**HSBC flowdown terms**

**1.1 Definitions:**

Acceptance Tests: means the tests for acceptance of the performance and functionality of the Deliverable more particularly described in the relevant Agreement

Agreement: means the main body of these terms between Capgemini and the subcontractor, including these flow down terms and any other schedules and/or appendices.

Background IP: means proprietary computer software, methodologies, techniques, software libraries, tools, algorithms, materials, products, ideas, designs, and know-how used by the Supplier Contracting Party in providing services (including. all copies, enhancements, modifications, revisions, and derivative works of any of the foregoing) that: (a) existed prior to the commencement of such Services, or (b) are developed independently of providing the Services or Deliverables hereunder, in each case as identified in the relevant Agreement or otherwise in writing prior to the completion of provision of Services under the relevant Agreement;

Best Endeavours: means to take every step necessary to achieve the desired result including taking such action and making available such resources to the extent necessary to achieve the desired objective;

Capgemini: means the entity signing the main body of the Agreement

Computer Virus: means a parasitic program or programming code written intentionally to enter a computer network without the user’s permission or knowledge, which damages or is intended to damage, modify, or disrupt the operation of software or hardware, including trojan horses, worms, logic bombs, time bombs, back doors, trap doors, spyware, malware or other code or components;

Confidential Information: means any information or know how of the disclosing party (including information relating to their facilities, premises, systems, security, procedures, products, business strategy (including the existence of the terms of and its position in any dispute in relation to these Terms and Conditions or any Agreement), employees, officers, contractors and agents, customers, suppliers and contacts), and any other information that is supplied during any audit or is marked confidential or that the recipient ought reasonably to have known was confidential, imparted to the receiving party or any their employees, agents or contractors pursuant to this Agreement.

Provided always that Confidential Information shall exclude information (1) that is in or comes into the public domain (other than as a result of a breach of confidentiality) or (2) is disclosed by a third party (except where such third party discloses such information in breach of obligations of confidence), or (3) that is independently developed by a party without recourse to the Confidential Information of the other;

Data Protection Legislation: means all applicable laws and regulations relating to the processing of personal data including, national legislation implementing the Directive on Privacy and Electronic Communications (Directive 2002/58/EC), the GDPR, UK GDPR and Data Protection Act 2018 and any other laws and regulations implementing, derogating from or made under them, and any binding orders and codes of practice, guidelines and recommendations issued by the applicable Regulatory Authorities,

Deliverables: means any information, data, document, report, software, design, plan, strategy, graphics, artworks or other product or material developed or delivered or to be developed or delivered by the Supplier Contracting Party as referred to or described in the Agreement, including, without limitation, any enhancements or improvements to HSBC components, but specifically excluding the HSBC components themselves;

Event of Force Majeure: means any of the following circumstances which occur and which are beyond the reasonable control of a party and directly prevent that party from performing its obligation(s) under the Agreement, being war, civil commotion, armed conflict, riot, act of terrorism, criminal damage, fire, flood or other act of God (excluding for the avoidance of doubt any labour dispute, labour shortages, strikes or lock-outs);

HSBC Personal Data: means Personal Data for which any HSBC Group Member is primarily responsible under Data Protection Legislation;

HSBC Contracting Party: means the ultimate beneficiary to the Services contemplated under this Agreement;

Intellectual Property Rights: means all present and future rights conferred by statute, common law or equity in any territory in or in relation to copyright and related rights, moral rights, trade marks, designs, patents, database rights, circuit layouts, business and domain names, inventions and rights in goodwill or to sue for passing off or equivalent rights or forms of protection (whether or not registered or capable of registration) and all applications (and rights to apply) therefor, and for renewals and extensions of, any such rights as may now or in the future exist anywhere in the world;

Key Personnel: shall mean the Supplier Personnel identified as such in the relevant Agreement from time to time;

Notification Event: means any of the following: an actual personal data breach (in relation to data processed in connection with this Agreement), breach of the provisions of Clause 23, or any complaint made relating to HSBC Personal Data;

Open Source Software: means open-source software, public source software, shareware or freeware, or any modification or derivative thereof, including any version of any computer software licensed pursuant to any open source or general public licence;

Reasonable Endeavours: means making every effort that the party concerned reasonably can, consistent with the objective to be achieved (and taking into account any timescale within which it is aimed to achieve the objective concerned), including the following:

(a) the allocation and use of a reasonable amount of resources (including manpower, financial and other appropriate terms) to achieve the relevant objective within any applicable timescale;

(b) obtaining any further information necessary to enable the achievement of the objective; and

(c) co-operating with the other party or with others to the extent necessary to achieve the objective;

Regulatory Authority: means any governmental, statutory or regulatory bodies and any other competent authorities in any jurisdiction (or persons or entities appointed by or on the direction of such authorities and/or bodies and/or entities);

Services: means the services including the development and supply of Deliverables as detailed in the Agreement;

Supplier Affiliates: means a legal entity from time to time in which the Supplier (or one of its holding or subsidiary companies) owns more than fifty percent (50%) or more of the voting shares or over which the Supplier (or one of its holding or subsidiary companies) exercises management control, even though it may own less than fifty percent (50%) of the shares and is prevented from owning a greater shareholding;

Supplier: means the Supplier Contracting Party;

Supplier Contracting Party: means the other party to this Agreement who is not Capgemini;

Supplier Personnel: means all employees, officers, directors, contractors, personnel, subcontractor personnel or other representatives of the Supplier Contracting Party and relevant Supplier Affiliates (whether former or current) involved in the provision of the Services;

Terms and Conditions: means Agreement;

Third Party Software: means any software owned by a third party other than the Supplier Contracting Party or any Supplier Affiliate;

TUPE Regulations: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended.

**Provision of the services**

**2.6** The Supplier shall ensure no other terms and conditions are submitted (in standard form documentation or otherwise) by the Supplier or any Supplier Affiliates during the order and/or supply process. For the avoidance of doubt any such terms and conditions submitted by the Supplier or any Supplier Affiliates or by any third party operating on their behalf in the course of ordering and/or supplying the Services shall not replace, alter or amend the Terms and Conditions or any other term of the relevant Agreement, unless Capgemini have agreed to the contrary in writing.

