

# **Master As-a-Service Agreement**

**Commonwealth Bank of Australia**

**Markit On Demand, Inc.**

## **Commonwealth Bank Group**

### **Legal Services**

Commonwealth Bank,  
Level 8A, North Building, Commonwealth Bank Place  
1 Harbour Street  
SYDNEY NSW 2000  
Australia

Phone: +612 9118 5723

Fax: +612 9118 5700

Ref: 3070572

## Table of Contents

<b>1</b>	<b>Definitions and interpretations</b>	<b>6</b>
1.1	Definitions	6
1.1	Interpretation	6
1.2	Business day	7
<b>2</b>	<b>Objectives</b>	<b>8</b>
2.1	General objectives	8
2.2	Act towards Objectives	8
2.3	Interpretation	8
<b>3</b>	<b>Scope and structure of agreement</b>	<b>9</b>
3.1	Scope	9
3.2	Term	9
3.3	Order	9
3.4	Change Requests	9
3.5	No Exclusivity	10
<b>4</b>	<b>Conditions Precedent</b>	<b>10</b>
4.1	Conditions Precedent	10
4.2	Satisfaction or waiver of Conditions Precedent	10
4.3	Termination	11
4.4	Effect of termination	11
<b>5</b>	<b>Services</b>	<b>11</b>
5.1	Services to be provided	11
5.2	Volume	11
5.3	Standard of performance	11
5.4	Conflict of Interest	11
5.5	Supplier to provide Resources	12
5.6	Supplier to fully inform itself	12
5.7	Co-operation	12
5.8	Bank Tasks	13
<b>6</b>	<b>Supplier Personnel</b>	<b>14</b>
6.1	Supplier Personnel	14
6.2	Key Personnel	14
<b>7</b>	<b>Security, Regulatory and Industry Requirements</b>	<b>15</b>
7.1	Security fundamentals	15
7.2	Supplier procedures	15
7.3	Compliance with Security Requirements	15
7.4	Laws, Standards and Regulatory and Industry Requirements	16
7.5	Failure to comply	17
<b>8</b>	<b>Correction of errors and restoration of Bank Data</b>	<b>17</b>
<b>9</b>	<b>Service Levels</b>	<b>17</b>
9.1	General	17
9.2	Failure to perform Services	17

9.3	Service Credits	18
9.4	Monitoring	19
9.5	Service Level reports	19
<b>10</b>	<b>Training and knowledge transfer</b>	<b>20</b>
10.1	Training	20
10.2	Knowledge transfer to the Bank	21
10.3	Knowledge transfer to the Supplier	21
<b>11</b>	<b>Supplier Sites</b>	<b>21</b>
11.1	Supplier Sites	21
11.2	Access to Supplier Sites	23
11.3	Use of work space at the Supplier Sites	23
<b>12</b>	<b>Risk management</b>	<b>23</b>
12.1	The Supplier's risk management obligations	23
12.2	Quarterly review	24
12.3	Risk reporting	24
12.4	Specific requirements	24
12.5	No limitation	24
<b>13</b>	<b>AML/CTF Personnel obligations</b>	<b>25</b>
<b>14</b>	<b>Governance</b>	<b>25</b>
14.1	Representatives	25
14.2	Meetings	26
14.3	Reporting	26
<b>15</b>	<b>Acceptance Tests</b>	<b>27</b>
<b>16</b>	<b>Fees and payment</b>	<b>29</b>
16.1	Fees	29
16.2	Invoices	29
16.3	Payment	30
16.4	Fees inclusive	30
16.5	Disputes as to amounts payable	30
16.6	Rights of set-off	30
16.7	Unused credits	30
16.8	Most Favoured Customer	30
<b>17</b>	<b>GST and Taxes</b>	<b>31</b>
17.1	GST	31
17.2	Taxes generally	32
<b>18</b>	<b>Warranties</b>	<b>32</b>
18.1	General	32
18.2	Services and Supplier Owned Deliverables Warranties	32
18.3	Intellectual property	33
18.4	Moral rights	33
18.5	Breach of Warranty	34
18.6	Warranties separate	34
<b>19</b>	<b>Intellectual Property Rights</b>	<b>35</b>

19.1	Bank Owned Deliverables	35
19.2	Licence by the Supplier	35
19.3	Bank Data	35
19.4	Open Source Software	36
19.5	Indemnity and litigation	36
19.6	Conduct of IPR Claims	37
<b>20</b>	<b>Liability and indemnity</b>	<b>38</b>
20.1	Supplier's liability	38
20.2	Indemnity	38
20.3	Bank's liability	38
<b>21</b>	<b>Termination</b>	<b>39</b>
21.1	Rights to terminate	39
21.2	Regular or habitual breaches	39
21.3	Change in Control	39
21.4	Criminal conduct, fraud, disreputable acts	39
21.5	Termination by the Bank in part	40
21.6	Further Bank rights	40
21.7	Reimbursement of Fees	40
21.8	Delivery up	40
21.9	Transition Out	40
21.10	Consequences of termination	41
<b>22</b>	<b>Confidentiality</b>	<b>41</b>
22.1	Confidentiality	41
22.2	Exclusions	41
22.3	Permitted disclosures	42
22.4	Preventing disclosures	42
22.5	Return of Confidential Information	42
22.6	Remedies for breach	43
22.7	Supplier Employees	43
22.8	Confidentiality of Bank Data	43
<b>23</b>	<b>Privacy</b>	<b>43</b>
<b>24</b>	<b>Dispute resolution</b>	<b>45</b>
24.1	Meeting of Representatives	45
24.2	Escalation of Dispute	45
24.3	Legal proceedings	45
24.4	General	46
<b>25</b>	<b>Insurance</b>	<b>46</b>
25.1	General	46
25.2	Required Insurances	46
<b>26</b>	<b>Assignment and subcontracting</b>	<b>47</b>
26.1	Assignment by the Bank	47
26.2	Assignment by the Supplier	47
26.3	Subcontracting	47
<b>27</b>	<b>Force Majeure</b>	<b>48</b>

<b>28</b>	<b>Audit and inspection</b>	<b>48</b>
28.1	Audit rights	48
28.2	Purposes	49
28.3	Co-operation	49
28.4	Supplier audits	50
28.5	Regulator audits	50
28.6	Discrepancies	50
28.7	Costs of the audit	50
28.8	Document maintenance and retention	50
<b>29</b>	<b>Occupational Health and Safety</b>	<b>51</b>
<b>30</b>	<b>Business Continuity</b>	<b>52</b>
<b>31</b>	<b>Costs, expenses and duties</b>	<b>53</b>
31.1	Costs and expenses	53
31.2	Duties	53
<b>32</b>	<b>General</b>	<b>53</b>
32.1	Precedence of documents	53
32.2	Construction	54
32.3	Discretion in exercising rights	54
32.4	Notices	54
32.5	Relationship of the parties	55
32.6	Governing law and jurisdiction	55
32.7	Prohibition and enforceability	55
32.8	Waivers	55
32.9	Variation	56
32.10	Cumulative rights	56
32.11	Further assurances	56
32.12	Entire agreement	56
32.13	Survival	56
32.14	Counterparts	56
32.15	To the extent not excluded by law	56
32.16	Trust	57
32.17	Severability	57
32.18	Public statements	57
	<b>Schedule 1 - Dictionary</b>	<b>59</b>
	<b>Schedule 2 - Template Order</b>	<b>68</b>
	<b>Schedule 3 - Confidentiality Deed</b>	<b>75</b>
	<b>Schedule 4 - Change Request</b>	<b>80</b>
	<b>Schedule 5 - Executed Orders</b>	<b>82</b>
	<b>Schedule 6 - Form of Parent Guarantee</b>	<b>83</b>
	<b>Schedule 7 - Bank Security Requirements</b>	<b>84</b>
	<b>Schedule 8 - Not in use</b>	<b>88</b>
	<b>Schedule 9 - Supplier Sites</b>	<b>89</b>

---

## Master As-a-Service Agreement

---

### Parties

**Commonwealth Bank of Australia** (ACN 123123124) of Ground Floor, Tower 1, 201 Sussex Street, Sydney NSW 2000, Australia (Bank)

**Markit On Demand, Inc.**, of 5718 Central Avenue, Boulder, CO 80301 USA (Supplier)

---

### Background

- A** The Bank Group Members require the highest quality information technology services to be provided to them in an end-to-end, integrated, efficient, effective and cost-effective manner including:
- (A) the efficient processing of all Bank Data, (including via the capture, manipulation, storage, back-up, retrieval and distribution of the data); and
  - (B) performance, management and processing of various transactions on behalf of the Bank.
- B** The Supplier has represented to the Bank that it has significant experience in the delivery of technology services.
- C** In reliance on such representation, the Bank wishes to purchase and the Supplier has agreed to supply certain technology services in accordance with this Agreement.
- D** The parties agree in consideration of, among other things, the mutual promises contained in this Agreement.
- 

## 1 Definitions and interpretations

### 1.1 Definitions

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (Dictionary), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

### 1.1 Interpretation

In this Agreement, headings and terms appearing in bold typeface are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;

- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing (including any right) includes a part of that thing but nothing in this paragraph (e) implies that performance of part of an obligation constitutes performance of the obligation;
- (f) subject to paragraph (g), a reference to a clause, party, annexure, attachment, exhibit or Schedule is a reference to a clause of, and a party, annexure, exhibit and Schedule to, this Agreement;
- (g) a reference in a Schedule to a clause or paragraph, annexure, attachment, exhibit or Schedule is a reference to a clause or paragraph of, and an annexure, attachment, exhibit and Schedule to, that Schedule;
- (h) a reference in a Schedule to a clause "of the Agreement" is a reference to a clause of this Agreement excluding the Schedules;
- (i) a reference to this Agreement includes any annexure, exhibit or Schedule and any Order;
- (j) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (k) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (l) a reference to a party to a document includes that party's successors and permitted assigns;
- (m) the terms "including", "for example", "such as" and similar terms do not imply any limitations;
- (n) a reference to software or code includes all computer programs and code (including source code, object code, assembly code and scripts) and associated documentation;
- (o) except to the extent that any provision expressly states otherwise, if this Agreement requires a party to perform an obligation by a certain date, the party will not be in breach of this Agreement if it performs that obligation by 11.59 pm on that date;
- (p) a reference to the Bank includes a reference to any other Bank Group Member; and
- (q) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of that provision.

