement, including the Collected Data, 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 in the event that:

* + - 1. the Bank remains in material breach of its obligations to pay undisputed Charges by giving sixty (60) days’ notice specifying the breach and requiring its remedy.
      2. the Bank makes use of the Contractor Software for purposes other than as set out this Agreement and does not remedy such breach within thirty (30) days after notice thereof;
      3. the Bank accesses and uses the Source Code Materials in the absence of a Release Event Notice (as defined in Schedule 11 (Escrow)), and does not remedy such breach within thirty (30) days after notice thereof; and
  1. Termination for Force Majeure

Without prejudice to Clause 17.12.8, should a Force Majeure Event under Clause 17.12 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 shall take effect.

* 1. Voluntary Termination by the Bank

The Bank may terminate this Agreement for convenience at any time after expiry of [*twenty four (24) months*] of the Go Live Date by complying with its obligations under this Clause 12.4.

If the Bank wishes to terminate this Agreement under this Clause 12.4, it must give written notice to the Contractor stating that:

the Bank is terminating this Agreement under this Clause; and

this Agreement will terminate on the date falling twenty (20) Working Days after the date of receipt of the notice.

This Agreement will terminate on the date falling twenty (20) Working Days after the date of receipt of the notice referred to in Clause 12.4.2.

* 1. Consequences of Termination

The provisions of Clauses 8.4, 8.5, 9.1.3, 10, 11, 12, 13, 15, 16, 17.2, 17.3, 17.5, 17.16, 17.18, 17.19, 17.20, 17.21 and 17.22 and Schedules 1 (Definitions), 3 (Implementation Services and Transition), 10 (Exit and Termination Assistance), 12 (Environments and Security) and 13 (Staff Transfer) shall survive the termination or expiry of this Agreement.

Where the Bank terminates the whole or any part of the Agreement under Clause 12.2, and then makes other arrangements for the provision of services the same as or similar to the Services (or for the relevant affected portions of the 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 provided that the replacement arrangements are directly comparable to the Services and that the Bank uses reasonable endeavours to mitigate such costs. Where the Agreement is terminated under Clause 12.2, 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.

Any termination of this Agreement (howsoever caused) does not affect any accrued rights or liabilities of either party nor does it affect the coming into force or the continuance in force of any provision of this Agreement that is expressly or by implication intended to come into or continue in force on or after such termination or any expiry. Notwithstanding the termination of this Agreement, its provisions shall specifically remain in effect and bind the parties for the duration of the Termination Assistance Period.

Subject to the provisions of Schedule 10 (Exit and Termination Assistance), at the termination of the Agreement the Contractor shall immediately return to the Bank all materials, work or records held, including any back-up media and any other items within the Contractor’s possession or control in which the Intellectual Property Rights are held by the Bank and all Collected Data.

Where a portion only of the Services is terminated pursuant to this Agreement, the parties shall meet in good faith to determine what changes, if any, are required to the Agreement in order to reflect the fact that such portion of the Services has been terminated.

If termination prematurely concludes a period for which the Bank has already paid any Support and Maintenance Charges or the result of any termination will be that the Bank does not receive any Implementation Services, Migration Services or Additional Services that it has already paid any Charges for, the Contractor shall (i) refund a pro-rata portion of any Support and Maintenance Charges actually paid by the Bank based on the number of days remaining in the applicable period which has been pre-paid, and (ii) refund any Implementation Services Charges, Migration Services Charges or Additional Services Charges which have been paid but as a result of such termination the Bank will not receive such Implementation Services, Migration Services or Additional Services. Such refund shall be provided within thirty (30) days from receipt of an invoice from the Bank.

* 1. Recovery upon Termination

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

In the event that this Agreement is terminated or expires, each party shall return to the other party all property belonging to the other party then in its possession. For the avoidance of doubt, Collected Data held by the Contractor shall similarly be returned to the Bank on termination or expiry of this Agreement.

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.

1. TERMINATION ASSISTANCE

Commencing at the start of any applicable Termination Assistance Period, the Contractor will provide the Termination Assistance and the Continuation Services to allow the Services to continue without interruption or disruption and to facilitate the orderly transfer of the Services (including the Collected Data) to the Bank or a Replacement Contractor and which will, as a minimum, consist of the assistance described in Schedule 10 (Exit and Termination Assistance).

The Contractor will not without the Bank’s prior written consent:

reduce or increase staff levels; or

remove or reassign any Staff, except by reason of long-term sickness, termination of employment and other extenuating circumstances,

prior to completion of the transfer of the Services to the Replacement Contractor or the Bank, as appropriate.

The Contractor will provide Termination Assistance in accordance with the Exit Plan. For the avoidance of doubt all relevant terms of the Agreement will continue in force whilst such Termination Assistance and Continuation Services are being provided by the Contractor.

In the event of the expiry or termination by the Bank of this Agreement, for the avoidance of doubt, the Contractor has a contractual obligation in all circumstances to provide the Termination Assistance and Continuation Services.

Unless agreed otherwise, and subject to the following, the Bank will pay for Continuation Services as agreed pursuant to the Change Control Procedure and for Termination Assistance on a time and materials basis, calculated in accordance with the rate card set out in Schedule 5 (Charges). However, in the event of termination by the Bank under Clauses 12.1 and 12.2, the Bank will only be required to pay for the Continuation Services, but the Contractor may not charge for Termination Assistance. For the avoidance of doubt, the Contractor shall still provide the Termination Assistance where termination is by the Bank under Clauses 12.1 and 12.2*.*

The Contractor acknowledges that, if it breaches (or attempts or threatens to breach) its obligation to provide Termination Assistance and/or the Continuation Services as provided in this Clause 13, the Bank will be irreparably harmed. In such a circumstance, the Bank may proceed directly to court to obtain (at the court’s discretion) the appropriate equitable remedies, including any appropriate order for specific performance.

Following termination or expiry of this Agreement, the Bank may request and the Contractor shall use Commercially Reasonable Efforts to ensure that any licences or agreements relating to Third Party Material or Third Party Software (as applicable) which are assignable or novatable to the Bank or a Replacement Contractor shall, at the Bank’s election, be so assigned or novated.

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 fifty per cent (50%) of the average profit for the group over the previous three (3) year period;
      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 the shares of 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;
      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 14.1.

* 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 14.1.1 – 14.1.8 (inclusive) without the service of a Contractual Reassurance Notice, upon the Bank’s written notification), the parties shall arrange a meeting between the Managing Director of the Contractor and the Chief Information Officer of, or such other senior official nominated by, 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 ongoing 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 14.3.3, 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 14.3.4 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 14.3.4 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 14.3.3,

then, in each case, the Bank may exercise its right of termination under Clause 12.2 of this Agreement by giving notice in writing to the Contractor.

1. COMMERCIALLY SENSITIVE INFORMATION

For the purposes of Clause 16.3, Schedule 14 (Commercially Sensitive Information) 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.

1. PROTECTION OF INFORMATION

**Confidentiality**

Except to the extent set out in this Clause 16.1 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.

Clause 16.1.1 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 16.3;

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 was independently developed without access to the other party’s Confidential Information.

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.

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

Other than with the Bank’s prior written consent either on a case-by-case basis or as set out in this Agreement, the Contractor shall not (except as may be required by Law or in order to instruct professional advisers in connection with this Agreement) and shall take all reasonable steps to ensure that all of its Staff shall not:

disclose or permit disclosure of any details of this Agreement to the news media or any third party other than sub-contractors;

make any press announcements or publicise this Agreement or disclose the fact that the Contractor is providing Services to the Bank in any way;

use the Bank’s name and or brand in any promotion or marketing or announcement of orders.

Where it is considered necessary in the opinion of the Bank, the Contractor shall ensure that the Staff or its professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

The Receiving Party shall, upon written request by the Disclosing Party, 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 on demand).

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.

Nothing in this Clause shall prevent the Bank:

disclosing any Confidential Information for the purpose of:

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

(b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Bank has used its regulatory or statutory obligation upon the Bank in respect of the supervision of the Bank’s use of its resources, or

disclosing any Confidential Information obtained from the Contractor 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 16.1.9.2 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.

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.

The obligations in this Clause 16.1 shall continue in force without limit in time and shall survive termination of this Agreement. If at any time either party does not wish to retain the other party’s Confidential Information, it may return or destroy to the other party’s reasonable satisfaction, all such Confidential Information.

**Data Protection**

For the purpose of this Clause “data controller”, “data processor”, “data subject”, “personal data” and “processing” shall have the meanings ascribed to them in the Data Protection Legislation.

Both parties warrant that they will duly observe all their obligations under the Data Protection Legislation which arise in connection with this Agreement. With respect to the parties’ rights and obligations under this Agreement, the parties agree that the Bank is the data controller and that the Contractor is the data processor.

The Bank engages the Contractor to process various statistical and regulatory data submitted to the Bank by financial institutions for the purposes of delivering the Services in accordance with this Agreement for the duration of the Term.

The types of personal data may include details of individuals’ names, addresses and financial products and the categories of data subjects will be customers of the institutions referred to in Clause 16.2.3.

The Contractor agrees that it will promptly inform the Bank if at any time it has cause to believe that the Bank’s instructions infringe the Data Protection Legislation.

The Contractor has set out in Schedule 15 the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations in this Clause (“**Data Protection Officer**”). The Contractor will notify the Bank promptly of any change to such individual.

With respect to the parties’ rights and obligations under this Agreement, the Contractor agrees that it shall:

**Acting on instructions**

only process the personal data on the Bank’s documented instructions from time to time (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Bank to the Contractor during the Term);

not process or cause to be processed any 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, which may include the form of binding corporate rules, standard data protection clauses adopted by the European Commission or other legally binding instrument;

process personal data only to the extent, and in such manner, as is necessary for: (i) the provision of the Services; or (ii) as is required by Law or any regulatory body, and where required by Law, the Contractor shall inform the Bank of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest;

**Maintaining technical and organisational security measures**

taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of the data subjects, implement appropriate technical and organisational measures to protect personal data against unauthorised or unlawful processing and accidental destruction or loss and ensure the protection of the rights of the data subject, in such a manner that processing will meet the requirements of the Data Protection Legislation, including where appropriate: (i) the pseudonymisation and encryption of personal data; (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing. The Contractor will on reasonable notice substantiate the measures in this Clause 1.1.8.4 to the Bank for its review;

**Data Protection Impact Assessments**

at no additional cost, 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;

at no additional cost, provide the Bank with such assistance as the Bank may reasonably require in order to consult the Information Commissioner in connection with a data protection impact assessment prepared pursuant to Clause 1.1.8.5;

**Engagement of sub-processors**

not engage another processor without the prior written consent of the Bank, and where general consent rather than specific consent has been obtained, shall inform the Bank of any intended changes concerning the appointment or replacement of other processors, giving the Bank reasonable opportunity to consider and object to such changes;

include in any contract between the Contractor and a sub-contractor (where prior written consent for such sub-contracting has been provided by the Bank), who will process personal data directly or indirectly on the Bank’s behalf, provisions in favour of the Bank which are equivalent to those in this Clause 1.1 (and the Contractor shall remain fully liable to the Bank for the performance of the sub-contractor’s obligations);

**Industry best practice**

keep up to date with relevant industry developments and Good Industry Practice and use all reasonable endeavours to advise, in the light of new technology and methods of working, if the Bank should consider revising the processes (including security measures) applied to personal data;

**Staff requirements**

take reasonable steps to ensure the reliability of the Staff who have access to the personal data;

ensure and procure that all Staff store or process personal data provided by the Bank or acquired by the Contractor or the Staff during the Term in accordance with the data protection principles as set out in the Data Protection Legislation;

ensure that all Staff required to access the personal data are informed of the confidential nature of the personal data, and have committed themselves to such confidentiality and comply with the obligations set out in this Clause 1.1;

**Requests for information**

promptly refer to the Bank any requests, notices or other communication from data subjects, the Information Commissioner or any other law enforcement authority, for the Bank to resolve;

in no event respond directly to any request, notice or other communication identified in Clause 1.1.8.14 unless expressly authorised in writing by the Bank to do so;

**Data Subject rights**

at no additional cost, provide such information to the Bank 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, or with notices served by the Information Commissioner;

**Personal data breach**

notify the Bank without undue delay (and in any event within 24 hours) after becoming aware of a personal data breach and, where such a breach is in the determination of the Bank likely to result in a risk to the rights and freedoms of data subjects: (i) at no additional cost, provide all assistance necessary to enable the Bank to fulfil its obligations to notify the Information Commissioner within 72 hours after the Bank being made aware of the breach by the Contractor; and (ii) at no additional cost, provide all reasonable assistance necessary to communicate the personal data breach to the data subject without undue delay, where such communication is required;

in connection with Clause 1.1.8.16, 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;

**Audit**

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, including: (i) details of any relevant data protection officers; (ii) the details of sub-processors; (iii) the categories of processing carried out; and (iv) details of any transfers to third countries, and shall, 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 Clause 1.1 and the obligations set out in the Data Protection Legislation. The Contractor shall, upon reasonable notice, allow the Bank access to premises and other materials and to assist the Bank in exercising its audit rights under this Clause 1.1. The Contractor’s obligations under this Clause 1.1.8.18 shall continue notwithstanding termination or expiry of this Agreement;

**Material change in processing**

notify the Bank prior to any change to its business that could materially affect the manner in which personal data will be processed, including but not limited to: (i) a potential merger, demerger or acquisition; (ii) a significant change in its business model; or (iii) a change to the jurisdiction in which the personal data will be stored, backed-up or otherwise accessed, giving the Bank reasonable opportunity to consider and object to such changes; and

**General**

not do or cause to be done (by act or omission) anything that may cause the Bank to be in breach of Data Protection Legislation.

At the end of the Term or earlier termination of this Agreement, at the Bank’s request, the Contractor shall, at the Bank’delete or return all personal data to the Bank and delete any copies of such personal data except where required to retain any copies by Law.

**Freedom of Information**

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.

The Contractor shall (and shall procure that its Staff shall):

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;

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 or PRA may specify) of the Bank’s request; and

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.

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.

In no event shall the Contractor respond directly to a Request for Information unless expressly authorised in writing to do so by the Bank.

The Contractor acknowledges that (notwithstanding the provisions of this Clause 16.3) 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:

in certain circumstances without consulting the Contractor; or

following consultation with the Contractor and having taken their views into account,

provided always that where Clause 16.3 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.

The Contractor shall ensure that all Information is retained for disclosure for a period of seven (7) years following termination or expiry of this Agreement and shall permit the Bank to inspect such records as requested from time to time.

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 16.3.5.

**[Not Used]**

**Security**

The Contractor shall comply with Schedule 12 (Environments and Security) and 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 or when accessing or using the Bank’s systems and information 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.

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.

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.

Failure by the Contractor to comply with the provisions of Clause 16.5.3 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**

The Contractor shall provide disaster recovery services and ensure business continuity in accordance with Schedule 9 (Business Continuity and Disaster Recovery).

The Contractor shall undertake regular risk assessments in relation to the provision of the Services not less than once [every six months (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.

The Contractor shall prior to the Go Live Date document a business continuity and disaster recovery plan which complies with Schedule 9 (Business Continuity and Disaster Recovery). 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, to the extent that the following is relevant to the Services, 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.

**Bank Data**

The Contractor shall take all precautions necessary to preserve the integrity of any Data and/or Collected Data and to prevent any corruption, loss or unauthorised disclosure of the Data and/or Collected Data.

Upon termination or expiry of this Agreement, or upon request by the Bank, and without prejudice to the Contractor’s obligations in under Clause 13 and Schedule 10 (Exit and Termination Assistance) the Contractor will return all Data and Collected Data to the Bank without charge in any format reasonably requested by the Bank.

1. GENERAL

**Amendments**

* + 1. This Agreement shall not be amended except with the prior written approval of:
       1. an authorised signatory of the Bank (on behalf of the Bank); and
       2. an authorised signatory of the Contractor (on behalf of the Contractor)

and formalised in accordance with Schedule 7 (Change Control Procedure).

Save as set out in the Agreement, no terms and conditions of either party (including, without limitation, any terms or conditions contained in any purchase order issued by the Bank) or invoices of the Contractor (or any third parties) shall form part of the Agreement or take precedence over any terms or conditions in the Agreement.

**Notices and Communications**

Any notice or request required or permitted to be given or made under this Agreement shall be in writing and to the address notified by each party. Such notice or request shall be deemed to have been served and received: (i) if delivered by hand, at the time and date of delivery; (ii) if sent by fax, at the time and date of the successful fax transmission report; (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 etc.); or if sent by registered airmail, five (5) days from the date of posting.

**Insurance**

* + 1. 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 or any other direct loss.
    2. The Contractor shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.
    3. 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 shall be maintained for a minimum of seven (7) years following the expiration or earlier termination of this Agreement
    4. The Contractor shall produce to the Bank, on request, copies of 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.
    5. The Contractor shall notify the Bank immediately in writing of any anticipated or actual event or circumstances which may lead or has lead 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).
    6. If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Contract the Bank shall have a right to terminate this Agreement or to make alternative arrangements to protect its interests and then recover the costs of such arrangements from the Contractor.
    7. 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 the terms of this Agreement, acting in manner consistent with a reasonable and prudent commercial organisation.
  1. Relationship of the Parties

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 the authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

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.

* 1. Equality and Discrimination

The Contractor shall, and shall procure that the Staff in relation to the conduct and provision of the Services, comply with any applicable anti-discrimination legislation.

**Health and Safety**

The Contractor agrees, whilst on the Premises, to comply with any reasonable health and safety policies which the Bank provides copies of to the Contractor from time to time. The Contractor agrees to comply with those rules when on the 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 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.

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

**Environmental Considerations**

The Contractor shall, when working on the 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.

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.

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 which are the subject of this Agreement. Where the provisions of any such legislation are implemented by the use of voluntary contracts or codes of practice, the Contractor shall comply with such contracts or codes of practice as if they were incorporated into English law subject to those voluntary contracts or codes being cited in the tender documentation. Without prejudice to the generality of the foregoing, the Contractor shall:

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;

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;

comply with all obligations imposed on it in relation to the Services which are 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);

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;

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

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.

The Contractor shall meet all reasonable requests by the Bank for information evidencing the Contractor’s compliance with the provisions of Clause 17.7.3.

**Prevention of Corruption**

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 17.8.1 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 17.8.1 and 17.8.2, the Contractor represents, warrants and undertakes that it and its Staff will:

adhere to and comply with any policies or protocols notified to it by the Bank from time to time regarding bribery, fraudulent acts and/or any other corrupt practices, which the Contractor hereby confirms and warrants it shall adhere to and comply with; and

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 17.8.3 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 17.8.3.1 and 17.8.3.2.

Without limiting Clause 17.8.1, 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 17.8.5 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 17.8.5.1 and 17.8.5.2.

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 17.8, 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.

Notwithstanding Clause 17.21, any dispute relating to:

the interpretation of this Clause 17.8 inclusive; or

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**

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.

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.

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.

The Contractor shall promptly notify the Bank’s Account 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 such 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.

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.

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**

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, which the Bank shall not unreasonably withhold or delay. 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.

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.

The Bank may not without the express, written consent of the Contractor, which the Contractor shall not unreasonably withhold, 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.

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**

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.

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.

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.

If the Contractor’s proposals referred to in Clause 17.12.7 are considered insufficient or unacceptable by the Bank, then this Agreement may be terminated by the Bank by notice in writing with immediate effect.

* 1. 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, the Contractor may propose an amendment to the Charges via the Change Control Procedure and which the Bank shall consider in good faith).

**Conflicts of Interest**

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.

**Non Solicitation**

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.

Each party agrees that if it breaches the provisions of Clause 17.15.1 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.

The parties agree that the amount referred to in Clause 17.15.2 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 17.15.1.

**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 and an authorised signatory of the Contractor 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.

* 1. Audit Rights

The Contractor shall keep and maintain until seven (7) years after the Agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the Services provided under it, the Charges due to the Contractor and all payments made by the Bank under this Agreement.

Subject to Clauses 17.19.3 and Clauses 17.19.7 to 17.19.8, the Contractor shall allow the Bank by its own employees or duly authorised agents once per annum (for a maximum period of two (2) weeks) 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, subject to the Bank’s compliance with the Contractor’s security requirements.

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, subject to the Bank’s compliance with the Contractor’s security requirements, for the purposes of inspecting and carrying out any enquiries necessary to investigate a breach (or apparent breach) of Clause 16.5 (Security) that the Bank has reasonable grounds to believe has occurred or will occur. The Bank shall only conduct such a security audit upon the written authorisation of the Bank’s Central Services Executive Director and a copy of which shall be provided to the Contractor at the time or, if practicable, before this Clause 17.19.3 is exercised. The Bank shall pay the costs of the audit unless the audit finds that a breach of Clause 16.5 (Security) has occurred.

From time to time the Bank (including its third party representatives), will have the right, (subject to not less than ten (10) Working Days prior written notice to the Contractor indicating the scope of the proposed audit), subject to the Bank’s compliance with the Contractor’s security requirements and for any such audits to fall within the once per annum audit limit as set out in Clause 17.19.2, to perform audits and inspections of the Contractor and/or its subcontractors or other representatives to:

* + - 1. verify the integrity of the Data and the Collected Data and to examine the systems (including the systems that interface with the Bank’s systems), processes, procedures that process, store, support and transmit that Data and Collected Data, and the processes that impact on the integrity of such Data and Collected Data, including the Contractor’s controls and security practices and procedures;
      2. examine the Contractor’s performance of the Services and compliance with its obligations under this Agreement including verifying compliance with the Service Levels, Quality Standards and compliance with all Bank security requirements (including for the avoidance of doubt the Bank’s Security Policies & Procedures); and
      3. carry out any other audit activity to the extent required pursuant to any applicable law, regulation or industry code.

The Contractor shall fully co-operate with (and shall cause its subcontractors and representatives to fully co-operate with) the Bank and, where applicable, the Bank’s audit representatives, including by providing access to any locations at which any Staff, equipment, software, data, records and systems relating to the Services are located, subject to the Bank’s compliance with the Contractor’s security requirements and for any such audits to fall within the once per annum audit limit as set out in Clause 17.19.2, and any relevant information to the extent reasonably necessary to carry out the audit as set out in Clause 17.19.4 above. The Contractor will also comply and make its records available for any audit conducted by a regulatory agency, on terms specified by the regulators.

If any audit or inspection results in the Contractor being notified that it is not in compliance with any generally accepted accounting principle or audit requirements or other requirements stated in the Agreement relating to the Services, the Contractor shall, at its own cost and within the time specified by the auditor or regulatory authority or the Bank as the case may be, bring the Services into compliance.

In the event of an investigation into suspected fraudulent activity by the Contractor or any third party associated with the Contractor, the Bank reserves for itself, any auditors of the Bank and their respective authorised agents the right of immediate access to the Contractor’s records and/or premises and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the Term or at any time thereafter. For the avoidance of doubt, the Contractor shall only be repaid its reasonable expenses incurred in giving assistance pursuant to this Clause 17.19.7 in the event that the result of such investigation reveals no fraudulent activity or other criminal activity by the Contractors, its servants, agents or sub-contractors.

The Contractor shall comply with all other additional audit requirements as set out in Schedule 12 (Environments and Security).

If any audit or inspection reveals any error or overcharging in any Contractor invoice, the Contractor shall give, as soon as reasonably practicable, an appropriate correcting credit equivalent to the amount of the error or overcharge plus interest at the rate of two (2) per cent per annum above the base rate of the Bank of England calculated from the date of receipt by the Contractor of the overcharged amount until the date of repayment to the Bank.

If any overcharging by the Contractor has exceeded five (5) per cent of a particular fee category, or if any audit carried out under clause 17.19 uncovers any material breach of this Agreement on the part of the Contractor, the Contractor shall bear the entire cost of the audit exercise, including all fees incurred by the Bank’s external audit representatives, in addition to the repayment of the sum plus interest as set out in Clause 17.19.9

**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. However, 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.

* 1. Escalation and Dispute Resolution Procedure

The parties shall refer any issue which is identified in this Agreement as being subject to escalation and 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 (“**Escalation and Dispute Resolution Procedure**”):

either party may submit the escalation or dispute to the parties Project Managers (if the dispute relates to the Implementation Services, Migration Services or Additional Services) or to the Contract Managers, who shall gather and analyse any information relevant to the resolution of the escalation or dispute (as applicable) and meet to negotiate in good faith in an effort to resolve the issue;

[Not used];

if the Project Managers or Contract Managers, as applicable, do not resolve the issue within five (5) Working Days of the referral, or if they determine in good faith that resolution through continued discussions does not appear likely within five (5) Working Days of the original referral or such other timescale as agreed between the parties in writing, the matter shall be referred to the Relationship Managers to attempt to negotiate a resolution (**Second referral**);

the Relationship Managers shall meet to negotiate in good faith in an effort to resolve the issue;

if the Relationship Managers do not resolve the issue within five (5) Working Days of the Second Referral, or if they determine in good faith that resolution through continued discussions does not appear likely within five (5) Working Days of the Second Referral or such other timescale as agreed between the parties in writing, the matter shall be referred to the Contractor Head of Account Management for the Contractor and the Bank Project Sponsor to attempt to negotiate a resolution (**Third Referral**);

the Contractor Head of Account Management and the Bank Project Sponsor shall negotiate in good faith in an effort to resolve the issue; and

if the Contractor Head of Account Management and the Bank Project Sponsor do not resolve the issue within ten (10) Working Days of the Third Referral, or determine in good faith that resolution through continued discussions does not appear likely within ten (10) Working Days of the Third Referral, or such other timescale as agreed between the parties in writing, 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.

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.

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.

In the event that the parties fail to agree the resolution of the dispute at the end of the mediation, or if no such resolution is achieved within thirty (30) Working Days of the referral to mediation, either party may then invoke legal proceedings to seek determination of the dispute.

Subject to Clause 17.21.7, the parties agree that they shall not commence legal proceedings until the Escalation and Dispute Resolution Procedure has been exhausted.

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

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.

**Governing Law and Jurisdiction**

* + 1. 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
    2. Each party irrevocably agrees, for the sole benefit of the Bank that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Bank to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorised representatives on the date first above written.

**EXECUTED** by the parties

For and on behalf of **THE BANK OF ENGLAND**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of **[*CONTRACTOR*]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCHEDULE 1: DEFINITIONS

“**Acceptance Test**” means a test or sequence of tests specified in Schedule 4 (Acceptance) to be performed in order to establish, by compliance with the acceptance criteria contained in Schedule 4 (Acceptance), that the Implementation Services and Migration Services as applicable conform to the Specifications;

“**Acquired Rights Directive**”means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended;

“**Additional Services**” means the additional services as may be agreed between the parties pursuant to Clause 6.3 and Schedule 7 (Change Control Procedure);

“**Affiliates**” means with respect to the Contractor, any other entity Controlling, Controlled by or under Control with such entity;

“**Agreement**” has the meaning given in Clause 1.5.1;

“**Approval**” and “**Approved**” means the written consent of the Bank;

“**Availability**” means the period during which the System is fully functional and accessible to all Financial Institutions;

“**Bank Dependency**” means the events (if any) expressly established as such as described in Schedule 3 (Implementation Services and Transition) or the Appendices to Schedule 2;

“**Bank Contract Manager**” means the individual appointed to that role pursuant to Section 3 of Schedule 8 (Governance);

“**Bank Material**” means any Material owned by the Bank (and any modifications to that Material);

“**Bank Personnel**” means all employees, staff, contractors, consultants, agents, officers and workers of the Bank;

“**Bank Project Manager**” means the individual appointed to that role pursuant to Section 3 of Schedule 8 (Governance);

“**Bank Project Sponsor**” means the individual appointed to that role by the Bank, in its discretion, from time to time;

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

**“Base Product”** means the standard version of the Contractor Software which is publicly marketed, as of the Go Live Date.