**3.2** Time shall be of the essence in relation to all obligations of the Supplier Contracting Party to perform the Services pursuant to the relevant Agreement, except that this clause 3.2 shall not apply in the case of timeframes or timescales which are expressly stated in an Agreement to be estimates only.

**3.6** The engagement of all Supplier Personnel to provide Services shall be subject to the approval of the HSBC Contracting Party. Capgemini may require the Supplier Contracting Party to remove or procure the removal of any of the Supplier Personnel whom it considers to be unsatisfactory for any reason which has a material impact on such person’s responsibilities.

**3.7** Capgemini may withhold its approval or require the replacement of any Supplier Personnel if in its reasonable opinion the Supplier Personnel in question has failed or is likely to fail to meet the requirements set out in the Agreement or is otherwise inappropriate. Capgemini may terminate the relevant Agreement if the Supplier persistently provides Supplier Personnel who in the reasonable opinion of Capgemini fail or are likely to fail to meet the requirements set out in the Agreement or are otherwise inappropriate.

**3.8** Unless otherwise agreed, the replacement of any Supplier Personnel (including Key Personnel) shall be at no additional charge to Capgemini over and above the agreed charges for provision of the relevant Supplier Personnel, and the Supplier Contracting Party shall bear the cost of both the exiting and replacement Supplier Personnel for the time required to complete knowledge transfer by the replacement Supplier Personnel to familiarise themselves with the relevant Services and requirements of the HSBC Contracting Party. The Supplier Contracting Party shall ensure or procure that any transition arrangements to replace Supplier Personnel shall be without disruption to the business, personnel and operations of the HSBC Contracting Party, and shall not delay the performance or completion of the Services or any Deliverables.

**3.9** All Supplier Personnel shall remain under the direct control of the Supplier Contracting Party, the Supplier or a Supplier Affiliate (as appropriate), but whilst such Supplier Personnel are on any HSBC Contracting Party premises, Capgemini premises, or the premises of any other party as necessary for the provision of the Services, the Supplier Contracting Party will ensure or procure that the Supplier Personnel

**3.9.1** comply with the security and health and safety regulations, and other policies and procedures in force at the site from time to time;

**3.9.2** at all times behave in a courteous, professional and appropriate manner; and

**3.9.3** obey the reasonable instructions and requirements of the HSBC Contracting Party, Capgemini, and other party (as applicable) provided in each case that the same have first been brought to the attention of the relevant Supplier Personnel.

**3.11** The Supplier Contracting Party shall procure that none of the Supplier Personnel makes or purports to make any representation, warranty or undertaking or otherwise acts or purports to act in any manner that might be interpreted as binding or committing the HSBC Contracting Party or Capgemini to any obligation to any third party.

**3.12** Unless the parties otherwise specify in the relevant Agreement:

**3.12.1** the Supplier Contracting Party shall take all steps necessary to ensure the HSBC Contracting Party and their respective licensees and transferees may use the Deliverables and receive the Services without restriction of any kind;

**3.12.2** the Supplier Contracting Party may only use the Deliverables as strictly necessary to provide the Services to Capgemini and the HSBC Contracting Party in accordance with the relevant Agreement; and

**3.12.3** Where any Deliverable takes the form of, or includes, computer software, the Supplier Contracting Party shall also deliver to the HSBC Contracting Party the source code for such software and such technical descriptions, guides and documentation as is required in order to allow a reasonably competent software engineer to maintain, amend and develop such software.

**3.12.4** Where the use of any Background IPR is necessary for the HSBC Contracting Party to use or to facilitate the use of any Deliverable, the Supplier Contracting Party shall provide an irrevocable, non-exclusive, transferable, sub-licensable royalty free licence to such Background IPR in accordance with clause 18.4.

**3.12.5** Where the source code to any Background IPR forming part of a Deliverable is required by the HSBC Contracting Party to use or facilitate the use of any Deliverable, the Supplier Contracting Party shall, where such source code is owned or held by the Supplier Contracting Party or a Supplier Affiliate, deliver such source code on written request by Capgemini or the HSBC Contracting Party (and where any such source code is held by a third party, the Supplier Contracting Party shall use all Reasonable Endeavours to procure such source code for the HSBC Contracting Party). Unless otherwise agreed in the relevant Agreement, HSBC’s rights in respect of such source code shall only apply to the extent this is necessary to achieve interoperability of the Deliverable with other software created independently of the Deliverable. Capgemini shall not disclose such source code to any competitor of the Supplier Contracting Party or any other third party unless such party is the owner of the software with which the Deliverable is intended to interoperate.

**3.13** The Supplier Contracting Party shall notify Capgemini as soon as it becomes aware or has any reason to believe that it is or is likely to become unable to perform or complete the Services by the date(s) specified in the relevant Agreement.

**3.17** The Supplier Contracting Party shall comply with the Capgemini’s and HSBC’s Codes of Conduct.

**Confidentiality**

**Delivery and Acceptance**

**5.4** If the Deliverable fails to satisfy the Acceptance Tests, Capgemini shall give the Supplier Contracting Party prompt written details of the failure, and if it does:

**5.4.1** the Supplier Contracting Party, must, at its own cost, commence use of Best Endeavours to correct the Deliverable so that the Acceptance Tests can be repeated and shall complete such correction within seven (7) days or otherwise within such reasonable period agreed between the parties; and

**5.4.2** the Supplier Contracting Party must promptly give Capgemini written notice when it has corrected the Deliverable and the Acceptance Tests can be repeated.