## 1.2 Business day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

---

## **2 Objectives**

### **2.1 General objectives**

The objectives of this Agreement are to:

- (a) enable the Bank to achieve "technology and operational excellence" in on-demand information technology services;
- (b) provide the Bank with access to world class on-demand services in a cost-effective manner;
- (c) reduce the complexity of the Bank's systems and to increase automation;
- (d) provide highly scalable, resilient, auditable, highly stable, on-demand solutions that are easy to Use, maintain, support and develop;
- (e) establish, and to put in place a framework for the continued development of, an open and co-operative relationship between the Supplier and the Bank;
- (f) encourage the Supplier and Bank Personnel to work together to identify, understand and deal with the Bank's business opportunities and barriers as they arise;
- (g) allow the Supplier to understand the business needs of the Bank;
- (h) enhance the Bank's information technology and telecommunications risk profile, including by way of the provision of improved service delivery;
- (i) position the Bank to expand its market access, in line with its distribution strategy from time to time, including its online strategies; and
- (j) improve over time the quality, value and benefits of the on-demand Services provided to the Bank.

(the **Objectives**).

### **2.2 Act towards Objectives**

- (a) Unless the parties otherwise agree, the parties agree to act to develop the relationship and act otherwise in a manner which is reasonable and consistent with the Objectives.
- (b) The parties also agree that whenever any matter for agreement, dispute or other issue (an **Issue**) arises which is not provided for expressly in this Agreement, they will work together to resolve that Issue to give maximum effect to the Objectives.

### **2.3 Interpretation**

- (a) In interpreting and construing this Agreement, reference may be made, without limitation, to the Objectives:
  - (i) in determining the Bank's objectives and the Supplier's intentions in entering into this Agreement; and
  - (ii) as an aid to the dispute resolution procedures set out in this Agreement.



- (b) The Objectives are not intended to alter the plain meaning of the specific terms and conditions of this Agreement.

---

### **3 Scope and structure of agreement**

#### **3.1 Scope**

This Agreement sets out the terms on which the Supplier has agreed to supply Services to the Bank.

#### **3.2 Term**

This Agreement commences on the Commencement Date and continues until it is terminated in accordance with clause 21 (the **Term**).

#### **3.3 Order**

- (a) Where the Bank requires the Supplier to provide Services, the provision of those Services will be evidenced by an Order executed by the parties in accordance with the terms of this Agreement, and which will specify:
- (i) the date on which the Order commences, its term and any renewal options;
  - (ii) the Services to be provided by the Supplier; and
  - (iii) the Fees to be payable by the Bank.
- (b) All Orders duly executed by the parties will form Annexures to Schedule 5 (Executed Orders) of this Agreement.
- (c) As at the date of this Agreement, the Orders completed and annexed to this Agreement have been duly executed by the parties in accordance with this clause.

#### **3.4 Change Requests**

- (a) If either party requires a change to any Order, that party must issue a Change Request in respect of each change:
- (i) to the other party's Commercial Representative ;
  - (ii) in the form outlined as part of Schedule 4 (Change Request); and
  - (iii) in accordance with this clause 3.4.
- (b) In order for a Change Request to be effected, it must be duly executed by both parties.
- (c) Promptly after receipt of a Change Request, both party's Commercial Representatives, and where applicable the party's Operational Representatives, must meet to discuss the proposed change, and within 10 Business Days the party which has received the Change Request must advise the other party whether the change is accepted or rejected.
- (d) In the event that the Change Request is accepted by the party which received it, the Change Request must then be executed by both parties without undue delay and will come into effect on and from the date of execution or otherwise as agreed between the parties.

- (e) In the event that the Change Request is rejected by the party which received it, either party may escalate the Change Request to the Executives detailed in the relevant Order to which the Change Request relates. If a Change Request is so escalated, then the Executives will meet as often as required and negotiate in good faith towards agreement with respect to the Change Request. If agreement has not been reached within 20 Business Days of the initial escalation, then the parties may follow the procedure in clause 24.
- (f) The parties agree that they will not exercise the ability to propose Change Requests arbitrarily or capriciously in recognition that both parties are committed to the Agreement.

### **3.5 No Exclusivity**

- (a) The Supplier acknowledges that it is not, nor will it be, the exclusive supplier to the Bank of the kinds of goods and services contemplated by this Agreement and that the Bank may, at any time and from time to time, perform, provide or engage a third party to perform or provide, the whole or any part of the Services, or any similar services, without the consent of or notice to the Supplier.
- (b) Nothing in this Agreement requires the Bank:
  - (i) to purchase, or offer to purchase, goods or services from the Supplier or to use or exploit goods or services supplied by the Supplier; or
  - (ii) to place orders for Services, or to guarantee a minimum spend in any period during the term of the Agreement.
- (c) Nothing in this clause 3.5 relieves the Bank of any obligation under an Order.

---

## **4 Conditions Precedent**

### **4.1 Conditions Precedent**

The obligations of each party under this Agreement do not come into force until satisfaction by the Supplier, or waiver by the Bank, on or before the relevant Cut Off Date, of the following Conditions Precedent:

- (a) receipt by the Bank of certificates of currency of the insurance policies referred to in clause 25;
- (b) receipt by the Bank of a parent guarantee duly executed by the Supplier Parent, which duplicates, in form and substance the draft Deed of Guarantee; and
- (c) receipt by the Bank of a legal opinion from an appropriately qualified lawyer certifying that the parent guarantee was properly executed by a duly authorised officer of the Supplier Parent in a form and in substance reasonably satisfactory to the Bank.

### **4.2 Satisfaction or waiver of Conditions Precedent**

- (a) The Supplier must use its best endeavours to satisfy the Conditions Precedent on or before the relevant Cut Off Date.
- (b) The Supplier must promptly notify the Bank if it discovers that any Condition Precedent is not satisfied or becomes incapable of being satisfied.

- (c) Only the Bank can waive a Condition Precedent.
- (d) This clause 4.2 does not impose any obligation on the Bank to exercise a discretion, or give any approval, in any way.

#### **4.3 Termination**

If any Condition Precedent is not waived or satisfied on or before the relevant Cut Off Date, this Agreement will automatically terminate unless the parties have mutually agreed in writing an extension of time for the completion of the relevant unsatisfied or unwaived Condition(s) Precedent.

#### **4.4 Effect of termination**

If this Agreement terminates under clause 4.3, this Agreement has no further effect and neither party is liable to the other for performance of any obligations under this Agreement.

---

### **5 Services**

#### **5.1 Services to be provided**

The Supplier must provide the Services, as set out in an Order, to:

- (a) the Bank and all Bank Group Members; and
- (b) any IT Service Providers and other third parties to whom the Bank is entitled to grant a sublicense to under clause 19.2(b),

in accordance with this Agreement including the Specifications.

#### **5.2 Volume**

The Supplier must increase or decrease the volume of Services in accordance with the Bank Group's business requirements and demands from time to time and in accordance with the terms of this Agreement and the relevant Order(s).

#### **5.3 Standard of performance**

The Supplier must perform its obligations under this Agreement in a:

- (a) diligent and professional manner with the degree of skill and care that is normally exercised by professional persons or entities which supply services of a similar nature to a world class standard; and
- (b) manner that ensures continuous improvement of the standard, quality and performance of the Services provided to the Bank.

#### **5.4 Conflict of Interest**

- (a) The Supplier must notify the Bank in writing of any matter connected with the performance of this Agreement which may give rise to an actual or potential conflict of interest at any time during the performance of this Agreement.
- (b) If the Bank, acting reasonably, believes that a conflict of interest exists and that it may have an adverse effect on the Bank, or the proper performance of the Services by the Supplier, then this will constitute a material breach of the Supplier's obligations under this Agreement which is not capable of remedy entitling the Bank to immediately terminate this Agreement by giving notice to the Supplier in accordance with clause 21.1(a)(ii).

## **5.5 Supplier to provide Resources**

The Supplier must at all times maintain sufficient Resources to fulfil its obligations under this Agreement.

## **5.6 Supplier to fully inform itself**

- (a) The Supplier must satisfy itself as to the correctness and sufficiency of any information provided or identified by the Bank in relation to this Agreement (the **Bank Information**).
- (b) The Bank will not be responsible for, and the Supplier will not be entitled to any increase in Fees as a result of, any inaccuracy or insufficiency of the Bank Information, except to the extent caused by the fraud of any Bank employee.

## **5.7 Co-operation**

- (a) The Supplier must:
  - (i) when performing its obligations under this Agreement co-operate with the IT Service Providers and the Bank's other suppliers;
  - (ii) ensure that any Bank Tasks required to be performed by the Bank or any IT Service Provider are expressly specified in the relevant Order;
  - (iii) provide all assistance reasonably requested by the Bank, an IT Service Provider, or any other Bank supplier, including by:
    - (A) providing such access as may be necessary to the Supplier Sites and Resources being provided, managed or operated by the Supplier in the provision of the Services;
    - (B) providing such access, and copies, as may be necessary of Bank Data in such format as the Bank reasonably requires;
    - (C) providing necessary information, documentation and instructions for the Services (including for quality assurance and development and performance acceptance testing) to enable goods or services to interface, or be integrated, with the Services, or be operated by the Supplier;
    - (D) providing assistance and support services to permit such Bank Group Members, IT Service Providers and other Bank suppliers to acquire the knowledge necessary efficiently to provide, receive or operate goods or services;
    - (E) participating in training and other familiarisation processes to permit the Supplier to obtain the knowledge necessary to receive or operate goods or services provided by such Bank Group Members, IT Service Providers or other Bank suppliers; and
    - (F) providing access to individual Supplier Personnel, upon the giving of reasonable notice by the Bank; and
  - (iv) give the Bank and the IT Service Providers access to architectural or design information and related data (including any interface specifications and data models) in respect of any software to the extent

necessary to enable the Bank or a Bank Group Member to exercise the rights granted to it under this Agreement.

- (b) If requested by the Bank, the Supplier must ensure the Services interface with or can be incorporated into the Bank Systems and comply with the Bank or an IT Service Provider's network integration requirements (as the case may be) as provided to the Supplier from time to time.