**“Business Critical Services”** has the meaning set out in Schedule 10 (Exit and Termination Assistance);

“**CESG**” means the UK government’s National Technical Authority for Information Assurance;

“**Change**” has the meaning as set out in Schedule 7 (Change Control Procedure);

“**Change Control Procedure**” means the procedure as set out in Schedule 7 (Change Control Procedure);

“**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;

**“Change Request”** has the meaning set out in Schedule 7 (Change Control Procedure);

“**Charges**” means the charges set out in Schedule 5 (Charges);

“**Claim**”has the meaning set out in Schedule 13 (Staff Transfer);

**“Collected Data”** means all data entered or uploaded on to the System by the Financial Institutions;

“**Commercially Reasonable Efforts**” means that the party obliged to perform shall take all such steps and perform in such a manner as if it were acting in a determined, prudent and reasonable manner in order to achieve the desired result for its own benefit;

“**Commercially Sensitive Information**” means any information identified by the Contractor in the Agreement comprising the 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;

“**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, and in respect of the Bank shall include the Data and the Collected Data, 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 and any market sensitive information and the Commercially Sensitive Information (“**Receiving Party**”);

“**Configuration Document**” means all relevant documentation that will be provided to the Bank that sets out how the Configured Software is configured at the time of acceptance in order to provide the Services;

“**Configurations**” means all configurations made to the Contractor Software or Third Party Software, including any plausibility checks and data validation rules, which is produced, commissioned or developed by the Contractor, the Staff or any sub-contractors for or on behalf of the Bank under or in connection with this Agreement;

“**Configurations Use Conditions**” has the meaning given on Clause 10.8;

“**Configured Software**” means the Contractor Software, Third Party Software and any Configurations**;**

“**Continuation Services**” means the Services which the Bank may continue to require the Contractor to provide during the Termination Assistance Period and which will be agreed by the parties in accordance with the Change Control Procedure;

“**Contractor Account Manager**” means the individual appointed to that role pursuant to Section 3 of Schedule 8 (Governance);

“**Contractor Head of Account Manager**” means the individual appointed to that role pursuant to Section 3 of Schedule 8 (Governance);

“**Contract Manager**” means the individuals notified as Bank’s contract manager or the Contractor’s contract manager (or such other representatives as nominated by the parties) pursuant to section 3 of Schedule 8 (Governance);

“**Contractor Material**” means Materials owned by the Contractor (including any materials relating to the operation, modification, support and/or maintenance of Materials) which are provided or utilised by the Contractor in the provision of the Services;

“**Contractor Party**”the Contractor's agents and contractors, including each sub‑contractor;

“**Contractor Personnel**” means all employees, staff, contractors, consultants, agents, officers and workers of the Contractor and any Contractor Party engaged in the provision of the Services;

“**Contractor Processes**” means the processes used by the Contractor to provide the Services which relate to the Contractor tasks and which exclude processes specific to the provision of Services to the Bank;

**“Contractor Project Manager”** means the individual appointed to that role pursuant to Paragraph 5 of Schedule 8 (Governance);

“**Contractor Software**” means Software owned by the Contractor (including any materials relating to such Software and/or its operation, modification, support and/or maintenance) which are provided or utilised by the Contractor in the provision of the Services;

“**Contractor Test Analyst**” shall have the meaning as set out in paragraph 4.1 of Schedule 4

“**Contract Year**” shall mean each consecutive twelve (12) month period starting on the Effective Date or the anniversary thereof;

“**Control**” and its derivatives means the power of a person, body corporate or unincorporated body (**Person**) to secure (i) by means of the holding of shares or the possession of voting power in an entity, or (ii) by virtue of any powers conferred by the articles of association or other document regulating or relating to any entity, that the affairs of that entity are conducted in accordance with that Person’s wishes and a **Change of Control** occurs if a Person who controls the Contractor ceases to do so or if another Person acquires Control of it.

“**Current Data Collections**” means those data collections which at the relevant time the Bank performs using the System, whether those data collections are detailed in the SOUR or in any Contract Amendment.

“**Data**” means all data (other than the Collected Data) and/or information developed, received or acquired by the Contractor in the course of performing the Services which relates to the Bank, or to any of the Bank’s users and staff and their respective operations, facilities, assets and programs in whatever form that data and/or information may exist;

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

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

“**Defect Administrator**” means the individual identified as such by the Contractor who is responsible for monitoring defects, progressing the resolution of defects as appropriate and coordinating with the Bank to manage, update and (where appropriate) re-test any defects and the Fixes applied to them. The Defect Administrator is also responsible for supplying the Bank with all relevant MI Reports and associated information;

“**Defect Manager**” means the individual identified as such by the Bank who is responsible for the defect management process and ensuring that all defects are processed and resolved efficiently. The Defect Manager will be responsible for the management of all defects in accordance with this Agreement, including but not limited to an initial review of all defects, assigning all defects an appropriate resolution pathway and providing such assistance as may be reasonable to the Defect Administrator to resolve all defects;

“**Deficiency**” means any issue with the implementation or performance of any aspect of the Services which impacts negatively on or is likely to impact negatively on the achievement of a Milestone or otherwise has resulted in or may result in a breach of the Service Levels or other Default by the Contractor;

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

“**Developments**” means the Documentary Developments, the Configurations;

“**Disaster**”means any disruption to the performance or receipt of the Services (whether caused by a natural or a man-made phenomenon or occurrence);

“**Disaster Recovery Plan**” means a written document detailing the procedures to be followed and actions to be undertaken in order to recover from a Disaster and restore the Services such that they are performed in accordance with this Agreement, including the provisions of Schedule 6 (Service Levels and Service Credits);

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

“**Documentary Developments**” means all documentary Deliverables produced and/or supplied by the Contractor in relation to and/or in support of the Services, including the Requirements Analysis Document(s), the Solution Design Document(s), the Configuration Document(s) and the Quality Plan;

“**Downtime**” means any period when the System is not fully functional and available to all Financial Institutions;

“**Effective Date**” means the date on which the Agreement is signed by both parties;

“**EIOPA**” means the European Insurance and Occupational Pensions Authority and any successor or replacement body from time to time;

“**Emergency Maintenance**” means any ad hoc and unplanned maintenance provided by the Contractor or the Bank which results in Downtime;

“**Employee Liabilities**” means all claims (including but not limited to claims for redundancy payments, unlawful deduction of wages, breach of contract, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination or discrimination on the grounds of religion, belief, age, gender reassignment, marital or civil partnership status, pregnancy, maternity or sexual orientation or claims for equal pay, compensation for less favourable treatment of part-time workers or fixed-term employees, claims for failure to inform and consult pursuant to the Regulations or the Trade Union and Labour Relations (Consolidation) Act 1992 and any claims whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any expenses and legal costs on an indemnity basis;

“**Employees”** means full-time, part-time, or temporary employees held in the HR system of the Bank and paid via the Bank payroll;

“**Employment Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Council Directive 77/181/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;

“**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;

“**Escalation and Dispute Resolution Procedure**” means the dispute resolution procedure set out in Clause 17.2.1 (Dispute Resolution Procedure);

“**Escrow Charges**” means those Charges detailed in paragraph 3 of Schedule 5 (Charges).

“**Exit Plan**” has the meaning as set out in paragraph 2 of Schedule 10 (Exit and Termination Assistance);

“**Financial** **Institutions**” means those entities submitting data to the Bank (which, once submitted, shall be Collected Data) using the System in accordance with this Agreement from time to time;

“**Fix**” means the repair of a Service Failure by either a temporary software patch or inclusion in a maintenance release or a scheduled enhancement release;

“**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);

“**Go Live**” means that the Contractor has met all acceptance criteria in accordance with Clause 5 and Schedule 4 (Acceptance) for the Implementation Services to the Bank’s satisfaction and the System is fully operational in accordance with the Specification;

“**Go Live Date**”means the date on which Go Live is achieved and the Contractor commences Maintenance and Support Services;

“**Governance Schedule**” means Schedule 8 (Governance);

“**Implementation Project Plan**”means a plan that will form part of the Transition Plan with respect to the delivery of the Implementation Services and will include as a minimum the project plan, the Quality Plan and the Milestones and Milestones Dates;

“**Implementation Services**” means the services as set out in paragraph 2 of Schedule 2 and identified as “Implementation Services” in Schedule 3 (Implementation Services and Transition), those other Services to be provided pursuant to the Transition Plan and all other activities required to develop the System so that it is ready for launch by the agreed Milestone Date and “**Implementation**” shall be construed accordingly;

“**Implementation Services Charges**” means those Charges as set out in paragraph 4 of Schedule 5 (Charges);

“**Improvement Plan**” means a plan produced by the Contractor which show the detailed steps to be undertaken by the Contractor to rectify a Deficiency and which specifies reasonable steps that will be undertaken by the Contractor to prevent the recurrence of the Deficiency;

“**Initial Training Services**” means any Training Services which are identified in Schedules 2 and 3 as required to deliver Implementation;

“**Initial Training Services Charges**” means the Charges that are detailed in paragraph 5.1 of Schedule 5;

“**Industry Testing**” means the external testing phase involving Financial Institutions submitting regulatory data (which shall, once submitted be Collected Data) to the non-live System in order to test: (i) the external functionality of the System, including but not limited to user management and notifications; and (ii) that the Collected Data meets EIOPA taxonomy, and to ensure that Financial Institutions can access the System and transmit data as expected;

“**Information**” has the meaning given under Section 84 of the FOIA;“**Intellectual Property Rights**” means (whether registered or unregistered) copyrights, patents, utility models, trade marks, service marks, design rights, database rights, semiconductor topography rights, proprietary information rights and all other similar proprietary rights as may exist anywhere in the world now or in the future;

“**Key Milestone**”and “**Key Milestone Dates**” means the key milestones and their relevant dates as set out in Paragraph 3.3 of Schedule 3 (Implementation Services and Transition) and forms part of the Milestones and Milestone Dates respectively;

“**Key Personnel**” means those persons named in Schedule 15 as being key personnel;

“**Key Service Level**” means the Service Levels identified as such in Schedule 6 (Service Levels and Service Credits);

“**Know-how**” means all information relating to and comprised in inventions (whether or not patentable), discoveries, improvements, modifications, concepts, ideas, equipment specifications, techniques, processes, procedures, instructions, methods, raw and secondary data, computer programs, algorithms, prototypes, models, formulae, drawings, sketches, plans, schematics, records, reports and manuals, and all other technical information in each case whether written or unwritten and whether in machine readable form and whether stored electronically or otherwise;

**“Licence Charges”** mean those Charges as set out in paragraph 1 of Schedule 5 (Charges)

“**Licence Model**” has the meaning given in paragraph 6.2 of Schedule 7;

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

“**Losses**”means (without limitation) any damages, liabilities, claims, demands, proceedings, actions, costs, charges, losses and/or expenses;

“**Maintenance and Support Services**” means the maintenance and support of the System and the other Services to be provided by the Contractor on and from the Go Live Date, except for the Termination Assistance in accordance with the provisions as detailed in Schedule 2;

“**Maintenance and Support Services Charges**” means those Charges as set out in paragraph 3 of Schedule 5 (Charges);

“**Maintenance Year**” shall mean each consecutive twelve (12) month period starting on the Go Live Date or the anniversary thereof;

“**Mandatory Change”** has the meaning given in Schedule 7 (Change Control Procedure);

“**Material**” means any document, methodology or process, documentation, drawings, patents, patterns, models, designs, data or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, but excluding Software;

“**Migration Configurations**” means all configurations in BEEDS including any plausibility checks, data validation rules or workflows that the Bank lists in the Migration Configuration Document and which the Contractor will recreate in the Solution in accordance with the provisions of Schedule 3;

“**Migration Configuration Document**” means the list of Migration Configurations produced by the Bank in accordance with the provisions of Schedule 4;

“**Migration Data**” means all data described by Schedule 2, the Requirements Analysis Document and the Solution Design Document that will be migrated from BEEDS to the System during the Migration Services as directed by Schedule 3;

“**Migration Go Live**” means that the Contractor has met all acceptance criteria in accordance with Clause 5 and Migration Schedule 4 (Acceptance) for the Migration Implementation Services to the Bank’s satisfaction and the Migration Data is fully operational in accordance with the Migration Specification;

“**Migration Services**” means the services as set out in paragraph 2 of Schedule 2 and identified as “Migration Services” in Schedule 3 (Implementation Services and Transition), those other Services to be provided pursuant to the Outline Migration Plan and all other activities required to develop the System so that it is ready for launch by the agreed Milestone Date and “**Migration**” shall be construed accordingly;

“**Migration Services Charges**” mean those Charges as set out in paragraph 5 of Schedule 5 (Charges);

“**Migration** **Specification**” means the description of the services to be provided under the Agreement and is as set out in Schedule 3;

“**Migration Project Plan**”means a plan with respect to the delivery of the Migration Services and will include as a minimum a project plan, the Quality Plan and the Milestones and Milestones Dates;

“**Milestones**” and “**Milestones Dates**”means the milestones and their relevant dates as set out in Schedule 3 (Implementation Services and Transition);

“**Milestone Achievement Criteria**” means the event which must have occurred for a Milestone to be achieved as set out in Schedule 3 (Implementation Services and Transition);

“**Milestone Termination Event**”has the meaning set out in Schedule 3 (Implementation Services and Transition);

“**MI Report**” means the management information reports to be provided by the Contractor to the Bank as further described in Schedule 2 (Statement of User Requirements);

“**Month**” means calendar month;

“**Monthly Progress Meeting**” means the meeting with this title referred to in Schedule 8 (Governance);

**“New Joiner”** has the meaning given in Clause 17.15.2 of the Agreement;

**“Non-Chargeable Change”** has the meaning set out in Schedule 7 (Change Control Procedure);

**“Outline Transition Plan”** has the meaning set out in Schedule 3 (Implementation Services and Transition);

“**Other Contractors**” means Corefiling Limited, who have entered into an agreement with the Bank for the provision of services relating to data collection, data validation and plausibility checking/xbrl processing and Qinetiq Limited who provides hosting platform services to the Bank and any replacement contractor or contractors from time to time;

“**Outline Migration Plan**” means the Outline Migration Plan (as set out in Schedule 3 (Implementation Services and Transition)) or (if and when approved by the Bank in accordance with the terms of this Agreement) the Migration Project Plan as updated in accordance with Schedule 3 (Implementation Services and Transition) from time to time; For the avoidance of doubt, where the Migration Project Plan does not cover any dates or milestones that have yet to commence, the relevant provisions of the Outline Migration Plan will continue to apply with respect to the provision of the Migration Services;

“**Parallel Run**” has the meaning set out in Schedule 4 (Acceptance);

“**Payment Trigger Event**” has the meaning set out in Schedule 5 (Charges);

“**Peak Days**” means those days designated by the Bank upon the service (email being sufficient) to the Contractor of two weeks’ notice, limited to 24 days per Maintenance Year.

“**Peak Days Allowance**” has the meaning set out in section 3 of Schedule 2.

“**Peak Hours**” means 24 hours a day on Peak Days.

“**Performance Management System**” has the meaning set out in Schedule 6 (Service Levels and Service Credits);

“**Performance Monitoring System**”means the system established to monitor the Contractors performance of the Services as described in Schedule 6 (Service Levels and Service Credits);

“**Pre-Contractual Statements**”has the meaning given in Clause 1.5.3 of the Agreement;

“**Pre-Existing Materials**”has the meaning given in Clause 10.1 of the Agreement;

“**Premises**” means the location where the Services are to be performed, as specified in the Specification;

“**Priority 1**”has the meaning set out in Schedule 2 (Statement of User Requirement);

“**Priority 2**” has the meaning set out in Schedule 2 (Statement of User Requirement);

“**Priority 3**” has the meaning set out in Schedule 2 (Statement of User Requirement);

“**Priority 4**”has the meaning set out in Schedule 2 (Statement of User Requirement);

“**Project Board**”means the board with the members and responsibilities as set out in paragraph 4 of Schedule 8 (Governance);“**Programme Governance**” has the meaning set out in paragraph 1.2 of Schedule 8 (Governance);

“**Quality Plan**”means the plan referred to in Clause 6.8 of the Agreement;

“**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 (Statement of User Requirements);

“**Quarter**” means each period of three calendar months ending on 31 March, 30 June, 30 September and 31 December.

“**Quarterly Review Meeting**” means the meeting with this title referred to in Schedule 8 (Governance);

“**Quarterly Service Charge**” means the total quarterly charges invoiced by the Contractor to the Bank for the Maintenance and Support Services and as set out in Schedule 5 (Charges);

“**Quarterly Summary**” has the meaning set out in Schedule 8 (Governance);

“**Rate Card**” means the rate card set out in Schedule 5 (Charges);

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

“**Recovery Point Objective**” or “**RPO**” means the acceptable amount of data loss measured in time, being the point in time to which you must recover data as agreed with the Bank organisation;

“**Recovery Time Objective**” or **“RTO**” means the duration of time within which a business process must be restored after a disaster in order to avoid unacceptable consequences associated with a break in business continuity; “**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;

“**Relationship Manager**” means the individuals notified as Bank’s relationship manager or the Contractor’s relationship manager (or such other representatives as nominated by the parties) pursuant to section 3 of Schedule 8 (Governance);

“**Replacement Services**”has the meaning set out in Schedule 10 (Exit and Termination Assistance);

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

“**Requirements Analysis Document**” means a description analysing the Bank requirements with respect to the Services based on the SOUR (to a greater level of granularity where necessary than the SOUR and which shows full traceability to the SOUR), and is a suite of documents, broadly falling in to the following three categories that will be provided by the Contractor to be approved by and owned by the Bank: (i) System, (ii) Implementation Services, (iii) Migration Services;

“**Requirements Analysis Workshop**” means the workshops that will take place between the Contractor and the Bank in accordance with (i) the Transition Plan and (ii) the Outline Migration Plan in order for the parties to discuss collaboratively the Requirements Analysis Document and the Solution Design Document requirements of the Services;

“**Retention Payment**”has the meaning set out in Schedule 5 (Charges);

“**Risks and Issues Log**” has the meaning set out in Paragraph 4.1 of Schedule 3 (Implementation Services and Transitions);

“**Security Policies & Procedures**” means in addition to the security policies and procedures as set out in Schedule 12 (Environments and Security), all other relevant policies and procedures as notified by the Bank to the Contractor from time to time;

“**Security Vetting Test**” means a security screening test prepared by the Bank for Staff to undertake to verify their eligibility and suitability to provide the Services;

“**Sensitive Claim**”has the meaning set out in Schedule 13 (Staff Transfer);

“**Service Credits**” means the service credits set out in Schedule 6 (Service Levels and Service Credits);

**“Service Desk”** means the single point of contact service desk set up and operated by the Contractor via telephone, e-mail and an online reporting tool;

“**Service Failure**” means any:

1. defect in or failure of the System, and/or any Maintenance and Support Services which results (or would result if the Bank end users were, at the relevant time, using that Maintenance and Support Service) in a failure to provide the System and/or that Maintenance and Support Service in accordance with the requirements of this Agreement or which results in the provision of the System and/or that Maintenance and Support Service to the Bank not complying with the requirements of this Agreement; and
2. any failure in any material obligations of the Contractor’s under Schedule 12 (Environments and Security).

“**Service Failure Log**” means the log maintained by the Contractor in relation to each Service Failure and all contact made by the Bank to the Service Desk;

“**Service Hours**” means (for the purposes of the Service Levels) an agreed time period during which the System shall be fully operational in accordance with the Specification, being Working Days between 08:00 to 18:00 or in the case of Peak Days the Peak Hours;

“**Service Levels**” means the service levels set out in Schedule 6 (Service Levels and Service Credits);

“**Service Period**” shall have the following meaning:

(i) the first service period of this Agreement shall start on the Go Live Date and shall expire at the end of the Quarter in which the Go Live Date falls; and

(ii) after the first Service Period of this Agreement a “Service Period” shall be a Quarter during this Agreement save that the final payment Quarter of this Agreement shall commence on the first day of the Quarter in which the Term expires or terminates and shall end on the expiry or termination of the Term;

“**Service Transfer”** has the meaning given in paragraph 3 of Schedule 13 (Staff Transfer);

“**Service Transfer Date**”means the date of a Service Transfer;

“**Services**” means any and all of the services to be provided by the Contractor under this Agreement including those as specified in the Specification, the Implementation Services, the Migration Services, the Maintenance and Support Services, the Continuation Services, the Termination Assistance and any services agreed under the Change Control Procedure;

“**Software**” means any computer program (in object code or source code form), program interfaces and any tools or object libraries embedded in that software and which is used in relation to the Services;

“**Solution Design Document**”means the document or suite of documents that will be provided to the Bank and which sets out the complete design of the System (including setting out how the System meets or does not meet the Bank requirements as set out in the Requirements Analysis Document);

“**SOUR**” means Schedule 2 (Statement of User Requirements);

“**Source Code Materials**” has the meaning given in paragraph 2 of Schedule 11;

“**Specification**” means the description of the services to be provided under the Agreement and is as set out in the SOUR as supplemented by the Requirements Analysis Document(s), Solution Design Document(s) and Configuration Document(s);

“**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;

“**Step-In Rights**”means the right of the Bank to take steps in relation to the Services as described in paragraph 1 of Schedule 16 (Step-In);

“**Step-Out Date**”has the meaning given in paragraph 3 of Schedule 16 (Step-In);

“**Step-Out Notice**”has the meaning given in paragraph 3 of Schedule 16 (Step-In);

“**Support Hours**” means the time during which support is available to users, being between 08:00 to 18:00 on Working Days or, where agreed in accordance with section 3.4(ii) of Schedule 2, either 24 hours on Working Days or 24 x 7 as applicable; with the exception of Peak Days on which support will be available to users for the Peak Hours;

“**System**” means the Configured Software, any applicable Contractor infrastructure, including hardware application, operating system and database, connectivity and inter-operability of these items including interfaces, and related documentation and procedures operated by the Contractor in the provision of the Services;

“**T&M Rate**” means the time and materials rate card set out in paragraph 5 of Schedule 5 (Charges)

“**Term**” means the period of duration of the Agreement in accordance with Clause 2.2 and any extensions agreed pursuant to Clause 2.3;

“**Termination Assistance**” means the necessary assistance to be provided by the Contractor to the Bank (over and above the Continuation Services) to complete the transition of all or part of the Services from the Contractor to a Replacement Contractor or to the Bank in accordance with Clause 13 (Termination Assistance) and Schedule 10 (Exit and Termination Assistance);

“**Termination Assistance Period**” means the period of time during which the Contractor is required to provide Termination Assistance to the Bank until the Services have been completely transitioned to the Bank or a Replacement Contractor, as set out below:

(i) in connection with the expiry of the Term, the period of six (6) Months prior to the expiry date;

(ii) in connection with any other termination of this Agreement, the period of six (6) Months from the date of service of notice of termination;

“**Third Party Material**” means any Materials owned by a third party (including any materials relating to the operation, modification, support and/or maintenance of Materials) which are provided or utilised by the Contractor in the provision of the Services;

“**Third Party Software**” means Software owned by a third party (including any materials relating to such Software and/or its operation, modification, support and/or maintenance) which are provided or utilised by the Contractor in the provision of the Services;

“**Training Services**” means any training services, including but not limited to Initial Training Services, provided by the Contractor to the Bank to enable the Bank’s nominated personnel to use the System in accordance with the Agreement at any time during the Term;

“**Training Services Charges**” means the Charges that are detailed in paragraph 5.2 of Schedule 5;

“**Transition**” means implementation of those Services to be provided by the Contractor to the Bank as more particularly described in Schedule 3 (Implementation Services and Transition);

“**Transition Plan**” means the Outline Transition Plan (as set out in Schedule 3 (Implementation Services and Transition)) or (if and when approved by the Bank in accordance with the terms of this Agreement) the Implementation Project Plan as updated in accordance with Schedule 3 (Implementation Services and Transition) from time to time; For the avoidance of doubt, where the Implementation Project Plan does not cover any dates or milestones that have yet to commence, the relevant provisions of the Outline Transition Plan will continue to apply with respect to the provision of the Implementation Services;

“**Use**” means to use, copy, modify, enhance and maintain for the Bank’s own business purposes including, but not limited to for the purpose of the Bank receiving the Services, continuing to use the System and any other resource which replaces the System, for receiving, collecting and storing data from Financial Institutions and for making data and reports available to EIOPA;

“**User Contact**”has the meaning set out in Schedule 6 (Service Levels and Service Credits);

“**Workaround**” means a temporary patch or workaround to correct or bypass the problem or fault whilst a permanent Fix is found, as mutually agreed by the parties (acting reasonably);

“**Working Hours**” being 8:00 to 18:00 during Working Days except for on Peak Days in which it shall mean the Peak Hours; and

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

1. SCHEDULE 2: STATEMENT OF USER REQUIREMENTS
   1. **OBJECTIVES**
      1. This Schedule sets out the Services to be provided by the Contractor.
      2. The tables set out in [APPENDICES] below describe the requirements which will together form the minimum requirements of the System at the Effective Date.
      3. Paragraph 2 describes the Appendices and ownership of the relevant requirements.
      4. Subject to Paragraph 1.1 above, the Parties intention is that following the Effective Date, the Appendices to this schedule will become the basis of a project document to track progress and delivery of the System. The Parties agree that where major changes to the minimum requirements are agreed these will be captured and added to this Agreement using the Change Control procedure described in Schedule 7 (“**minimum requirements**”).
   2. **THE SYSTEM, IMPLEMENTATION SERVICES AND MIGRATION SERVICES**
      1. The Contractor will provide the following software and licenses on which the requirements set out in this Schedule 2 will be based and will implement, migrate and configure the same as set out in Schedule 3:
         1. [LIST SOFTWARE LICENCES TO BE PROVIDED – Drafting Note: Based on bidder’s ITT response]

[APPENDICES containing finalised SOUR, based on bidder’s ITT response, to be placed here]

* + 1. The Contractor will implement the software and licences detailed in paragraph 2.1 above in accordance with the provisions of the Agreement and as particularly set out in Schedule 3.
    2. The Contractor will migrate the BEEDS Platform data into the System in accordance with the provisions of the Agreement and as particularly set out in Schedules 2 and 3.
  1. **PEAK DAYS**
     1. Notwithstanding the provisions set out in Schedule 5, the Contractor shall ensure that Staff are available during Peak Hours to provide Maintenance and Support Services for Priority 1 Service Failures, in accordance with paragraph 6 of this Schedule 2.
     2. The Bank shall be entitled to a (“**Peak Days Allowance**”) of twenty four (24) days per twelve (12) month period during the Term in addition to any unused Peak Days from any previous Peak Days Allowance.
     3. The Bank shall be entitled to purchase additional Peak Days at the PAYG rate detailed in Schedule 5 (Charges)
     4. Where the Bank does not use all of the Peak Days in any Peak Days Allowance, the Contractor will, at the Bank’s option either:
        + 1. Carry forward the unused Peak Days into any future Peak Days Allowance as the Bank chooses; or
          2. Rebate the Bank in the sum equal to the PAYG rate detailed in Schedule 5 for each unused Peak Day, such rebate to be paid to the Bank within thirty (30) days of the Bank’s written request or to be set off against an invoice(s) of the Bank’s choice.
     5. In the event that the Bank wishes to permanently increase Support Hours from 0800-1800 to 24 hours on Working Days or to 24 x 7, then the Contractor will, within [*NOTICE PERIOD TBA*] of the Bank notifying the Contractor, provide the Maintenance and Support Services on such increased Support Hours and the Maintenance and Support Services Charges shall be amended accordingly with Schedule 5 (Charges). If the Bank wishes at a later date to decrease Support Hours from 24 x 7 or from 24 hours on Working Days then the Contractor will within [*NOTICE PERIOD TBA*] of the Bank notifying the Contractor, decrease the Support Hours and the Maintenance and Support Charges shall be amended accordingly with Schedule 5 (Charges).
     6. For the avoidance of doubt the provision of Maintenance and Support Services during Peak Hours within the Bank’s relevant Peak Days Allowance, is included within the annual Maintenance and Support Charges detailed at Schedule 5 (Charges) for Support Hours.
  2. **REPORTING OF SERVICE FAILURES BY THE BANK** 
     1. The Contractor shall provide the Bank with dedicated telephone, email and online details on a Third Line Support\* basis, that may be used to report Service Failures (the ‘Service Desk’). Service Failures may be reported to the Contractor at any time through such dedicated contact methods.

\*Third Line Support means that the Service Desk provided by the Contractor will interact with the Bank’s IT support professionals only and not with individual end users.