**5.5** If the repeated Acceptance Tests are not successfully completed within a reasonable time, or, if applicable, the period specified in an agreed implementation plan (other than directly and solely because of any act or omission of Capgemini or the HSBC Contracting Party) Capgemini may elect:

**5.5.1**  to reject the Deliverable and terminate the relevant Agreement (in full or in part) on notice with immediate effect, in which case the Supplier Contracting Party shall refund to Capgemini all charges paid by them in relation to such Deliverable; or

**5.5.2**  to accept the Deliverable subject to a reasonable deduction of charges (as agreed by the parties concerned) to reflect the reduced level of functionality and performance (or other aspects) of the Deliverable and/or the delays caused by its failure to meet Acceptance Tests; or

**5.5.3**  to require the Supplier Contracting Party to continue to use Best Endeavours to remedy the defect and re-present the Deliverables for further Acceptance Testing.

**5.7** If any Acceptance Test is repeated because a Deliverable failed to pass the Acceptance Test when previously tested then, save only to the extent an Acceptance Test was failed specifically because of Capgemini or the HSBC Contracting Party failing to comply with a specifically identified obligation on it under such Acceptance Tests, the Supplier Contracting Party shall promptly pay on demand Capgemini’s additional expenses (including any internal expenses relating to wasted time, as well as third party expenses) in repeating the Acceptance Tests.

**Charges**

**6.2** Save as otherwise agreed, charges shall be payable in arrears, any charges relating to time spent by Supplier Personnel shall be

(a) evidenced by timesheets approved by Capgemini, and invoices shall be rendered to Capgemini on the timeframes specified in the relevant Agreement and if correct and undisputed shall fall due and payable to the Supplier Contracting Party forty-two (42) days thereafter. All charges payable under the relevant Agreement shall be expressed, invoiced and payable in the currency(ies) specified in the relevant Agreement. Invoices shall be delivered in the manner and in the form specified by Capgemini; and

(b) otherwise in compliance with Capgemini’s instructions from time to time in relation to HSBC’s requirements.

**6.7** Notwithstanding anything to the contrary in the relevant Agreement, Capgemini shall have no liability in respect of any payment due hereunder which is not invoiced by the Supplier Contracting Party within twelve (12) months of the date when such invoice had properly become presentable under clause 6.2.

**Supplier Warranty**

**12.2** In the context of any Agreement and as from the commencement date thereof, the Supplier Contracting Party warrants, represents and undertakes to Capgemini that:

**12.2.3** the Services will be provided in accordance with the terms of the Agreement, the relevant Specification and using all due reasonable skill, care and due diligence and in accordance with best computing industry practice;

**12.2.4** the Deliverables shall fulfil the requirements set out in the SoW, Agreement or as otherwise agreed in writing by the Supplier Contracting Party and Capgemini and shall, on delivery, be free from errors and material defects;

**12.2.6** save as specifically notified to Capgemini in the relevant Agreement, the Deliverables do not contain Open Source Software and that Open Source Software has not been used in creating the executable version of any software contained in or comprising the Deliverables; and

**12.2.7** unless otherwise expressly stated in the relevant Agreement, the Deliverables shall contain only original work of the Supplier Contracting Party, or work of which it is entitled freely to assign the title.

**12.3** The Supplier Contracting Party shall indemnify and keep indemnified Capgemini against loss suffered by Capgemini and the HSBC Contracting Party as a result of any breach of warranties in clause 12.2.

**12.4** Without prejudice to the foregoing or any other rights or remedies of Capgemini and without prejudice to the Warranty Period in clause 12.5, in the event of breach of any warranty the Supplier Contracting Party undertakes promptly to remedy the breach without charge.

**12.5** The Supplier Contracting Party shall during the Warranty Period, promptly and at its sole cost and expense, repair or replace or credit or reimburse to Capgemini the charges in respect of any Deliverables which do not comply with the warranty set out in clause 12.2.4.

**Health and Safety, and IT Security Obligations**

**14.1** When performing work at HSBC's premises (in this clause, a “Location”), the Supplier Contracting Party shall ensure that any disruption to the normal operations of HSBC (including the operations of other parties employed by HSBC) are minimised and shall comply with the reasonable instructions given by HSBC’s representatives at the Location. The Supplier Contracting Party shall ensure that any Supplier Personnel comply with the site and security regulations relating to the Location and with HSBC’s then current health and safety requirements for contractors, a copy of which may be obtained on request to Capgemini.

**14.2** The Supplier Contracting Party shall ensure that all electrical portable equipment to be used by the Supplier Personnel at the Location conform to the Electricity at Work Regulations Act 1989 or equivalent legislation in the relevant country in which the Location is situated, and that prior to putting any electrical equipment or extension leads, to use they are checked to ensure their condition and fitness for use.

**14.3** The Supplier Contracting Party shall immediately remove from the Location any of Supplier Personnel who fail to comply with the instructions of Capgemini or HSBC, the regulations and codes of practice relating to Health and Safety or who, in the sole opinion of HSBC, has been guilty of misconduct or has been negligent or incompetent. Compliance with this obligation shall not constitute a valid reason for the Supplier Contracting Party’s failure to comply with any obligation in accordance with, and at the time required by, the Agreement. The Supplier Contracting Party shall indemnify and keep indemnified Capgemini from and against all or any liabilities arising from or in connection with such removal.

**14.4** The Supplier Contracting Party undertakes to comply with industry good IT security practices including the ISO 27000 Series in connection with the performance of its obligations under the relevant Agreement.

**14.5** The Supplier Contracting Party will ensure that it implements, follows and maintains appropriate security controls, at least in compliance with the HSBC Contracting Party’s IT security standards and requirements (as may be notified from time to time in writing by Capgemini or HSBC), including submitting to a formal security review conducted by Capgemini, to ensure the confidentiality, availability and integrity of all data and information belonging to HSBC which may be delivered to, generated by or otherwise used or processed by or on behalf of the Supplier Contracting Party which is in the possession or control of the Supplier Contracting Party, any Supplier Affiliate or any Supplier Personnel (in this clause, “HSBC Data”), and warrants and represents that such appropriate security controls, are operational and effective as at the commencement date of the relevant Agreement. The Supplier shall not and shall procure in the context of an Agreement that the relevant Supplier Contracting Party shall not downgrade the security configuration of any system processing any such HSBC Data without the prior written consent of Capgemini.