## **5.8 Bank Tasks**

- (a) Notwithstanding any other provision of this Agreement, the Bank has no obligation to perform any Bank Tasks however, remains accountable for the performance of the Bank Tasks in accordance with this clause 5.8.
- (b) Subject to paragraph (e):
  - (i) the Bank agrees that if it does not perform or procure the performance of a Bank Task the Supplier may be unable to comply with its obligations under this Agreement which are dependent on the Bank Task having been performed; and
  - (ii) if the Supplier demonstrates to the reasonable satisfaction of the Bank that the Supplier is unable to comply with an obligation under this Agreement which is dependent on a Bank Task being performed:
    - (A) the Supplier will not be liable for its failure to comply with that obligation; and
    - (B) where the obligation is a timeframe required to be met under this Agreement, the Bank agrees to adjust that timeframe and any dependant timeframe by such period as is reasonable in the circumstances to reflect the delay.
- (c) The Supplier must promptly notify the Bank of any failure by the Bank to perform or procure the performance of the Bank Task (and, in any event, within 5 Business Days of becoming aware of such failure) and provide to the Bank:
  - (i) such information as the Supplier has or has access to in relation to the failure to comply with its obligations under this Agreement; and
  - (ii) such information as the Bank may reasonably request in relation to that failure to comply with its obligations under this Agreement,so as to assist the Bank to assess whether such failure was caused by the non-performance of that Bank Task.
- (d) Where an event of the type specified in paragraph (b) occurs, the Supplier must use all reasonable endeavours, including by applying additional Resources, to minimise the impact and duration of any delay caused, or likely to be caused, as a result of the occurrence of that event.
- (e) Paragraph (b) does not apply:
  - (i) to the extent that any failure by the Supplier to comply with its obligations under this Agreement, or an act or omission of the Supplier, caused or contributed to the non-performance of the relevant Bank Task;

- (ii) to the extent that the Supplier could have avoided its failure to comply by the taking of reasonable precautions or the use of reasonable workarounds using existing resources; or
    - (iii) where the Supplier has failed to provide a notice to the Bank as required by paragraph (c).
  - (f) The Supplier has no other rights or remedies in relation to the non-performance of a Bank Task.
- 

## **6 Supplier Personnel**

### **6.1 Supplier Personnel**

- (a) The Supplier must ensure the Supplier Personnel have appropriate skills, training and background to perform the Services.
- (b) Where, in the Bank's reasonable opinion, the Supplier Personnel are not performing the Services in an acceptable manner the Supplier must take all reasonably appropriate steps to remedy the problem within 5 Business Days following notification from the Bank. If the Bank is not satisfied with such remedial steps, the Bank may by giving notice to the Supplier, require the Supplier to replace the relevant Supplier Personnel within a time frame acceptable to the Bank, but in no event later than 30 calendar days from the date of such notice.
- (c) The Supplier must ensure that all Supplier Personnel comply with all reasonable instructions and requirements of the Bank or an IT Service Provider while on the premises of the Bank Group or the IT Service Provider or accessing the Bank Systems, Bank software or the Bank's network.
- (d) The Supplier must ensure that its Personnel comply with all of the terms and conditions of this Agreement, and the Supplier will be liable to the Bank for the acts, omissions, defaults and negligence of the Supplier Personnel as if they were the acts, omissions, defaults or negligence of the Supplier.

### **6.2 Key Personnel**

- (a) The Supplier must ensure that any Key Personnel perform and complete the Services in accordance with the terms of this Agreement.
- (b) The Supplier must use its best endeavours to ensure that Key Personnel devote, to the extent necessary as determined by the Bank, substantially their full time and effort to the provision of the Services to the Bank.
- (c) Subject to paragraphs (b) and (f), the Supplier must not transfer or reassign any Key Personnel until a suitable replacement is nominated by the Supplier and approved by the Bank.
- (d) Before replacing Key Personnel, the Supplier must notify the Bank of the proposed replacement, introduce the individual to appropriate Bank representatives, and provide the Bank with a resume and other information about the individual reasonably requested by the Bank.
- (e) Any replacement Key Personnel to be provided by the Supplier under this Agreement must:
  - (i) have at least the equivalent skills, experience and qualifications as the replaced Key Personnel;

- (ii) be reasonably acceptable to the Bank;
  - (iii) be provided to the Bank at no additional charge and at the earliest opportunity; and
  - (iv) not waive or diminish the Supplier's obligation to meet any due date or time for performance under this Agreement.
- (f) The Supplier may, after consultation with the Bank, transfer or reassign Key Personnel for serious misbehaviour.

## **7 Security, Regulatory and Industry Requirements**

### **7.1 Security fundamentals**

The Supplier acknowledges that the security of the Bank Data is fundamental to the business of each Bank Group Member and that, without limitation, any security breach may directly affect one or more of any Bank Group Member's:

- (a) duties to its customers;
- (b) relationship with its shareholders and employees; and
- (c) obligations under Privacy Legislation, regulatory requirements of the Reserve Bank of Australia and other applicable Laws and Regulatory and Industry Requirements.

### **7.2 Supplier procedures**

- (a) Without limiting any other obligations of the Supplier under this clause 7, the Supplier must:
  - (i) establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised use, destruction, loss or alteration of Bank Data and the Bank's other Confidential Information;
  - (ii) operate and maintain procedures and processes that ensure the secure configuration of all Supplier Systems and their components throughout their lifecycle (including but not limited to installation, operation, maintenance and disposal);
  - (iii) not make any undocumented, unreported or unauthorised configuration changes to the Supplier Systems or to the information security controls that secure the Bank Data, if those changes would materially decrease the protections afforded Bank Data; and
  - (iv) notify and keep the Bank notified at all times of the Supplier's current safety and security procedures and safeguards and any amendments to such procedures and safeguards which adversely affect, or are likely to adversely affect, the Bank's ability to manage the Services or the security of the Services.

### **7.3 Compliance with Security Requirements**

- (a) The Supplier must comply with the Security Requirements and such other security requirements of the Bank from time to time and communicated to the Supplier, including security requirements relating to:

- (i) access to, and use of, any data, information systems or facilities provided by the Bank, an IT Service Provider or a third party; and
  - (ii) the confidentiality or integrity of the Bank Data or the availability or security of the Services.
- (b) If the Supplier becomes aware of an actual, alleged or suspected breach of the Security Requirements or other security requirements in force from time to time, or becomes aware of an act or omission relating to the security of the Bank Data and/or Services which impacts the confidentiality or integrity of the Bank Data or the availability or security of the Services, (together a **Security Breach**) it must immediately:
  - (i) notify the Bank of the Security Breach;
  - (ii) identify the cause of the Security Breach;
  - (iii) rectify any actual Security Breach and its consequences;
  - (iv) ensure that any potential Security Breach does not become an actual Security Breach;
  - (v) investigate any alleged or suspected Security Breach; and either:
    - (A) implement rectification measures if an actual Security Breach occurred or a Security Breach is likely to occur; or
    - (B) confirm to the Bank that no actual Security Breach occurred or is likely to occur;
  - (vi) provide the Bank with a report detailing the cause of, and procedure for correcting, the Security Breach;
  - (vii) provide the Bank with reasonable evidence that the Security Breach will not occur again; and
  - (viii) certify that the Supplier has taken all commercially reasonable steps to prevent any recurrence of such Security Breach.

#### 7.4 Laws, Standards and Regulatory and Industry Requirements

In order to allow the Bank to comply with all relevant Laws, Standards and Regulatory and Industry Requirements, the Supplier must, in the provision of the Services:

- (a) comply with all Industry Standards notified to the Supplier or that should be known to the Supplier;
- (b) comply with all:
  - (i) Bank Policies notified to the Supplier or that should be known to the Supplier; and
  - (ii) Laws, Standards and Regulatory and Industry Requirements relating to Services and the performance of its obligations under this Agreement; and
- (c) obtain and maintain any licences, authorisations, consents, approvals and permits required by applicable Laws, Standards and Regulatory and Industry Requirements to provide the Services and to perform its obligations under this Agreement.



## **7.5 Failure to comply**

- (a) The Supplier must notify the Bank of any actual, alleged or suspected breach of, the Bank Policies, Laws and Regulatory and Industry Requirements immediately after the Supplier has become aware of the actual, alleged or suspected breach (as the case may be).
- (b) Upon notification under paragraph (a), the Supplier must immediately:
  - (i) rectify any actual breach; and
  - (ii) investigate any alleged or suspected breach; and:
    - (A) implement rectification measures if an actual breach has occurred or a breach is likely to occur; or
    - (B) confirm to the Bank that no actual breach has occurred or is likely to occur.

---

## **8 Correction of errors and restoration of Bank Data**

- (a) Without limiting the Supplier's obligations under this Agreement, the Supplier must promptly correct any inaccuracies or omissions in any Bank Data caused by the Supplier, and restore (including from back-up tapes) any corrupt or wrongfully deleted Bank Data, in accordance with the Bank's directions.
- (a) Where the Supplier fails to comply with paragraph (a), the Bank may correct any such inaccuracies or omissions in any Bank Data, and/or restore (including from back-up tapes) any corrupt or wrongfully deleted Bank Data at the Supplier's cost.
- (b) The Supplier must provide to the Bank:
  - (i) such information as the Supplier has or has access to in relation to any such inaccuracies, omissions, corruptions or wrongful deletions;
  - (i) such information as the Bank may reasonably request in relation to such inaccuracies, omissions, corruptions or wrongful deletions;
  - (ii) information in relation to the adequacy and effectiveness of the Supplier's current controls; and
  - (iii) a detailed outline of the remediation plans and controls, which the Supplier will put in place to ensure that such inaccuracies, omissions, corruptions or wrongful deletions of Bank Data caused by the Supplier will not occur again.

---

## **9 Service Levels**

### **9.1 General**

The Supplier must provide the Services in accordance with the Service Levels.

### **9.2 Failure to perform Services**

- (a) If:
  - (i) the Supplier fails to meet any Service Level;
  - (ii) there is a Priority 1 Defect or Priority 2 Defect; or

- (iii) the Supplier otherwise fails to provide the Services in accordance with this Agreement in a material way,

then the Supplier must promptly:

- (iv) give the Bank notice to that effect;
  - (v) identify the cause of such failure, including by performing a Root Cause Analysis; and
  - (vi) allocate such Resources as are necessary to remedy the failure and any consequences of such failure;
  - (ii) provide the Bank with a written report detailing the cause of such failure and the procedure for correcting the failure and update the report on at least a monthly basis outlining the steps taken by the Supplier in connection with the Root Cause Analysis and the effectiveness of these steps;
  - (iii) provide the Bank with reasonable evidence that the failure will not occur again;
  - (iv) certify to the Bank that all reasonable action has been taken to prevent any recurrence of such failure;
  - (v) comply with any additional obligations contained in any Schedule or Order, which prevail over the terms of this paragraph (a) in the event of any inconsistency;
  - (vi) if requested by the Bank, provide any documentation that is requested to verify the Supplier's compliance with this paragraph (a); and
  - (vii) promptly respond accurately and with adequate detail to any questions raised by the Bank in relation to the Supplier's failure to meet Service Levels within the time required by the Bank.
- (b) The Bank's rights in this paragraph (a) are in addition to any other rights it may have in relation to the matters referred to in this clause 9.