* + 1. In the event of any repeated disruption or non-performance (more than twice in any one Service Period) of the Support Hours, the Contractor’s Contract Manager shall meet with the Bank (at a time and location to be specified by the Bank) to discuss the non-conforming Services.
    2. Service Failures and enquiries shall be categorised as follows:

|  |  |  |
| --- | --- | --- |
| **Priority Level** | **Classification** | **Description** |
| Priority 1 | Critical | The System cannot be used for the intended purpose and there is no Workaround and the failure is having an immediate and material impact on day-to-day operation of the System. Such examples would include situations where the entire System could not be started or an entire module or business function of the System becoming inoperable. |
| Priority 2 | Serious | Errors in a mainstream day-to-day function which a reasonable Workaround is available for and where there is no immediate or material impact on the use of the System or the system is degraded in terms of response and function. |
| Priority 3 | Degraded | A Service Failure is a mainstream day-to-day function in the System, which does not render the System unusable |
| Priority 4 | Minimal | Error is cosmetic and has no adverse effects on the day-to-day running of the System |

* + 1. When reporting each Service Failure, the Bank shall furnish reasonably sufficient details of the effect of the Service Failure on the Bank’s business operation and to classify the Service Failure as Priority 1 – 4 (as categorised above).
    2. The Contractor (acting reasonably) shall be entitled to challenge the level which is allocated by the Bank and the Bank shall, acting in good faith, consider such challenge, although the Bank’s allocation of the severity level shall be conclusive.
    3. The Contractor shall respond to all Service Failures in accordance with the timeframes specified in paragraph 8.4 below. The times to investigate will be based on the time taken for a Contractor operative to respond to such requests from the Bank (or from the time that the Contractor first became aware of the fault or issue, if earlier). Requests receiving an automated response or placed into a queuing system shall be deemed not to have been answered, unless they are received outside Support Hours, where an automated response will be sent to the Bank. The Contractor will attend to all such requests upon the commencement of the immediate next Support Hours and in accordance with the terms of this Agreement.
    4. The Contractor shall monitor its response times and shall provide the results of such monitoring to the Bank in accordance with Schedule 8 (Governance).
    5. The Bank’s Contract Manager shall be sent all relevant information on the status and resolution of Service Failures by the Contractor.
  1. **RECORDING OF SERVICE FAILURES AND SERVICE DESK CONTACT**
     1. The Contractor shall resolve all Service Failures, by providing, subject to clause 6.2 a Workaround and a Fix within the ‘Resolution Times’ described in paragraph 6.4 of this Schedule 2. For the avoidance of doubt the Contractor will not be provided with any remote access to the System or any of the Bank’s internal systems when providing any Workaround or Fix.
     2. The Contractor shall ensure that all Service Failures and Service Desk contact are logged immediately on the Service Failure Log. The Bank shall have verification rights in relation to the Service Failure Log and the Contractor shall provide all supporting evidence in relation to the Service Desk contact on request.
     3. Where the Service Desk receives more than one report of the Service Failure or incident then all such reports shall be logged on the Service Failure Log (but for the avoidance of doubt, the first report shall be deemed to be the Service Failure report).
     4. The Contractor shall ensure that, as a minimum, the following details are recorded by the Contractor in the Service Failure Log in respect of each Service Failure (regardless of whether reported via the Service Desk or otherwise) and all Service Desk contact:
        1. a unique report number;
        2. the date and time the report is received;
        3. the nature and location of the Service Failure/Service Desk contact;
        4. the person/organisation making the report;
        5. where applicable, the priority level assigned to the Service Failure by the Bank and the Contractor (in accordance with paragraph 6.4 of this Schedule);
        6. the action intended to be taken or which has been taken to rectify the Service Failure/Service Desk contact;
        7. details of any communication with the Bank’s authorised representative(s) in connection with the Service Failure/Service Desk contact;
        8. as applicable, notes/comments regarding any mitigating circumstances with regard to the Service Failure; and
        9. as applicable, the reasons for any inability of the Contractor to meet the Service Level so as to resolve the Service Failure.
     5. In addition to the reporting requirements detailed in section 6.4 of this Schedule Whenever requested by the Bank (acting reasonably), the Contractor shall provide to the Bank an up-to-date status report with respect to each Service Failure within eight (8) Working Hours.
     6. The Contractor shall ensure that the Service Failure Log and the Contractor’s records regarding all Service Desk contact are up to date and accurate. For the avoidance of doubt, the Service Failure Log and the Contractor’s records relating to all Service Desk contact may be audited by the Bank in accordance with Clause 17.19 of the Agreement.
  2. **RESOLUTION OF SERVICE FAILURES BY THE CONTRACTOR**
     1. When the Contractor provides a Workaround prior to a permanent Fix, it will provide the Bank with an impact analysis (as set out in Schedule 7 (Change Control)), unless otherwise agreed with the Bank, and evidence of the testing completed by the Contractor.
     2. Where a Workaround is proposed by the Contractor prior to a permanent Fix, the Bank reserves the right to reject that Workaround if it is not acceptable to the Bank (acting reasonably) for the Service Failure or Service Failure in question.
     3. When the Contractor provides a permanent Fix, it will provide the Bank with an impact analysis (as set out in Schedule 7 (Change Control)), unless otherwise agreed with the Bank, and evidence of the testing of the Fix completed by the Contractor.
     4. Service Failures and Service Desk contact shall be responded to as follows within Support Hours and Peak Hours:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Priority Level |  | Report Schedule | Workaround | Permanent Fix |
| 1 |  | Within 2 hours (and then every 2 hours) | Within 4 elapsed hours | Within 10 Working Days |
| 2 |  | Within 4 hours (and then every 4 hours) | Within 10 working hours | Within 30 Working Days |
| 3 |  | Daily | Within 30 Working hours | Next scheduled upgrade |
| 4 |  | Weekly | Next scheduled upgrade | Next scheduled upgrade |

* + 1. The Contractor will provide remote or onsite support for the installation and/or testing of the supplied Workaround or Fix, as reasonably required, but for the avoidance of doubt shall have no remote access to the System to provide such support.
    2. The Bank (acting reasonably) reserves the right to apply Workarounds or Fixes in accordance with its own timetable. If the Bank decides to do so, the Bank shall consider the clock stopped for that Service Failure at the point the Workaround or Fix is provided by the Contractor. If the Bank has not implemented the Workaround or Fix within two (2) weeks of receipt of the same from the Contractor, the Contractor may contact the Bank to find out why the Bank has not implemented the Workaround or Fix proposed by the Contractor and to try and reach a decision on how the Service Failure can be promptly resolved. If the parties cannot agree on the Fix to be used for that Service Failure, the issue will be immediately referred to the escalation procedure in Schedule 8 (Governance).
    3. Where a Service Failure requires any Documentary Developments to be updated, the Documentary Developments should be updated at the same time as the Contractor fixes the Service Failure, provided that updating the Documentary Developments shall not cause any delay to any Fix. The Contractor shall ensure that the Bank is promptly provided with the correct details to update the Documentary Developments so that the Documentary Developments are current at all times.
    4. Where there is a Service Failure with a Documentary Development itself, the Bank will raise the issue as a Service Failure assign a Priority Level and the Contractor shall ensure that the Documentary Development is corrected and delivered to the Bank in accordance with the timescales set out in clause 6.4
    5. The Bank reserves the right to change the response times set out above. Any change to the response times set out in this Schedule 2 shall be agreed with the Contractor in accordance with the Change Control Procedure.
    6. The Bank (acting reasonably) will determine when a Service Failure has been satisfactorily Fixed. For the avoidance of doubt, if a new unrelated problem was identified after testing a Fix of a given Service Failure, then the Bank should report that problem as a new Service Failure instead of linking it to the original Service Failure.
  1. **SOFTWARE UPDATES**
     1. The Bank is not obliged to accept every new version of the Software released by the Contractor, provided that the Bank acknowledges that certain functionality it may from time to time require may only be available within a subsequent version of the Software.
     2. The Contractor will provide any future releases and updates to the Bank where requested, in addition to all future release and update documentation and supporting, full instruction on how to install the releases and updates and guarantee that all the Configurations made to date will work with the updates or upgrades. The Contractor will provide on-site support for any major upgrade of the Software with no additional charge to the Bank. The Bank may, in its discretion, accept remote support for a major upgrade in place of on-site support.
     3. The Contractor, unless otherwise agreed with the Bank, will provide 20 working days’ notice of any Software updates, upgrades or enhancement.
     4. The Supplier will provide no less than 24 months’ written notice of the termination of Maintenance and Support Services for the version of the System that the Bank is currently using from time to time.
  2. **ACCEPTANCE PROCEDURE FOR FIXES AND SOFTWARE UPDATES**
     1. Prior to any delivery of Workarounds, Fixes, Configurations, development and/or Software updates, the Contractor shall carry out sufficient testing in order to ensure that no Service Failures will be introduced to the System in its then operating version.
     2. Prior to deploying the delivered items in the production environments, the Bank may carry out testing in a test environment(s) of the received items to control their quality. The Contractor’s obligation to deliver any such Workaround, Fix or Configuration will only be discharged upon the Bank’s Approval of such test results.
     3. All Workarounds, Fixes, Configurations or development and/or Software updates deployed for the Bank pursuant to this paragraph 8 shall be subject to the Maintenance and Support Services provided by the Contractor.
  3. **NON-REPRODUCIBLE SERVICE FAILURES**
     1. A reproducible Service Failure is a Service Failure on the Bank’s production environment, the source of which is identified by the Bank’s internal support team as being the System and in respect of which the Bank can provide the exact steps to reproduce the Service Failure. The reproducible Service Failure must also be reproducible in the Contractor’s environment.
     2. If a Priority 1 or Priority 2 Service Failure is non-reproducible (namely that the Service Failure cannot be reproduced by the Contractor), the Contractor shall notify the Bank about such an event, and shall as soon as reasonably practicable remotely engage a technical expert with the Bank’s chosen contact(s) or, where strictly necessary send a technical expert to the Bank’s Premises in order to investigate the Service Failure. The Bank shall provide all reasonable assistance to help identify the root cause of the Service Failure.
     3. For Priority 3 or Priority 4 non-reproducible Service Failures, the parties both acting reasonably will agree on the appropriate action plan.
     4. Non-reproducible Service Failures will not be subject to the Service Levels.
     5. If after engaging a technical expert with the Bank or sending a Contractor technical expert to the Bank’s Premises the Service Failure turns out to be attributable to the Bank only and not the Contractor, then the Contractor may, at its option, charge the Bank for the Additional Services as set out in paragraph 4 of Schedule 5 (Charges).
  4. **ISSUE ESCALATION**
     1. If the Contractor cannot resolve the Service Failure in accordance with the response times set out above, then the following escalation procedure shall apply:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Priority Level** | **1** | **2** | **3** | **4** |
| by Response Time | 4 hours after stated Response Time | 24 hours after stated Response Time | 48 hours after stated Response Time |
| 1 | Escalate to Contractor’s Account Manager to discuss the Service Failures and recommend next steps. | Escalate to Contractor’s Relationship Manager who shall prepare a detailed action plan for the Bank setting out recommended actions to resolve the Service Failures. | Escalate to Contractor’s Head of Account Manager to review the Service Failures.  Contractor to send necessary resources to the Bank to enable the Contractor to Fix the Service Failures. | Escalate to Contractor’s Head of Account Manager.  The Contractor must immediately send the necessary resources to the Bank to Fix the Service Failures. |
| 2 |
| 3 | Escalate to Contractor’s Head of Account Manager.  Contractor must review action plan with the Bank and amend if required by the Bank. | Escalate to Contractor’s Head of Account Manager.  The Contractor must send the necessary resources to the Bank’s Premises to Fix the Service Failures. |
| 4 | Escalate to Contractor’s Account Manager to discuss the Service Failures. | | | |

* + 1. The Bank will use the above escalation process in the event that there are other issues with the timeliness or quality of the provision of Maintenance and Support Services (e.g. issues with Service Desk enquiry resolution).

**SCHEDULE 3**

**IMPLEMENTATION SERVICES AND TRANSITION**

* 1. Purpose

This Schedule:

* + - 1. sets out in Part A, each party’s obligations during Transition and in Part B, each party’s obligations during Migration;
      2. At Part A, sets out the Outline Transition Plan (as set out in Annex 1 of this Schedule) and defines a process for the preparation and implementation of the Implementation Project Plan to deliver the Implementation Services; and at Part B, sets out the Outline Migration Plan (as set out in Annex 1 of this Schedule) and defines a process for the preparation and implementation of the Migration Project Plan to deliver the Migration Services
      3. identifies the Milestones (and associated Deliverables) including the Milestones that trigger payment to the Contractor (as set out in Schedule 5 (Charges)) relevant to, at Part A, the Implementation Services and, at Part B, the Migration Services.

2. The Contractor will, unless the Bank expressly agrees otherwise, approach and carry out the Implementation Services detailed in Part A of this Schedule 3 and the Migration Services detailed in Part B of this Schedule 3 as separate projects.

The Contractor will ensure that the performance of neither the Implementation Services nor the Migration Services (whether separately from each other or otherwise), threatens, competes with for resources (including Bank resources), compromises quality of the deliverables or undermines the successful implementation of either the Implementation Services or the Migration Services.

Part A

All references in this Part A of this Schedule 3 to “relevant sections” of any of the Requirements Analysis Document or the Solution Design Document refer to the sections of each document which relate to the Implementation Services.

* 1. The Transition Plan
     1. The Transition Plan describes the activities that must be conducted by the Contractor to complete the Implementation Services.
     2. At the Effective Date, the Transition Plan is initially comprised of the certain Key Milestones and Deliverables that will be provided as part of the Implementation Services, as set out in the Outline Transition Plan.
     3. The Implementation Project Plan will be developed by the Contractor and Approved by the Bank following the Effective Date as described in this Schedule. The Implementation Project Plan will be consistent with the Outline Transition Plan and will contain a detailed project plan explaining each of the steps to be undertaken by the Contractor to provide the Implementation Services generally, and to achieve each of the relevant Milestones by the Milestone Date.
     4. The Implementation Project Plan will also take into account the production and content of the Requirements Analysis Document and Solution Design Document for the overall Implementation Services as well as (if applicable) any subsequent Requirements Analysis Document(s) and Solution Design Document(s) that may be Approved by the Bank.
     5. The Implementation Project Plan may include obligations on the Bank ("Bank Dependencies"). It is agreed that the obligations listed in Annex 2 may be included by the Contractor as Bank Dependencies within the Implementation Project Plan. Any additional obligations on the Bank must be clearly identified as "Bank Dependencies" within the draft Implementation Project Plan which is submitted by the Contractor, but will only become Bank Dependencies when Approved by the Bank as part of the Approval of the Implementation Project Plan. The Bank agrees that it will not unreasonably withhold its agreement to proposed Bank Dependencies.
     6. When the Implementation Project Plan is Approved by the Bank, it will form an integral part of the Transition Plan.
     7. As described below, any material amendments to the Implementation Project Plan shall be subject to agreement pursuant to the Change Control Procedure and, for the avoidance of doubt, any amendments which will result in the Implementation Project Plan becoming inconsistent with the Outline Transition Plan, or which otherwise seek to move or amend a relevant Milestone or Milestone Date, shall be deemed to be material amendments and therefore subject to agreement pursuant to the Change Control Procedure.
  2. Production and Maintenance of the Implementation Project Plan
     1. The Contractor shall produce and maintain the Implementation Project Plan in accordance with the following procedures. The Contractor acknowledges the importance of detailed planning for the Implementation Services under this Agreement and the need to develop a detailed Implementation Project Plan in accordance with the terms of this Agreement.
     2. In consultation with the Bank, the Contractor shall plan the project to deliver the Implementation Services and document this plan in the form of an Implementation Project Plan, which shall include the project timetable plan for acceptance by the Bank.
     3. The Contractor shall ensure that the Implementation Project Plan prepared and delivered to the Bank incorporates all of the relevant Milestones and Milestones Dates and includes (as a minimum) the Contractor’s proposed timescales for the following:
        1. completion of the Requirements Analysis Document and Solution Design Document for the overall Implementation Services;
        2. completion of the build of the System;
        3. complete configuration of all environments relevant to the System (including those identified in Schedule 4 (Acceptance), including the Contractor providing all reasonable assistance that the Bank may require;
        4. completion of all acceptance testing of the Services (including Industry Testing) in accordance with the terms of this Agreement; and
        5. training and roll out activities.
     4. The Contractor shall ensure that the Implementation Project Plan:
        1. clearly outlines in a detailed plan all the steps required to implement the Milestones to be achieved, together with a high level plan for the remaining Milestones, in conformity with the Bank’s requirements; and
        2. clearly outlines the required roles and responsibilities of all parties concerned, including staffing requirements. The Bank shall advise the Contractor if resource estimates for Bank resources made within the Implementation Project Plan are achievable.
     5. The first draft of the Implementation Project Plan will be delivered to the Bank no later than the relevant Milestone Date.
     6. The Bank shall review the draft Implementation Project Plan to assess whether it complies with the requirements of this Schedule and whether it provides sufficient detail of how each of the Milestones will be achieved by the relevant Milestone Dates. The Bank shall provide the Contractor with one of the following responses within ten (10) Working Days following its receipt of such document:
        1. written acceptance of the Implementation Project Plan;
        2. written rejection of the Implementation Project Plan and grant to the Contractor of such further periods of time as the Bank reasonably believes appropriate, during which the Contractor shall be required to re-submit a revised Implementation Project Plan within a specified timeframe. The re-submitted Implementation Project Plan will then either be accepted or rejected by the Bank in accordance with the processes set out in Clauses 4.2.1.1 and 4.2.1.3 respectively; or
        3. following rejection of the Implementation Project Plan at least twice in accordance with Clause 4.2.1.2, written rejection of the Implementation Project Plan, whereby the parties will (without prejudice to any remedy that may be available to the Bank) escalate the matter to the Escalation and Dispute Resolution Procedure.
     7. After Approval of the Implementation Project Plan by the Bank, it shall be maintained and updated on a weekly basis by the Contractor (provided that such updates have been Approved by the Bank) as may be necessary to reflect the then current state of the Implementation Services. Any material amendments to the Implementation Project Plan shall be subject to the Change Control Procedure (and for the avoidance of doubt any amendments to elements of the Implementation Project Plan which reflect the contents of the Outline Transition Plan shall be deemed to be material amendments) provided that in no circumstances shall the Contractor alter or attempt to alter any Milestone Date without the prior written agreement of the Bank.
     8. Until such time as the updated Implementation Project Plan is Approved by the Bank, the relevant Outline Transition Plan or Implementation Project Plan then existing (that is to say prior to the update) shall apply and the Contractor will comply with its terms.
     9. In addition to maintaining and updating the Implementation Project Plan in accordance with this Paragraph 3 of this Schedule, the Contractor shall submit an updated Implementation Project Plan to the Bank for Approval within ten (10) Working Days of receiving notification from the Bank, or such longer period as the parties may agree (provided that any failure to agree such longer period shall be referred to the Escalation and Dispute Resolution Procedure), of being advised by the Bank of an event reasonably identified by the Bank as requiring a revised Implementation Project Plan.
     10. The parties shall consider and review the Implementation Project Plan and progress towards its successful implementation at the Project Board meetings held in accordance with Schedule 8 (Governance). In preparation for such meeting the then-current Implementation Project Plan shall be provided by the Contractor to the Bank not less than three (3) Working Days in advance of each meeting of the Project Board.
  3. Obligations during Transition

The parties shall provide the following during Transition:

* + 1. General Obligations
       1. The Contractor shall perform the tasks assigned to it in the Transition Plan and the Bank will comply with the relevant Bank Dependencies.
       2. The Contractor may, at its option, monitor and test the Transition. The Contractor will immediately notify the Bank if such monitoring or testing is likely to cause a problem or a delay in the Transition and shall work with the Bank to prevent or circumvent the problem or delay.
       3. The Contractor will provide the Bank with written weekly progress reports that describe in reasonable detail the current status of the Transition and indicate the progress of the work being performed in comparison to the Transition Plan. Such weekly reports will also contain a “Risks and Issues Log” which shall identify the actual and anticipated problems, together with the impact of such problems on the Contractor’s work effort and all action being taken or alternative actions to be taken to remedy such problems. The Bank shall provide input to the progress report relating to the Bank tasks. The Contractor agrees that in this regard it shall use reasonable and auditable tools in connection with its reporting of the Transition. All progress reports shall be subject to audit by the Bank, or its appointed agents, at any time on reasonable notice.
       4. The parties shall agree the criteria by which the success or failure of Transition will be measured and will be agreed as further detailed in Schedule 4 (Acceptance).
    2. Contractor Obligations
       1. The Contractor shall:
          1. appoint a Contractor Project Manager in accordance with paragraph 3 of Schedule 8 (Governance) to establish and manage the project to deliver the Implementation Services in accordance with the agreed Implementation Project Plan for each Milestone. The Contractor may appoint the same Project Manager for both Implementation and Migration provided only that it can provide the Bank, acting reasonably, with the highest degree of confidence that such joint appointment will not cause either Implementation or Migration to be compromised;
          2. build the System and configure the Configured Software to meet the Specification;
          3. deploy the System for use when conducting the Acceptance Tests;
          4. provide the Bank with procedures detailing the operation of the live System and enable the Bank to provide and have updated the Data used within the System in accordance with the applicable Service Levels;
          5. assist and support the Bank team to deploy the |System for all aspects of its testing, including, but not limited to, System Integration, User Acceptance Testing and Go Live;
          6. provide maintenance support and testing support for the System as required until Go Live (from which point Maintenance and Support Services shall be provided);
          7. notify the Bank in writing if any relevant Bank Dependencies have not been (or appear that they will not be) achieved, indicating the impact, if any, on the Implementation Services;
          8. enable the Bank to monitor and access the System whilst it is in development;
          9. undertake all necessary activities to ensure that the Implementation Services are provided in accordance with the Transition Plan and that the Milestones are achieved by the relevant Milestone Date;
          10. conduct project closure activities in respect of the Implementation Services, including providing the Bank with the source code in accordance with Schedule 11 (Escrow); and
          11. provide:

[*Training Requirements to be populated based on information gathered from successful bidders’ tender response*]

* + 1. Bank Obligations
       1. The Bank shall:
          1. provide reasonable information to allow the Contractor to plan the project to deliver the Implementation Services;
          2. provide the Data which is to be used for the purposes of configuring the System (it being agreed that the content for the Implementation Services may not be equivalent to Collected Data following Go Live);
          3. appoint a named individual to act as the main contact within the Bank for the Contractor Project Manager;
          4. maintain the project within the Bank to ensure timely delivery of all Bank Dependencies as part of the Implementation Services;
          5. inform the Contractor promptly if the Bank is unable to meet its resourcing requirements under the Implementation Project Plan;
          6. provide timely review and (where appropriate) signed acceptance on the Contractor meeting the agreed acceptance criteria of all relevant Deliverables produced by the Contractor to allow the project to meet the agreed timescales;
          7. work with the Contractor to update the Implementation Project Plan in respect of providing input to the Contractor regarding Bank activities as required;
          8. provide reasonable information required to allow the Contractor to document the Bank’s requirements with respect to the Specifications;
          9. conduct the agreed relevant Acceptance Tests in accordance with Schedule 4 (Acceptance); and
          10. conduct project closure activities in respect of the Implementation Services that will consist of “lessons learnt” from the receipt of the Services.

**Part B – Migration Services**

All references in this Part B of this Schedule 3 to “relevant sections” of any of the Requirements Analysis Document or the Solution Design Document refer to the sections of each document which relate to the Migration Services.

1. **The Outline Migration Plan**

1.1 The Outline Migration Plan describes the activities that must be conducted by the Contractor to complete the Migration Services.

1.2 At the Effective Date, the Outline Migration Plan is initially comprised of certain Key Milestones and Deliverables that will be provided as part of the Migration Services, as set out in the Outline Migration Plan.

1.3 The Migration Project Plan will be developed by the Contractor and Approved by the Bank following the Effective Date as described in this Schedule. The Migration Project Plan will be consistent with the Outline Migration Plan. The Migration Project Plan will contain a detailed project plan explaining each of the steps to be undertaken by the Contractor to provide the Migration Services generally, and to achieve each of the relevant Milestones by the Milestone Date.

1.4 The Migration Project Plan will also take into account the production and content of the Requirements Analysis Document and Solution Design Document for the overall Migration Services as well as (if applicable) any subsequent Requirements Analysis Document(s) and Solution Design Document(s) that may be Approved by the Bank.

1.5 The Migration Project Plan may include obligations on the Bank ("Bank Dependencies"). It is agreed that the obligations listed in Annex 2 may be included by the Contractor as Bank Dependencies within the Migration Project Plan. Any additional obligations on the Bank must be clearly identified as "Bank Dependencies" within the draft Migration Project Plan which is submitted by the Contractor, but will only become Bank Dependencies when Approved by the Bank as part of the Approval of the Migration Project Plan. The Bank agrees that it will not unreasonably withhold its agreement to proposed Bank Dependencies.

1.6 When the Migration Project Plan is Approved by the Bank, it will form an integral part of the Outline Migration Plan.

1.7 As described below, any material amendments to the Migration Project Plan shall be subject to agreement pursuant to the Change Control Procedure and, for the avoidance of doubt, any amendments which will result in the Migration Project Plan becoming inconsistent with the Outline Migration Plan, or which otherwise seek to move or amend a relevant Milestone or Milestone Date, shall be deemed to be material amendments and therefore subject to agreement pursuant to the Change Control Procedure.

2. **Production and Maintenance of the Migration Project Plan**

2.1 The Contractor shall produce and maintain the Migration Project Plan in accordance with the following procedures. The Contractor acknowledges the importance of detailed planning for the Migration Services under this Agreement and the need to develop a detailed Migration Project Plan in accordance with the terms of this Agreement.

2.2 In consultation with the Bank, the Contractor shall plan the project to deliver the Migration Services and document this plan in the form of a Migration Project Plan, which shall include the project timetable plan for acceptance by the Bank.

2.3 The Contractor shall ensure that the Migration Project Plan prepared and delivered to the Bank incorporates all of the relevant Migration Milestones and Migration Milestones Dates and includes (as a minimum) the Contractor’s proposed timescales for the following:

(a) completion of the relevant parts of the Requirements Analysis Document and Solution Design Document for the overall Implementation Services;

(b) completion of the migration of the Migration Data from the BEEDS Platform to the System as set out in Schedule 2 (Statement of User Requirement).

(c) completion of the configuration of the environments of the Bank’s choosing (including those identified in Schedule 4 (Acceptance), and including the Contractor providing all reasonable assistance that the Bank may require to configure the System which includes, without limitation, assistance to reproduce the equivalent validation rules, business rules and workflows that were present in the BEEDS Platform.

(d) completion of all acceptance testing of the Migration Services in accordance with the terms of this Agreement; and

(e) training and roll out activities that the Bank may require to ensure Migration is successful.

2.4 The Contractor shall ensure that the Migration Project Plan:

(a) clearly outlines in a detailed plan all the steps required to implement the relevant Milestones to be achieved, in conformity with the Bank’s requirements; and

(b) clearly outlines the required roles and responsibilities of all parties concerned, including staffing requirements. The Bank shall advise the Contractor if resource estimates for Bank resources made within the Migration Project Plan are achievable.

2.5 The first draft of the Migration Project Plan will be delivered to the Bank no later than the relevant Migration Milestone Date.

2.6 The Bank shall review the draft Migration Project Plan to assess whether it complies with the requirements of this Schedule and whether it provides sufficient detail of how each of the Migration Milestones will be achieved by the relevant Migration Milestone Dates. The Bank will also assess whether the Migration Project Plan materially impacts the Implementation Services as set out in the Implementation Project Plan. The Bank shall provide the Contractor with one of the following responses within ten (10) Working Days following its receipt of such document:

(a) written acceptance of the Migration Project Plan;

(b) written rejection of the Migration Project Plan and grant to the Contractor of such further periods of time as the Bank reasonably believes appropriate, during which the Contractor shall be required to re-submit a revised Migration Project Plan within a specified timeframe. The re-submitted Migration Project Plan will then either be accepted or rejected by the Bank in accordance with the processes set out in Clauses 4.2.1.1 and 4.2.1.3 respectively; or

(c) following rejection of the Migration Project Plan at least twice in accordance with Clause 4.2.1.2, written rejection of the Migration Project Plan, whereby the parties will (without prejudice to any remedy that may be available to the Bank) escalate the matter to the Escalation and Dispute Resolution Procedure.

2.7 After Approval of the Migration Project Plan by the Bank, it shall be maintained and updated on a weekly basis by the Contractor (provided that such updates have been Approved by the Bank) as may be necessary to reflect the then current state of the Migration Services. Any material amendments to the Migration Project Plan shall be subject to the Change Control Procedure (and for the avoidance of doubt any amendments to elements of the Migration Project Plan which reflect the contents of the Outline Migration Plan shall be deemed to be material amendments) provided that in no circumstances shall the Contractor alter or attempt to alter any Migration Milestone Date without the prior written agreement of the Bank.

2.8 Until such time as the updated Migration Project Plan is Approved by the Bank, the relevant Outline Migration Plan or Migration Project Plan then existing (that is to say prior to the update) shall apply and the Contractor will comply with its terms.

2.9 In addition to maintaining and updating the Migration Project Plan in accordance with this Paragraph 2 of this Schedule, the Contractor shall submit an updated Migration Project Plan to the Bank for Approval within ten (10) Working Days of receiving notification from the Bank, or such longer period as the parties may agree (provided that any failure to agree such longer period shall be referred to the Escalation and Dispute Resolution Procedure), of being advised by the Bank of an event reasonably identified by the Bank as requiring a revised Migration Project Plan.

2.10 The parties shall consider and review the Migration Project Plan and progress towards its successful implementation at the Project Board meetings held in accordance with Schedule 8 (Governance). In preparation for such meeting the then-current Migration Project Plan shall be provided by the Contractor to the Bank not less than three (3) Working Days in advance of each meeting of the Project Board.