**14.6** Without prejudice to the generality of clauses 14.4 and 14.5, the Supplier Contracting Party shall ensure that all HSBC Data is protected at all times, in such manner as (subject to clause 14.5) is consistent with the HSBC Contracting Party’s data security as set out in the relevant Agreement or notified from time to time in writing by Capgemini or the HSBC Contracting Party to the Supplier Contracting Party.

14.6.2 Supplier Contracting Party shall promptly notify Capgemini of (and manage) any security incidents which relate to the unauthorised disclosure of (or access to) HSBC Information and work with Capgemini and HSBC in relation to any security incidents.

**14.7** The Supplier Contracting Party shall ensure that no HSBC Data is stored on any portable medium or device except where such storage is strictly required for the performance of the Supplier Contracting Party's obligations under the relevant Agreement.

**14.8** Where HSBC Data is transmitted across a network or stored on any portable medium or device, the level of protection that the Supplier Contracting Party is obliged to adopt pursuant to clause 14.5 and clause 14.6 shall be consistent both with the data security classification of the HSBC Data in question and with the additional risk posed by its transmission and/or its storage on a portable medium or device.

**14.9** Without prejudice to the generality of the Supplier Contracting Party’s obligation to preserve the confidentiality of confidential information and to observe proper IT security procedures, and subject to any policy in relation to the security of portable devices that is expressly agreed between HSBC or Capgemini and the Supplier to be in substitution for this clause, the Supplier Contracting Party shall ensure either that:

**14.9.1** no HSBC Data or any data or information relating to the relevant Agreement or these Terms and Conditions from which HSBC could be identified shall be stored or processed on portable devices capable of data storage (including, without limitation, laptops, PDAs, and memory sticks); or

**14.9.2** that such storage and processing occurs only on the premises of the HSBC Contracting Party, Capgemini, or on secure premises of the Supplier Contracting Party and that no such data is resident on such portable devices when they are not on such premises.

**14.10** The Supplier Contracting Party shall ensure that any HSBC Data is appropriately backed-up and shall have in place and maintain up-to-date (i.e. in line with good industry practices) business continuity procedures designed to ensure that in the event of a failure of, or disruption to the Supplier Contracting Party's infrastructure, the Supplier Contracting Party is able to continue to provide the Services and otherwise perform its obligations under the relevant Agreement to normal performance levels within the shortest reasonably practicable time. If the Supplier Contracting Party is affected by an event that requires it to invoke its business continuity procedures it will ensure that in allocating its resources and providing service to its customers it treats Capgemini or HSBC no less favourably than any other similar customer.

**14.11** The Supplier Contracting Party will ensure that any Supplier Personnel who will be entering a Location and/or will have access (remotely or otherwise) to HSBC systems, data or information shall have been subject to pre-employment screening at least to the standards set out in the HSBC Contracting Party’s policy for the screening of personnel provided by contractors, a copy of which shall be set out in the relevant Agreement or notified from time to time to the Supplier Contracting Party by Capgemini. The Supplier Contracting Party will, following a request from Capgemini, provide evidence that Supplier Personnel have been subject to such screening. Additional screening may be requested if Supplier Personnel are to have access to data that is subject to data protection legislation.

**14.12** Capgemini reserves the right to visit the Supplier Contracting Party’s offices to carry out such checks as it deems necessary to ensure that the Supplier Contracting Party is properly fulfilling its obligations as set out in this clause in relation to any Agreement and may request sight of records and documents held by the Supplier Contracting Party in respect of such obligations. Capgemini shall give the Supplier Contracting Party reasonable prior notice (which may, depending on the circumstances giving rise to the visit, be very short) of any intended visit and the Supplier Contracting Party shall use all Reasonable Endeavours to provide for Capgemini access to all information, facilities, procedures or other resources (including staff) as it shall reasonably require.

**14.13** In the event of any unauthorised use or any misuse of HSBC’s or Capgemini’s premises, equipment, systems, data or information (including HSBC Data) by the Supplier Personnel Capgemini shall have the right (without prejudice to its other rights) to:

**14.13.1** seek adequate compensation for any damage or costs incurred in such instances; and

**14.13.2** require that Supplier Personnel in breach of the above cease to be engaged in the delivery of services to Capgemini.

**14.14** The exercise by Capgemini of its rights under clause 14.13 shall not relieve the Supplier Contracting Party of its responsibility to perform its obligations under the relevant Agreement.

**14.16** The Supplier Contracting Party acknowledges and agrees that in the context of any Agreement it will comply with any additional requirements over and above those described in this clause 14 in relation to data integrity, handling or storage as set out in such Agreement or as otherwise requested in writing by Capgemini.

**Reporting**

**15.1** The Supplier Contracting Party shall (if requested by Capgemini) provide a monthly report stating which personnel have delivered or are delivering Services and/or Deliverables under any Agreement (“Sub-Contractor Personnel Report”).

**Computer Viruses**

**16.1** The Supplier Contracting Party warrants that it will:

**16.1.1** take all reasonable precautions (at least in accordance with good industry practice) with the aim of preventing Computer Viruses and and/or similar destructive code from affecting or being present in any Deliverables provided to Capgemini or HSBC in connection with an Agreement, including but not limited to using the latest available versions of anti-virus versions or definitions available from an industry accepted anti-virus software vendor to check for and delete viruses and/or similar destructive code from all such Deliverables; and

**16.1.2** not load or use on any Capgemini or HSBC computer equipment or systems any software, data or other materials, other than those provided or approved by Capgemini or HSBC

**16.2** The Supplier Contracting Party shall use Best Endeavours to ensure that no Computer Virus and/or similar destructive code is introduced on to Capgemini or HSBC’s computer equipment or systems by any act, omission or negligence of the Supplier Contracting Party, any Supplier Affiliates or any of their employees, agents or contractors. Without limitation to the foregoing obligation, the Supplier Contracting Party shall test the Deliverables prior to delivery of the same to identify and remove any Computer Viruses and/or similar destructive code in order to prevent introduction of the same on to Capgemini or HSBC’s computer equipment or systems, and shall secure for the HSBC Contracting Party sufficient rights to perform periodic scans and checks on the Deliverables and (in accordance with a written procedure (setting out, for example, times, methods and other restrictions designed to protect, for example, confidentiality, other clients, services and operations) to be agreed in advance by the Supplier Contracting Party, such agreement not be unreasonably withheld or delayed) any other computer software that the Supplier Contracting Party, or any Supplier Affiliate introduces or connects to HSBC computer equipment or systems.