### **9.3 Service Credits**

- (a) The Bank will be entitled to Service Credits where the Supplier fails to meet one or more Service Levels, in accordance with the terms of this Agreement, including any Order.
- (b) The Bank's entitlement to a Service Credit is in addition to, and does not limit or affect, any other right or remedy the Bank may have in connection with the Supplier's failure to meet a Service Level.
- (c) Without limiting the Bank's other rights and remedies, the Supplier's liability for Service Credits under any Order will not exceed the At-Risk Amount.
- (d) The Service Credits are calculated in accordance with the following:
  - (i) the Service Level Credit Percentage is multiplied by the total Fees for the Services for the billing month in which the Service Level is breached; and
  - (ii) where there are multiple Service Level breached the individual Service Credits are added together up to the At-Risk Amount.

- (e) Service Credits will be applied to the monthly invoice for the Services provided under the relevant Order, in accordance with clause 16.2(c).

#### **9.4 Monitoring**

- (a) The Supplier must implement appropriate procedures and automated measurement, monitoring and management tools to enable it to:
  - (i) detect and prevent any failure to provide any of the Services or meet the Service Levels; and
  - (ii) notify and report to the Bank in accordance with this clause 9.
- (b) The Supplier must in addition to its obligations under the relevant Order(s) at all times provide the Bank with:
  - (i) for any tools used to provide the Services:
    - (A) online access;
    - (B) all standard data feeds; and
    - (C) if requested by the Bank, a data extract of all Bank Data used or stored by the tools; and
  - (ii) if requested by the Bank, an up to date copy of all the Bank Data produced or stored by such tools,

to enable the Bank to access the same data and information that is available to the Supplier.
- (c) The Supplier must provide the Bank on request with information concerning, and access to, such data and measurement, monitoring and management tools for audit and inspection purposes.
- (d) The Supplier must conduct regular risk assessments in relation to the Service Levels and the Supplier's compliance with the Service Levels and deliver a comprehensive Service Level risk register to the Bank upon written request.
- (e) The Supplier must not charge the Bank any run time, or other charges for the operation of or access to any such data or measurement, monitoring and management tools or standard data feeds or copies including when the Supplier is required to separate Bank Data from other Supplier client-specific data.

#### **9.5 Service Level reports**

- (a) With each invoice contemplated by clause 16.1(d), the Supplier must include a Service Level report for each Order for the relevant month in a form acceptable to the Bank.
- (b) As part of the report, the Supplier must in relation to the relevant month:
  - (i) certify the extent to which the relevant Service Levels are and are not being met;
  - (ii) certify the applicable Service Credits payable for each of the Services in accordance with the relevant Service Levels;
  - (iii) include any other information referred to in the relevant Order; and

- (iv) include any other information requested by the Bank from time to time.
- (c) Unless otherwise agreed, all reports must contain a level of detail sufficient to:
  - (i) verify the Supplier's compliance with the Service Levels; and
  - (ii) verify the calculation of Service Credits payable.
- (d) If at any stage it is discovered that the Supplier has under-paid the amount of Service Credits payable, then the Supplier will promptly pay the Service Credits owing.

---

## **10 Training and knowledge transfer**

### **10.1 Training**

- (a) The Supplier must provide training services to the Bank under this Agreement in accordance with a Training Plan developed in accordance with this clause 10.1.
- (b) Following commencement of each Order, the Supplier, in consultation with the Bank, must design a draft Training Plan in respect of that Order which must:
  - (i) be based on the training requirements, if any, specified by the Bank;
  - (ii) describe in detail the training services and training materials to be provided by the Supplier;
  - (iii) describe a training program that will provide sufficient training for the Bank's Personnel who attend to deliver the outcomes required by the Bank; and
  - (iv) require the Supplier to provide the Bank with training materials in the quantity and format reasonably specified by the Bank (if any).
- (c) The Supplier must submit a copy of the draft Training Plan to the Bank for its approval by the timeframes set out in this Agreement, or if no such timeframes are specified, then at least 10 Business Days prior to the scheduled commencement of training.
- (d) If the Bank approves the draft Training Plan, it will become the Training Plan for the purposes of that Order.
- (e) If the Bank does not approve the draft Training Plan, the Supplier must promptly make any amendments to the draft Training Plan that are:
  - (i) required in order for the draft Training Plan to comply with paragraph (b); or
  - (ii) otherwise reasonable in the circumstances,and resubmit a revised draft Training Plan to the Bank for its approval, in which case paragraph (d) and, if relevant, this paragraph (e) will apply again.
- (f) The Supplier must ensure that the process described in this clause 10.1 is completed within the timeframes set out in this Agreement, or if no such timeframes are specified, then prior to the scheduled commencement of training.

## 10.2 Knowledge transfer to the Bank

The Supplier acknowledges the importance to the Bank Group of knowledge transfer to the Bank's Personnel. For the purpose of maximising knowledge transfer the Supplier must provide comprehensive knowledge transfer Services, including by:

- (a) transferring knowledge from the Supplier to the Bank;
- (b) developing or capturing (as may be required) and retaining, the Knowledge Management Materials in both electronic and hard copy formats;
- (c) promptly updating the Knowledge Management Materials to ensure the Knowledge Management Materials remain current and accurate at all times throughout the Term;
- (d) ensuring version control of all electronic and hard copy versions of the Knowledge Management Materials;
- (e) upon request, providing the Bank with access to the Knowledge Management Materials at all times throughout the Term;
- (f) upon termination or expiry of this Agreement or the relevant Order, and at any other time requested by the Bank, providing the Bank with a complete electronic and hard-copy version of the Knowledge Management Materials; and
- (g) providing any other or additional knowledge transfer Services required by the Bank as set out in this Agreement.

## 10.3 Knowledge transfer to the Supplier

- (a) The Supplier must actively participate in any knowledge transfer, training and other familiarisation processes to the extent, and otherwise in the manner and format, required by the Bank from time to time to facilitate the transfer to the Supplier of knowledge relevant to the Services.
- (b) Without limiting this clause 10, specific knowledge transfer, training and other familiarisation processes may also be set out in an Order.
- (c) The Bank is under no obligation to conduct any such knowledge transfer, training or other familiarisation processes. However, the conduct of any such knowledge transfer, training or familiarisation processes by the Bank neither:
  - (i) relieves the Supplier of any of its obligations under this Agreement; nor
  - (ii) acts as a waiver of any of the Bank's rights or remedies under this Agreement.

---

## 11 Supplier Sites

### 11.1 Supplier Sites

- (a) The Supplier must supply the specific Services from the address of each specific Supplier Site listed in Schedule 9 (Supplier Sites) as relevant to each individual Service, subject to the Supplier providing the Bank with a Risk Assessment and Mitigation Plan prior to the Bank approving any locations as Supplier Sites.

- (b) The Supplier must maintain the Supplier Sites in accordance with industry best practices.
- (c) Upon request by the Bank (but no more than once per year), and on prior written approval by the Bank of any associated costs, the Supplier must, conduct a review of the Supplier Sites and deliver a report, from an independently recognised and qualified third party as determined by the Bank, that assesses the quality, design and operational effectiveness of the policies and procedures, including but not limited to security procedures, operating at the Supplier Sites in accordance with industry best practices to the Bank.
- (d) The Supplier must not, without the Bank's approval (to be provided in the Bank's sole and absolute discretion), supply the Services from any location not specified in Schedule 9 (Supplier Sites) from time to time. For clarification, except as otherwise specified in Schedule 9 (Supplier Sites), this clause 11 applies equally to locations from which any subcontractor of the Supplier is involved in the provision of the Services.
- (e) Where, as a result of the performance of any of the Services, Bank Data is transmitted through or across any form of telecommunications network (including any submarine telecommunications cable systems, satellite feeds or similar) to locations outside of the Jurisdiction, the Supplier must ensure that the Bank Data is only routed, prior to the Bank Data being processed at the relevant Supplier Site, through facilities (including any terminal international centres (TICs) or landing stations or similar) located in jurisdictions that are expressly specified in this Agreement.
- (f) The Supplier may from time to time propose to provide:
  - (i) Services of a particular nature from a location that is not specified in Schedule 9 (Supplier Sites); or
  - (ii) Services of a different nature from a location that is already specified in Schedule 9 (Supplier Sites).
- (g) Within a reasonable period after receiving the Supplier's notice under paragraph (f), the Bank may:
  - (i) notify the Supplier that it does not approve the proposal, in which case the Supplier's proposal has no effect;
  - (ii) notify the Supplier that it approves the Supplier's proposal (which approval may be granted subject to conditions), in which case that location will be considered added to Schedule 9 (Supplier Sites). No such approval limits the Supplier's obligations under clause 23(d); or
  - (iii) require the Supplier to:
    - (A) prepare a Risk Assessment and Mitigation Plan; and
    - (B) identify the business, technology and other benefits and risks to the Bank from the relocation,following receipt of which the Bank will, within 20 Business Days of receiving the risk assessment and mitigation plan, notify the Supplier under either paragraph (i) or (ii) as the case may be.

- (h) If no notice is received from the Bank within a reasonable period after receiving notice from the Supplier, the Bank will be deemed not to have approved the Supplier's proposal.

## **11.2 Access to Supplier Sites**

Subject to the Bank and its nominated third parties agreeing to the Supplier's reasonable confidentiality undertakings and security requirements, the Supplier must provide the Bank and its nominated third parties with (or procure for the Bank and its nominated third parties) timely and full access to the Supplier Sites as the Bank reasonably requires from time to time. The Bank will provide such notice as is reasonably practicable in the circumstances where it requests access under this clause 11.2.

## **11.3 Use of work space at the Supplier Sites**

The Supplier must provide the Bank with (or procure for the Bank) use of, and an appropriate amount of work space at, any Supplier Site if reasonably required by the Bank.

---

# **12 Risk management**

## **12.1 The Supplier's risk management obligations**

The Supplier must, in a manner that is consistent with the nature and scope of the Services, and in accordance with:

- (a) any relevant Bank Policies and Standards; and
- (b) industry best practices for risk management

(the **Risk Standards**), establish and use auditable, repeatable and integrated processes approved by the Bank to effectively identify, manage and report Risks, including by:

- (c) identifying any Risks, and analysing the likelihood and impact of such Risks occurring;
- (d) implementing appropriate Risk Controls;
- (e) proactively monitoring Risk Controls;
- (f) continuously monitoring and reviewing Risks to allow for changes in factors affecting Risks and to ensure that the Risk Controls remain up-to-date and effective; and
- (g) unless the Bank agrees otherwise in writing, maintaining a register of Risks that enables Risks to be viewed, categorised and reported to the Bank (**Risk Register**). Each Risk Register must be kept up-to-date at all times and must include:
  - (i) a detailed description of each Risk;
  - (ii) a categorisation of each Risk as determined reasonably by the Supplier;
  - (iii) the likelihood and impact of each Risk occurring; and

- (iv) the Risk Controls which must be put in place by the Supplier to mitigate each Risk as described in paragraph (d), and the associated timeframes and implementation status for those Risk Controls.