3. **Obligations during Migration**

The parties shall provide the following during Migration:

3.1 **General Obligations**

(a) The Contractor shall perform the tasks assigned to it in the Outline Migration Plan and the Bank will comply with the relevant Bank Dependencies.

(b) The Contractor may, at its option, monitor and test the Migration Services. The Contractor will immediately notify the Bank if such monitoring or testing is likely to cause a problem or a delay in the Migration and shall work with the Bank to prevent or circumvent the problem or delay.

(c) The Contractor will provide the Bank with written weekly progress reports that describe in reasonable detail the current status of the Migration and indicate the progress of the work being performed in comparison to the Outline Migration Plan. Such weekly reports will also contain a “Risks and Issues Log” which shall identify the actual and anticipated problems, together with the impact of such problems on the Contractor’s work effort and all action being taken or alternative actions to be taken to remedy such problems. The Bank shall provide input to the progress report relating to the Bank tasks. The Contractor agrees that in this regard it shall use reasonable and auditable tools in connection with its reporting of the Migration. All progress reports shall be subject to audit by the Bank, or its appointed agents, at any time on reasonable notice.

(d) The parties shall agree the criteria by which the success or failure of Migration will be measured and will be agreed as further detailed in Schedule 4 (Acceptance).

3.2 **Contractor Obligations**

(a) The Contractor shall:

(i) appoint a Contractor Project Manager in accordance with paragraph 3 of Schedule 8 (Governance) to establish and manage the project to deliver the Migration Services in accordance with the agreed Migration Project Plan for each relevant Milestone. The Contractor may appoint the same Project Manager for both Implementation and Migration provided only that it can provide the Bank, acting reasonably, with the highest degree of confidence that such joint appointment will not cause either Implementation or Migration to be compromised;

(ii) deploy all tools, software, training and procedures necessary to enable the Bank to effect migration of all Migration Data and Migration Configurations into a test environment to be specified by the Bank of England and on-site at the Bank’s premises.

(iii) Using the capabilities as set out in 3.2 (a) (ii) above, migrate the Migration Data into the System in a test environment to be specified by the Bank of England and on-site at the Bank’s premises;

(iv) provide and train the Bank to use the capabilities set out in 3.2(a) (ii) above to enable the Bank to migrate all Migration Data and Migration Configurations into the System, in multiple environments, including, but not limited to, user acceptance and live environments.

(v) Assist Bank technical staff to migrate the Migration Data and Migration Configurations for User Acceptance Testing and also to Go Live;

(vi) provide maintenance support and testing support to the Bank’s Migration activities;

(vii) notify the Bank in writing if any relevant Bank Dependencies have not been (or appear that they will not be) achieved, indicating the impact, if any, on the Implementation Services;

(viii) undertake all necessary activities to ensure that the Migration Services are provided in accordance with the Outline Migration Plan and that the Migration Milestones are achieved by the relevant Migration Milestone Date;

(ix) conduct project closure activities in respect of Migration Services.; and

(x) provide:

[Drafting note for Bidders: Training Requirements to be populated based on information gathered from successful bidders’ tender response]

3.3 **Bank Obligations**

(a) The Bank shall:

(i) provide reasonable information to allow the Contractor to plan the project to deliver Migration Services;

(ii) provide the Migration Data which is to be used for the purposes of enabling the Contractor to populate the Systems.

(iii) provide the Contractor with a document that sets out the Migration Configurations which will be used as the basis of recreating these in the System. (iii) appoint a named individual to act as the main contact within the Bank for the Contractor Project Manager;

(iv) maintain the project within the Bank to ensure timely delivery of all relevant Bank Dependencies as part of the;

(v) inform the Contractor promptly if the Bank is unable to meet its resourcing requirements under the Migration Project Plan;

(vi) provide timely review and (where appropriate) signed acceptance on the Contractor meeting the agreed acceptance criteria of all relevant Deliverables produced by the Contractor to allow the project to meet the agreed timescales;

(vii) work with the Contractor to update the Migration Project Plan in respect of providing input to the Contractor regarding Bank activities as required;

(viii) provide reasonable information required to allow the Contractor to document the Bank’s requirements with respect to the Migration Specification;

(ix) conduct the agreed relevant Acceptance Tests in accordance with Schedule 4 (Acceptance); and

(x) conduct project closure activities in respect of Migration that will consist of “lessons learnt” from the receipt of the Services.

**Annex 1 – Outline Transition Plan**

1. The Outline Transition Plan is as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Milestone Number | Milestone Description | Milestone Date | Milestone Achievement Criteria |
| 1 | First draft of the Implementation Project Plan | *[TBC]* | The Implementation Project Plan accepted by the Bank |
| 2 | Delivery and installation by the Contractor of the System. | *[TBC]* | The delivered demonstration version of the System is capable of functioning in the test environment, functionality available for initial testing is consistent with the Solution Design Document. The System contains all elements indicated as ‘Provided as Standard’ in the SOUR (Appendix 1 of Schedule 2) |
| 3 | Completion of all Acceptance Testing (UAT / OAT and all prior required testing described in Schedule 4 completed) | *[TBC]* | As agreed pursuant to Schedule 4 |
| 4 | Completion of Industry Testing | *[TBC]* | All required testing described in Schedule 4 completed to the Bank’s satisfaction. |
| 5 | Go-Live | *[TBC]* | The System is fully functioning according to the Specification and live for use by the Bank and the Financial Institutions. |

2. The Outline Migration Plan is as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Milestone Number | Milestone Description | Milestone Date | Milestone Achievement Criteria |
| 1 | First draft of the Migration Project Plan | *[TBC]* | The Migration Project Plan accepted by the Bank |
| 2 | Delivery and installation by the Contractor of the Migration Services. | *[TBC]* | The System demonstrates in a test environment the migration of the existing Migration Data and Migration Configurations without any loss of data, no data transformation, no data addition, no amalgamation or aggregation of data or duplication of data and consistent with the Migration Specification. |
|  |  |  |  |
| 3 | Completion of Migration Configurations | *[TBC]* | The Bank, with the assistance of and working with the Contractor successfully completes the Migration Configurations in a test environment |
| 4 | Completion of Acceptance Testing (UAT) and all prior required testing described in Migration Schedule 4 completed) | *[TBC]* | All required testing described in Schedule 4 completed to the Bank’s satisfaction. |
| 5 | Migration Go-Live | *[TBC]* | The Bank Approves that the Migration Services have been fully and successful delivered by the Contractor in accordance with the Migration Specification and the relevant functions are live for use by the Bank and the Financial Institutions in the System. |

**Annex 2 – Bank Dependencies**

1. Facilities: The Bank will provide office facilities (desk, chair, international phone) for Contractor staff working on-site.
2. Issue Management: The Bank project team will use Microsoft Team Foundation Server (an issue tracking product used by the Contractor for bug tracking, issue tracking and project management) to log all issues over the course of the project.
3. Training: Training will not include updating any existing Bank operational or process documentation or organisational change management (OCM).
4. Support: The Contractor will provide off-site support for the Configured Software.
5. The Bank will provide the following software, categorised as below:

|  |  |
| --- | --- |
| **CATEGORY** | **PRODUCT** |
| Operating systems | Windows, Linux or Solaris |
| Virtualisation | VMWare |
| Anti-virus software | Symantec Enterprise Protection or McAfee |
| External access management | SailPoint |
| Internal access management | Microsoft Active directory |
| Monitoring | Microsoft SCOM |
| Databases | SQL Server |
| Document management | Filesite |

Any software not listed in the table above but required by the Contractor in order to provide the System in accordance with this Agreement shall be provided by the Contractor at the Contractor’s own cost. For the avoidance of doubt, the Contractor may not levy any additional Charges in respect of software not listed in this table which is required for the Contractor to deliver the System in accordance with this Agreement.

**SCHEDULE 4**

**ACCEPTANCE**

1. **Purpose and Structure of this Schedule**
   1. This Section describes:
      1. the testing and acceptance processes to be undertaken for the System generally and each of the documents which are stated herein to be subject to acceptance pursuant to this Schedule. The definition of which type of testing is appropriate at each stage will be made after the Implementation Project Plan has been agreed;
      2. the level of testing, including the acceptance criteria and the reporting mechanisms to be used throughout the Acceptance Testing process for the Implementation Services and the System as well as the Migration Services;
      3. the process for agreeing the Test Plan(s) (as defined in paragraph 2.1.2, below) and the testing approach which will be used to assess the acceptance of the System prior to the Go Live Date;
      4. where responsibilities for the different types of testing lie, the environments, the entry and exit criteria for each testing stage, and where sign-off responsibility belongs for each testing level; and
      5. the Bank's testing requirements. The precise scope of the testing to be conducted shall be set out for each test level in a separate Test Plan document as explained herein.
   2. The roles specified herein in relation to the particular Acceptance Tests may be updated depending on the roles formalised pursuant to Schedule 8 (Governance).
2. The Contractor will, unless the Bank expressly agrees otherwise, approach and carry out testing and acceptance of the Implementation Services and the Migration Services as separate projects

The Contractor will ensure that the performance of testing and acceptance of neither the Implementation Services nor the Migration Services (whether separately from each other or otherwise), threatens, competes with for resources (including Bank resource), compromises quality of the deliverables or undermines the successful implementation of the testing and acceptance of either the Implementation Services or the Migration Services.**Part A – Implementation Services and System Acceptance Testing**

All references in this Part A of this Schedule 4 to “relevant sections” of any of the Requirements Analysis Document or the Solution Design Document refer to the sections of each document which relate to the Implementation Services.

1. **Purpose of the Acceptance Tests and Generation of the Test Plan**

1.1.The testing to be executed is as follows:

* + - * Static Testing of the relevant sections of the Requirements Analysis Document (RAD), Solution Design Documents (SDD) and Configuration Document
      * Contractor System and Integration Test
      * Business Confidence Test
      * Smoke Test
      * Bank System and Integration Test
      * User Acceptance Test
      * Industry Test
      * Performance Test
      * Security and Penetration Test
      * Fail over / Recovery Test
      * Parallel Run Test

1.2 Following the Bank’s Approval of the Solution Design Document, both the Bank and the Contractor shall each produce a test plan for each level for which they are responsible. This document will describes in detail the testing which is to be conducted by that party based upon the requirements of this Schedule. Accordingly, references herein to the “Test Plan” shall be deemed to be the Contractor's test plan, the Bank's test plan or both, at whatever test level is applicable, as the context requires.

1.2.3 The Test Plan shall, as a minimum incorporate all of the requirements of this Schedule, and list in respect of each test to be conducted:

1.2.3.1 the scope of the relevant test;

1.2.3.2 the date that test shall be conducted where known, or (if not known) an estimated start date;

1.2.3.3 the proposed approach to the test;

1.2.3.4 the acceptance criteria for the test; and

1.2.3.5 the resources required from each party for such test.

1.2.3.6 Each Test Plan shall be based upon the format set out in Appendix 1 to this Schedule.

1.3. The Contractor shall provide input to the Bank's Test Plan when required by the Bank to allow the Bank to take into account the testing and related activities to be conducted by the Contractor. The Bank agrees that it will also take into account any feedback on the Bank's Test Plan which is reasonably provided by the Contractor.

1.4 The Contractor shall ensure that the Contractor's Test Plan integrates with and complements the Bank's Test Plan and shall be subject to Approval by the Bank. The Contractor shall submit the first version of its Test Plan to the Bank within five (5) Working Days of the Bank's Approval of the relevant part of the Solution Design Document.

1.5 The Bank shall review the draft Contractor's Test Plan to assess whether it complies with the requirements of this Schedule and whether it provides sufficient detail of how each of the tests will be conducted. The Bank shall provide the Contractor with one of the following responses within ten (10) Working Days following its receipt of such document:

1.5.1 acceptance of the Contractor's Test Plan;

1.5.2 rejection of the Contractor’s Test Plan and grant to the Contractor such further periods of time as the Bank reasonably believes appropriate, during which the Contractor shall be required to re-submit a revised Contractor's Test Plan within a specified timeframe. The re-submitted Contractor's Test Plan will then either be accepted or rejected by the Bank in accordance with the processes set out in paragraphs 4.2.1.1 and 4.2.1.3 respectively; or

1.5.2.1following rejection of the Contractor's Test Plan at least twice in accordance with paragraph 4.2.1.2, rejection of the Contractor's Test Plan, whereby the parties will (without prejudice to any remedy that may be available to the Bank) escalate the matter to the Escalation and Dispute Resolution Procedure as described in Clause 17.21 of the Agreement.

1.6 The Test Plan shall be read in conjunction with this Schedule, although in the event of conflict, the Test Plan (subject to having been drafted or Approved by the Bank) will prevail. Until such time as the Test Plan is completed, this Schedule shall describe the required tests, and the parties agree to comply with its terms.

1.7 The Test Plan will deal with each of the following:

1.7.1 approach;

1.7.2 execution environment;

1.7.3 roles and responsibilities; and

1.7.4 entry and exit criteria.

1.8 The Test Plan may also define detailed criteria in respect of the classification of errors and how they relate to the different elements of the Services.

1.9 Any proposed amendments to this Schedule (i.e. other than by the Test Plan) shall be subject to the Change Control Procedure.

1.10 Any proposed changes to the Approved Test Plans will be subject to the Change Control Procedure.

**2. The Testing Methodology**

2.1 The testing model adopted shall be the Bank's testing methodology unless agreed otherwise with the Contractor.

2.2 The relationships between the various documents and the test stages can be summarised as follows:

2.2.1 The Solution Design Document will be used to generate the testing requirements for System and Integration Testing (as described in paragraph 3.3 of this Schedule); and

2.2.2The relevant aspects of the Requirements Analysis Document together with the SOUR will be used to generate the testing requirements for the User Acceptance Testing (as described in paragraph 3.7 of this Schedule).

2.2.3 The testing methodology and the principles of this Schedule 4 should be applied to non-functional testing stages, where tests are derived from the appropriate documentation.

**3. The Approach**

* 1. **Introduction** 
     1. This section of the Schedule outlines the testing to be performed during delivery of the System. This Schedule describes the testing in further detail and the responsibilities of the Bank and the Contractor in relation to such tests and shall be read in conjunction with this section when establishing the Test Plan for each level of testing.
     2. This section also indicates for each test:
        1. the approach to testing;
        2. execution environment;
        3. roles and responsibilities; and
        4. entry and exit criteria.
     3. The "Entry" criteria identify the requirements for the applicable Acceptance Test to commence, whereas the "Exit" criteria identify when the Acceptance Test will be deemed to have been successfully completed.
     4. In order to exit a level of testing, the number of outstanding defects or issues must be no more than the maximum number of defects or issues identified in the applicable exit criteria for that level of testing. Where the number of defects or issues exceeds the prescribed maximum:
        1. the Contractor shall implement appropriate Fixes to remedy the issues identified through testing and may be required by the Bank to resubmit the System or a part thereof to re-testing; or
        2. the Bank (in its sole discretion) may Approve exit from that level of testing notwithstanding the prescribed maximum number of issues having been exceeded.
     5. The Contractor will support the Bank in testing the functionality of all test environments prior to the Bank commencing any testing thereon. The Contractor shall successfully complete its own internal testing prior to releasing the System (or any part thereof) for testing by the Bank.
     6. For the avoidance of doubt, the tests shall be conducted in accordance with the Test Plan although may not necessarily run sequentially as listed in this Schedule. Test levels may be repeated during the Term.
     7. The Contractor shall provide the Bank with requested assistance for any tests which are to be conducted by the Bank.
  2. **Static Testing of the relevant aspects of the Requirements Analysis and Solution Design Documents in respect of the Implementation Services**

| **Activities** | **Static Testing of Requirements Analysis and Solution Design Documents** |
| --- | --- |
| **Approach** | Each of the relevant Requirements Analysis Document (RAD), the Solution Design Document (SDD) and the Configuration Document will be assessed to ensure that the Contractor has understood the Bank’s requirements and put forward a suggested System design that both parties believe will meet those requirements.  Documents will be produced as the outcome of a series of workshops undertaken between the Bank and the Contractor with respect to the provision of the Services and will be assessed against the entry and exit criteria. |
| **Execution Environment** | N/A |
| **Roles and Responsibilities** | RAD  The Contractor will be responsible for the preparation of the RAD;  The Bank will be responsible for reviewing the RAD; and  The Bank Project Board will be responsible for the final Approval of the relevant sections of the RAD.  SDD  The Contractor will be responsible for the preparation of the SDD;  The Bank will be responsible for reviewing the SDD to ensure all processes are covered and accurate; and  The Bank Project Board will be responsible for final Approval of the SDD.  Configuration Document  The Contractor will be responsible for the preparation of the Configuration Document;  The Bank will be responsible for reviewing the Configuration Document to ensure all relevant Services are covered and accurate;  The Bank Project Manager will be responsible for recommending Approval of the Configuration Document by the Project Board; and  The Bank Project Board will be responsible for final Approval of the Configuration Document. |
| **Entry and Exit Criteria** | RAD Entry Criteria   * The SOUR or an alternative consolidated requirements document to be provided by the Bank.   RAD Exit Criteria   * Completed relevant sections of the RAD. * Written acceptance of the relevant sections of the RAD by the Bank.   SDD Entry Criteria   * Written acceptance of the relevant sections of the RAD by the Bank (or mutual agreement to proceed at risk).   SDD Exit Criteria   * A completed SDD. * Written acceptance of the SDD by the Bank.   Configuration Document Entry Criteria   * Written acceptance of the relevant sections of the RAD and SDD by the Bank (or mutual agreement to proceed at risk).   Configuration Document Exit Criteria   * A completed Configuration Document. * Written acceptance of the Configuration Document by the Bank. |

* 1. **Contractor System and Integration Testing**

| **Activity** | * + - * 1. **Contractor Configuration and System and Integration Testing** |
| --- | --- |
| Approach | This is the testing stage where all of the elements of the System are tested both separately and together as an integrated system.  The testing activities will be undertaken by the Contractor.  The Contractor must create a Test Plan, define test conditions and scripts that test new functionality being delivered against the SDD.  Test conditions and scripts will be produced by the Contractor that tests the integration of the System with the Bank network system, which shall be peer-reviewed by the Contractor.  All test scripts will be detailed in accordance with industry standards and reference a delivered requirement to enable test coverage reporting to occur.  On completion of Contractor testing (according to the agreed delivery schedule) a test summary report will be provided to the Bank, identifying the testing executed, the results and number of defects found. For any failed tests and remaining defects open an explanation will be provided by the Contractor. |
| **Execution Environment** | Contractor’s own environment |
| **Roles and Responsibilities** | The Contractor will manage the process, produce the test plan, test summary report and end-of-testing report reviews and approve the test scripts and results log.  The Contractor will approve the Test Plan.  The Contractor will be responsible for assessing and Fixing all System Failures that are found.  The Bank may also review the test scripts to ensure that the test coverage and depth expectations are appropriate. The Contractor shall provide the results logs in a format that facilitates a quality review by the Bank. |
| **Entry and Exit Criteria** | * + - * 1. Entry Criteria   For each level, Configuration is at an appropriate stage for meaningful testing.  Test Plans have been approved by the Contractor and the Bank;  System test scripts are Approved by the Bank;  Test environment and builds are completed; and  Test data and resources available as per the Test Plan.   * + - * 1. Exit Criteria   The Contractor has validated outputs and the Bank Approves the same.  All tests have been executed and the acceptance criteria met as reasonably determined by the Bank. Where an acceptable Workaround for a critical or major issue has been made available and an action plan for the release of the Fix, this shall not be included as outstanding error for entry into Bank System and Integration Testing.  Approval by the Bank of the test summary report.  Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories.   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 5 | | Minor Issue | 10\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

* 1. **Business Confidence Testing**

| **Activities** | * + - * 1. **Business Confidence Testing** |
| --- | --- |
| **Approach** | During configuration, regular checkpoint sessions will be held with Bank stakeholders, including business representatives to report on progress. These sessions are intended as an opportunity for early user feedback prior to formal acceptance testing.  Where and if appropriate, prototypes may also be provided for user trial. |
| **Execution Environment** | Contractor’s development environment. |
| **Roles and Responsibilities** | The Contractor will manage and minute the checkpoint sessions, including user feedback.  The Contractor will support any trial of prototypes.  Requests for minor changes will be managed via the Defect Management process.  If any significant requests emerge from these sessions, these will be subject to the Change Control Procedure. |
| **Entry and Exit criteria** | * + - * 1. Entry Criteria * Release notes have been provided and Approved by the Bank. * Confirmation from the Contractor that the System is ready to test.   Exit criteria  Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories.   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 5 | | Minor Issue | 10\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

* 1. **Smoke Testing**

| **Activities** | * + - 1. **Smoke Testing** |
| --- | --- |
| **Approach** | * + - 1. Once any testing environment has been updated with new code, the Bank will carry out a series of structured tests confirming that a representative sub-set of business functionality is operating as expected and the environment is ready for entry into the next level of formal testing. |
| **Execution Environment** | All Bank testing environments and also production environment. |
| **Roles and Responsibilities** | The testing activities described above will be conducted by the Bank.  The Bank will be the overall test owner and the test script executioner.  The Contractor will support this testing including trouble-shooting issues in the System. |
| **Entry and Exit Criteria** | * + - * 1. Entry Criteria * Release notes have been provided and Approved by the Bank. * Confirmation from the Contractor that the System is ready to test.   + - * 1. Exit Criteria   The sub-set of business functionality is operating as expected.  Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories.   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 5 | | Minor Issue | 10\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

* 1. **Bank System and Integration Testing**

| **Activities** | * + - * 1. **Bank System and Integration Testing** |
| --- | --- |
| **Approach** | The Bank will test the System in the testing environment against the SDD and the SOUR. The Contractor will support the Bank in carrying out such System testing.  This is the key testing stage that integrates all of the delivered components and tests the entire System at one time.  Sign-off of this level of testing by the Bank will mark the System as ready for UAT to begin. |
| **Execution Environment** | SIT environment. |
| **Roles and Responsibilities** | The Bank manages the process, produces the level test plan, end of testing report and release notes, and reviews and Approves the test scripts and results log.  The Bank is responsible for Approving the System & Integration test plan, results log and summary report.  The Bank will design, peer review and execute the test scripts and complete the test results log.  The Contractor will provide support for the set-up and maintenance of the test environment.  The Contractor will support the Bank by identifying and logging fault issues, implementing Fixes and reviewing Test Scripts.  The Bank and the Contractor shall conduct periodic reviews of the recorded Service Failures and schedule Fixes to be implemented.  The Contractor shall assist the Bank’s technical staff to install and configure the system into the SIT environment as required. |
| **Entry and Exit Criteria** | * + - * 1. Entry Criteria   All Contractor testing has been completed and documentary evidence of this testing has been provided to the Bank.  System test plans Approved by the Bank.  System test scripts Approved by the Bank.  Test environment and builds completed.  Test data and resources available as per the test plan.  Sufficient penetration testing has been undertaken to ensure that the Bank’s security has not and cannot be compromised.   * + - * 1. Exit Criteria   All tests have been executed and the acceptance criteria met as reasonably determined by the Bank. Where an acceptable Workaround for critical or major issues has been made available and an action plan for the release of the Fix into the next available agreed delivery of code has been agreed, then this shall not be included as outstanding error for entry into User Acceptance Testing.  The end of testing report has been Approved by the Bank.  Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories.   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 2 | | Minor Issue | 10\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

* 1. **User Acceptance Testing**

| **Activities** | * + - 1. **User Acceptance Testing** |
| --- | --- |
| **Approach** | This stage is a significant component of work and is the first real opportunity for the Bank to test the System for functional and integration stability.  The testing is owned by the Bank to satisfy itself that the System is acceptable and the agreed functionality has been delivered. It will include end to end business process/service testing within the context of testing the System.  During this test stage, the Contractor will provide the Bank with 2nd line support to diagnose and resolve Service Failures.  An end of testing report will be produced by the Bank to confirm that the functionality has met the User Acceptance Testing exit criteria. |
| **Execution Environment** | User Acceptance Testing environment. |
| **Roles and Responsibilities** | The Bank manages the process and is responsible for the production of the test plan, test scripts, test log, and end of testing report.  The Bank is responsible for Approving the User Acceptance Testing test plan, results log and summary report.  The Bank will define, review and execute the test scripts and complete the test results log with support from the Contractor.  The Contractor will support the Bank in setting up and providing support for this environment.  The Contractor will support the Bank in identifying and logging Service Failures and will implement the Fixes.  The Bank and the Contractor shall periodically review the recorded Service Failures and schedule Fixes to be implemented.  The Contractor shall assist the Bank’s technical staff to install and configure the system into the SIT environment as required. |
| **Entry and Exit Criteria** | Entry Criteria  All previous test stages have been successfully completed or there is formal agreement by the Bank to proceed at risk.  User Acceptance Testing test plan and test scripts are Approved and are available.  Live-like Test data is available.  The System is configured and made available.  Users identified to run test scripts.  Project team available for first line support.  The acceptable total number of defects that are outstanding in the System when entering User Acceptance Testing has not been exceeded in accordance with the table below, as reasonably determined and allocated by the Bank:   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 5\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected*   * + - * 1. Exit Criteria   All tests have been executed and the acceptance criteria met as determined by the Bank (acting reasonably).  The UAT results log and summary report have been reviewed and Approved.  The end of testing report has been Approved.  Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories:   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 5 | | Minor Issue | 10\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

* 1. **Industry Testing**

| **Activities** | * + - 1. **Industry Testing** |
| --- | --- |
| **Approach** | Industry Testing is a period of testing undertaken with selected Financial Institutions. It will test both the mechanism for uploading data files (including user administration functions) and the validation of the content of those files.  During this test level, the Contractor will provide the Bank with 2nd line support to diagnose and resolve Service Failures.  If the Industry Testing exit criteria have not been met in full at the end of the Industry Testing stage then by agreement with the Bank (both parties acting reasonably and in a timely manner) the testing may be treated as being complete but exceptions will be raised along with an agreed action plan to show how the exceptions will be managed pre or post Go Live.  Where an acceptable Workaround for a critical or major issue has been made available and an action plan for the release of the Fix has been agreed, then this shall not be included as outstanding error for exit out of Industry Testing.  As part of the defect reporting, the Contractor will provide the Bank with a schedule of when the resolution (Fix or Workaround) will be released.  An end of testing report will be produced to confirm the Bank’s Approval that the functionality has met the Industry Testing exit criteria at the end of this stage. |
| **Execution Environment** | Environment to be confirmed by the Bank in advance of testing commencing. |
| **Roles and Responsibilities** | The Bank manages the process and is responsible for the production of the test plan, test scripts, test log, and end of testing report.  The Bank is responsible for Approving the User Acceptance Testing test plan, results log and summary report.  The Bank and the Contractor shall approve the test plan.  The Bank defines, reviews and executes the test scripts and completes the test results log.  The Contractor will support the Bank who will set up and provide support for this environment.  The Contractor will support the Bank by validating, logging and Fixing Service Failures as required. |
| **Entry and Exit Criteria** | Entry Criteria:  All previous test stages have been successfully completed, or there is formal agreement from the Bank to proceed at risk.  Industry Testing test plan and test scripts are Approved and are available.  Test data is available.  The test System is configured and made available.  Users identified to run test scripts together with Financial Institutions identified.  Firms have received the appropriate training and the Financial Institution’s pre-requisite system checks (to be defined) have been completed.  Bank project team available for first line support.  The acceptable total number of errors that are outstanding in the System when entering Industry Testing has not been exceeded, in accordance with the table below, as determined and allocated by the Bank:   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 5\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected*   * + - * 1. Exit Criteria:   All tests have been executed and the acceptance criteria met as determined by the Bank (acting reasonably). Where an acceptable Workaround for a critical or major issue has been made available and an action plan for the release of the Fix, then this shall not be included as an outstanding error for entry into go live commission test.  The test results log and test summary report have been reviewed and Approved.  The end of testing report has been Approved.  Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank.  Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories:   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 5\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected*  The Bank acknowledges that the Contractor may (acting reasonably) provide a Workaround for an error and that will be considered resolution of such an error for the purposes of this requirement; and if the Contractor does so it shall continue to use Commercially Reasonable Efforts to provide a permanent Fix for critical and major errors. A Workaround for a fault under this paragraph will only be acceptable where it has no impact on, and does not alter the user experience, operation and/or perception of, the System or the Services. |