**16.3** Without prejudice to the HSBC Contracting Party’s other rights, in the event that a Computer Virus or similar destructive code is introduced on to Capgemini or HSBC’s computer equipment or systems caused by any act, omission or negligence of the Supplier Contracting Party, any Supplier Affiliates or any of their employees, agents or contractors, the Supplier Contracting Party shall (at no additional charge) provide all such assistance necessary in order to promptly restore Capgemini and/or the HSBC Contracting Party’s, equipment or systems (as appropriate) to normal operational readiness. The Supplier Contracting Party’s obligations in this clause 16.3 shall not apply in circumstances where such Computer Virus was introduced solely through a component belonging to Capgemini or HSBC in circumstances where the Supplier Contracting Party’s only action was to load such component in accordance with instructions of Capgemini or the HSBC Contracting Party.

**Intellectual Property**

**18.1** Subject only to clause 18.4, unless the parties otherwise specify in the relevant Agreement, the Intellectual Property Rights in any Deliverables (excluding the Intellectual Property Rights in any Third Party Software forming part of any such Deliverables, which shall be licensed in accordance with clause 18.3) shall belong to Capgemini (to enable Capgemini to pass the benefit upwards to the HSBC Contracting Party).

**18.2** Subject to clause 18.4 and to any other agreement to the contrary between the parties set out in the relevant Agreement, the Supplier Contracting Party assigns, and shall procure that the Supplier and any Supplier Affiliate whose Intellectual Property Rights are included in any Deliverables shall assign, by way of present and, where appropriate, future assignment all such Intellectual Property Rights in the Deliverables on creation with full title guarantee to Capgemini and will procure the waiver of all moral rights (or similar rights) therein and will take all steps necessary to ensure Capgemini and their licensees and transferees may use the Deliverables and receive the Services without restriction of any kind.

**18.3** Where any Third Party Software forms part of the Deliverables, the Supplier Contracting Party shall procure for Capgemini, a perpetual, irrevocable, world-wide, royalty-free, transferable, sub-licensable, non-exclusive licence to use, execute, reproduce, transmit, display, perform, enhance, modify and create derivative works from any such Third Party Software provided that any transferee or sub-licensee shall only be entitled to exercise its rights under such license solely for HSBC internal business purposes.

**18.4** Background IPR shall be the property of the Supplier Contracting Party. Subject to payment for the relevant Deliverable, the Supplier Contracting Party hereby grants to Capgemini, a perpetual, irrevocable, world-wide, royalty-free, transferable, sub-licensable non-exclusive licence to use, execute, reproduce, transmit, display, perform, enhance, modify and create derivative works from any Background IPR incorporated into or made a part of the Deliverables or necessary to use the Deliverables only in connection with the use, sale, licensing, modification, enhancement or further development of such Deliverables provided that any transferee or sub-licensee shall only be entitled to exercise its rights under such license solely for HSBC internal business purposes.

**18.6** The Supplier Contracting Party shall, and shall procure that any Supplier Affiliate and any third party whose Intellectual Property Rights are included in any Deliverables shall, enter all such documents or arrangements or undertake or procure all acts reasonably necessary to give effect to the provisions of clauses 18.3 and 18.4.

**18.7** The Supplier Contracting Party represents, warrants and undertakes to Capgemini that the Deliverables and Services and the delivery and use of any or all of the foregoing as contemplated by the relevant Agreement, including any Background IPR, Open Source Software and Third Party Software licenced as part of the Deliverables, does not and will not constitute an infringement or misappropriation of any Intellectual Property Rights of any third party.

**18.8**  The Supplier Contracting Party shall indemnify and keep indemnified Capgemini from and against, and agrees to pay promptly on demand, any losses, liabilities, damages and expenses (including, subject to the overall stated cap, legal fees on a full indemnity basis) incurred by or awarded against Capgemini solely as a result of, or in connection with, any claim or allegation of infringement of any Intellectual Property Rights of any third party relating to the Deliverables and Services provided under the relevant Agreement or any other software, hardware, systems, facilities or other resources provided by the Supplier Contracting Party or any Supplier Affiliate to Capgemini under the relevant Agreement, which, for the avoidance of doubt shall include all Open Source Software, Third Party Software or Background IPR forming part of the Deliverables or Services or otherwise licensed to Capgemini under the relevant Agreement.

**18.9** For the avoidance of doubt, in the event of any likely damage to Capgemini’s goodwill or reputation arising as a result of or in connection with any claim, or in the event of an injunction or any other interim relief (or threat of such relief) against Capgemini, it shall be entitled to instruct senior legal counsel or take such other steps as it deems appropriate, the reasonable costs of which shall be included in the scope of the Supplier Contracting Party’s indemnity.

**18.10** The Supplier Contracting Party shall (at Capgemini’s request and its expense, and subject to consulting frequently with Capgemini) be entitled to conduct and/or settle all negotiations and litigation arising from any claim. Without prejudice to its other obligations and liabilities in this clause, the Supplier Contracting Party agrees to promptly pay on demand, to Capgemini any expenses or other amounts howsoever incurred or suffered by Capgemini, up to an amount of £20,000, for the initial handling of any Claim, and thereafter any further amounts suffered by Capgemini shall be paid by the Supplier Contracting Party in accordance with this clause (and the initial payment shall be set-off against any amounts subsequently payable under this clause).