## **12.2 Quarterly review**

The Supplier will:

- (a) remain abreast of global developments in Risks relevant to the security of the Services (including associated infrastructure) including any emerging Risks; and
- (b) meet with the Bank upon request, to:
  - (i) discuss any emerging Risks;
  - (ii) notify Risks known to it, or identified by it, to the extent not previously notified to the Bank;
  - (iii) discuss and agree upon any emerging Risks which pose a sufficient threat; and
  - (iv) discuss and agree upon strategies and/or processes for dealing with such emerging Risks.

## **12.3 Risk reporting**

The Supplier must, upon written request, report to the Bank on:

- (a) all then current Risks under this Agreement;
- (b) the extent to which such Risks are recorded in the relevant Risk Register; and
- (c) the effectiveness of Risk Controls in terms of mitigating such Risks.

## **12.4 Specific requirements**

Each Order may specify additional requirements relating to Risks (such as, for example, specific reporting obligations).

## **12.5 No limitation**

The identification of Risks by the Supplier in accordance with this clause 12 (including the identification of Risks that may be affected by the acts or omissions of the Bank, other Bank Group Members or IT Service Providers) will not limit the Supplier's other obligations under this Agreement.



---

### 13 AML/CTF Personnel obligations

- (a) Supplier must perform appropriate due diligence on all Supplier Personnel, by putting in place a **Personnel Due Diligence Program** which:
  - (i) includes appropriate risk based systems and controls for screening prospective Supplier Personnel against money laundering or terrorism financing risk (for example identification checks, reference checks, criminal history checks etc);
  - (iii) establishes and maintains a system to manage any Supplier Personnel that fails, without reasonable excuse, to comply with any system, control or procedure established under the Personnel Due Diligence Program.
- (b) The Supplier must comply with its Personnel Due Diligence Program, and, upon request by the Bank, acknowledge such compliance.
- (c) The Bank may audit or inspect any issue or matter relating to the Supplier's compliance with its Personnel Due Diligence Program, and the Supplier must provide all reasonable assistance and information to the Bank in the conduct of those audits or inspections.

---

### 14 Governance

#### 14.1 Representatives

- (a) Both parties must appoint a Commercial Representative to fulfil that party's obligations in relation to Change Requests, governance, Disputes, and to execute any agreed upon variations to this Agreement or an Order.
- (b) As at the Commencement Date, the Commercial Representatives for this Agreement are:
  - (i) For the Bank:
    - Name: Joe Edwin
    - Position: General Manager, EML and Private Bank IT
    - Address: Level 4c, 1 Harbour St, Sydney NSW 2000
    - Phone: +61 405 450 461
    - Facsimile:
    - Email: joseph.edwin@cba.com.au
  - (ii) For the Supplier:
    - Name: Meredith Chavel
    - Position: Director, Business Development
    - Address: 5718 Central Avenue  
Boulder, CO 80301 USA
    - Phone: +1 303 583 6357
    - Facsimile: +1 303 444 2586
    - Email: meredith.chavel@markit.com

- (c) The Supplier:
  - (i) may consult with Bank Personnel with regard to their business requirements;
  - (ii) must, unless otherwise directed by the Bank Commercial Representative, ensure that this Agreement is used to govern any future software, hardware or services to be provided by the Supplier;
  - (iii) will not take instructions or directions from Bank Personnel with respect to variations to this Agreement; and
  - (iv) must only take instructions from the Bank Commercial Representative with respect to variations to this Agreement.
- (d) Prior to execution of any Order, both parties must additionally appoint an Operational Representative to make day-to-day decisions regarding the operational and technical aspects of that Order. For the avoidance of doubt, the parties' Operational Representatives are not authorised to make decisions that vary their respective party's obligation or rights under this Agreement.
- (e) Either party may replace its Commercial Representative or Operational Representative by giving notice to the other party.

#### **14.2 Meetings**

The parties must ensure that their respective Commercial Representatives and Operational Representatives (or delegates with appropriate authority):

- (a) meet (at the Bank's premises in Sydney or other premises agreed by the parties) as necessary to discuss this Agreement, including:
  - (i) the updating of any documents or processes which form part of the Bank's Policies;
  - (ii) the progress of performance of any Services;
  - (iii) any other issue of concern or interest to either party;
  - (iv) proposed solutions for addressing issues of concern; and
  - (v) issues relating to technical coordination; and
- (b) work to resolve any issues of concern, before applying the dispute resolution procedures set out in clause 24, but in no case will this provision prevent or delay any party from invoking such procedures in accordance with their terms.

#### **14.3 Reporting**

- (a) At least once a month or otherwise less frequently as required by the Bank, each Supplier's Operational Representative must submit to the appropriate Bank Operational Representative a progress report, including:
  - (i) whether any part of Documentation requires review and/or updating and the proposed process for such review and/or updating;
  - (ii) in addition to any Service Level reports required under clause 9.5, Service Level compliance;

- (iii) whether any part of the Business Continuity Plan requires review and/or updating and the proposed process for such review and/or updating;
  - (iv) detailed progress reports (indicating the nature of the work completed and the work yet to be completed) regarding the progress of any:
    - (A) design work;
    - (B) development work (including development work on new features or fixes for existing code);
    - (C) testing work;
    - (D) integration work; and
    - (E) training services,against any key dates detailed in an executed Order or otherwise agreed between the parties;
  - (v) a summary of past Services provided, and a forecast of future Services to be provided;
  - (vi) any delays or defaults and reasons for such delays and defaults;
  - (vii) plans for managing any risks (including foreseeable delays and breaches) to the Services and plans for managing those risks;
  - (viii) details of outstanding issues, specifying the nature of each issue, the current status of each issue and who has responsibility for resolution of each issue;
  - (ix) a list of material risks and their current status; and
  - (x) detail regarding any other matter related to the Services as requested by the Bank.
- (b) The Supplier Commercial Representative must report immediately to the Bank Commercial Representative on any existing or anticipated factors which may have a significant effect on the performance of the Supplier's obligations under this Agreement.

---

## 15 Acceptance Tests

- (a) If the relevant Order requires the Supplier to prepare an Acceptance Test Plan:
- (i) the Supplier must prepare and deliver an Acceptance Test Plan to the Bank for its approval no later than 60 calendar days prior to the relevant scheduled Service commencement date;
  - (ii) the Bank will review such Acceptance Test Plan within a reasonable time of receipt and notify the Supplier of whether or not it approves of such plan;
  - (iii) if the Bank does not approve the relevant Acceptance Test Plan, it will notify the Supplier of this decision and the Supplier must vary the plan in the manner reasonably directed by the Bank and resubmit the plan to the Bank for approval;

- (iv) if the Bank does not approve the Acceptance Test Plan (acting reasonably) on two or more occasions, then this will constitute a material breach of the Supplier's obligations under this Agreement which is not capable of remedy entitling the Bank to immediately terminate this Agreement by giving notice to the Supplier in accordance with clause 21.1(a)(ii); and
  - (v) if the Bank approves the relevant Acceptance Test Plan, the Bank may conduct Acceptance Tests for that Service in accordance with the Acceptance Test Plan.
- (b) The Supplier must provide all assistance reasonably requested by the Bank in relation to the Acceptance Tests.
- (c) If a Service passes its Acceptance Tests, the Bank will notify the Supplier that the Bank accepts that Service (an **Acceptance Certificate**).
- (d) If a Service fails to pass its Acceptance Tests, the Bank may by giving notice to the Supplier reject that Service, in which case:
  - (i) the Supplier must within 14 calendar days (or such longer period agreed by the Bank), at the Supplier's cost, rectify the Defects that caused the Service to fail the Acceptance Tests and resubmit it to the Bank for the Acceptance Tests; and
  - (ii) the Acceptance Tests must be repeated in accordance with this clause 15,unless the Bank issues a notice with respect to that Service in accordance with paragraph (f).
- (e) If the Bank rejects any Service two or more times in accordance with paragraph (d), then this will constitute a material breach of the Supplier's obligations under this Agreement which is not capable of remedy entitling the Bank to immediately:
  - (i) this Agreement by giving notice to the Supplier in accordance with clause 21.1(a)(ii); and
  - (ii) claim from the Supplier reasonable losses or damage suffered by the Bank Group, including:
    - (A) any costs and expenses reasonably incurred by the Bank as a result of the Service containing any one or more Defects (including the costs of contractors required to be retained to assist the Bank in re-testing the Service); and
    - (B) the value of any time reasonably spent by Bank Personnel in assisting the Supplier to identify and correct any one or more Defects in the Service; and
- (f) If the Bank agrees to issue an Acceptance Certificate for a Service which contains Defects:
  - (i) the Supplier must correct those Defects as soon as reasonably possible, and in any event at a date no later than that agreed by the Bank.

- (ii) if there is a payment linked to the Bank issuing an Acceptance Certificate, that payment will not be payable until any material Defects are corrected.
- (g) The issuing by the Bank of an Acceptance Certificate does not relieve the Supplier of its responsibility or liability in relation to the Service being tested, and in particular does not relieve the Supplier of its obligation to ensure that the Service complies with the relevant warranties and with this Agreement.

---

## **16 Fees and payment**

### **16.1 Fees**

- (a) In consideration of the Supplier providing the Services, the Bank must pay the Supplier the Fees in accordance with this clause 16.
- (b) Unless otherwise agreed between the parties, all Fees are stated in U.S. dollars and are exclusive of GST.
- (c) Fees are payable monthly in arrears.
- (d) For the avoidance of doubt and without limitation, except as expressly set out in this Agreement, the Bank is not required to pay any:
  - (i) any out-of-pocket expenses; or
  - (ii) any amount under this Agreement for services provided or costs incurred by the Supplier prior to entry into this Agreement.

### **16.2 Invoices**

- (a) When a payment is due in accordance with this Agreement, the Supplier must provide a correctly rendered invoice to the Bank.
- (b) An invoice is correctly rendered if:
  - (i) the amount claimed in the invoice is due for payment;
  - (ii) the invoice contains a detailed breakdown of the Fees and is accompanied (where necessary) by relevant documentation demonstrating that the amount specified in the invoice is calculated in accordance with this Agreement;
  - (iii) the invoice is addressed to the Bank and identifies this Agreement;
  - (iv) the invoice identifies (where applicable) the time periods to which the amount payable relates;
  - (v) the invoice identifies all information necessary for the Bank to be able to transfer any required funds by way of electronic transfer;
  - (vi) it is accompanied by such other information as is reasonably requested in advance by the Bank; and
  - (vii) it is a valid Tax Invoice.
- (c) In the event that Service Credits become payable by the Supplier in accordance with this Agreement (including the relevant Order), the Supplier will, at the end of each month, credit the Bank with the amount of the payable

Service Credits by providing the Bank with a credit note, or as otherwise agreed by the Bank.