* 1. **Performance Testing**

| **Activities** | **Performance Testing** |
| --- | --- |
| **Approach** | Performance Testing focuses on testing the performance of the System.  Performance Testing will be undertaken throughout the Term. |
| **Environment** | * + - 1. User Acceptance testing environments (or other environments as applicable). |
| **Roles and Responsibilities** | The Contractor will manage the process, define the Test Plan and summary report, and review and approve the test scripts and results log.  The Contractor will produce the performance summary report.  The Bank will Approve the test plan and summary report.  The Contractor will define and review, and the Bank must Approve, the scope of testing and user load scripts (both parties acting reasonably and in a timely manner).  The Contractor will be responsible for executing the tests and scripts.  The Contractor will complete the test results log and interpret the resulting data to assist with analysis of the same.  The Bank will review and Approve the test scripts to ensure that coverage/depth expectations are met.  (H)The Bank may also wish to undertake independent third party performance testing and will manage this with support and participation of the Contractor. The Bank will share the scope and results of the testing with the Contractor. The exit criteria from this testing is as set out below in 4.10. |
| **Entry and Exit Criteria** | Entry Criteria:  Agreed base-lined performance requirements.  Load profiles, including user types with corresponding representative transaction profiles and expected volumes have been Approved by the Bank.  Suitable environments are available.   * + - * 1. Exit Criteria:   The test results log has been reviewed and Approved by the Bank.  Final performance tests on the pre-live environment show that the System meets the Specification.  The Bank has Approved the performance summary report.  Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories.   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 5\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

* 1. **Security and Penetration Testing**

| **Activities** | * + - 1. **Security and Penetration Testing** |
| --- | --- |
| **Approach** | The purpose of Security and Penetration Testing is to ensure that the provision of the Services is secure from unauthorised external and internal attack. Security and Penetration Testing may be completed by an independent CESG check-accredited penetration test company, Approved by the Bank.  Security and Penetration Testing will be undertaken inaccordance with the requirements of Schedule 10 (Data Security and Incident Management)*.* The scope of this testing will be determined jointly by the Bank and the Contractor, with Approval from the Bank. The scope will be provided to the penetration testing organisation that will create and execute detailed security tests to try and compromise the provision of the Services (including, for the avoidance of doubt, the System).  These results will be shared with the Contractor, which shall implement all appropriate Fixes to remedy any security issues identified.  The Contractor and the Bank will review and, if acceptable, the Bank will Approve Go Live once these security measures have been fully addressed by the Contractor, with an action plan to address any minor security Fixes outstanding.  Security and penetration testing will be undertaken throughout the Term. |
| **Execution Environment** | User Acceptance and production environment prior to Go Live. |
| **Roles and Responsibilities** | Security/penetration testing will be undertaken by an independent CESG check-accredited penetration test company, Approved by the Bank.  The Contractor will support the Bank as required. |
| **Entry and Exit Criteria** | * + - * 1. Entry Criteria:   Security scope Approved by the Bank.   * + - * 1. Exit Criteria:   Security and penetration test summary report is received by the Bank from the penetration test company.  Agreed action plan between the Bank and the Contractor (acting reasonably).  Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories:   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 5\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

* 1. **Fail Over/Recovery Testing**

| **Activities** | * + - 1. **Fail Over/Recovery Testing** |
| --- | --- |
| **Approach** | This form of testing involves the forced failure of the System in a variety of ways to verify that recovery is properly performed. This is to test how well the System is able to recover from crashes, hardware failure and other similar problems. It also tests for any unexpected errors and that the System continues as expected. |
| **Execution Environment** | As determined by the Bank. |
| **Roles and Responsibilities** | The Contractor shall support the Bank as required. |
| **Entry and Exit Criteria** | * + - * 1. Entry Criteria   Fail over/recovery scope Approved by the Bank (acting reasonably).   * + - * 1. Exit Criteria   Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories.   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 5\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

* 1. **Parallel Run Testing**

| **Activities** | * + - 1. **Parallel Run Testing** |
| --- | --- |
| **Approach** | Under certain circumstances (to be determined by the Bank), the Bank may choose to execute parallel run testing. |
| **Execution Environment** | Pre-production and User Acceptance Test environments. |
| **Roles and Responsibilities** | To be conducted by users appointed by the Bank. The Contractor to support the Bank as required. |
| **Entry and Exit Criteria** | * + - * 1. Entry Criteria: * Live data has been loaded into the System and the Bank has signed off the successful data load.   UAT has been completed successfully.   * + - * 1. Exit Criteria:   The System is demonstrably able to operate in accordance with the Specification and Service Levels.  All defects identified during testing have been resolved or it has been agreed by the Bank that that the System can be accepted without those faults being resolved.  Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories:   |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 5\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

1. **Defect Management AND SERVICE LEVELS**
   1. The Contractor test team will include a Contractor Test Analyst who also undertakes the role of Defect Administrator to manage items emerging from Unit and Contractor System testing. The Defect Administrator will work together with the Bank’s Defect Manager to ensure that all Service Failures are entered into the Service Failure Log. The Contractor shall be responsible for remedying all defects and issues identified in the System and for implementing all Fixes and Approved Workarounds but work to remedy defects and/or issues shall only be conducted by the Contractor following Approval from the Bank. A full set of defect procedures will be documented prior to the commencement of Acceptance Testing.
   2. The parties agree that the following service levels will be applicable for Service Failures which become apparent in relation to the activities specified in this Schedule 4 until Go-Live.

| **Severity** | Description | **SLA\*** |
| --- | --- | --- |
| Critical | This is a very severe defect that may or has rendered the System inoperable. There is no Workaround and testing cannot continue. Examples of critical defects include Software that does not run or crashes repeatedly, corrupts or destroys data or fundamentally performs the wrong actions. | 1 day |
| Major | A major defect is one where a large piece of functionality or a major System component is not working properly. There is a temporary Workaround or the problem is sufficiently isolated to allow some testing activity to continue. The test phase as a whole cannot be completed without a Fix. | 2 days |
| Minor | A defect that may or has resulted in low-key disruption to testing, causing for example, user inefficiency. The System suffers a failure, but is still operable. | 5 days |
| Cosmetic | A minor defect that may, for example, be related to the layout or presentation of data but which results in no corruption of data and no wrong values. For example, cosmetic user interface defects such as labels, headings or colours are missing or poorly chosen will be classified with this severity level. Whilst this may be regarded as a System Failure, the System is completely usable. | To be mutually agreed |

\**Expected number of working days to resolve issue. Unless out of hours support specifically agreed in advance, SLA times may also be subject to agreement dependent on the defect encountered.*

* 1. The categorisation of “Must” and “Should” for requirements in the SOUR will be referred to in order to determine the final priority for resolving defects prior to each Release.
  2. The Contractor must promptly inform the Bank of any issues and defects. The Bank will allocate a severity level to each such issue or defect in accordance with the table at paragraph 4.2 above.
  3. The Bank acknowledges that the Contractor may (acting reasonably) provide a Workaround for an error and that will be considered resolution of such an error for the purposes of this paragraph 4; and if the Contractor does so it shall continue to use Commercially Reasonable Efforts to provide a permanent Fix for critical and major errors. A Workaround under this paragraph 4.5 will only be acceptable where it has no impact on, or does not alter the user experience, operation and/or perception of, the System or the Services.

**Part B – Migration Services Acceptance Testing**

All references in this Part B of this Schedule 3 to “relevant sections” of any of the Requirements Analysis Document or the Solution Design Document refer to the sections of each document which relate to the Migrationation Services.

1 The roles specified herein in relation to the particular Acceptance Tests may be updated depending on the roles formalised pursuant to Schedule 8 (Governance).

2. **Migration Services Acceptance Testing**

2.1 **Purpose of the Acceptance Tests and Generation of the Test Plan**

2.1.1 The testing to be executed is as follows:

• Static Testing of the relevant sections of the Requirements Analysis Document (RAD), Solution Design Documents (SDD) and Migration Configuration Document.

• Contractor Initial Testing with sample Migration Data

• Contractor Migration Testing

• Bank System and Integration Test

• Bank User Acceptance Test

2.1.2 Following the Bank’s Approval of the Solution Design Document, both the Bank and the Contractor shall each produce a test plan for each level for which they are responsible. This document will describes in detail the testing which is to be conducted by that party based upon the requirements of this Schedule. Accordingly, references herein to the “Test Plan” shall be deemed to be the Contractor's test plan, the Bank's test plan or both, at whatever test level is applicable, as the context requires.

2.1.3 The Test Plan shall, as a minimum incorporate all of the requirements of this Schedule, and list in respect of each test to be conducted:

2.1.3.1 the scope of the relevant test;

2.1.3.2 the date that test shall be conducted where known, or (if not known) an estimated start date;

2.1.3.3 the proposed approach to the test;

2.1.3.4 the acceptance criteria for the test; and

2.1.3.5 the resources required from each party for such test.

2.1.4 Each Test Plan shall be based upon the format set out in Appendix 1 to this Schedule.

2.1.5 The Contractor shall provide input to the Bank's Test Plan when required by the Bank to allow the Bank to take into account the testing and related activities to be conducted by the Contractor. The Bank agrees that it will also take into account any feedback on the Bank's Test Plan which is reasonably provided by the Contractor.

2.1.6 The Contractor shall ensure that the Contractor's Test Plan integrates with and complements the Bank's Test Plan and shall be subject to Approval by the Bank. The Contractor shall submit the first version of its Test Plan to the Bank within five (5) Working Days of the Bank's Approval of the Solution Design Document.

2.1.7 The Bank shall review the draft Contractor's Test Plan to assess whether it complies with the requirements of this Schedule and whether it provides sufficient detail of how each of the tests will be conducted. The Bank shall provide the Contractor with one of the following responses within ten (10) Working Days following its receipt of such document:

2.1.7.1 acceptance of the Contractor's Test Plan;

2.1.7.2 rejection of the Contractor’s Test Plan and grant to the Contractor such further periods of time as the Bank reasonably believes appropriate, during which the Contractor shall be required to re-submit a revised Contractor's Test Plan within a specified timeframe. The re-submitted Contractor's Test Plan will then either be accepted or rejected by the Bank in accordance with the processes set out in paragraphs 4.2.1.1 and 4.2.1.3 respectively; or

2.1.7.3 following rejection of the Contractor's Test Plan at least twice in accordance with paragraph 4.2.1.2, rejection of the Contractor's Test Plan, whereby the parties will (without prejudice to any remedy that may be available to the Bank) escalate the matter to the Escalation and Dispute Resolution Procedure as described in Clause 17.21 of the Agreement.

2.1.8 The Test Plan shall be read in conjunction with this Schedule, although in the event of conflict, the Test Plan (subject to having been drafted or Approved by the Bank) will prevail. Until such time as the Test Plan is completed, this Schedule shall describe the required tests, and the parties agree to comply with its terms.

2.1.9 The Test Plan will deal with each of the following:

2.1.9.1 approach;

2.1.9.2 execution environment;

2.1.9.3 roles and responsibilities; and

2.1.9.4 entry and exit criteria.

2.1.10 The Test Plan may also define detailed criteria in respect of the classification of errors and how they relate to the different elements of the Services.

2.1.11 Any proposed amendments to this Schedule (i.e. other than by the Test Plan) shall be subject to the Change Control Procedure.

2.1.12 Any proposed changes to the Approved Test Plans will be subject to the Change Control Procedure.

2.2 **The Testing Methodology**

2.2.1 The testing model adopted shall be the Bank's testing methodology unless agreed otherwise with the Contractor.

2.2.2 The relationships between the various documents and the test stages can be summarised as follows:

2.2.2.1 The Solution Design Document will be used to generate the testing requirements for System and Integration Testing (as described in paragraph 3.5 of this Schedule); and

2.2.2.2 The relevant aspects of the Requirements Analysis Document together with the SOUR will be used to generate the testing requirements for the User Acceptance Testing (as described in paragraph 3.7 of this Schedule).

2.2.3 The testing methodology and the principles of this Schedule 4 should be applied to non-functional testing stages, where tests are derived from the appropriate documentation.

3 **The Approach**

3.1 **Introduction**

3.1.1 This section of the Schedule outlines the testing to be performed during delivery of the Migration Services. This Schedule describes the testing in further detail and the responsibilities of the Bank and the Contractor in relation to such tests and shall be read in conjunction with this section when establishing the Test Plan for each level of testing.

3.1.2 This section also indicates for each test:

3.1.2.1 the approach to testing;

3.1.2.2 execution environment;

3.1.2.3 roles and responsibilities; and

3.1.2.4 entry and exit criteria.

3.1.3 The "Entry" criteria identify the requirements for the applicable Acceptance Test to commence, whereas the "Exit" criteria identify when the Acceptance Test will be deemed to have been successfully completed.

3.1.4 In order to exit a level of testing, the number of outstanding defects or issues must be no more than the maximum number of defects or issues identified in the applicable exit criteria for that level of testing. Where the number of defects or issues exceeds the prescribed maximum:

3.1.4.1 the Contractor shall implement appropriate Fixes to remedy the issues identified through testing and may be required by the Bank to resubmit the System or a part thereof to re-testing; or

3.1.4.2 the Bank (in its sole discretion) may Approve exit from that level of testing notwithstanding the prescribed maximum number of issues having been exceeded.

3.1.5 The Contractor will support the Bank in testing the functionality of all test environments prior to the Bank commencing any testing thereon. The Contractor shall successfully complete its own internal testing prior to releasing the solution (or any part thereof) to the Migration Services for testing by the Bank.

3.1.6 For the avoidance of doubt, the tests shall be conducted in accordance with the Test Plan although may not necessarily run sequentially as listed in this Schedule. Test levels may be repeated during the Term.

3.1.7 The Contractor shall provide the Bank with requested assistance for any tests which are to be conducted by the Bank.

3.2 **Static Testing of the relevant aspects of the Requirements Analysis and Solution Design Documents in respect of the Migration Services**

| **Activities** | **Static Testing of Requirements Analysis and Solution Design Documents** |
| --- | --- |
| **Approach** | Each of the relevant sections of the Requirements Analysis Document (RAD), the Solution Design Document (SDD) and the Migration Configuration Document (MCD) will be assessed to ensure that the Contractor has understood the Bank’s requirements and put forward a suggested solution that both parties believe will meet those requirements.  Documents will be produced as the outcome of a series of workshops undertaken between the Bank and the Contractor with respect to the provision of Migration Services and will be assessed against the entry and exit criteria. |
| **Execution Environment** | N/A |
| **Roles and Responsibilities** | RAD  The Contractor will be responsible for the preparation of the RAD;  The Bank will be responsible for reviewing the RAD; and  The Bank Project Board will be responsible for the final Approval of the relevant sections of the RAD.  SDD  The Contractor will be responsible for the preparation of the SDD;  The Bank will be responsible for reviewing the SDD to ensure all processes are covered and accurate; and  The Bank Project Board will be responsible for final Approval of the SDD.  MCD  The Bank will be responsible for the preparation of the MCD;  The Contractor will be responsible for reviewing the MCD to ensure all relevant Migration Configurations required for Migration are covered and accurate;  The Bank Project Manager will be responsible for recommending Approval of the MCD to the Project Board; and  The Project Board will be responsible for final Approval of the MCD. |
| **Entry and Exit Criteria** | RAD Entry Criteria   * The SOUR or an alternative consolidated requirements document to be provided by the Bank.   RAD Exit Criteria   * Completed relevant sections of the RAD. * Written acceptance of the relevant sections of the RAD by the Bank.   SDD Entry Criteria   * Written acceptance of the relevant sections of the RAD by the Bank (or mutual agreement to proceed at risk).   SDD Exit Criteria   * A completed SDD. * Written acceptance of the SDD by the Bank.   MCD Entry Criteria   * Written acceptance of the relevant sections of the RAD and SDD by the Bank (or mutual agreement to proceed at risk).   MCD Exit Criteria   * A completed MCD. * Written acceptance of the MCD by the Bank and the Contractor. |

**3.3 Contractor Initial Testing**

| **Activity** | **Contractor Initial Testing** |
| --- | --- |
| Approach | * This is the testing stage where the System is tested using a sample of the Migration Data. * The testing activities will be undertaken by the Contractor. * The Contractor must create a Test Plan, define test conditions and scripts that test new functionality being delivered against the SDD. * Test conditions and scripts will be produced by the Contractor that tests the Migration Services. * All test scripts will be detailed and made available to the Bank for a peer review. * On completion of Contractor Initial Testing (according to the agreed delivery schedule) a test summary report will be provided to the Bank, identifying the testing executed, the results, including, but not limited to, a reconciliation report demonstrating that the data has been successfully migrated, and details of any defects found. For any failed tests and remaining defects open an explanation will be provided by the Contractor. |
| **Execution Environment** | Contractor’s own environment |
| **Roles and Responsibilities** | * The Contractor will manage the process, produce the test plan, test summary report and end-of-testing report reviews and approve the test scripts and results log. * The Contractor will approve the Test Plan. * The Contractor will be responsible for assessing and Fixing all System Failures that are found. * The Bank may also review the test scripts to ensure that the test coverage and depth expectations are appropriate. * The Bank will provide a sample of anonymised Migration Data and supporting documentation for use in the Contractors testing. * The Contractor shall provide the results logs in a format that facilitates a quality review by the Bank. |
| **Entry and Exit Criteria** | Entry Criteria   * Test Plans have been approved by the Contractor and the Bank; * Test scripts are Approved by the Bank; * Contractor’s Test environment and solution builds are completed; * Sample Migration Data has been produced and anonymised ready for Contractor use.   Exit Criteria   * The Contractor has validated outputs and the Bank Approves the same. * All tests have been executed and the acceptance criteria met as reasonably determined by the Bank. * Any Workaround proposed by the Contractor for a critical or major issue together with any supporting action plan for the release of the Fix, must be approved bv the Bank. The Bank reserves the right to reject the Workaround if its technical team deem this to be a high risk and/or will compromise the next stage of testing * Approval by the Bank of the test summary report. * Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories.  |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 10\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

3.4 **Contractor Migration Testing**

| **Activity** | **Contractor Migration Testing** |
| --- | --- |
| Approach | * This is the testing stage where all of the elements of the Migration are tested both separately and together in the System. * The testing activities will be undertaken by the Contractor. * The Contractor must create a Test Plan, define test conditions and scripts that demonstrate that the solution delivers against the specification described in the SDD and against requirements specified in the SOUR and relevant sections of the RAD. * All test scripts will be detailed and reference a delivered requirement to enable test coverage reporting to occur. * On completion of Migration testing (according to the agreed delivery schedule) a test summary report will be provided to the Bank, identifying the testing executed, the results and number of defects found. For any failed tests and remaining defects open an explanation will be provided by the Contractor. |
| **Execution Environment** | Bank development test environment |
| **Roles and Responsibilities** | * The Contractor will manage the process, produce the test plan, test summary report and end-of-testing report reviews and approve the test scripts and results log. * The Bank will approve the Test Plan. * The Contractor will be responsible for assessing and Fixing all System Failures that are found. * The Bank may also review the test scripts to ensure that the test coverage and depth expectations are appropriate. The Contractor shall provide the results logs in a format that facilitates a quality review by the Bank. |
| **Entry and Exit Criteria** | Entry Criteria   * The Contractor’s system is sufficiently robust so as to give confidence that it will not adversely affect the testing of the Migration Services [e.g it is already in UAT and is stable]. * For each level, sufficient Migration Configuration is at an appropriate stage for meaningful testing. * Test Plans have been approved by the Contractor and the Bank; * System test scripts are Approved by the Bank; * Test environment and builds are completed; and * Migration Test data and resources available as per the Test Plan.   Exit Criteria   * The Contractor has validated outputs and the Bank Approves the same. * All tests have been executed and the acceptance criteria met as reasonably determined by the Bank. * Any Workaround proposed by the Contractor for a critical or major issue together with any supporting action plan for the release of the Fix, must be approved bv the Bank. The Bank reserves the right to reject the Workaround if its technical team deem this to be a high risk and/or will compromise the next stage of testing * Approval by the Bank of the test summary report. * Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories.  |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 10\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

3.5 **Bank System and Integration Testing**

| **Activities** | **Bank System and Integration Testing** |
| --- | --- |
| **Approach** | * The Bank will test the Migration Services in the testing environment against the relevant sections of the RAD, SDD, MCD and the SOUR. The Contractor will support the Bank in carrying out such System and Integration testing. * This is the key testing stage that integrates all of the delivered components and tests the entire System at one time. * Sign-off of this level of testing by the Bank will mark the Migration as ready for UAT to begin. |
| **Execution Environment** | Bank System Integration Environment hosting the System. |
| **Roles and Responsibilities** | * The Bank manages the process, produces the level test plan, end of testing report and release notes, and reviews and Approves the test scripts and results log. * The Bank is responsible for Approving the System & Integration test plan, results log and summary report. * The Bank will design, peer review and execute the test scripts and complete the test results log. * The Contractor will provide support for the set-up and maintenance of the test environment. * The Contractor will support the Bank by identifying and logging fault issues, implementing Fixes and reviewing Test Scripts. * The Bank and the Contractor shall conduct periodic reviews of the recorded Service Failures and schedule Fixes to be implemented. |
| **Entry and Exit Criteria** | Entry Criteria   * All Contractor Migration testing has been completed and documentary evidence of this testing has been provided to the Bank. * System test plans Approved by the Bank. * System test scripts Approved by the Bank. * Test environment and builds completed. * The Contractor’s system is sufficiently robust so as to give confidence that it will not adversely affect testing. [e.g it is already in UAT and is stable]. * Sample Migration data and resources available as per the test plan. * Migration Configuration for the sample data is at an appropriate stage for meaningful testing.   Exit Criteria   * All tests have been executed and the acceptance criteria met as reasonably determined by the Bank. * Any Workaround proposed by the Contractor for a critical or major issue together with any supporting action plan for the release of the Fix, must be approved bv the Bank. The Bank reserves the right to reject the Workaround if its technical team deem this to be a high risk and/or will compromise the next stage of testing * The end of testing report has been Approved by the Bank. * Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories.  |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 10\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

3.6 **User Acceptance Testing**

| **Activities** | **User User Acceptance Testing** |
| --- | --- |
| **Approach** | * This is the final stage of testing of the Migration Services in a production like environment. Successful completion of this testing deems the Migration Services ready for going into production. * The testing is owned by the Bank to satisfy itself that Migration of the Migration Data and Migration Configurations can be successfully implemented into the System. * During this test stage, the Contractor will provide the Bank with 2nd line support to diagnose and resolve Service Failures. * An end of testing report will be produced by the Bank to confirm that the functionality has met the User Acceptance Testing exit criteria. |
| **Execution Environment** | User Acceptance Testing environment running the System. |
| **Roles and Responsibilities** | * The Bank manages the process and is responsible for the production of the test plan, test scripts, test log, and end of testing report. * The Bank is responsible for Approving the User Acceptance Testing test plan, results log and summary report. * The Bank will define, review and execute the test scripts and complete the test results log with support from the Contractor. * The Contractor will support the Bank in setting up and providing support for this environment. * The Contractor will support the Bank in identifying and logging Service Failures and will implement the Fixes. * The Bank and the Contractor shall periodically review the recorded Service Failures and schedule Fixes to be implemented. |
| **Entry and Exit Criteria** | Entry Criteria   * All previous test stages have been successfully completed or there is formal agreement by the Bank to proceed at risk. * User Acceptance Testing test plan and test scripts are Approved and are available. * The current Migration Data is available. * The System is configured based on the Migration Configuration and made available. * Users identified to run test scripts. * Project team available for first line support. * The acceptable total number of defects that are outstanding in the System when entering User Acceptance Testing has not been exceeded in accordance with the table below, as reasonably determined and allocated by the Bank:  |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 0 | | Minor Issue | 5\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected*  Exit Criteria   * All tests have been executed and the acceptance criteria met as determined by the Bank (acting reasonably). * The UAT results log and summary report have been reviewed and Approved. * Any Workaround proposed by the Contractor for a critical or major issue together with any supporting action plan for the release of the Fix, must be approved bv the Bank. The Bank reserves the right to reject the Workaround if its technical team deem this to be a high risk and/or will compromise the ability to go live with Migration. * The end of testing report has been Approved. * Written acceptance will be issued by the Bank provided the test results are within the following ranges as reasonably determined by the Bank. See the ‘Defect Management’ section in this Schedule for full explanation of the categories:  |  |  | | --- | --- | | **Severity** | **Max** | | Critical Issue | 0 | | Major Issue | 5 | | Minor Issue | 10\* | | Cosmetic | Unlimited\* |   \**acceptable only as long as the credibility and operation of the System as a whole is not affected* |

4. **Defect Management and Service Levels**

4.1 The Contractor test team will include a Contractor Test Analyst who also undertakes the role of Defect Administrator to manage items emerging from Unit and Contractor System testing. The Defect Administrator will work together with the Bank’s Defect Manager to ensure that all Service Failures are entered into the Service Failure Log. The Contractor shall be responsible for remedying all defects and issues identified in the System and for implementing all Fixes and Approved Workarounds but work to remedy defects and/or issues shall only be conducted by the Contractor following Approval from the Bank. A full set of defect procedures will be documented prior to the commencement of Acceptance Testing.

4.2 The parties agree that the following service levels will be applicable for Service Failures which become apparent in relation to the activities specified in this Schedule 4 until Migration Go-Live.

| **Severity** | Description | **SLA\*** |
| --- | --- | --- |
| Critical | This is a very severe defect that may or has rendered the System inoperable. There is no Workaround and testing cannot continue. Examples of critical defects include Software that corrupts, duplicates or destroys Migration data, cannot be reconciled or fundamentally performs the wrong actions. | 1 day |
| Major | A major defect is one where Migration Services have not been performed properly including having an adverse impact on the System, for example taking an inordinate time to load or causes a problem once Migration Data is loaded on to it or Migration Configurations are not working properly. There is a temporary Workaround or the problem is sufficiently isolated to allow some testing activity to continue. The test phase as a whole cannot be completed without a Fix. | 2 days |
| Minor | A defect that may or has resulted in low-key disruption to testing, causing for example, user inefficiency. The System suffers a failure, but is still operable. | 5 days |
| Cosmetic | A minor defect that may, for example, be related to the layout or presentation of data but which results in no corruption of data and no wrong values. For example, cosmetic user interface defects such as labels, headings or colours are missing or poorly chosen will be classified with this severity level. Whilst this may be regarded as a System Failure, the System is completely usable. | To be mutually agreed |

\**Expected number of working days to resolve issue. Unless out of hours support specifically agreed in advance, SLA times may also be subject to agreement dependent on the defect encountered.*

4.3 The Contractor must promptly inform the Bank of any issues and defects. The Bank will allocate a severity level to each such issue or defect in accordance with the table at paragraph 4.2 above.

4.4 The Bank acknowledges that the Contractor may (acting reasonably) provide a Workaround for an error and that will be considered resolution of such an error for the purposes of this paragraph 4; and if the Contractor does so it shall continue to use Commercially Reasonable Efforts to provide a permanent Fix for critical and major errors. A Workaround under this paragraph 4.4 will only be acceptable where it has no impact on, or does not alter the user experience, operation and/or perception of the System or the Services.

**Appendix 1 – Test Plan TEMPLATE**

**Test Plan**

DOCUMENT INFORMATION

|  |  |
| --- | --- |
| * **Owners** |  |
| * **Document Date** |  |
| * **Document No** |  |
| * **Version** |  |

**Document Change Control**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| * **Date of update** | | * **Version** | | * **Summary of update** |
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| **Approvals** |  | |  | |
| **Name** | **Date** | | **Title** | |
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|  | |  |

**Test Plan Outline**

The outline of the Test Plan specific information is:

1. Context of the testing:
   * 1. Project/Test sub-process
     2. Test item(s)
     3. Test scope
     4. Assumptions, dependencies and constraints
     5. Stakeholders
2. Testing communication
3. Test strategy:
   * 1. Test sub-processes
     2. Retesting and regression testing
     3. Test design techniques
     4. Test completion criteria
     5. Test data requirements
     6. Test environment requirements
     7. Test deliverables
4. Testing tasks and estimates
5. Schedule
6. Suspension and resumption criteria
7. Cross-reference to risks
8. Deviations from the Organizational Test Strategy

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**Context of the testing**

**Project(s) / test sub-process**

Identifies the project(s) or the test sub-process(es) for which the plan is being written and the specific processes and products covered by the test effort.

For test planning purposes the risks, assumptions, issues, and dependencies known at the outset will be set out in this document and the document updated during the project life-cycle. The Project Manager will be informed of any new items which could impact on the overall project timelines. New versions of this Test Plan will be circulated to the wider distribution list to notify them of any material changes to the Plan.

This Test Plan will also document the unique entry/exit criteria for this Level.

Following circulation for review and duly updated, this Plan will be presented for approval by the Project Manager, and Test Manager.

**Test item(s)**

Identifies the test item(s) for the testing covered by this plan including their version/revision. This could be a software unit, interfaces between units, a subsystem, or a complete system.

This section may describe the mission/business purpose of the test item(s), or reference where this information can be found, e.g. in a system definition document, such as a concept of operations.

It may also identify any procedures for the transfer of the test item(s) from other environments to the test environment.

**Test scope**

Summarizes the features of the test item(s) to be tested, e.g. specific attributes of the software, functions, interfaces, or business processes. Also identifies any features of the test item(s) that are to be specifically excluded from testing and the rationale for their exclusion.