**18.11** Capgemini shall use all reasonable endeavours to:

**18.11.1** notify the Supplier Contracting Party (without unreasonable delay) in writing of any Claim of which it has notice;

**18.11.2** not make any admission of liability or agree to any settlement or compromise of any claim without the prior written consent of the Supplier Contracting Party (which consent shall not be unreasonably withheld or delayed); and

**18.11.3** at the Supplier Contracting Party’s request and expense, give the Supplier Contracting Party all reasonable assistance in connection with the negotiations and litigation of any claim.

**18.12** The Supplier Contracting Party or any Supplier Affiliate shall not be responsible to indemnify Capgemini for any increase in losses, liabilities, damages or expenses to the extent that they are directly caused by the failure of Capgemini to meet the obligations stated in clause 18.11.

**18.13** Should the Deliverables and Services (or any part thereof) become, or in Capgemini’s opinion be reasonably likely to become, the subject of a claim, the Supplier Contracting Party shall use Best Endeavours promptly to:

**18.13.1** procure for Capgemini the right to continue using the affected Deliverables and Services, or if it is unable to do so;

**18.13.2** replace or modify the affected Deliverables and Services to make them non-infringing without affecting performance or functionality.

**18.14** If the Supplier Contracting Party is unable to achieve the purpose in clauses 18.13.1or 18.13.2 within three (3) months from the first date of prevention or disturbance of the use of the Deliverables and Services then, without prejudice to the other rights and remedies of Capgemini, the Supplier Contracting Party will return to Capgemini all Charges paid in respect of the Deliverables and Services whose use is prevented or disturbed, and Capgemini will (to the extent that such Deliverable is still within its control) return the affected Deliverable to the Supplier Contracting Party. For the avoidance of doubt, all costs or losses incurred by Capgemini in removing and returning such Deliverable shall be recoverable under clause 18.8 above.

**18.16** The Supplier Contracting Party shall use all Reasonable Endeavours to:

**18.16.1** notify Capgemini (without unreasonable delay) in writing of any claim of which it has notice contemplated by this clause 18;

**18.16.2** not make any admission of liability or agree to any settlement or compromise of any claim contemplated by this clause 18 without the prior written consent Capgemini (which consent shall not be unreasonably withheld or delayed); and

**18.16.3** at Capgemini’s request and expense, give Capgemini all reasonable assistance in connection with the negotiations and litigation of any claim contemplated by this clause 18.

**Confidentiality**

**20.1** During the term of this Agreement and for a period of ten (10) years following termination of the same the Supplier shall, and shall procure that all Supplier Affiliates and their respective employees, agents and contractors shall:

**20.1.1** keep confidential all Confidential Information of Capgemini and HSBC, and use it solely to exercise its rights and /or fulfil its obligations under this Agreement and or checks, reviews and access required for compliance with law, regulation or internal policies or procedures and/or for provision of services to a party (Permitted Purpose);

**20.1.2** not disclose or transfer (directly or indirectly) to any third party (other than as permitted hereunder or to Supplier Affiliates on a strictly need to know basis) any Confidential Information of Capgemini or HSBC; and

**20.1.3** not use (including by making unnecessary copies) other than as strictly necessary for the performance of this Agreement any Confidential Information or Intellectual Property Rights of Capgemini or HSBC.

**20.4** The Supplier Contracting Party warrants that its employees are, in their employment contracts, under an obligation of confidentiality applicable to the confidential information of the Supplier Contracting Party’s customers on terms that are substantially equivalent to the confidentiality provisions in these Terms and Conditions. The Supplier Contracting Party shall procure that the Supplier Personnel, shall, where requested by Capgemini (who have been in turn requested by HSBC) enter into and observe the terms of a Declaration of Confidentiality and (if applicable) a Declaration of Conformity substantially in the form provided to the Supplier Contracting Party by Capgemini (which was in turn received by HSBC) prior to commencing the performance of any Services.

**Publicity**

**21.1** The Supplier shall not, and shall procure that none of the Supplier Affiliates shall disclose the existence of these Terms and Conditions, nor of any Agreement either during the term of any of them or at any time following expiry or termination of them in any journal magazine or publication or any other medium or otherwise use HSBC’s names or logos (including any trade marks) in any of its advertising or publicity material without the HSBC Contracting Party’s prior written consent, which may be withheld or given in the applicable HSBC Contracting Party’s absolute discretion.

**Data Protection**

**22.1** The subject-matter of the processing activities under these flow down terms is limited to HSBC Personal Data within the scope of Data Protection Legislation. The duration of the relevant processing shall be for the duration of these Terms and Conditions. The nature and purpose of the processing shall be to provide the Services. Data Subjects may include HSBC’s representatives, employees, contractors, collaborators, and customers where relevant to the Services. If the Supplier and/or a Supplier Affiliate receive HSBC Personal Data in connection with these Terms and Conditions or any Agreement, the Supplier and Supplier Contracting Party (as applicable) shall and shall procure that the other of them and/or any relevant Supplier Affiliates shall:

(a) comply with applicable Data Protection Legislation in the provision of the Services as Data Processor;

(b) only process HSBC Personal Data on the documented instructions and as strictly necessary for the performance of these Terms and Conditions;

(c) not transfer HSBC Personal Data to, or process it in any jurisdiction outside of UK or EEA, or permit any other party to process any HSBC Personal Data, without prior written consent from Capgemini and in accordance with cross-border transfer mechanisms approved under Data Protection Legislation;

(d) provide to Capgemini upon request an accurate, up-to-date written record of processing activities carried out in respect of Personal Data.