- (d) The Bank may, on giving reasonable notice, reasonably require the Supplier to vary the mode of distribution, recipients, content or supporting detail of invoices for all or part of the Services.

### **16.3 Payment**

The Bank must make payment within 30 calendar days of the date of receipt of a correctly rendered invoice.

### **16.4 Fees inclusive**

The Fees expressly provided for in this Agreement are the only amounts payable by the Bank in respect of the Services provided to the Bank, and the Supplier's performance of its obligations, under this Agreement.

### **16.5 Disputes as to amounts payable**

- (a) If there is a genuine dispute as to whether the whole or part of an invoice submitted by the Supplier is payable, the Bank must give notice of the dispute in writing to the Supplier within 30 business days of receipt of the disputed invoice.
- (b) If requested to do so by the Bank, the Supplier must promptly provide the Bank with sufficient evidence to substantiate any amounts invoiced by the Supplier under this Agreement that are queried or reasonably disputed by the Bank.
- (c) The Bank may withhold only the amount in dispute until the resolution of the dispute in accordance with clause 24, and the parties must otherwise continue to comply with their obligations under this Agreement until the dispute is resolved.

### **16.6 Rights of set-off**

The Bank may by notice to the Supplier reduce any Fees or other charges or costs payable to the Supplier under this Agreement by any fee, Service Credit or other amount which is payable to the Bank by the Supplier pursuant to, or in connection with, this Agreement.

### **16.7 Unused credits**

Any unused credits or rebates against future payments to which the Bank is entitled must be paid to the Bank within 30 days after the expiration or termination of this Agreement.

### **16.8 Most Favoured Customer**

The Supplier acknowledges the Bank is a most valued customer and agrees that the Fees will not be in excess of the fees paid by any other customers of the Supplier receiving similar Services at the time at which such fees become payable by the Bank under this Agreement.

---

## 17 GST and Taxes

### 17.1 GST

- (a) A capitalised term or expression used in this clause 17.1, which has a defined meaning in the GST Law, has the same meaning as in the GST Law unless the context otherwise indicates.
- (b) Any fees payable upon termination or suspension of this Agreement and any other amounts referred to in this Agreement, including the Fees, exclude GST unless otherwise agreed between the parties.
- (c) If GST is or becomes payable on a Supply made under or in connection with this Agreement, an additional amount (an **Additional Amount**) is payable by the party providing consideration for the Supply (the **Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (in this clause 17.1 only, the Supplier) in accordance with the GST Law.
- (d) The Additional Amount payable under paragraph (c) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice immediately after the time of payment of the Additional Amount if a Tax Invoice has not already been provided under this Agreement.
- (e) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under paragraph (c):
  - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
  - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 10 Business Days after becoming aware of the variation to the amount of GST payable. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 10 Business Days after becoming aware of the occurrence of the Adjustment Event.
- (f) If either party is entitled under this Agreement to be paid, reimbursed or indemnified by the other party for a loss, cost or expense, the payment, reimbursement or indemnity payment will be reduced by an amount equal to any input tax credit which may be claimed by the party entitled to be paid, reimbursed or indemnified (or by its representative member if that party is in a GST group) in respect of that loss, cost or expense.
- (g) To the extent that the amount referred to in paragraph (c) to be reimbursed or indemnified by a party represents consideration for a taxable supply by the recipient of the payment, the paying party must pay the recipient an additional amount equal to the portion of the amount which is consideration for a taxable supply multiplied by the GST rate prevailing at the time the relevant taxable

supply is made. This additional amount must be paid at the same time and in the same manner as the amount to which it relates.

## **17.2 Taxes generally**

- (a) Except as specified in clause 17.1, the Supplier will bear and be liable for all Taxes applied in respect of the provision of the Services under this Agreement.
- (b) If at any time the Bank is required by law to make a Tax Deduction from any amount paid or payable to the Supplier, the Bank will:
  - (i) notify the Supplier of the obligation as soon as the Bank becomes aware of it (failure to notify does not affect the Bank's right to withhold);
  - (ii) reduce the amount of any Fees payable by the amount of the Tax Deduction;
  - (iii) pay to the relevant taxing authority the amount of the Tax Deduction; and
  - (iv) provide the Supplier with documentary evidence of the payment of the Tax Deduction.

---

## **18 Warranties**

### **18.1 General**

The Supplier represents and warrants that throughout the term of the Agreement:

- (a) it is entitled to enter into this Agreement and perform its obligations under this Agreement;
- (b) there are no actions, claims, proceedings or investigations pending or threatened against it or by it which may have a material effect on the subject matter of this Agreement;
- (c) it has and will maintain all licences, authorisations, consents, approvals and permits required by applicable Laws, Standards and Regulatory and Industry Requirements in order to perform its obligations under this Agreement, proof of which must be provided to the Bank upon request;
- (d) no conflict of interest concerning the Supplier, its agents or subcontractors exists or will arise in the performance of its obligations under this Agreement;
- (e) there are no matters which will or may adversely affect its ability to perform its obligations under this Agreement;
- (f) it will provide and maintain appropriate Resources to enable it to fulfil its obligations under the Agreement; and
- (g) it will at all times comply with any applicable Laws or Regulatory and Industry Requirements.

### **18.2 Services and Supplier Owned Deliverables Warranties**

The Supplier represents and warrants that:

- (a) each Service will comply with its Specifications;



- (b) all Services will be supplied and the Service Levels will be achieved;
- (c) all Services will be supplied in a diligent and professional manner with the degree of skill and care that is normally exercised by recognised professional or trades persons or entities which supply services of a similar nature;
- (d) the Supplier Personnel (including for the avoidance of doubt the Key Personnel) will be sufficiently skilled and qualified to perform the Services;
- (e) all Services will be supplied by sufficient numbers of adequately qualified and skilled Personnel;
- (f) it will not engage in any activity that is likely to compromise the ability of the Supplier to perform its obligations under this Agreement fairly and independently;
- (g) Documentation will be accurate and sufficient to enable Bank Personnel to make full and proper Use of the Services;
- (h) all Supplier Owned Deliverables will:
  - (i) be free from any Disabling Code; and
  - (ii) be free from material Defects or omissions in design, materials, performance and workmanship; and
- (i) all Services and Supplier Owned Deliverables will be fit for the Bank Group's purposes made known to the Supplier on or before the date the parties agree that the Services or Supplier Owned Deliverables were to be provided to the Bank pursuant to this Agreement.

### 18.3 Intellectual property

The Supplier represents and warrants that:

- (a) it has the right to grant to the Bank Group and the IT Service Providers the rights in clause 19.2;
- (b) it has the right to assign the Intellectual Property Rights assigned to the Bank under clause 19.1;
- (c) the provision of the Services by the Supplier, and the Use of the Services and Supplier Owned Deliverables to the extent permitted under this Agreement, will not infringe the Intellectual Property Rights or Moral Rights of any person; and
- (d) the Use, modification, adaptation or other exploitation of the Bank Owned Deliverables will not infringe the Intellectual Property Rights or Moral Rights of any person.

### 18.4 Moral rights

- (a) The Supplier represents and warrants that it will procure from each Supplier Employee who is an author of any copyright material (including any software) in which Intellectual Property Rights are to be assigned, or which is licensed to the Bank under this Agreement (**Copyright Material**), an irrevocable and unconditional grant of waiver and consent in respect of their Moral Rights in respect of such material, to the extent necessary to enable each Bank Group Member to fully exercise, exploit and enjoy the ownership or licensed rights (as the case may be) granted under this Agreement.

- (b) The Supplier must ensure that each Supplier Employee who is an author of any Copyright Material, irrevocably and unconditionally consents to each Bank Group Member Using, developing, reproducing, publishing, transmitting, communicating, making available to the public in any form, adapting, editing, abridging, changing, modifying, relocating, combining, merging, translating, decompiling, destroying and otherwise dealing with, and doing any other acts or omissions in relation to, the Copyright Material, whether in whole or in part, whether occurring before or after the giving of the consent, and whether alone or in combination with any other material, including where such acts or omissions involve:

- (i) a failure to identify such individual as the author of any work comprised in the Copyright Material;
- (ii) the false attribution of a person other than such individual as the author of any work comprised in the Copyright Material; or
- (iii) the subjection of any work comprised in the Copyright Material to derogatory treatment (within the meaning of Part IX of the Copyright Act),

which acts or omissions would, apart from the consent, infringe any Moral Rights of such individual subsisting in any work comprised in the Copyright Material.

- (c) The Supplier must ensure that the waiver and consents referred to above extend to any licensees or successors in title to a Bank Group Member, as well as to any person which is authorised by a Bank Group Member or by any of its licensees or successors in title to do any act comprised in the copyright of the Copyright Material (including Use and development of the Copyright Material).
- (d) The Supplier must, on request, produce reasonable evidence in a form acceptable to the Bank of the Supplier's compliance with this clause 18.4.
- (e) The Bank acknowledges that:
- (i) its rights in respect of the Copyright Material may be limited in accordance with the terms of licences granted under this Agreement; and
  - (ii) any consent given by any Supplier Employee to do any act going beyond the terms of any such licence (and the Supplier's obligation to procure such consent) does not extend or otherwise modify the scope of the licences granted by the Supplier in respect of Copyright Material under this Agreement.

### **18.5 Breach of Warranty**

In the event of a breach of a warranty in this clause 18, without limiting any other rights and remedies of the Bank, the Supplier will, at no charge to the Bank, re-perform the Services or re-provide the Supplier Owned Deliverables so that they comply with the warranty breached.

### **18.6 Warranties separate**

- (a) Each of the representations and warranties contemplated by this Agreement
- (i) is to be construed independently of the others;

- (ii) is not limited by reference to any other representation or warranty; and
  - (iii) is not to be construed as excluding or limiting any other rights or remedies that the Bank has in relation to the relevant subject matter under this Agreement or at law.
- (b) The Supplier acknowledges that the Bank, in entering into this Agreement, is relying on the warranties and on the representations made in or under this Agreement.