**Assumptions and constraints**

Describes any assumptions and constraints for the test effort covered by this plan. These may include regulatory standards, the requirements in the Test Policy and the Organizational Test Strategy, contractual requirements, project time and cost constraints, and availability of appropriately-skilled staff, tools and/or environments.

**Stakeholders**

Lists the stakeholders and their relevance to the testing. Describes how the communication with each stakeholder is to be performed.

**Testing communication**

Describes the lines of communication between testing and other life cycle activities (e.g. the authority for resolving issues raised as a result of the testing activities, and the authority for approving test products and processes), and within the testing organization. This may be represented visually, e.g. an organization chart or a figure that illustrates the flow of information and data.

**Test strategy**

Describes the approach to testing for the specified test project or test sub-process, as outlined in the following sub-clauses. The document may refer to the Organization Test Strategy stating only its differences from it.

**Test sub-processes**

For a project test plan this identifies the sub-processes of testing that will be conducted.

**Retesting and regression testing**

Specifies the conditions under which regression testing will be performed. This could include a description of the estimated number of test cycles.

**Test completion criteria**

Describes the conditions under which the relevant test organization considers test execution activities to be complete, for example when a specific coverage has been reached and the number of outstanding defects is under a specified limit.

**Test data requirements**

Specifies all relevant test data requirements for the project or test sub-process (as appropriate). .

**Test environment requirements**

Specifies the necessary and desired properties of the test environment. This may include hardware, software, testing tools, databases, and personnel

**Test deliverables**

Identifies all documents that are to be delivered from the testing activity or equivalent information to be recorded electronically, for example in databases or dedicated tools. The following documents may be included:

Test Plan;

Test Case Specification;

Test Procedure Specification;

Incident Reports;

Test Status Reports; and

Test Completion Report.

Test input data and test output data may be identified as deliverables. Test tools created as part of the testing activity may also be included. If documents have been combined or eliminated, then this list will be modified accordingly.

**Testing tasks and estimates**

Identifies all necessary testing tasks based on the test process to be used. The task iteration strategy for the re-execution of test tasks should be considered, e.g. concerning retesting and regression testing tasks, as well as any dependencies. The testing tasks may be described in terms of a work breakdown structure.

Describes estimates for each of the identified testing tasks to be performed as part of the testing activities covered by the test plan.

Additionally, where appropriate, describes the allocated testing budget and cost estimates or references where that information can be found, e.g. in the project plan.

**Training needs**

Specifies test training needs by skill level and identifies training options for providing the necessary skills for the staff needed.

**Schedule**

Identifies test milestones defined in the project schedule and from the test strategy. Summarizes the overall schedule of the testing tasks and test milestone based on the task estimates, available resources, and other constraints.

**Suspension and resumption criteria**

Specifies the criteria used to suspend and resume all or a portion of the testing tasks in the Test Plan. Identifies who is responsible for suspending and resuming testing tasks. Specifies the testing tasks that may have to be repeated when testing is resumed.

**Cross-reference to risks**

Describes the relationship between the risks and the corresponding testing tasks which are being used to treat these risks. This may be illustrated in a matrix.

SCHEDULE 5  
CHARGES

This Schedule 5 sets out the Charges for the Services. No further charges or fees shall be payable by the Bank, unless expressly agreed otherwise in writing.

**1. Licence Charges**

|  |  |
| --- | --- |
| **Chargeable from and Payment Trigger Event** | **Total (£)** |
| [Go-Live] | [To be populated from bidder’s response] |

**2. Maintenance and Support Charges**

|  |  |  |
| --- | --- | --- |
| 2.1 The Bank shall, dependent on which Maintenance and Support Services it is receiving from the Supplier in accordance with paragraph 3 of Schedule 2, pay the relevant Maintenance and Support Charges as set out in the tables below. For the avoidance of doubt, where the Bank moves between the different support options within the same support year, it shall either pay or be refunded the difference in the level of the Charges for the two different options. Such payment or refund shall be payable following notification of the change to the support model. **Support Hours 08:00-18:00 plus 24 days Peak Days Allowance** | | |
| **Chargeable from and Payment Trigger Event** | **Annual Service Charges** | **Total (£)** |
| [Go Live] | For the period from Go Live to the first anniversary of Go Live | [To be populated from bidder’s response] |
| [First Anniversary of Go Live] | For the period from first anniversary of Go Live to the second anniversary of Go Live | [To be populated from bidder’s response] |
| [Second Anniversary of Go Live] | For the period from second anniversary of Go Live to the third anniversary of Go Live | [To be populated from bidder’s response] |
| [Third anniversary of Go Live] | For the period from third anniversary of Go Live to the fourth anniversary of Go Live | [To be populated from bidder’s response] |

|  |  |  |
| --- | --- | --- |
| **Chargeable from and Payment Trigger Event** | **Charge** | **Charge (£)** |
| [On order of additional Peak Days] | PAYG for purchasing additional Peak Days | [To be populated from bidder’s response] per Peak Day |
| **Support Hours 24 hours a day on Business Days plus 9 day Peak Days Allowance** | | |
| **Chargeable from and Payment Trigger Event** | **Annual Service Charges** | **Total (£)** |
| [Go Live] | For the period from Go Live to the first anniversary of Go Live | [To be populated from bidder’s response] |
| [First Anniversary of Go Live] | For the period from first anniversary of Go Live to the second anniversary of Go Live | [To be populated from bidder’s response] |
| [Second Anniversary of Go Live] | For the period from second anniversary of Go Live to the third anniversary of Go Live | [To be populated from bidder’s response] |
| [Third anniversary of Go Live] | For the period from third anniversary of Go Live to the fourth anniversary of Go Live | [To be populated from bidder’s response] |

|  |  |  |
| --- | --- | --- |
| **Support Hours 24 hours a day 7 days a week** | | |
| **Chargeable from and Payment Trigger Event** | **Annual Service Charges** | **Total (£)** |
| [Go Live] | For the period from Go Live to the first anniversary of Go Live | [To be populated from bidder’s response] |
| [First Anniversary of Go Live] | For the period from first anniversary of Go Live to the second anniversary of Go Live | [To be populated from bidder’s response] |
| [Second Anniversary of Go Live] | For the period from second anniversary of Go Live to the third anniversary of Go Live | [To be populated from bidder’s response] |
| [Third anniversary of Go Live] | For the period from third anniversary of Go Live to the fourth anniversary of Go Live | [To be populated from bidder’s response] |

**3. Escrow Charges**

|  |  |
| --- | --- |
| **Chargeable from and Payment Trigger Event** | **Total (£) per annum** |
| [Go Live and each subsequent anniversary of Go Live] | [To be populated from bidder’s response] |

**4. Implementation Service Charges**

|  |  |
| --- | --- |
| **Payment Trigger Event** | **Total (£)** |
| [Go-Live] | [To be populated from bidder’s response] |

Charges payable for the Implementation Services are based on the following assumptions:

(i) The Bank will provide a development environment in which the Supplier can install and test the Solution;

(ii) The Supplier will provide full training to the Bank’s technical teams involved in the implementation to enable them, with initial support from the Supplier to independently install the Solution into the Bank’s system testing, UAT and production environments prior to these activities taking place;

(iii) The Supplier will provide on-site key project members to work alongside the Bank teams, and that these are sufficiently expert and experienced in the Solution so as not to require major support from teams back at the Supplier’s base.

Each being an (“**Implementation** **Assumption”**).

If there is a change to an Implementation Assumption this will be addressed by the parties in accordance with Schedule 7 (Change Control).

**5. Migration Services Charge**

|  |  |
| --- | --- |
| **Payment Trigger Event** | **Total (£)** |
| Upon Bank’s Approval of successful completion of Acceptance Testing in accordance with Schedule 4 (Acceptance) | [To be populated from bidder’s response] |

The Charges payable for Migration Services are based on the following assumptions:

(i) The Bank will provide a development environment in which the Supplier can migrate the data and install their Solution;

(ii) The Bank will have extracted the existing data for the Data Collections and placed it in a holding area for the Supplier to pick up and migrate to the Supplier’s databases in a development environment;

(iii) The Supplier will provide full training to the Bank’s technical teams involved in the migration to enable them, with initial support from the Supplier to independently migrate the data into the Bank’s system testing, UAT and production environments prior to these activities taking place;

(iv) The Supplier will have trained end business users in their Solutions configuration tools so that non-technical business users can create workflows and business rules governing the data;

(v) The Supplier will provide on-site key project members to work alongside the Bank teams, and that these are sufficiently expert and experienced in the Solution so as not to require major support from teams back at the Supplier’s base;

(vi) That the Functional and Non-Functional Requirements for these Data Collections once migrated are as stated within this SOUR;

(vii) That the Functional and Non-Functional Requirements for these Data Collections once migrated are as stated within this SOUR;

(viii) The data that the Bank will have extracted from the existing solution and made available in the holding for the Supplier to migrate are as follows:

* All financial and non-financial returns in the current system.
* All financial institution reference data (for example firm name).
* All user data that is on the system, including external portal users and Bank Internal Users.

Each being a (“**Migration** **Assumption”**).

If there is a change to a Migration Assumption this will be addressed by the parties in accordance with Schedule 7 (Change Control).

**6. Training Services**

6.1 Initial Training Charges

|  |  |
| --- | --- |
| **Payment Trigger Event** | **Total (£)** |
| [Completion of relevant Training Services] | [To be populated from bidder’s response] |

6.2 Training Charges

[Drafting Note: To be populated following bidder’s final responses to include here any Charges for future Training Services agreed if any]

**7. Additional Services**

Should the Bank require Additional Service, such Services shall be agreed using the Change Control Procedure and the rate card below.

The charge per day is to cover all work undertaken by the resource within that day based upon at least eight (8) hours worked in that day. If the individual works for less than eight (8) hours in that day, the charge per day shall be pro-rated accordingly.

|  |  |
| --- | --- |
| **Consultancy grades** | **Daily rate (£)** |
| Partner |  |
| Director |  |
| Managing Consultant |  |
| Principal Consultant |  |
| Senior Consultant |  |
| Consultant |  |
| Junior Consultant |  |

**SCHEDULE 6  
SERVICE LEVELS AND SERVICE CREDITS**

1. **PRINCIPLES**
2. This Schedule describes the Service Levels which the Contractor is required to achieve when delivering the Implementation Services and Maintenance and Support Services and the mechanism by which Service Failures will be proactively monitored, managed and reported, including the Service Credits payable by the Contractor to the Bank in the event of failure to meet Service Levels.
3. The objectives of the Service Levels and Service Credits are to:
4. ensure that the Services are provided by the Contractor in accordance with the Agreement;
5. provide a mechanism whereby the Bank can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor’s failure to deliver the Services to the Service Levels; and
6. incentivise the Contractor to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.
7. SERVICE LEVELS AND SERVICE CREDITS
   1. The Contractor shall perform the Implementation Services and Maintenance and Support Services in accordance with the Service Levels set out in the table below. However, the Service Levels are without prejudice to the Contractor's general obligations to provide the Services in accordance with the Specification and the Agreement generally.
   2. The following are descriptions of Service Levels required of the Contractor. The Service Levels marked with asterisk (\*) are of particular importance and shall be referred to as “Key Service Levels”:

|  |  |  |  |
| --- | --- | --- | --- |
| **Service Level Descriptions** | | **Service Levels** | **Service Credit applicable per failure to achieve the Service Level (as a percentage of the relevant Quarterly Service Charge)** |
| IMPLEMENTATION SERVICE LEVELS | | | |
| 1 | Respond to Service Failures raised during Implementation according to Section 4.2 of Schedule 4. | 99.4% | N/A |
| GO-LIVE SERVICE LEVELS | | | |
| AVAILABILITY  Availability % =  A – B  X 100  A  Where:  A = the total number of minutes during Service Hours during the less any planned (and mutually agreed) maintenance or Downtime arising due to a Force Majeure event; and  B = the number of minutes during Service Hours when the System is unavailable. Each occurrence of Downtime shall be rounded up to the nearest minute. | | |  |
| 1 | All Financial Institution-facing test environments are fully operational in Service Hours during each Service Period. | 99.4% | N/A |
| 2\* | System is fully operational (in accordance with the Specification) during Service Hours during each Service Period. | 99.95% | 10% |
| TIMELINESS AND ACCURACY OF CONTENT | | |  |
| 3\* | Any notifications, data requests and all Collected Data are accurately presented to all System users (whether Financial Institution or Bank). | 100% accuracy | 10% |
| 4\* | Integrity of Collected Data maintained from the point of receipt by the System and throughout the processing, handling and use of that Collected Data. | 100% | 10% |
| 5 | Immediate presentation of notifications and messages to Financial Institutions via the System, or initiate sending of email to Financial Institution s within two (2) hours of receiving the Bank’s instruction to publish. | No more than:   * Three failures to meet the time frames in any six Month period; or * Failure to meet the time frames for three consecutive Months. | N/a |
| INCIDENT AND FAULT RESOLUTION | | |  |
| 6\* | Priority 1 Service Failures investigated and resolved within the time frames specified in Schedule 2 (Specification). | No more than:   * Three failures to meet the time frames in any six Month period; or * Failure to meet the time frames for three consecutive Months. | 10% |
| 7\* | Priority 2 Service Failures investigated and resolved within the time frames specified in Schedule 2 (Specification). | No more than:   * Three failures to meet the time frames in any six Month period; or * Failure to meet the time frames for three consecutive Months. | 5% |
| 8 | Priority 3 Service Failures investigated and resolved within the time frames specified in Schedule 2 (Specification). | No more than:   * Three failures to meet the time frames in any twelve Month period; or * Failure to meet the time frames for three consecutive Months. | N/A |
| 9 | Priority 4 Service Failures investigated and resolved within the time frames specified in Schedule 2 (Statement of User Requirements). | No more than:   * Three failures to meet the time frames in any twelve Month period; or * Failure to meet the time frames for three consecutive Months. | N/A |
| 10 | Provide MI Reports requested by the Bank. | Within 2 Working Days, or as otherwise stated. | 5% |

* 1. **Variation to the Service Levels**

Service levels may be added, deleted, or modified by the parties at any time during the term, in accordance with schedule 7 (change control). For the avoidance of doubt, the contractor will not withhold or delay its consent to any changes to the service levels that are required to achieve a fair, accurate and consistent measurement of the contractor’s performance in delivering the services.service credit process

1. Service Credit Process

Meeting or exceeding a Service Level indicates that the Contractor is meeting some (but not necessarily all) of its contractual commitments to the Bank with respect to levels of performance.

If the Contractor fails to meet a Key Service Level in a Service Period the Bank shall be entitled to a service remedy in the form of a Service Credit to the extent provided in the table above. The Service Credit shall be calculated in accordance with the provisions set out in this Schedule.

Service Credits are provided as a remedy for all applicable Service Failures in respect of the Services but shall be without prejudice to any other right or remedy available to the Bank as a result of the Service Failure.

Multiple Service Credits may apply within any one Service Period. The maximum Service Credit payable in any Quarter shall be limited to fifteen per cent (15%) of the Charges payable for the applicable Service Period.

The Bank shall use the MI Reports to, amongst other things, verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.

Service Credits due to the Bank shall accrue over each Service Period and shall be due to the Bank in accordance with the Agreement. Service Credits are either:

* + 1. a reduction of the amounts payable in respect of the Services and do not include VAT; or
    2. (if the Charges corresponding to the Services against which Service Credits accrue have already been paid) a rebate to the Bank of the amounts paid in respect of the Services and do not include VAT. Any rebate shall be shown as a credit on the next invoice submitted by the Contractor or (if no further invoices are prepared) as a credit note issued to the Bank.

The Contractor confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Charges. Both parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

Service improvement plan:

* + 1. Where the Supplier fails to meet any Service Levels and the Bank is entitled to a Service Credit, the Bank will be entitled to regard such failure as a Contractor Default. The Bank may, at its sole discretion, request that the Contractor provide to the Bank within five (5) Working Days a Service Improvement Plan (“SIP”) setting out the timeframe and actions the Contractor intends to take to rectify Service Failures in order to fully meet its obligations under the Agreement. The Bank and the Contractor will discuss the SIP and the Contractor will incorporate any reasonable suggestions made by the Bank.
    2. Where a SIP is agreed, the Contractor will implement it in full. If at the end of the agreed improvement period the Contractor fails to meet any applicable Service Level the Bank will be entitled to regard such failure as Contractor Default not capable of remedy, entitling the Bank to terminate this Agreement in accordance with Clause 12.2.
    3. Where a SIP cannot be agreed, the Bank may regard the Supplier as in Default entitling the Bank to terminate this Agreement in accordance with Clause 12.2.

1. **service level measurement**
   1. For the purposes of calculating Availability, the Bank will measure the relevant Service Level by deduction of total hours of Downtime from the total hours of potential Availability in a Service Period when the root cause is attributable to the Contractor (e.g. Software code, Configuration etc.).
   2. Each occurrence of Downtime shall be rounded up to the nearest minute.
   3. The recording of Downtime shall commence as soon as the System is no longer fully operational in accordance with the Specification.
   4. Downtime shall end when the System is fully operational again in accordance with the Specification.
   5. If the Bank (acting reasonably) considers the security or integrity of the System has been compromised, resulting in the Bank needing to reduce the operational effectiveness or perform Emergency Maintenance on the System and this is attributable to the Contractor, this will count towards Downtime.
   6. For the avoidance of doubt, Service Credits shall accrue if any Downtime occurs, whether or not as a result of Emergency Maintenance.
   7. The Contractor shall on a Monthly basis and in accordance with the Specification, provide the Bank with a set of hard and soft-copy reports to verify the Contractor’s performance and compliance with the Service Levels and shall provide agreed supporting information for each such report to the Bank in machine-readable form suitable for use on a personal computer.
   8. The Contractor shall, if required by the Bank, use appropriate tools in order to measure and report the levels of performance of the Services that are subject to the Service Levels. Such measurement shall enable reporting which is detailed enough to verify compliance with the Service Levels and the Charges and shall be subject to audit by the Bank on reasonable notice.
   9. The Contractor shall clearly notify the Bank in the Monthly performance report if the Bank becomes entitled to a Service Credit, which the Bank shall receive in accordance with paragraph 4. The Monthly performance report shall also, as a minimum, describe: (i) the applicable Services, (ii) any Service Level failure; (iii) any failure to meet the minimum Service Level; and (iv) the efforts made by the Contractor to ensure compliance with the Service Level in future.
   10. In addition, the Contractor shall, on a Monthly basis, deliver a separate financial Service Credit report to the Bank which shall summarise the value of the Service Credits for that Month together with the cumulative value of Service Credits for the current year of this Agreement to date.
   11. The Contractor shall, if required by the Bank, use appropriate tools in order to measure and report the levels of performance of the Services that are subject to the Service Levels. Such measurement shall enable reporting which is detailed enough to verify compliance with the Service Levels and the Charges and shall be subject to audit by the Bank on reasonable notice.
2. EXCLUSIONS

The Contractor shall be relieved of its liability (and the Bank shall not claim Service Credits) in respect of any failure to provide the Services to the Service Levels if, and to the extent, such failure is attributable to any of the following:

* + 1. failure by the Bank to provide the Contractor with access to the Premises pursuant to this Agreement, where such access is reasonably required to enable the Contractor to provide the relevant Services;
    2. failure by the Bank to observe any of its obligations under this Agreement which have a direct and material impact upon the Contractor's provision of the Services; or
    3. a Force Majeure Event.

Subject to paragraph 5.1, for the purposes of calculating achieved performance in respect of each Service Level, any event that directly contributes to the Contractor failing to meet the Service Level requirements will be excluded from the calculations of achieved performance only if:

* + 1. the event is not the result of any actions or omissions of the Contractor, or its Subcontractor;
    2. the Contractor provides the Bank with notice of such non-performance promptly after such non-performance; and
    3. the Contractor is able to demonstrate to the Bank's reasonable satisfaction that the Contractor used all reasonable endeavours to avoid or rectify the failure in a timely manner and to perform the Service to the Service Level notwithstanding the event affecting the Contractor's ability to perform (with the Bank reimbursing the Contractor for its additional out-of-pocket expenses for such efforts where the non-performance arises out of any Bank failure).
    4. the Contractor has notified the Bank of such events and exclusions at the earliest possible opportunity.

In the event that the Contractor is prevented from restoring the Services as a result of any Bank action this will be treated as a permitted exclusion and the clock used for the calculation of Service Credits will be stopped to take into account any such delay as detailed in:

|  |  |  |
| --- | --- | --- |
|  | **Conditions for when the Clock Will Stop for Response Times** | **Clock Will Restart** |
| 1. | If the Bank prevents the Contractor from providing a Workaround or Fix because the Bank has failed to provide the information that it is reasonably required by the Contractor to remedy the Services. | When the Bank provides such information to the Contractor. |
| 2. | If the Bank provides materially incomplete/incorrect information which the Contractor reasonably requires in order to restore or remedy the defect in the Services. | When the Bank has provided information to the Contractor that is materially complete/correct. |

The parties acknowledge that the response time for Service Failures will always run unless the Bank is in breach of either one or both of the conditions set out in the table in paragraph 5.3 above.

The Contractor has one (1) hour from receipt of the information referred to in the table set out in paragraph 5.3 above to confirm if the information provided by the Bank is sufficient to enable the Contractor to "Start the Clock". If the Contractor fails to confirm its acceptance of the information received from the Bank upon the expiry of this one (1) hour, the response time for the resolution of any Service Failure will be deemed to have started and the Contractor shall be subject to the response time for that applicable Service Level.

Subject to paragraph 5.5 above, any decision to stop or start the clock shall be agreed mutually between the parties (acting reasonably). Any dispute in relation to a decision to start or stop the clock shall be referred to the escalation procedure in Clause 17.21 of the Agreement within two (2) Working Days of the dispute arising.

Where the Bank prevents the Contractor from providing a Workaround or Fix and that leads to a "Clock will Stop" instance as set out in the above table, but the Contractor's action contributes to the delay in restoring the Services, the parties (acting reasonably) shall agree the proportion of the applicable Service Credit to apply (i.e. a proportion of the Service Credit that would have applied if the Contractor was solely responsible for the delay) by the Bank.

1. Cooperation
   1. Without prejudice to any contractual or other restrictions upon the Contractor sub-contracting or assigning its obligations under this Agreement; Achievement of the Service Levels by the Contractor may require the coordinated, collaborative effort of other suppliers, service providers, vendors and other third parties contracted with the Bank (“Other Vendors”). The Contractor shall provide a single point of contact for the prompt resolution of all Service Level failures, regardless of whether the reason for such Service Level failures, or any other failure to provide the Services to the Service Levels, was caused by the Contractor or the Other Vendors.

**SCHEDULE 7**

**CHANGE CONTROL**

**DEFINITIONS USED IN THIS SCHEDULE**

* 1. In this Schedule:

**“Additional Dataset Change”** means a change (whether by addition or removal) to the Current Data Collections which the Bank uses the System to collect;

**“Change”** means any change to this Agreement (including but not limited to aSystem Change, Additional Dataset Change, changes 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 17.13; 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;

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

**“System Change”** means (i) a change to either the functional or non-functional requirements of the System; and/or (ii) a change to the configuration of the System so as to allow integration with additional Bank systems.

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 Contract Manager;
      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:
      6. a Minor Change;
      7. a System Change;
      8. an Additional Dataset Change;
      9. an alternative change to Services or scope of Services;
      10. a change to a process or procedure within this Agreement;
      11. a change to Service Levels or performance/quality targets;
      12. a change to the Charges or the basis of charging;
      13. a change to any of the wording of this Agreement; and/or
      14. any other change.
   2. The Contractor shall promptly allocate a sequential number to each Change Request (whether issued by the Contractor or the Bank).
   3. The Contractor shall maintain a status log of all open and closed Change Requests.
3. **Responses to Change Requests**
   1. The Contractor shall prepare (at its own cost and expense) and submit to the Bank within 15 Business Days an assessment of the Change Request detailing:

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

4.1.2 any changes to the Charges, where applicable, calculated in accordance with paragraph 6;

4.1.3 any cost of the Change, where applicable, calculated in accordance with paragraph 7;

4.1.3 any documentation or training to be provided;

4.1.4 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;

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

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

1. **Discussion of Change Requests**

5.1 As soon as reasonably practicable following the submission of the assessment as referred to in paragraph 4.1, the Contractor and the Bank shall discuss the Change Request and (subject to paragraphs 5.1.2 to 5.1.4 below) shall each use its respective reasonable endeavours, acting in good faith, to agree the same.

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

5.3 To the extent that any Change Request 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.

5.4 The Contractor may not unreasonably withhold or delay its agreement to any Change Request, to the extent that such Change Request relates to a System Change or an Additional Dataset Change.

1. **Costs to implement Change Request**

6.1 The Issuing Party shall be responsible for the costs of implementing the Change (“**Change Costs”**).

6.2 If the Bank is the Issuing Party then the Contractor shall calculate any Change Costs in accordance with the following:

(i) any resource to be provided by the Contractor to implement the Change will be charged at a rate which does not exceed the T&M Rate set out in Schedule 5 (Charges) and the Contractor shall use all reasonable endeavours to minimise the resource required to implement such Change;

(ii) the Supplier shall use reasonable endeavours to mitigate the cost impact of the Change Costs and shall use reasonable endeavours to reduce any Change Costs. The Supplier shall ensure Change Costs are reasonably and properly incurred; and

(iii) the Supplier shall substantiate the proposed Change Costs, including providing breakdowns of costs anticipated, where relevant quotes from third parties, and where relevant evidence of proportionate changes exhibited in similar changes for other customers (subject to the parties agreement that this provision shall not require the Contractor to provide evidence to the extent that this would cause the Contractor to breach confidentiality obligations imposed on it by a third party) and where relevant with reference to Services and Changes already provided to the Bank.

1. **Contract Amendments**
   1. Once a Change Request is agreed, the Contractor shall produce a Contract Amendment for the Bank’s Approval. Once approved 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.
   2. The Contractor shall maintain a record of all Contract Amendments.
   3. 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.
2. **Expert Determination**

8.1 In the event that the Bank wishes to dispute any proposed Amended Charges or Change Costs given in accordance with paragraph 6 and 7 then the Bank may refer this for determination by an appropriate independent expert (“**Expert Determination**”) by sending a written notice to the Contractor, notifying the Contractor of the referral to Expert Determination and identifying a proposed expert ("**Independent Expert**").

8.2 The Contractor shall within ten (10) Business Days of receipt of such notice respond to the Bank stating whether it agrees with the Independent Expert proposed and in the event the Contractor does not agree with the appointment of the Independent Expert proposed it shall suggest its own proposed expert.

8.3 If the parties are unable to agree the identity of the Independent Expert then the Bank may refer the choice of the Independent Expert to an appropriate independent industry body, the decision of which shall be binding upon the parties.

8.4 The Independent Expert shall act as an expert and not as an arbitrator, and shall act fairly and impartially.

8.5 The Independent Expert's determination shall (in the absence of a manifest error by the Independent Expert) fully and finally settle the dispute in respect of the quote for Amended Charges or Change Costs and shall be in English; the parties shall be bound by the Independent Expert's determination in accordance with this paragraph 9.

8.6 The parties agree that the Independent Expert may determine that a quote for Amended Charges or Change Costs should remain the same or that a quote for Amended Charges or Change Costs should be for a lower amount (and the Independent Expert may determine on or opine as to how much lower) but the Independent Expert may not determine that the quote for Amended Charges or Change Costs should be for a higher amount.

8.7 The Independent Expert shall decide the procedure to be followed in the determination and shall be requested to make his or her determination in writing fifteen (15) calendar days after his or her appointment or as soon as reasonably practicable thereafter.

8.8 The parties shall provide reasonable assistance to the Independent Expert and shall provide the Independent Expert with such information as the Independent Expert may require for the purposes of the determination. The parties shall be entitled to make written submissions;

8.9 The Independent Expert determination shall be conducted in private and shall be confidential.

8.10 If the Independent Expert determines that the quote for Amended Charges or Changes Costs should be lower then the Contractor shall be liable to pay the costs of the Expert Determination; if the Independent Expert determines that the quote for Charges should remain the same then the Bank shall be liable to pay the costs of the Expert Determination.

**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**”) [[DRAFTING NOTE: Where applicable only] and [Guarantor] whose registered office is at [•] (the “**Guarantor**”).

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:

[•]

[5. [DRAFTING NOTE: Where applicable only] [The Guarantor hereby acknowledges and agrees that none of the amendments to the Original Agreement contained in this Contract Amendment shall in any way discharge, impair, waive, limit or in any way affect its guarantee and indemnity obligations as set out in the Original Agreement and that its said guarantee and indemnity obligations thereunder shall remain in full force and effect and shall continue to apply fully to the Original Agreement as amended by this Contract Amendment.]