(e) accounting for the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures in respect of the integrity and confidentiality of the HSBC Personal Data whilst in its possession to ensure that the HSBC Personal Data shall not be recorded, disclosed, processed, deleted, lost, damaged, altered, used or otherwise tampered with in an unauthorised, accidental or unlawful manner;

(f) promptly, and without undue delay, notify Capgemini in writing of any actual Personal Data Breach or breach of the provisions of this Clause 22 or any complaint made relating to HSBC Personal Data (each a Notification Event), such notice to include all information reasonably known by the Supplier and reasonably required by Capgemini to pass on to HSBC to enable it to comply with its obligations under the Data Protection Legislation. Supplier shall also provide a copy of all HSBC Personal Data it (or any Supplier Contracting Party or Supplier Affiliate) holds in relation to any affected individuals as soon as it receives a request for that HSBC Personal Data from Capgemini;

(g) provide, subject to Capgemini agreeing in writing to pay all costs, full co-operation and assistance to Capgemini in ensuring its compliance with Data Protection Legislation including in relation to any Notification Event or any communication from a Data Subject or Regulatory Authority and comply with any reasonable instructions of Capgemini; and

(h) promptly notify Capgemini in writing, and in any event within 3 days, if it receives any communication from a Data Subject regarding the processing of HSBC Personal Data, or any other communication relating to HSBC or compliance with Data Protection Legislation.

**22.4** Subject to clause 18.12, the Supplier Contracting Party shall fully and effectively indemnify and keep indemnified Capgemini from and against, and agree to pay on demand, any and all losses, liabilities, damages and expenses (including legal fees on a full indemnity basis) incurred by or awarded against Capgemini as a result of any breach of this clause by the Supplier Contracting Party. Without prejudice to the foregoing or to any other rights or remedies of Capgemini, in the event of any such breach of this clause the Supplier Contracting Party undertakes promptly to remedy its breaches (or the circumstances giving rise to the breach) without charge and at no additional cost to Capgemini.

**Termination**

**23.2** Capgemini may terminate these Terms and Conditions:

**23.2.6** immediately on written notice if the Supplier Contracting Party or a Supplier Affiliate behaves in a manner which in the reasonable opinion of Capgemini is likely to bring either Capgemini or HSBC into disrepute or otherwise to compromise or adversely affect their respective reputation.

**23.5** Capgemini may terminate these Terms and Conditions:

**23.5.4** immediately on written notice if the Supplier Contracting Party commits any material or persistent default of the Agreement, which is either incapable of remedy, or if capable of remedy is not remedied to the satisfaction of Capgemini (to be determined reasonably) within thirty (30) days of written notice requiring the default to be remedied;

**23.5.5** immediately on written notice if the Supplier Contracting Party fails to perform or procure the Services for a period of seven (7) consecutive days or an aggregate of fourteen (14) days in any six (6) month period;

**23.5.6** subject only to payment of any early termination charges specifically identified in the relevant Agreement, immediately on written notice if Capgemini is notified by HSBC that that termination is required by any rule or guidance of any regulatory body that has authority over the HSBC Contracting Party (or with whose rules and guidance the HSBC Contracting Party is accustomed to comply);

**23.8** Without prejudice to any other right or remedy of Capgemini under this Agreement, in the event of expiry or any termination of the Agreement for any reason whatsoever the Supplier Contracting Party shall procure that Capgemini and HSBC may keep copies of all or any Deliverables which are provided to it under a licence for archival and/or regulatory purposes as stipulated by any regulatory body that has authority over

**23.9** Capgemini shall be entitled to a pro rata refund of any and all pre-paid charges and any other fees in respect of any terminated Services that relate to any period after the relevant termination date.

**23.10** Where an Agreement expires and/ or any notice of termination in respect of all or any of the Services has been served for any reason, for the duration of the notice period and for up to three months after such termination or expiry, the Supplier Contracting Party (or the relevant Supplier Affiliates) shall provide such reasonable assistance and co-operation as may be required by Capgemini to pass all Deliverables and other materials then paid for to the HSBC Contracting Party or its chosen nominee and for the migration to and provision of replacement services (including but not limited to reasonable assistance and co-operation to the replacement service provider). Where the Agreement is for outsourced service projects or managed service projects then, if specified in the relevant Agreement, Capgemini shall pay any agreed termination services charges specified therein. The Supplier Contracting Party will not be obliged to provide any incoming service provider with information, procedures and practices reasonably considered as the Supplier Contracting Party’s Confidential Information unless the incoming service provider has executed a non-disclosure agreement in favour of the Supplier Contracting Party on similar terms to the confidentiality protections afforded herein.

**23.12** On termination of any Agreement, the Supplier Contracting Party shall and shall procure that any Supplier Affiliate shall promptly return to Capgemini (or HSBC as appropriate) or, at such party’s option, certify destruction of all of their respective Confidential Information that relates exclusively to that Agreement and all copies thereof and all other data and information belonging to Capgemini and HSBC which was delivered to, generated by or otherwise used or processed by or on behalf of the Supplier Contracting Party in respect of that Agreement.

**Boilerplate**

**24.2.4** the Supplier Contracting Party shall indemnify and keep indemnified Capgemini from and against all liabilities arising from or in connection with:

**(A)** the termination of employment of Supplier Personnel who have transferred to Capgemini under TUPE Regulations and any employment liabilities including without limitation:

(i) any sum payable to or in respect of such Supplier Personnel related to his employment following the cessation of the Agreement in whole or in part; and

(ii) any applicable statutory or contractual notice period (or any applicable payment in lieu) and any statutory or contractual redundancy entitlement whether express or implied to which any Supplier Personnel is, or claims to be, entitled in connection with the termination of his employment;

(iii) any claim or demand in respect of redundancy, unfair dismissal, wrongful dismissal or any other claim whatsoever arising out of the termination of employment, any other claim under the TUPE Regulations and/or other employment legislation, breach of contract, any claim arising out of the contract of employment, including in respect of all emoluments and outgoings (including without limitation wages, holiday pay, bonuses, tax and social security contributions, pension contributions) or any other claim arising at common law or any claim relating to discrimination or equal pay;

**(B)** any complaint brought or made under Regulations 11,13 or 14 of the TUPE Regulations (or the equivalent provisions of any other applicable employment legislation) and/or under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the “1992 Act”) (or other applicable legislation in effect from time to time) for failure to inform or consult with any Supplier Personnel or any appropriate representative of any Supplier Personnel and/or penalties incurred for failure to notify the Secretary of State pursuant to section 193 of the 1992 Act or in respect of an award of compensation under Regulation 15 of the TUPE Regulations;

**(C)** any claim or demand arising from any actual or alleged act fault or omission (or any other event, occurrence or failure to act) by or on behalf of the Supplier Contracting Party or any Supplier Affiliate prior to, on or after the date on which the Services cease to be provided (in whole or in part) by the Supplier Contracting Party or Supplier Affiliate;

**(D)** any claim or demand arising from any actual or alleged act fault or omission (or any other event or occurrence) by or on behalf of Capgemini in respect of the Supplier Personnel taken on behalf of or at the instruction of the Supplier Contracting Party; and

**(E)** a claim made by or in respect of any Supplier Personnel for which it may be alleged that Capgemini is liable by virtue of the operation of these Terms and Conditions or any Agreement and/or the TUPE Regulations and/or other Employment Legislation.