---

## **19 Intellectual Property Rights**

### **19.1 Bank Owned Deliverables**

- (a) The Bank will own all right, title and interest in (including Intellectual Property Rights) in the Bank Owned Deliverables.
- (b) The Supplier absolutely and unconditionally assigns to the Bank all right, title and interest (including Intellectual Property Rights) in any and all Bank Owned Deliverables immediately upon its creation including by present assignment of future rights.

### **19.2 Licence by the Supplier**

- (a) The Supplier grants to the Bank and each Bank Group Member a world-wide, royalty-free licence for the Term to:
  - (i) Use the Services in accordance with the terms set out in the relevant Order; and
  - (ii) Use the Supplier Owned Deliverables in connection with the receipt of the Services.
- (b) The Bank and any other Bank Group Member may grant a sublicense to IT Service Providers and other third parties to Use the Services and Supplier Owned Deliverables in connection with Bank Related Activities.
- (c) The Bank will ensure that each Bank Group Member, IT Service Provider and third party, to the extent that they are users of the Services or Supplier Owned Deliverables, comply with any terms set out in this Agreement.

### **19.3 Bank Data**

- (a) Nothing in this Agreement is intended to give the Supplier any Intellectual Property Rights in, or other rights in respect of, any Bank Data.
- (b) Without the consent of the Bank, the Supplier must not:
  - (i) Use or Develop the Bank Data; or
  - (ii) make the Bank Data available to any Supplier Employee or other third party,for any purpose other than the provision of the Services under this Agreement.
- (c) The Supplier must promptly return any Bank Data in its possession, custody or control to the Bank (or destroy all copies so they are irretrievable, if required by the Bank), in accordance with the Bank's requirements (including data retention and destruction requirements) notified to the Supplier from time to time.

- (d) The Supplier must not:
  - (i) possess or assert any lien or other right against or to the Bank Data;
  - (ii) Deal, except in accordance with this Agreement, with the Bank Data;
  - (iii) sell, lease, dispose or commercially exploit any part of the Bank Data;
  - (iv) transfer or transmit any Bank Data from the Supplier Locations to any non-approved locations including through data traffic re-routing.

#### **19.4 Open Source Software**

- (b) Where Supplier uses Open Source Software in Supplier Owned Deliverables:
  - (i) the Supplier will ensure that the use of that Open Source Software will not result in an obligation to disclose, license or otherwise make available any part of the Bank Systems, Bank Data or the Bank's Confidential Information to any third party; and
  - (i) the use of that Open Source Software will not in any way diminish the Supplier's obligations under this Agreement, including in relation to any warranties, indemnities, support obligations or any provisions dealing with the licensing or assignment of Intellectual Property Rights.

#### **19.5 Indemnity and litigation**

- (a) The Supplier indemnifies the Bank Group and the IT Service Providers against:
  - (i) any claim, action or proceeding that:
    - (A) the grant to the Bank Group and the IT Service Providers of the rights in clause 19.2;
    - (B) the assignment of the Intellectual Property Rights to the Bank under clause 19.1; or
    - (C) the provision of the Services, or the Use of the Services or Supplier Owned Deliverables, to the extent permitted under this Agreement, or
    - (D) the Use, modification, adaptation or other exploitation of the Bank Owned Deliverables,infringes the Intellectual Property Rights or Moral Rights of any person (an **IPR Claim**); and
  - (ii) any claim, action, proceeding, damage, loss, liability, cost, charge, expense (including reasonable legal costs and expenses on a solicitor and client basis), outgoing or payment paid, suffered or incurred by the Bank Group or any IT Service Provider arising out of or in connection with an IPR Claim.
  - (iii) Supplier's indemnity obligation under this Section 19.5 shall not apply to:
    - (A) any intellectual property owned by Bank that is not part of the Services;

- (B) any action against Bank asserting that the Services infringe any patent claiming exclusive rights over a technology, method or invention that is in such widespread unlicensed use by third parties as to be considered a fundamental public domain element of the internet; and
- (C) any loss to the extent such loss arises from the fraud, gross negligence or willful misconduct of Bank.

#### 19.6 Conduct of IPR Claims

- (a) Each party must promptly notify the other of any IPR Claim of which it has notice (unless the other party is already aware of the IPR Claim).
- (b) The party against which such IPR Claim is made must ensure that all IPR Claims are fully, promptly and properly defended.
- (c) Each party agrees to provide assistance reasonably requested by the other to defend any IPR Claim.
- (d) Subject to paragraph (e), the Supplier will have sole control of the defence of any IPR Claim and any resulting settlement negotiations, unless otherwise agreed in writing with the Bank.
- (e) The Supplier, at no additional cost to the Bank, must consult with the Bank in the conduct of the defence or settlement of any IPR Claim to the extent reasonably necessary to:
  - (i) protect the reputation of the Bank Group; and/or
  - (ii) to ensure the Bank's continuity of the Use of the Services and Supplier Owned Deliverables in accordance with this Agreement, or Use, modification, adaptation or any other exploitation of the Bank Owned Deliverables.
- (f) If an IPR Claim is made, the Supplier will (without prejudice to its obligations under this clause 19) promptly, at its own expense and in consultation with the Bank, either:
  - (i) procure for the Bank Group and the IT Service Providers the right to continue to use the relevant Service as contemplated under this Agreement free of any claim or liability for infringement;
  - (ii) replace or modify the relevant Service so that it becomes non-infringing (provided such replacement or modification continues to provide the same performance and functionality and does not adversely affect the Use of the Service); or
  - (iii) in the event that both paragraphs (i) and (ii) above are proven by the Supplier to not be reasonably commercially viable, terminate this Agreement or the relevant Order by providing at least 6 months notice to the Bank.
- (g) The party against which such IPR Claim is made must reimburse the other party for any costs incurred by the other party arising out of or in connection with an IPR Claim.

---

## **20 Liability and indemnity**

### **20.1 Supplier's liability**

- (a) The aggregate liability of the Supplier under this Agreement for loss or damage sustained by the Bank Group or any IT Service Provider in connection with this Agreement is limited to the higher of:
  - (i) one and a half times the Fees paid and payable under all Orders on an annual basis (where "payable" means amounts that have not been paid but which would be payable if both parties were to continue to properly perform all of their respective obligations under this Agreement, and is not limited to amounts that have become due and payable); or
  - (ii) \$1,500,000
- (b) The limits in paragraph (a) do not apply in relation to liability:
  - (i) for personal injury (including sickness or death);
  - (ii) for loss of, or damage to, tangible property;
  - (iii) under clauses 7, 18.3, 19, 22 or 23; or
  - (iv) any fraud, or wilful misconduct or repudiation of this Agreement.

### **20.2 Indemnity**

Subject to clause 20.1, the Supplier indemnifies the Bank Group and IT Service Providers against any claim, action, proceeding, damage, loss, liability, cost, charge, expense (including reasonable legal costs and expenses on a solicitor and client basis), outgoing or payment paid, suffered or incurred by the Bank Group or any IT Service Provider arising out of or in connection with:

- (a) any breach of Law arising out of any breach of this Agreement by the Supplier;
- (b) any fraud, or wilful misconduct or repudiation of this Agreement, by the Supplier;
- (c) any negligent or otherwise wrongful act or omission of the Supplier;
- (d) any claim by a third party arising out of a breach of this Agreement by the Supplier;
- (e) any breach of clause 22 or 23 by the Supplier;
- (f) any loss of or damage to property, including any Bank Data caused by any act or omission of the Supplier; or
- (g) any personal injury (including sickness or death) caused by any act or omission of the Supplier.

### **20.3 Bank's liability**

- (a) The aggregate liability of the Bank and the Bank Group Members for loss sustained by the Supplier in connection with this Agreement is limited to an amount equal to the Fees paid and payable by the Bank under this Agreement.

- (b) The limit in paragraph (a) does not apply in relation to liability for personal injury (including sickness or death).
- 

## **21 Termination**

### **21.1 Rights to terminate**

- (a) Either party (the **first party**) may terminate this Agreement immediately by notice to the other party if:
  - (i) the other party commits a breach of this Agreement which is capable of remedy, and fails to remedy that breach within 30 calendar days from the date the first party notifies the other party of the breach;
  - (ii) the other party commits a material breach of any of its obligations under this Agreement, which is not capable of remedy;
  - (iii) an Insolvency Event occurs in relation to the other party. The Supplier must notify the Bank in writing as soon as it becomes aware that an Insolvency Event has occurred or is likely to occur in relation to the Supplier;
  - (iv) the Bank is directed by a regulatory or government body to terminate the Service and Agreement.

### **21.2 Regular or habitual breaches**

- (a) The Bank may terminate this Agreement by giving 30 calendar days' notice to the Supplier if the Supplier:
  - (i) regularly or habitually commits breaches of this Agreement (which individual breaches need not be material); or
  - (ii) commits a number of breaches (which individual breaches need not be material) at the same time or over a period of time.
- (b) Without limiting the generality of paragraph (a), if in any rolling 12 month period the Supplier is liable to pay the Bank Service Credits which equal 5% or more of the Fees paid to the Supplier in the same 12 month period, then the Bank will be entitled to terminate under paragraph (a).

### **21.3 Change in Control**

- (a) The Bank may terminate this Agreement immediately by giving 30 calendar days' notice to the Supplier if a Change in Control of the Supplier occurs.
- (b) The Supplier must promptly notify the Bank if a Change in Control of the Supplier occurs.

### **21.4 Criminal conduct, fraud, disreputable acts**

The Bank may terminate this Agreement immediately by giving notice to the Supplier if:

- (a) the Supplier, or any of its directors or officers, are convicted of a serious criminal offence;
- (b) the Supplier is fraudulent in connection with this Agreement; or

- (c) the Supplier, in the reasonable opinion of the Bank, brings or threatens to bring the Bank Group into disrepute.

#### **21.5 Termination by the Bank in part**

- (a) Where the Bank is entitled to terminate this Agreement or any Order(s), the Bank may terminate this Agreement, or the relevant Order(s), in whole or in part.
- (b) If the Bank exercises a right to terminate this Agreement in part, the Bank has the sole and absolute discretion as to which part or parts of this Agreement are to be terminated. For clarification, only the Bank may terminate in part. If the Bank elects to terminate this Agreement in part the parties will use reasonable efforts to seek to agree, any appropriate variations to this Agreement, including to the Services and the Fees.
- (c) If at any time the Bank considers that any aspect of a partial termination is not proceeding to its satisfaction, it may by notice to the Supplier convert the partial termination into a full termination.

#### **21.6 Further Bank rights**

If the Bank terminates this Agreement in whole or in part under clauses 21.1(a), 21.2, 21.3 or 21.4, the Bank may (without limiting its other rights and remedies) procure from any other services which are substantially similar to the Services and suitable to the Bank, and the Supplier will be liable to the Bank for any reasonable extra expense incurred together with any loss sustained by the Bank.