FOR AND ON BEHALF OF: FOR AND ON BEHALF OF:

Bank of England: [Contractor]

By By

Title Title

Date Date

**SCHEDULE 8**

**MONITORING, GOVERNANCE AND RELATIONSHIP MANAGEMENT**

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), the type, content and frequency of Agreement review meetings that shall be held and the processes by which potential improvements to the Services and relationship between the parties may be identified and implemented.
  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. Where the Bank’s consent or approval is required as described in this Schedule, the Bank will use reasonable endeavours to ensure that the relevant project governance team members act within a reasonable timescale to ensure that the approval, consent or refusal is given in a timely manner.
  5. 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.

1. **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. In addition, the Contractor agrees to co-operate with the Bank and the Bank’s other suppliers and any third party to whom the Bank subcontracts or delegates any of its rights and/or obligations under this Agreement whose services have an association with the Services.
   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:
      1. to enable the Bank to continue to improve its processes and services to its business; and
      2. to enable the Bank to realise business efficiency and cost savings / benefit realisation wherever possible.
   3. The Contractor will take and comply with directions from the Bank in all its dealings under this Agreement including, but not limited to, dealings with its sub-contractors.
   4. The Contractor acknowledges the Bank may review all aspects of its relationship with the Contractor on a biannual basis using a “Relationship Scorecard” and the Contractor agrees to provide to the Bank all reasonable assistance in connection with any such review. Any such relationship review may (without limitation) comprise the following elements:

2.4.1 a review of the Contractor’s compliance with its obligations set out in this Agreement;

2.4.2 a review of the Contractor’s compliance with the Service Levels;

2.4.3 a review of the Contractor’s cost effectiveness and efficiency (including in respect of any key performance indicators and continuous improvement and innovation activities in accordance with paragraph 6 of this Schedule);

2.4.4 a review of the strength and nature of the relationship between the parties (and, as part of this assessment, the Contractor may be requested by the Bank to complete a “360 Relationship Health Survey” from time to time, which shall be completed and returned to the Bank by the Contractor within ten (10) Working Days from the date of any such request); and

2.4.5 a review of the results of any Benchmarking Exercise and value assessment undertaken by the Bank in accordance with paragraph 5 of this Schedule (including any value baseline).

* 1. The Bank shall review the results of each relationship review carried out in accordance with paragraph 2.4 above and shall identify any potential opportunities for service and/or cost improvements. The parties will then jointly develop appropriate implementation plans in respect of the same. Any such improvements shall be implemented by way of a Contract Amendment in accordance with Schedule 7 (Change Control).
  2. The Contractor is obliged, throughout the Term, to utilise its resources to improve operational performance and efficiency in the provision of the Services and the System and to identify new potential improvements to the provision of the same in order to, without limitation:

2.6.1 Reduce the Bank’s costs wherever possible (including the Charges);

2.6.2 Improve the availability, quality, delivery speeds and efficiency of the Software and the Services;

2.6.3 Minimise disruption to the Software and the Services; and

2.6.4 Improve the speed and efficiency of response and resolution times in connection with any disruption of the System and the Services.

* 1. The Contractor shall identify and report to the Bank once every twelve (12) months:

2.7.1 The emergence of any relevant, new or evolving technologies which could improve the supply of the Services or the System and those technological advances potentially available to the Contractor and the Bank which the parties may wish to adopt;

2.7.2 New or potential improvements to the provision of the Services or the System including the quality, responsiveness, procedures, likely performance mechanisms and customer support services;

2.7.3 Changes in business processes and ways of working that would enable the Software or the System to be provided at lower costs or with greater benefit to the Bank.

1. **Roles and Responsibilities of Key Governance Team Members**

Relationship Managers

* 1. The parties shall on the Effective Date, each nominate a Relationship Manager to carry out the roles and responsibilities detailed in this Agreement.
  2. The Bank’s Relationship Manager shall have an overarching responsibility for managing the Bank’s relationship with the Contractor throughout the Term with a view to fostering a strong relationship with the Contractor and strategic alignment.
  3. The responsibilities of the Bank’s Relationship Manager shall include:
     1. Contractor relationship management (including mapping key roles) 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. financial management; and
     3. evaluating Service Credits and approving (or declining) any action plans resulting from failures to provide Services in accordance with the Service Levels; and
     4. assisting with any Dispute Resolution Procedure in accordance with Clause 12.21.
  4. The Contractor’s Relationship Manager shall have an overarching responsibility for managing the Contractor’s relationship with the Bank throughout the Term with a view to fostering a strong relationship with the Bank and strategic alignment.
  5. The responsibilities of the Contractor’s Relationship Manager shall include:
     1. managing the overall relationship between the Contractor and the Bank and working with the Bank’s Relationship Manager to manage and meet commitments, requirements and expectations;
     2. ensuring attendance at governance meetings with the Bank in accordance with this Schedule;
     3. remaining informed of progress, key issues and risks associated with the Services in order to keep the Contractor’s provision of the Services on course;
     4. working with the Bank’s Relationship 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 Relationship Manager;
     5. managing cross-programme interfacing and collaboration with the Contractor’s sub-contractors as required (including effective management of those relationships) to ensure the delivery of the Services;
     6. 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;
     7. establishing and building a close working relationship with the Bank’s Relationship Manager; and
     8. assisting with any Dispute Resolution Procedure in accordance with Clause 12.21.

Contract Managers

* 1. The parties shall on the Effective Date, each nominate a Relationship Manager to carry out the roles and responsibilities detailed in this Agreement.
  2. 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.
  3. The responsibilities of the Bank’s Contract Manager shall include:
     1. overseeing all Agreement management and administrative activities;
     2. monitoring the Contractor’s compliance with its obligations set out in this Agreement;
     3. approving (or declining) all work requests that are in excess of the Charges;
     4. ensuring receipt and review of all Contractor reports required in relation to this Schedule and this Agreement;
     5. 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
     6. assisting with any Dispute Resolution Procedure in accordance with Clause 12.21.
  4. The Contractor’s Contract Manager shall be an account manager dedicated to the provision of Services to the Bank and 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. ensuring that the Contractor fulfils all of its obligations under this Agreement;
     2. ensuring attendance at governance meetings with the Bank in accordance with this Schedule;
     3. ensuring that timetables, costs and dependencies with respect to the delivery of the Services are identified and monitored;
     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. managing and resolving issues regarding the Services;
     7. ensuring that adequate governance arrangements are in place within the Contractor’s organisation for the delivery of the Services;
     8. being responsible for the management of the Contractor’s responsibilities, input and deliverables with respect to the provision of the Services;
     9. working with the Bank’s Contract Manager with respect to any variations to the terms of this Agreement and processing contract amendments in accordance with Schedule 7 (Change Control); and
     10. assisting with any Dispute Resolution Procedure in accordance with Clause 12.21.

Contractor Head of Account Manager

* 1. The Contractor shall appoint a Head of Account Manager who shall be responsible for the management of the Contractor’s Relationship Manager and Contractor’s Contract Manager in respect of their roles and responsibilities under this Agreement and who shall engage with the Bank in accordance with the escalation procedures described in this Agreement.

Project Managers

* 1. In respect of each of the Implementation Services, Migration Services or any other project carried out in accordance with Schedule 7 (Change Control), the parties will appoint a Project Manager who will carry out the roles and responsibilities described in this Agreement.
  2. Governance Meetings
     1. Representatives of the Bank and the Contractor (including the Contract Managers, Relationship Managers and Executive Directors) will meet to discuss the provision of the Services in accordance with this paragraph 4. Such meetings may be held via conference call or in person and shall take place at such location and time (within normal business hours) as the Bank shall reasonably determine unless otherwise agreed in advance.
     2. No later than five (5) Working Days prior to any meeting described in this paragraph 4, the Contractor shall prepare and circulate the agenda and any relevant documentation to each of the proposed attendees of the meeting (and to any other recipients as the Bank may request).
     3. **Day-to-Day Operational Meetings**

4.3.1 There will be day-to-day contact, as necessary, between the respective business experts, technical experts, service management teams and Contract Managers (or their nominated representatives) of the Bank and the Contractor. The objective will be to improve normal day-to-day routines and resolve any issues.

4.3.2 The parties’ respective project teams will be responsible for dealing with any day-to-day issues that may arise.

4.3.3 Any operational issues that are unable to be resolved shall be escalated as appropriate for discussion at the next Monthly performance review meeting (in accordance with paragraph 4.3 below).

* + 1. **Monthly Performance Review Meetings**

4.4.1 The parties’ Contract Managers (or their nominated representatives) and any other relevant individuals shall meet on a Monthly basis during the Term to discuss the Contractor’s provision of the Services over the previous Month.

4.4.2 The purpose of this meeting is to:

4.4.2.1 discuss and seek to resolve any issues and/or risks identified which have affected, or may affect, the provision of the Services (including the outcomes of any assessment undertaken in accordance with paragraphs 2.4 and 2.5 of this Schedule 8 and any issues escalated for review at the meeting) and to implement any remedies and/or improvements reasonably required by the Bank;

4.4.2.2 review the Contractor’s provision of the Services including, without limitation, compliance with Service Levels, incident management, operational risk management, technical data/information (including configuration, delivery, asset/architecture/technology management, software assurance, residual life information), data/information security and any known security risks, audit activities, Changes/Change Requests, claims management and dispute management);

4.4.2.3 review and discuss any dependencies on third parties in connection with the Services;

4.4.2.4 review and discuss any service continuity plans and service improvement activities;

4.4.2.5 review and discuss any outstanding Change Requests; and

4.4.2.6 monitor, review and (if necessary) escalate any disputes.

4.4.3 Any issues that are unable to be resolved at the Monthly meeting shall be escalated as appropriate for discussion at the next quarterly management review meeting (in accordance with paragraph 4.5 below).

4.4.4 Following the Monthly meeting, either the Bank or the Contractor (as determined by the Bank) shall promptly prepare and circulate written minutes of the meeting to each of the attendees of the meeting (and to any other recipients as agreed at the meeting), together with a plan which details any actions arising from the meeting. The Contractor shall also prepare and circulate its proposals for achieving any such actions.

* + 1. **Quarterly Management Review Meetings**

4.5.1 The parties’ Relationship Managers (or their nominated representatives), Contract Managers (or their nominated representatives) and any other relevant individuals shall meet on a quarterly basis during the Term to discuss the Contractor’s provision of the Services over the previous quarter.

4.5.2 The purpose of this meeting is to:

4.5.2.1 review and manage the parties’ engagement throughout the Term;

4.5.2.2 review and discuss any issues escalated for review at the meeting and to implement any remedies and/or improvements reasonably required by the Bank;

4.5.2.3 discuss and resolve any performance issues and/or non-compliance with Service Levels;

4.5.2.4 consider any commercial barriers to the successful implementation/provision of the Services;

4.5.2.5 run a cost benefit analysis (both financial and qualitative) in respect of the Services;

4.5.2.6 review and discuss any Benchmarking Exercise carried out (or being carried out) in accordance with paragraph 5 below (including any value baseline);

4.5.2.7 review and discuss any opportunities for innovation and/or potential improvements to the provision of the Services in accordance with paragraph 6 below (including managing and agreeing priorities in respect of the same);

4.5.2.8 review and discuss all delivery activities (including any specific projects, Changes/Change Requests and their implementation);

4.5.2.9 discuss and resolve any contractual issues; and

4.5.2.10 monitor, review and (if necessary) escalate any disputes.

4.5.3 Any issues that are unable to be resolved at the quarterly meeting shall be escalated as appropriate for discussion at the next bi-annual executive steering meeting (in accordance with paragraph 4.6 below).

4.5.4 Following the quarterly meeting, either the Bank or the Contractor (as determined by the Bank) shall promptly prepare and circulate written minutes of the meeting to each of the attendees of the meeting (and to any other recipients as agreed at the meeting), together with a plan which details any actions arising from the meeting. The Contractor shall also prepare and circulate its proposals for achieving any such actions.

* + 1. **Bi-Annual Executive Steering Meetings**

4.6.1 The parties’ Executive Directors (or their nominated representatives), Relationship Managers (or their nominated representatives), Contract Managers (or their nominated representatives) and any other relevant individuals shall meet every six (6) Months during the Term to discuss the Contractor’s provision of the Services over the previous six (6) Months.

4.6.2 The purpose of this meeting is to:

4.6.2.1 conduct a high-level review of the service, delivery, technology and relationship between the parties in connection with the Services;

4.6.2.2 review and discuss any issues escalated for review at the meeting and to implement any remedies and/or improvements reasonably required by the Bank;

4.6.2.3 review the Service Levels;

4.6.2.4 identify and discuss any specific initiatives and opportunities that may improve efficiency in respect of the Contractor’s provision of the Services (including the development of new products/services and the impact that these may have on the Services);

4.6.2.5 identify and discuss any risks (organisational, industry-wide or otherwise) which may impact the Contractor’s provision of the Services;

4.6.2.6 discuss and agree any future joint strategic objectives;

4.6.2.7 build and maintain an open and trusting relationship between the parties; and

4.6.2.8 monitor, review and seek to resolve any disputes.

4.6.3 Following the bi-annual meeting, either the Bank or the Contractor (as determined by the Bank) shall promptly prepare and circulate written minutes of the meeting to each of the attendees of the meeting (and to any other recipients as agreed at the meeting), together with a plan which details any actions arising from the meeting. The Contractor shall also prepare and circulate its proposals for achieving any such actions.

* 1. Benchmarking and Value Assessment
     1. No more than once in any 12-Month period during the Term, the Bank shall be entitled to benchmark the Charges, its relationship with the Contractor and the Contractor’s performance in its provision of the Services against those of other suppliers providing services the same as or substantially similar to the Services (in all material respects) in order to ensure that they are consistent with industry norms (taking into account pricing, cost, efficiency, flexibility and any other specific Bank service requirements (e.g. confidence, governance arrangements, service management processes, technical standards, service performance, value potential and value achievement)) and in order to determine a “value baseline” against which the Contractor’s performance shall be monitored by the Bank during the Term (a “**Benchmarking Exercise**”).
     2. The Bank may carry out a Benchmarking Exercise using a range of research techniques including, without limitation, informal conversations with suppliers and other contractors, in-depth market research, quantitative research, surveys, questionnaires, process mapping, quality control, technology audits/testing/evaluation and financial ratio analysis. The Bank may (at its sole discretion) appoint a third party to undertake the Benchmarking Exercise on its behalf (the “**Benchmarking Advisor**”).
     3. The Benchmarking Exercise will make due allowance for any relevant material differences in scale, scope, product type, installation/monitoring methods and Bank service/process requirements.
     4. The Contractor shall provide to the Bank and/or the Benchmarking Advisor such assistance and information as the Bank and/or the Benchmarking Advisor may reasonably request in connection with any Benchmarking Exercise.
     5. The Bank shall review the results of each Benchmarking Exercise and identify any potential opportunities for service, cost and/or value improvements as against the value baseline. The parties will then jointly develop appropriate implementation plans in respect of the same. Any such improvements shall be implemented by way of a Contract Amendment in accordance with Schedule 7 (Change Control).
  2. Continuous Improvement and Innovation
     1. The Contractor shall have an on-going obligation throughout the Term to utilise its resources to improve operational performance and efficiency in the provision of the Goods and Services and to identify new or potential improvements to the provision of the Goods and Services with a view to (without limitation):

6.1.1 reducing the Bank’s costs (including the Charges);

6.1.2 improving the availability, quality, delivery speeds and efficiency of the Goods and Services and their supply to the Bank;

6.1.3 minimising disruption to the Services; and

6.1.4 improving the speed and efficiency of response and resolution times in connection with any disruption to the Services; and.

* + 1. As part of this obligation, the Contractor shall identify and report to the Bank once every twelve (12) Months:

6.2.1 the emergence of new and evolving relevant technologies which could improve the supply of the Goods and Services and those technological advances potentially available to the Contractor and the Bank which the parties may wish to adopt;

6.2.2 new or potential improvements to the provision of the Goods and Services including the quality, responsiveness, procedures, likely performance mechanisms and customer support services; and/or

6.2.3 changes in business processes and ways of working that would enable the Goods and Services to be provided at lower costs and/or at greater benefits to the Bank.

* + 1. The Contractor shall ensure that the information that it provides to the Bank shall be accurate and sufficient for the Bank to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Bank requests.
    2. In addition, the Contractor will support and work with the Bank (both parties acting reasonably and in good faith) to ensure the effective monitoring and management of the Services and the proactive promotion of innovation, service standards and cost competitiveness in connection with the performance of the Contractor’s obligations under this Agreement.
    3. If the Bank wishes to incorporate any improvement identified in accordance with this paragraph 6, the Bank shall request a Change (which shall be implemented by way of a Contract Amendment in accordance with Schedule 7 (Change Control)) and the Contractor shall implement such Change at no additional cost to the Bank.

**SCHEDULE 9**

**BUSINESS CONTINUITY AND DISASTER RECOVERY**

* 1. GENERAL
     1. The Contractor shall:
     2. take all reasonable precautions to ensure that a Disaster is avoided wherever possible; and
     3. ensure that in the event of a Disaster any disruption to the System or Services provided to the Bank are avoided, or at least minimised.
  2. The Contractor shall provide alternative methods of supply of the System and the Services in the event that normal operating conditions and service cannot be provided as a result of a Disaster.
  3. The Contractor shall ensure that, notwithstanding the formalisation of the Disaster Recovery Plan, it has in any case in place suitable procedures and processes to minimise the impact of any Disaster (including backing-up data and having alternative locations for working in the event of a Disaster) so that the Milestones for the Implementation Services can continue to be provided by the relevant Milestone Date notwithstanding the occurrence of a Disaster. The Contractor shall provide the Bank with written evidence of its compliance with this paragraph 1.3 within five (5) Working Days of a request by the Bank.
  4. DISASTER RECOVERY PLAN
     1. Development and Distribution of Disaster Recovery Plan
     2. The Contractor shall deliver to the Bank a Disaster Recovery Plan, which shall be subject to acceptance by the Bank, acting reasonably..
     3. The Contractor shall promptly distribute:
        1. the Disaster Recovery Plan as accepted by the Bank; and
        2. updated Disaster Recovery Plans, as and when changes are made in accordance with paragraph 2.3.5 below

to all relevant staff of the Bank, Staff and any agreed third parties.

* + 1. The Contractor shall provide such evidence as the Bank may reasonably require to show that all Staff and all staff working on behalf of the Bank have a clear understanding of the activities involved in the event that the Disaster Recovery Plan is invoked.
  1. Content of Disaster Recovery Plan
     1. The Contractor shall, as a minimum, include the following in the Disaster Recovery Plan:
        1. detailed notification and escalation procedures for the Bank, the Contractor and any agreed third parties in the event of a Disaster, including:
           1. contact details for all relevant staff;
           2. preferred and fall-back methods of communication;
           3. incident management procedures to be used in tracking progress and eventual closure of Disaster recovery activities; and
           4. how processes and information will be re-integrated following a Disaster;
        2. detailed procedures for ensuring Service Levels are not impacted;
        3. details of the current power and connectivity arrangements in relation to the support of the Services, including details of: (i) the levels of redundancy built into the existing power and communications network; and (ii) appropriate arrangements to allow for power outages on the national grid network;
        4. details of alternative routing and connectivity into the Bank systems as required; and
        5. details of the alternate site the Contractor proposes to use in the event of a Disaster.
     2. The Contractor shall ensure that, so far as possible, the Disaster Recovery Plan is compatible with the Bank’s own disaster recovery policies and procedures and the Contractor shall work with the Bank in good faith to resolve any incompatibilities identified by either party.
  2. Maintenance of Disaster Recovery Plan
     1. The Contractor shall put in place appropriate procedures for maintaining and updating the Disaster Recovery Plan, which are subject to key processes such as the Change Control Procedure.
     2. The Contractor shall maintain and update the Disaster Recovery Plan to ensure that at all times the Disaster Recovery Plan is kept up to date with all changes to the Services and the Bank systems.
     3. Upon the Bank’s request, the Contractor shall provide evidence to the Bank’s reasonable satisfaction that the Disaster Recovery Plan is being maintained in accordance with the provisions of this Schedule 9.
     4. Any material changes to the Disaster Recovery Plan after its acceptance by the Bank shall be made in accordance with the Change Control Procedure.
  3. Implementation of the Disaster Recovery Plan
     1. Either party may declare a Disaster if they believe, in good faith, that a Disaster has occurred.
     2. In the event of a Disaster being declared by either party, the Contractor shall:
        1. immediately implement the Disaster Recovery Plan;
        2. inform the nominated officer of the Bank and provide updates on the Disaster not less than daily; and
        3. cooperate with the Bank and such other service providers as is reasonable in respect of the Disaster.
     3. If the Contractor declares a Disaster, the Contractor must immediately notify the Bank, and shall provide sufficient information to enable the Bank to assess the severity and impact of the Disaster. If insufficient evidence of a Disaster has been provided by the Contractor, the Bank may declare that the Disaster has not occurred and that the Disaster Recovery Plan should no longer be implemented.
  4. DISASTER SERVICE LEVELS

In the event either party declares a Disaster, then all Service Levels shall continue to apply unless the Disaster also constitutes a Force Majeure Event.

1. SCHEDULE 10: EXIT AND TERMINATION ASSISTANCE
   1. **OBJECTIVES**

The purpose of Termination Assistance is to:

* + 1. enable the Contractor to cease supplying the Services or such part of the Services which are to be terminated and for the Bank or the Replacement Contractor from the end of the Termination Assistance Period to undertake services in substitution (the “**Replacement Services**”);
    2. allow for the extraction and return of all Data and Collected Data and all of the items which are required to enable the Bank’s continued use of the System in a timely manner and in a form as required by the Bank;
    3. allow the provider of the Replacement Services to enable the Data (where appropriate according to the Bank’s instructions), Collected Data and the System to be available to the Financial Institutions and the Bank in a manner that will result in minimal disruption; and
    4. eliminate or minimise any disruption or deterioration of the Services, or failure to achieve the Service Levels, during and as a result of the handover from the Contractor and the commencement of the Replacement Services.
  1. **TERMINATION PLANNING**
     1. Within three (3) Months of the Go Live Date, the Contractor will develop a plan to be applicable in the event of the termination or expiry of this Agreement (the “**Exit Plan**”) and submit the same for Approval by the Bank, that will enable the Contractor and the Bank to meet the objectives set out in paragraph 1 above. The Contractor’s discharging of its obligation to provide an Exit Plan will be subject to the Approval by the Bank, acting reasonably, of the Exit Plan.
     2. The level of detail of the Exit Plan shall be reasonable but in any event sufficient to provide the procedures and responsibilities for an orderly transition of Services and commencement of the Replacement Services.
     3. The Contractor will:
        1. maintain the Exit Plan through the Term and any Termination Assistance Period, ensuring that it is updated regularly to reflect the then current Configured Software and System configuration, IT environment and the Services;
        2. provide information and assistance reasonably necessary to conduct the termination in accordance with the Exit Plan as efficiently and effectively as possible; and
        3. jointly review and verify the Exit Plan with the Bank at least once per year in such a way as to provide the Bank with a high level of confidence that the process and procedures required by the Exit Plan can be put into effect at the commencement of the Termination Assistance Period. Areas of the Exit Plan which are identified as failing or requiring improvement will be identified and the steps necessary to remedy such failures or improve such areas will be clearly stated.
     4. The Exit Plan will, amongst other things:
        1. provide details of the Contractor functions and other resources that will provide Termination Assistance as agreed between the parties;
        2. be designed to address all the issues set out in this Schedule;
        3. provide a timetable, project milestones, generic timings, process and responsibilities of each of the parties and specify critical controls for providing the Termination Assistance; and
        4. provide details of the Charges that may be payable by the Bank for Termination Assistance to the extent that these are known at the time of updating the Exit Plan.
     5. As soon as possible following receipt or submission of a notice of termination or at three (3) Months prior to the expiry of the Agreement (whichever is sooner), the Contractor shall update the Exit Plan to ensure it contains the most current information and accurately predicts the timescales for conducting the Termination Assistance services.
     6. On request by the Contractor, after receipt or submission of a notice of termination, and in any case within three (3) Months prior to the expiry of the Agreement (whichever is sooner), the Bank will identify which of the Services it considers to be business critical (“**Business Critical Services**”) and whether it wishes the current Service Levels to be met up to the date of termination for such Service or until the end of the Termination Assistance Period.
     7. From the definition of the Business Critical Services identified by the Bank, the Contractor shall identify, from the Staff and/or resources providing the Services at that time, those of the Staff and/or resources which are: 
        1. required to continue to ensure that the Business Critical Services are performed in accordance with the Service Levels; and
        2. not required under paragraph 2.7(a) above and are therefore available to perform other services and the activities required during the Termination Assistance Period in order to meet the objectives described in paragraph 1 above.
     8. The parties will jointly agree how any available Staff and resources identified under paragraph 2.7 above will be allocated.
     9. The parties will further agree what additional resources may be required during the Termination Assistance Period, and the provisions of paragraph 2.10 below will thereafter apply.
     10. The parties agree as follows:
         1. the Contractor will provide the Continuation Services during the Termination Assistance Period for the relevant Charges;
         2. the Contractor will undertake the activities identified under the Exit Plan to be carried out by the resources identified in paragraph 2.7 together with the reasonable use by the Contractor of the Contractor’s internal support functions of human resources, legal and finance, in support of the Contractor’s Termination Assistance obligations; and
         3. the Contractor will undertake all activities that are required under the Exit Plan at the Bank’s cost where applicable pursuant to the terms of this Agreement, based upon the applicable rates specified in the Exit Plan or in the absence of such rates the applicable rates specified in Schedule 5 (Charges).
     11. Subject to the Agreement, in this Schedule and the Exit Plan, a reference to the Bank includes any other person nominated by the Bank, including any service provider appointed by the Bank to replace the Contractor for the Replacement Services or a Replacement Contractor provided that the Bank will act as an intermediary between the Contractor and such third parties and the Contractor’s point of contact for the obligations in Termination Assistance will be the Bank’s Account Manager.
     12. If the terms of the Exit Plan are incomplete, unclear or ambiguous, then they are to be interpreted and construed by reference to this Schedule.
  2. **FURTHER TENDERS**

The Contractor will, within timescales specified by the Bank, assist with providing all necessary information to the Bank in any tender process conducted for the provision of the Replacement Services, provided that the Bank will impose confidentiality obligations upon any third parties using any such information (where appropriate).

* 1. **BANK DATA AND CONFIGURATION INFORMATION**
     1. The Contractor shall provide the following to the Bank promptly at any time during the Termination Assistance Period following the written request of the Bank and also (to the extent not already provided or where such items have evolved since their original supply during the Termination Assistance Period) upon termination or expiry of the Agreement at no additional cost:
        1. all Collected Data and all data relating to the users of the System at the date of the request or the date of termination or expiry (as applicable) in any format required by the Bank (including for the avoidance of doubt in the format as specified by the Replacement Contractor);
        2. all Data, Documentary Developments, Deliverables and Configurations in any format required by the Bank (including for the avoidance of doubt in the format as specified by the Replacement Contractor);
        3. all Contractor Material, Contractor Software, Third Party Material and Third Party Software and other code which is required to continue to operate the System; and
        4. all Configuration Documents with respect to the provision of the Services in respect of configuration undertaken by the Contractor.
     2. If the right for the Bank (and its licensees) to continue to use, copy, modify, enhance and maintain any item which is supplied pursuant to the Agreement, in accordance with the ownership and licensing provisions specified in Clause 10 the Agreement, has not already been obtained or provided by the Contractor for the Bank, the Contractor will obtain or supply such rights by no later than the date of termination or expiry of the Agreement.
  2. **STAFF** 
     1. The Contractor will assist the Bank by liaising with any of its subcontractors to ensure that the termination is performed in accordance with the obligations under this Agreement and the Exit Plan.
     2. Subject to the other provisions of this Schedule and the Agreement generally, the Contractor will, as soon as reasonably practicable after a request, provide to the Bank such information and instruction as could reasonably be expected to enable the Bank (or at the Bank's request, a Replacement Supplier) to provide services similar to the Services or the Replacement Services, with minimum disruption and in accordance with service levels similar to the Service Levels. This instruction includes the Bank assigning Bank employees to work with the Staff to facilitate necessary knowledge transfer from the Contractor to the Bank as set out in paragraph 6 below.
  3. **OPERATIONAL TRANSITION**

The Contractor shall perform the activities identified in the Exit Plan as required to effect a smooth transfer of operational responsibilities for the Replacement Services.

**SCHEDULE 11**

**ESCROW**

It shall be a condition precedent upon the Bank’s obligations under clause 9 (Payment) of this Agreement that within seven (7) days of the Go Live Date the parties shall execute and comply with their respective obligations under the NCC Single Licensee Software Escrow Agreement contained within this Schedule (“**Escrow Agreement**”).