**25.1** Neither Capgemini nor the Supplier shall be liable for any delays or failures of performance of any part of these Terms and Conditions to the extent that they are attributable to its being affected by an Event of Force Majeure, provided always that the party so affected shall use Best Endeavours to resume performance as quickly as possible and shall promptly give the other party full particulars of the failure or delay and consult with the other party concerning the failure or delay and the steps that it is taking in order to resume performance from time to time as appropriate. The unaffected party shall likewise be relieved of liability in respect of performance of any corresponding or related obligations to an equivalent extent. If any delay or failure attributable to an Event of Force Majeure on the part of the Supplier continues for a period of three (3) months, or for sixty (60) days in any one hundred and twenty (120) day period, the non-delaying party shall be entitled to terminate these Terms and Conditions immediately on giving written notice to the other party.

**29.4** Supplier Contracting Party shall not (without Capgemini’s prior written consent) assign, sub-contract, transfer or part with any right or obligation under this Agreement nor delegate any of its responsibilities thereunder. Where Capgemini grants consent to the Supplier Contracting Party to subcontract any of its obligations under the relevant Agreement, the Supplier Contracting Party shall be liable for the acts and omissions of the sub-contractor, and shall ensure that such sub-contractor’s delivery of the subcontracted obligations in connection with the relevant Agreement conforms to the requirements of such Agreement. The Supplier Contracting Party hereby indemnifies Capgemini against any costs, damage, liability and or other loss that Capgemini sustains as a result of the acts and omissions of such sub-contractors.

**35** The Supplier Contracting Party shall maintain throughout the term of the relevant Agreement and for six years thereafter adequate reasonable insurance cover with a reputable insurer acceptable to Capgemini in relation to the Supplier Contracting Party’s risks under such Agreement. The Supplier Contracting Party shall at the request of Capgemini from time to time furnish or procure the furnishing of such evidence as Capgemini may reasonably request to demonstrate that such insurance cover has been maintained in force with such insurer.

**38.5** In connection with this Agreement the Supplier Contracting Party shall comply with all export and import laws and regulations applicable to it.

**38.6** Anti-Bribery and Corruption and Sanctions Compliance

**38.6.1** In connection with the provision of services and/or other activities to be carried out under this Agreement, the Supplier shall comply with, and shall use Reasonable Endeavours to ensure that its officers, directors, employees and any third parties engaged or instructed to act for or on behalf of the Supplier or Capgemini (the “Relevant Persons”) are aware of and comply with all anti-bribery and corruption laws applicable to this Agreement (“ABC Laws”), including the UK Bribery Act 2010, the US Foreign Corrupt Practices Act of 1977, and the Hong Kong Prevention of Bribery Ordinance.

**38.6.2** The Supplier shall not and shall use Reasonable Endeavours to ensure the Relevant Persons shall not take any actions or make any omissions that would cause Capgemini to be in violation of any applicable ABC Laws.

**38.6.3** The Relevant Persons shall not, directly or indirectly, offer, pay, promise to pay or authorise any bribe, other undue financial or other advantage or make any facilitation payment to, or receive any bribe or other undue financial or other advantage from, a public official or a private party in connection with this Agreement.

**38.6.4** The Supplier warrants and represents that, in relation to the provision of services and any other activities to be carried out under this Agreement, that the Relevant Persons are subject to policies and procedures that are reasonably designed to prevent bribery or corruption and ensure compliance with ABC Laws and undertakes that it shall procure the compliance with such policies and procedures by the Relevant Persons. The Supplier warrants and represents that neither the Supplier nor, to its knowledge, any Relevant Persons or ultimate beneficial owners of the Supplier are the target of economic or financial sanctions measures imposed by the United Nations, the European Union, the United Kingdom, the United States or any relevant and applicable jurisdiction (“Restricted Persons”).

**38.6.5** The Supplier shall not deal directly or indirectly with Restricted Persons in connection with its dealings with Capgemini or in relation to this Agreement.

**38.6.6** The Supplier shall ensure that all transactions, payments, and expenses related to this Agreement are:

(A) fairly and accurately recorded, in reasonable detail, in its books and records; and

(B) evidenced and supported by complete and accurate documentation, including but not limited to invoices and receipts, which shall be maintained throughout the duration of this Agreement and for no less than six years after this Agreement’s termination and shall be made available to Capgemini upon reasonable notice for review.

**38.6.7** The Supplier shall:

(A) promptly report to Capgemini any breach or suspected breach of this clause 38.6, including any changes in the representations and warranties set forth in clauses 38.6.1, 38.6.2 and 38.6.4, and any requests or demands for any bribes, undue financial or other advantages or facilitation payments in connection with the performance of this Agreement; and

(B) assist Capgemini in investigating and remedying any such breach or suspected breach.

**38.6.8** Notwithstanding any provision of this Agreement to the contrary, Capgemini shall not be obligated to make any payment or take any other action under this Agreement if Capgemini believes that such action may constitute a violation, or contribute to any violation, of any ABC Laws, and Capgemini shall not be liable to the Supplier for any claims, Losses, or damages arising from Capgemini exercise of its right under this clause 38.6.