The Bank undertakes not to unreasonably withhold or delay in entering into the Escrow Agreement.

[INSERT AND EXECUTE NCC SINGLE LICENSEE SOFTWARE ESCROW AGREEMENT]

**SCHEDULE 12**

**ENVIRONMENTS AND SECURITY**

* 1. **Introduction**
     1. This Schedule describes the processes and requirements for IT environments and security for the Services provided to the Bank by the Contractor (and, for the avoidance of doubt, this includes any sub-contractors used by the Contractor in order to provide the Services) under this Agreement.
     2. This Schedule should be read in conjunction with Clauses 16.1 (Confidentiality) and 16.2 (Data Protection).
     3. The Contractor’s use of sub-contractors to provide the Services shall be subject to the provisions of Clauses 17.11.1 and 17.11.2 [(Assignment and Sub-contracting)]. The Contractor shall use Commercially Reasonable Efforts to ensure that any sub-contractor it uses in connection with the provision of the Services shall comply with the requirements of Clauses 16.1 (Confidentiality) and 16.2 (Data Protection) and this Schedule.
     4. In this Schedule, unless the context otherwise requires, the following expressions have the following meaning:

“**Commercially Reasonable Efforts**” means that the party obliged to perform shall take all such steps and perform in such a manner as if it were acting in a determined, prudent and reasonable manner in order to achieve the desired result for its own benefit;

"**Contractor Systems**" means any systems, whether those of the Contractor or its Staff (including its sub-contractors), which are used in the provision of the Services to store, process or transmit any of the Bank’s Confidential Information or personal data (whether held electronically, on paper or in any other form);

“**Minimum IS Requirements**” means the Bank of England’s minimum information security requirements for the protection of its Confidential Information as set out in the policy document entitled “*Minimum Information Security Requirements for Third Parties (ISD-* *POL-012E*), as may be updated and notified to the Contractor from time to time;

"**Security Tests**" means test procedures including (without limitation) tests of IT general controls, tests of IT application controls, penetration tests, code analysis, compliance scans and vulnerability scans (and “**Security Testing**” shall be construed accordingly);

“**Serious Security Incident**” means any incident that could affect the security of the Bank’s IT infrastructure, financial or personal information in respect of the Bank or Bank staff or anything that may affect the reputation of the Bank were it to become public knowledge or anything that affects the Bank’s position as ‘data controller’ under the Data Protection Legislation. This shall also include any incident which the Contractor deems to be a Serious Security Incident as defined by their internal processes and policies (a copy of which definition will be provided to the Bank as at the Effective Date and the Contractor shall also promptly notify the Bank of any subsequent amendments to what constitutes a Serious Security Incident as defined by its internal processes and policies).

* 1. **Information Security Requirements**
     1. The Contractor will identify and protect at all times the confidentiality, integrity and availability of the Bank’s Confidential Information and personal data.
     2. The Contractor will operate at all times in accordance with the Minimum IS Requirements, a copy of which the Contractor acknowledges to have received.
     3. Upon the Bank’s request and within a reasonable period thereof, the Contractor will demonstrate its compliance with the Minimum IS Requirements and provide a written explanation to the Bank as to the methods and means by which it shall continue to ensure its compliance with the Minimum IS Requirements, provided that the Bank will not require the Contractor to do so more than once in any 12-month period (unless the Bank has reasonable grounds for suspecting that: (i) the Contractor has failed to operate in accordance with the Minimum IS Requirements; or (ii) there has been a Serious Security Incident).
     4. If the Bank determines (on reasonable grounds) that the Contractor is failing:
     5. to comply with the Minimum IS Requirements;
     6. to ensure the confidentiality, integrity and availability of the Bank’s Confidential Information; and/or
     7. to comply with any Data Protection Legislation in respect of any Bank personal data,

then the Bank may require the Contractor to implement additional information security requirements to remedy such failure or insufficiency and the Contractor shall promptly implement such requirements.

* + 1. Without prejudice to the foregoing provisions of this paragraph 2 and any reporting obligations in relation to the Services described in the Specification, the Contractor shall promptly report to the Bank any suspected, potential or actual known breach of the Minimum IS Requirements or of its obligations to protect the confidentiality, integrity and availability of the Bank’s Confidential Information and personal data.
  1. **IT Security**
     1. **Security Controls**
     2. Without prejudice to the Minimum IS Requirements, the Contractor shall ensure that all software, hardware and networking equipment used by the Contractor in the provision of the Services shall utilise suitable encryption and security functionality, which shall be maintained in accordance with Good Industry Practice and sector quality standards in respect of information security and the Data Protection Legislation (the “**Security Controls**”).
     3. The Contractor shall report to the Bank any: (i) unresolved internal audit test findings or issues; and (ii) Security Test findings or issues that are open ninety (90) days after being identified.
     4. The Contractor will maintain its Security Controls in accordance with the Quality Standards notified by the Bank to the Contractor in writing from time to time.
     5. The Bank will have a right to work with and review the Contractor’s configuration and set up of its Security Controls as applied to all environments where Bank Confidential Information and/or personal data is processed or stored.
     6. The Contractor will ensure that:
     7. with the exception of PGP (or acceptable equivalent) encrypted emails or the VPN connectivity provided by the Contractor as part of the Services, no Bank data will be transmitted between the Contractor’s and other external networks outside the Bank’s technical infrastructure as agreed and defined under this Agreement; and
     8. in relation to its relevant personnel it will provide individual usernames and passwords to ensure auditability and enforce individual accountability.
     9. **Security Testing**
     10. Without prejudice to the Minimum IS Requirements and the remaining provisions of this paragraph 3.3, the Contractor shall perform all such Security Tests on the Contractor Systems as are required in accordance with Good Industry Practice (including, without limitation, monthly vulnerability scans). In any event and without prejudice to the foregoing, the Contractor shall perform all such Security Tests on the Contractor Systems promptly following any material change to the operation of, or the infrastructure comprising, the Contractor Systems.
     11. The Contractor shall permit the Bank, and the Bank shall be entitled (acting by itself or its duly authorised agents), to perform Security Tests on the Services and the Contractor Systems from time to time during the Term and the Contractor will co-operate and provide all reasonable assistance with respect to such Security Testing at no additional cost to the Bank. Prior to the Bank conducting any such Security Tests, the Bank will consult with the Contractor as to the scope of the Security Tests (which may include any environments used to store, process or transmit any of the Bank’s Confidential Information or personal data).
     12. Without prejudice to the Bank’s rights and the Contractor’s obligations under paragraph 4.3.2 above, the Bank may (in its sole discretion) from time to time permit the Contractor to conduct (acting by itself or its duly authorised agents) its own Security Tests on the Services and the Contractor Systems in lieu of the Bank undertaking such Security Tests in accordance with paragraph 4.3.2 above, provided that:
         1. the parties agree in writing the scope of such Security Tests no later than twenty (20) Working Days in advance of such Security Tests (both parties acting reasonably); and
         2. the Contractor shall, as soon as reasonably practicable and in any event no later than within ten (10) Working Days of the completion of the Security Tests (or within any other alternative timeframe as may be agreed with the Bank on a case-by-case basis), provide to the Bank a copy of along with an executive summary of the Security Test report. The Contractor shall promptly provide such further details of the findings of the Security Test report as the Bank may reasonably request. The Contractor may, to the extent it deems necessary (acting reasonably and in good faith), provide such further details under controlled conditions and/or redact any Confidential Information from any sections of the Security Test report to be provided to the Bank.
     13. Any Security Testing carried out by or on behalf of either party under this paragraph 3.3 will be undertaken by a CESG Check Accredited tester.
     14. Where a Security Test reveals failings in the Contractor’s Security Controls (such that the Contractor’s Security Controls are insufficient to identify and protect at all times the confidentiality, integrity and availability of the Bank’s Confidential Information and personal data, fail to meet the requirements of any Law or the Data Protection Legislation or fail to comply with Good Industry Practice and sector quality standards in respect of information security), the Bank will have the right to carry out a specific audit of the Contractor’s Security Controls in relation to the issues or suspected issues arising from the Security Test. The Bank will provide the Contractor with a minimum of twenty-four (24) hours’ notice of its intention to carry out an audit. Such audits will not be subject to any of the restrictions placed upon the Bank in Clause 17.19 (Audit Rights).
     15. Any failings revealed by the Security Tests will be remediated by the Contractor (at its own cost) promptly and in any event no later than within ninety (90) days of the Contractor becoming aware of such failings (or within any other alternative timeframe as may be agreed with the Bank on a case-by-case basis). Any remediation action undertaken by the Contractor shall take into account any additional measures required by the Bank (both parties acting reasonably).
     16. **Changes to Security Requirements**
     17. Either party may request changes to the security requirements under this Agreement (which may or may not be requested in connection with any Security Test findings and/or associated remediation action). Where such a request is made, the Contractor will provide to the Bank within ten (10) Working Days a fully costed proposal including an impact assessment.
     18. Within ten (10) Working Days of receiving the Contractor’s proposal, the Bank will have the option to:
         1. accept the proposal, at which point the Contractor will implement it within a timeframe agreed between the parties (both parties acting reasonably);
         2. request amendments be made to the proposal before the Contractor resubmits it to the Bank for acceptance;
         3. (if appropriate) request an alternative solution be found to match the revised security proposals. Where an alternative solution can be found, the Contractor will provide a revised proposal to the Bank pursuant to this paragraph 3.4; or
         4. if, after consultation between the Bank and the Contractor, the Bank in its reasonable opinion determines that the newly proposed security requirements within the proposal do not satisfy the Bank’s requirements, and the Contractor has informed the Bank that it will be implementing the revised requirements regardless, then the Bank may, in its discretion, either [invoke the Dispute Resolution Procedure or terminate this Agreement by giving the Contractor one (1) Months’ notice.
     19. Where appropriate, the parties may agree to use the change control procedure described in Schedule 8 to reflect in this Agreement any agreed changes to the security requirements.
  2. **Contractor Support for Bank Security Processes and Planning**
     1. **External documents**
     2. The Contractor will support the Bank in the completion of all documents required in connection with a security assessment in respect of the Contractor’s interaction with third parties that may be involved in the provision of the Services (including, without limitation, any of the Contractor’s Staff). In particular, the Contractor will use its Commercially Reasonable Efforts to ensure that its Staff, if required to do so by the Bank, complete:
        1. the Bank’s External Data Storage Questionnaire (EDSQ);
        2. the Bank’s External Links Security Policy;
        3. any documents in relation to web-hosting; and
        4. such other documents as reasonably required by the Bank.
     3. **Business Continuity Planning and Disaster Recovery**

The Bank will consult with the Contractor in relation to business continuity planning and disaster recovery processes and procedures. The Contractor will offer its Commercially Reasonable Efforts to assist with any such planning, processes and procedures at no additional cost to the Bank.

* 1. **Risk Monitoring and Dealing with Incidents**
     1. **Issue rectification**
     2. The parties will, acting reasonably, agree at the Monthly review meeting (described in Schedule 5) a suitable remedial period for dealing with any security issue or incident.
     3. The Contractor will provide proposals in respect of the remediation of each security issue or incident on a timeframe to be agreed between the parties (both parties acting reasonably) at the Monthly review meeting.
     4. Where the Contractor fails to remedy an issue (or does not remedy the issue within the requisite timeframe) and the Bank determines such issue to be unacceptable, the Bank may, without prejudice to any other rights and remedies it may have under this Agreement, invoke the Dispute Resolution Procedure.
     5. **Serious Security Incidents**
     6. The Contractor shall report to the Bank any Serious Security Incident, suspected Serious Security Incident or imminent threat of a Serious Security Incident that relates to the Services, immediately upon becoming aware of such incident.
     7. The Contractor agrees to provide all reasonable assistance requested by the Bank in the event of a Serious Security Incident (which may include, without limitation, conducting, or supporting the Bank to conduct, computer forensic investigations and analysis).
     8. The parties will meet, either in person or by conference call (as appropriate), as soon as possible but in any event no later than within four (4) hours from the time the Serious Security Incident is reported to the other party.
     9. The Bank shall at all times be entitled to suspend all or any part of the Services during or following a Serious Security Incident pending rectification of the issues relating to the Serious Security Incident.
     10. The Bank shall be entitled to undertake an audit of the Contractor’s Security Controls where a Serious Security Incident has occurred provided that the Contractor is given twenty-four (24) hours’ advance notice and the audit will be undertaken bysecurity cleared individuals.
     11. The process and the timeframe for determining the appropriate remedial action (as set out in paragraph 5.1 above) may be reduced by agreement between the parties. If the parties cannot agree the timeframe for such remedial action, the Bank’s decision, acting reasonably, will be final.

SCHEDULE 13

**STAFF TRANSFER**

1. **PURPOSE OF THIS SCHEDULE**

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

1. **APPLICATION OF THE EMPLOYMENT REGULATIONS ON THE COMMENCEMENT OF THE AGREEMENT**
   * 1. The Bank and the Contractor agree that, on the date of this Agreement, it is not intended that either the Acquired Rights Directive or the Employment Regulations shall apply so as to transfer the employment of any employees of the Bank to the Contractor or any Contractor Party.
     2. The Contractor shall have no liability for any Bank Personnel or former Bank Personnel on the commencement of the Services or this Agreement and the Bank shall indemnify the Contractor against all Employee Liabilities suffered or incurred by the Contractor as a result of any claim or demand made or brought against the Contractor by any Bank Personnel or former Bank Personnel or any claim submitted on their behalf by a trade union or employee representative or otherwise on the grounds that their employment and/or any liabilities in connection with that employment or its termination or cessation (including as a result of its termination by the Contractor) have, on commencement of the Services or this Agreement, transferred from the Bank to the Contractor pursuant to the Employment Regulations or otherwise.

1. **APPLICATION OF THE EMPLOYMENT REGULATIONS ON TERMINATION OR AT THE END OF THE TERM**
   1. The Bank and the Contractor agree that it is not intended that the expiry or termination of the Services or this Agreement (in whole or in part) will give rise to a relevant transfer of any employee of the Contractor or any Contractor Party to the Bank, or a Replacement Contractor pursuant to the Acquired Rights Directive or the Employment Regulations (Service Transfer).
   2. Neither the Bank nor any Replacement Contractor shall have any liability for any Contractor personnel or former Contractor personnel on expiry or termination of the Services or this Agreement (in whole or in part) and the Contractor shall indemnify the Bank, and any Replacement Contractor against all Employee Liabilities suffered or incurred by the Bank, or a Replacement Contractor as a result of any claim or demand made or brought against the Bank, or any Replacement Contractor by any Contractor personnel or former Contractor personnel or any claim submitted on their behalf by a trade union or employee representative or otherwise on the grounds that their employment and/or any liabilities in connection with that employment or its termination or cessation (including as a result of its termination by the Bank, or a Replacement Contractor) have, on expiry or termination of the Services or this Agreement (in whole or in part), transferred from the Contractor or a Contractor Party to the Bank, or a Replacement Contractor pursuant to the Employment Regulations or otherwise.
   3. Notwithstanding any provision to the contrary in the Agreement, for the purposes of paragraph 3.2 and in accordance with the Contracts (Rights of Third Parties) Act 1999 any Replacement Contractor shall be entitled to enforce the benefits conferred on it by paragraph 3.2. The consent of the Replacement Contractor shall not be required for the variation or termination of paragraph 3.2 even if that variation or termination affects or will affect the benefits conferred on the Replacement Contractor.

1. **CONDUCT OF CLAIMS**
   1. This paragraph 4 shall apply to the conduct of the Contractor when claims are made by a third party against the Bank, or a Replacement Contractor who has (or claims to have) the benefit of an indemnity granted by the Contractor under this Schedule.
   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.
   3. Subject to paragraphs 4.4 and 4.5, on the giving of a notice by the Bank pursuant to paragraph 3.2 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 4.5 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.
   4. With respect to any Claim conducted by the Contractor pursuant to paragraph 3.3 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.
   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 3.3 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 3.2 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 4.4 above.

**Sensitive claims**

* 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 (**"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.
  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 4.5 above applies notwithstanding that it does not have the right to do so pursuant to paragraph 3.3 if, in the reasonable opinion of the Bank the Claim is, or has become, a Sensitive Claim. In such cases, the provisions of paragraph 4.6 above shall apply.

**Taxation**

* 1. 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 payment made by the Contractor 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.

**SCHEDULE 14**

**COMMERCIALLY SENSITIVE INFORMATION**

[*TO BE POPULATED WITH REFERENCE TO CLAUSE 15*]

**SCHEDULE 15**

Key Personnel

|  |  |  |  |
| --- | --- | --- | --- |
| Role | Named Individual | FULL TIME OR PART TIME (IF PART TIME SPECIFY HOURS TO BE COMMITTED PER WEEK) | Duration of requirement for that Key Personnel |
| Contractor's Account Manager |  |  |  |
| Contractor’s Relationship Manager |  |  |  |
| Contractor’s Head of Account Manager |  |  |  |
| [Contractor's Solution Architect] |  |  |  |
| Contractor’s Data Protection Officer |  |  |  |
| Contractor's Project Manager(s) |  |  |  |
| [Contractor's Lead Developer] |  |  |  |
| [Contractor's Lead Tester] |  |  |  |
| [*TBC*] |  |  |  |

**SCHEDULE 16**

**Step-In Rights**

1. **STEP-IN**
2. The Bank may, in its sole discretion, by notice in writing to the Contractor appoint a management team or third party to manage or provide the Services (or part thereof) where:
3. the Bank has reasonably determined thata breach by the Contractor of any of its obligations under the Agreement has occurred which has created, or may result in, a material interruption or disruption in the provision of the System, the Services (or any part(s) thereof); or
4. the Bank is required to do so for regulatory or compliance reason; or
5. a Force Majeure Event has occurred which prevents the Contractor from providing a material proportion or aspect of the Services in conformance with the requirements of the Agreement for a period of twenty four (24) hours or more.
6. If and to the extent that the Bank's Step-In Rights are triggered as set out in Paragraph 1.1 above, in respect of the provision of non-critical Services (as reasonably determined by the Bank), the Bank will have the right to take control of the Services if service is not re-established in conformance with the requirement of the Agreement within a reasonable period.
7. In exercising its Step-In Rights, the Bank may take such steps as it considers to be appropriate (either itself or by engaging others to take any such steps) to ensure performance of the Services or any element of the Services to the standards required by the Agreement (or as close as possible to those standards as the circumstances permit), including through the appointment of any person to either assume the performance of the relevant Services or work with the Contractor in performing all or any part of the Services.
8. In any case in which the Bank appoints any person to work with the Contractor in providing all or any part of the Services pursuant to this Schedule, or in which the Bank decides to take the necessary steps itself, the Contractor shall co-operate fully and in good faith with that person or the Bank as the case may be.
9. Where the Bank considers it to be necessary or expedient to do so, the steps which the Bank may take pursuant to this Schedule shall include the partial or total suspension of the right and obligation of the Contractor to provide all or any part of the System and/or the Services until such time as the Contractor shall have demonstrated to the satisfaction of the Bank that it shall perform (and is capable of performing) its obligations in respect of the System and/or relevant Services to the required standard.
10. The Contractor shall:
    * 1. bear any costs or expenses incurred by the Contractor in taking such steps as are required by the Bank pursuant to this paragraph;
11. where the step-in action has arisen by virtue of any breach of contract on the part of the Contractor on demand, reimburse the Bank for all reasonable excess charges or costs incurred by it above and beyond those that would have been payable for the impacted Services in relation to taking the steps, or engaging others to take the steps, under this Paragraph or incurred by the Bank in requiring the Contractor to take such steps (which the Bank shall use its reasonable endeavours to mitigate, to the extent reasonably possible) and in which regard the Bank shall not be obliged to pay the Charges applicable to the Services in respect of which it has stepped-in, for so long as the step-in continues (and provided that the Bank will still pay for such underlying elements of the Services which continue to be utilised in relation to the same); and
12. have deducted from any amount payable to it by the Bank under the provisions of the Agreement any amount payable to the Bank under Paragraph 1.6.2.
13. **Charges during Step-In**

In the event of the exercise of Step-In Rights, the Charges payable by the Bank shall be reduced on a pro-rated basis to reflect the System and/or Services which have not been received by the Bank during the period of the step-in.

1. **Step-Out**
   1. Before ceasing to exercise its Step-In Rights the Bank shall deliver written notice (“**Step-Out Notice**”) to the Contractor, specifying in reasonable detail (to the extent that it is reasonably practicable in the circumstances):
2. the action it has taken in exercising the Step-In Right; and
3. the date on which, subject to the Bank being satisfied with the plan the Contractor is required to develop under Paragraph 3.2 and the Contractor's ability to, and progress in, implementing it, it plans to conclude that action (“**Step-Out Date**”).
   1. The Contractor shall, following receipt of a Step-Out Notice and not less than ten (10) Working Days in advance of the Step-Out Date, develop a plan to restore the affected Services to the standards required by the Agreement by the Step-Out Date which it shall agree with the Bank in writing. Following agreement of that plan, the Contractor shall implement it and shall devote sufficient resources to ensure that delivery of the affected Services is restored to the Service Levels from the Step-Out Date or as otherwise agreed by the parties in writing.

**SCHEDULE 17**

**Parent Company Guarantee**

**THIS DEED OF GUARANTEE** is made the day of 201[\*]

BETWEEN:

(1) [*Insert the name of the Guarantor*] [a company incorporated in England and Wales with number [*insert company number*] whose registered office is at *[insert details of the Guarantor's registered office here]*] [a company incorporated under the laws of *[insert country]*, registered in *[insert country]* with number *[insert number]* at *[insert place of registration]*, whose principal office is at *[insert office details]* (the "**Guarantor**"); in favour of

(2) **THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND** of Threadneedle Street, London EC2R 8AH (the "**Bank**").

WHEREAS:

(A) It is a condition of the Bank entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Bank.

(B) The Guarantor has agreed, in consideration of the Bank entering into the Guaranteed Agreement with [**insert name of the Contractor**] (the " **Contractor** "), to guarantee the due performance by the Contractor of all of the Contractor 's obligations under the Guaranteed Agreement.

(C) It is the intention of the parties that this document be executed and take effect as a deed.

Now in consideration of the Bank entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Bank as follows:

**1.**  **DEFINITIONS AND INTERPRETATION**

In this Deed of Guarantee, including the Recitals:

* 1. unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
  2. the words and phrases below shall have the following meanings:
     + 1. **Guaranteed Agreement** means the agreement relating to the supply of substrate for the Bank of England £20 Banknote; and
       2. **Guaranteed Obligations** means all obligations of the Contractor to the Bank under the Guaranteed Agreement together with all obligations owed by the Contractor to the Bank that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
  3. references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
  4. unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
  5. references to a person are to be construed to include that person's assignees, or transferees or successors in title, whether direct or indirect;
  6. the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
  7. unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
  8. unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
  9. unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
  10. references to clauses and schedules are, unless otherwise provided, references to clauses of and schedules to this Deed of Guarantee; and
  11. references to liability are to include any liability whether actual, contingent, present or future.

1. **GUARANTEE AND INDEMNITY**
   1. The Guarantor irrevocably and unconditionally guarantees and undertakes to the Bank to procure that the Contractor duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Contractor to the Bank.
   2. The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Bank all monies and liabilities which are now or at any time hereafter shall have become payable by the Contractor to the Bank under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
   3. If at any time the Contractor shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Bank that, upon first demand by the Bank it shall, at the cost and expense of the Guarantor:
      * 1. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Bank in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Bank; and
        2. indemnify and keep the Bank indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements), of whatever nature which may result or which the Bank may suffer, incur or sustain arising in any way whatsoever out of a failure by the Contractor to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Contractor under the Guaranteed Agreement and, for the purpose of determining the scope of such purported obligations or liabilities, assuming that each of the Guaranteed Agreement is enforceable, valid and legal and the Contractor has at all times been solvent.
        3. as a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Bank indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which the Bank may suffer or incur if any obligation or liability guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation or liability guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor 's liability would have been if the obligation or liability guaranteed had not become unenforceable, invalid or illegal and the Contractor has at all times been solvent.
2. **OBLIGATION TO ENTER INTO A NEW CONTRACT**

3.1 Without prejudice to the rights of the Bank to make demand or otherwise enforce the other terms of this Deed of Guarantee, if a Guaranteed Agreement is terminated for any reason, whether by the Bank or the Contractor, or if a Guaranteed Agreement is disclaimed by a liquidator of the Contractor or the obligations of the Contractor are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Bank, enter into a contract with the Bank in terms mutatis mutandis the same as that Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been the original obligor under that Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as that Guaranteed Agreement with the Bank.

1. **DEMANDS AND NOTICES**
   1. Any demand or notice served by the Bank on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

[*Address of the Guarantor in England and Wales*]

[For the Attention of: ]

or such other address in England and Wales as the Guarantor has from time to time notified to the Bank in writing in accordance with the terms of this Deed of Guarantee as being an address for the receipt of such demands or notices.

* 1. Any notice served by the Guarantor on the Bank under this Deed of Guarantee shall be in writing addressed to:

Bank of England, Threadneedle Street, London EC2R 8AH

[For the Attention of: ]

or such other address in England and Wales as the Bank has from time to time notified to the Guarantor in writing in accordance with the terms of this Deed of Guarantee as being an address for the receipt of such notices.

* 1. Any notice or demand served on the Guarantor or the Bank under this Deed of Guarantee shall be deemed to have been served:
     + 1. if delivered by hand, at the time of delivery; or
       2. if posted, at 10.00 a.m. on the second Business Day after it was put into the post.
  2. In proving service of a notice or demand on the Guarantor or the Bank it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, as the case may be.
  3. Any notice purported to be served on the Bank under this Deed of Guarantee shall only be valid when received in writing by the Bank.

1. **BANK'S PROTECTIONS**
   1. The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Contractor and the Bank (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Bank in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Bank doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
   2. This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
      * 1. it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Contractor of the Guaranteed Obligations or by any omission or delay on the part of the Bank in exercising its rights under this Deed of Guarantee;
        2. it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Contractor, the Bank, the Guarantor or any other person;
        3. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Contractor for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
        4. the rights of the Bank against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Bank.
   3. The Bank shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Contractor of any Guaranteed Obligation shall not preclude the Bank from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
   4. The Bank shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Contractor or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Contractor or any third party, or to take any action whatsoever against the Contractor or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Bank in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
   5. The Bank's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Bank deems expedient.
   6. Any waiver by the Bank of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
   7. Any release, discharge or settlement between the Guarantor and the Bank shall be conditional upon no security, disposition or payment to the Bank by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Bank shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Bank shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due, owing or incurred to the Bank from the Guarantor for such period as the Bank may determine.
2. **RIGHTS OF SUBROGATION**
   1. The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Contractor and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
      * 1. of subrogation and indemnity;
        2. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Contractor’s obligations; and
        3. to prove in the liquidation or insolvency of the Contractor,
3. only in accordance with the Bank’s written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Bank and pay the same to the Bank on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Contractor and agrees not to do so until the Bank receives all moneys payable hereunder and will hold any security taken in breach of this clause on trust for the Bank.
4. **REPRESENTATIONS AND WARRANTIES**
   1. The Guarantor hereby represents and warrants to the Bank that:
      * 1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
        2. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
        3. the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:

the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;

* + - 1. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
      2. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

1. **PAYMENTS AND SET-OFF**
   1. All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Bank receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
   2. The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to two per cent (2%) above the base rate of the Bank of England from time to time in force.
   3. The Guarantor will reimburse the Bank for all legal and other costs (including VAT) incurred by the Bank in connection with the enforcement of this Deed of Guarantee.
   4. The obligations of the Guarantor under this clause 8 shall not be subject to any limitation on recovery by the Bank set out in this Deed of Guarantee (and, in particular, clauses 2.3(b) or 2.3(c)).
2. **GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Bank that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Bank (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

1. **ASSIGNMENT**

The Bank shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Deed of Guarantee.

1. **SEVERANCE**

If any provision of this Deed of Guarantee 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 hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

1. **THIRD PARTY RIGHTS**

A person who is not a party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

1. **GOVERNING LAW**
   1. This Deed of Guarantee shall be governed by and construed in all respects in accordance with English law.
   2. The Guarantor irrevocably agrees for the benefit of the Bank that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
   3. Nothing contained in this clause shall limit the rights of the Bank to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
   4. The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
2. **COUNTERPARTS**

This Deed of Guarantee may be entered into by the parties in any number of counterparts. Each counterpart shall, when executed and delivered, be regarded as an original, and all the counterparts shall together constitute one and the same instrument. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**THIS DEED OF GUARANTEE** has been entered into as a deed and has been delivered on the date stated at the beginning of this Deed of Guarantee.

EXECUTED as a DEED by )

[***Insert name of the Guarantor***] acting by [***Insert/print names***]