#### **21.7 Reimbursement of Fees**

- (a) Upon termination of this Agreement or an Order, for any reason other than termination in accordance with clauses 21.1(b) or 21.5, the Supplier must within 30 calendar days reimburse the Bank any Fees paid to the Supplier in relation to Services not performed by the Supplier.
- (b) Upon termination of this Agreement or an Order in accordance with clauses 21.1(b) or 21.5, the Supplier must within 30 calendar days reimburse the Bank any Fees paid to the Supplier in relation to Services not performed by the Supplier unless the Supplier can demonstrate that it has paid such Fees to a third party and that it cannot recover those Fees from that party.

#### **21.8 Delivery up**

Upon termination or expiry of this Agreement for any reason, the Supplier must promptly provide the Bank with all Bank Owned Bank Owned Deliverables that has not already been provided, whether completed or work in progress.

#### **21.9 Transition Out**

- (a) On the expiry or termination of this Agreement or any Order, the Supplier must provide all assistance reasonably requested by the Bank in relation to the termination of this Agreement or relevant Order, including the transition to alternative third party services or migration of the Bank Data to another System or to alternative equipment or software (the **Transition Out Services**). For clarification, in doing so the Supplier is not required to transfer to the Bank any software, hardware or other systems, and the Bank is responsible for obtaining such software, hardware and other systems at its own cost.



- (c) The Supplier must provide the Transition Out Services:
- (i) in the case of expiry, during the period commencing 60 days before expiry of this Agreement or Order (or as otherwise agreed between the parties) and ending 6 months after the due date of expiry of this Agreement or Order; and
  - (ii) in the case of termination, on the date on which a party terminates this Agreement or the particular Order (even if this Agreement provides that such termination is not effective immediately), and ending 6 months thereafter, or as otherwise agreed between the parties,
- (the **Transition Out Period**). The Term of this Agreement is extended during any Transition Out Period such that it will be considered part of the Term.
- (d) The Supplier must continue to provide the Services to the Bank, and the Bank may continue to use any Services, in accordance with all the terms of this Agreement during the Transition Out Period until they are transitioned to the Bank or its nominee (and the Bank must continue to pay any Fees for such Services).
- (b) The Bank will reimburse the Supplier for any additional out-of-pocket costs where they are reasonably incurred in relation to providing such assistance, except where the termination relates to a breach of this Agreement by the Supplier.

#### **21.10 Consequences of termination**

- (a) If this Agreement is terminated in part, the terms of this Agreement will continue to apply to those parts of the Agreement that remain in force following the termination in part until those parts of the Agreement expire or are terminated.
- (b) Any termination of this Agreement pursuant to this clause 21 will be without prejudice to any other rights or remedies either party may be entitled to hereunder or at law and will not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provisions hereof which are expressly or by implication intended to come into or continue in force on or after such termination.

---

## **22 Confidentiality**

### **22.1 Confidentiality**

- (a) Each party must keep confidential, and not use or disclose, any Confidential Information of the other party, except as permitted by this Agreement.
- (b) The obligation of confidence in paragraph (a) above extends to Confidential Information provided to or obtained by a party before entering into this Agreement.

### **22.2 Exclusions**

The obligation of confidence in clause 22.1(a) does not apply to Confidential Information that is:

- (a) in the public domain otherwise than as a result of a breach of this Agreement or another obligation of confidence;

- (b) independently developed by the recipient; or
- (c) already known by the recipient independently of its interaction with the other party and free of any obligation of confidence.

### **22.3 Permitted disclosures**

- (a) A party (a **Recipient**) may disclose Confidential Information of the other party:
  - (i) required to be disclosed by applicable Law or the rules of any stock exchange on which the Recipient's securities are listed, as long as the Recipient:
    - (A) discloses only the minimum amount of Confidential Information required to satisfy the Law or rules; and
    - (B) before disclosing any Confidential Information, gives a reasonable amount of notice to the other party and takes all reasonable steps (whether required by the other party or not) to maintain that Confidential Information in confidence; and
  - (ii) to Personnel of the Recipient who:
    - (A) have a need to know (and only to the extent that each has a need to know) the Confidential Information for the purposes of this Agreement; and
    - (B) have been directed and have agreed to keep confidential the Confidential Information on terms not inconsistent with this Agreement,

provided the Recipient ensures such Personnel comply with the obligation of confidentiality in clause 22.1(a).
- (b) The Bank may disclose Confidential Information of the Supplier to any IT Service Provider provided that the IT Service Provider has entered into an agreement with the Bank to keep confidential all information disclosed to the IT Service Provider, on terms consistent with the confidentiality obligations of this Agreement.

### **22.4 Preventing disclosures**

Each party must take all steps and do all things necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.

### **22.5 Return of Confidential Information**

A Recipient must immediately on termination of this Agreement or on request from the other party:

- (a) return to the other party;
- (b) destroy and certify in writing to the other party the destruction of; or
- (c) destroy and permit an employee of the other party to witness the destruction of,

all the other party's Confidential Information in the Recipient's possession or control other than one copy of any notes and other records that the Recipient is required by Law to retain.

## **22.6 Remedies for breach**

- (a) Each party acknowledges that the value of the other party's Confidential Information is such that an award of damages or an account of profits may not be adequate compensation if this clause 22 is breached.
- (b) Each party acknowledges that, without in any way compromising its right to seek damages or any other form of relief in the event of a breach of this clause 22, a party may seek and obtain an ex parte interlocutory or final injunction to prohibit or restrain the other party or its advisers from any breach or threatened breach of this clause 22.

## **22.7 Supplier Employees**

Prior to the commencement of any work under this Agreement by Supplier Employees or at any time thereafter, the Supplier must, if requested by the Bank, obtain from the Supplier Employees an executed Confidentiality Deed (substantially in the form of Schedule 3 (Confidentiality Deed)) in favour of the Bank.

## **22.8 Confidentiality of Bank Data**

The Supplier must not use any Bank Data for testing purposes unless that Bank Data has first been masked or de-identified in a manner approved by the Bank.

---

## **23 Privacy**

- (a) This clause 23 applies to any Personal Information provided to, or obtained or accessed by, the Supplier in the course of providing the Services, or otherwise in connection with this Agreement.
- (b) If the Supplier collects, uses, discloses, transfers or otherwise handles Personal Information to which this clause 23 applies, it must comply with:
  - (i) all applicable Privacy Legislation; and
  - (ii) any of the Bank's privacy policies notified to the Supplier from time to time.
- (c) Without limiting paragraph (b), the Supplier must:
  - (i) only use Personal Information to which this clause 23 applies to the extent necessary to provide the Services in accordance with this Agreement;
  - (ii) not disclose Personal Information to which this clause 23 applies to any other person without the express, prior written authority of the Bank, or (subject to paragraph (vi) below) as expressly required by Law;
  - (iii) establish, maintain and enforce appropriate policies and procedures, and associated access controls and other technological measures, to ensure that Personal Information to which this clause 23 applies is only accessible to those Supplier Employees who require such access for the purpose of performing their duties of engagement;
  - (iv) without limiting paragraph (iii) above, ensure that none of the Supplier Employees who have access to any Personal Information to which this clause 23 applies use, disclose, transfer or retain such Personal

Information except to the extent necessary to perform their duties of engagement;

- (v) co-operate with any requests or directions of the Bank concerning the storage, security, use and disclosure of Personal Information to which this clause 23 applies, or the rights of individuals to access and correct such Personal Information;
  - (vi) notify the Bank as soon as reasonably practicable after the Supplier becomes aware that a disclosure of Personal Information to which this clause 23 applies may be required by Law (including under the applicable Privacy Legislation), and, if requested by the Bank:
    - (A) obtain a written legal opinion, from a reputable international law firm approved by the Bank, confirming that the disclosure is required by Law; and/or
    - (B) assist the Bank to prevent or limit such disclosure;
  - (vii) ensure that any Supplier Employees who are required to deal with Personal Information to which this clause 23 applies are made aware of the obligations in this clause 23 and, if requested by the Bank, ensure that such Supplier Employees sign written undertakings (in a form acceptable to the Bank) to comply with the obligations in this clause 23;
  - (viii) without limiting any of the Supplier's obligations under this clause 23, or otherwise under this Agreement, not do any act or engage in any practice that would breach any Privacy Legislation, or which, if done by or engaged in by the Bank, would be in breach of any Privacy Legislation;
  - (ix) as soon as reasonably practicable notify the Bank if it becomes aware of a breach of this clause 23; and
  - (x) on the termination or expiry of this Agreement for any reason, destroy or otherwise deal with any Personal Information to which this clause 23 applies (including, for the avoidance of doubt, any such Personal Information provided to, or obtained or accessed by, the Supplier in the provision of any transition out in accordance with the directions of the Bank.
- (d) Without limiting any of the Supplier's obligations under this Agreement, the Supplier must not allow or permit access to any Personal Information outside of the countries referred to in paragraph (a) of the definition of the term "Jurisdiction" (the **Relevant Countries**) unless it complies with this paragraph (d). If the Supplier wishes to transfer any Personal Information outside of the Relevant Countries, the Supplier must, prior to transferring any Personal Information:
- (i) provide to the Bank all relevant information relating to the proposed transfer, including the country to which the Personal Information is intended to be transferred, a detailed description of the Personal Information that is intended to be transferred and the purpose for which such transfer is required; and
  - (ii) obtain the Bank's prior written approval to the transfer, which approval may be granted or withheld at the Bank's sole and absolute discretion.

As part of considering whether to give such approval, the Bank may require the Supplier to satisfy the Bank that the arrangements that have been put in place are sufficient to ensure that the handling of Personal Information will at all times be conducted in accordance with this clause 23 and such other standards or conditions as the Bank may reasonably require.

---

## **24 Dispute resolution**

### **24.1 Meeting of Representatives**

- (a) If a party considers that a Dispute has arisen, it may give a notice to the other party. The notice must set out reasonable particulars of the Dispute.
- (b) Promptly after the receipt of a notice of a Dispute, the Supplier Commercial Representative and Operational Representative (for the Order to which the Dispute relates) must meet with the Bank Commercial Representative and Operational Representative (for the Order to which the Dispute relates) to discuss the Dispute and negotiate in good faith to resolve the Dispute without resorting to any legal proceedings.

### **24.2 Escalation of Dispute**

- (a) If the parties do not resolve the Dispute in accordance with clause 24.1 within 10 Business Days of receipt of the notice of the Dispute, either party may request that the Dispute be escalated to the persons nominated for the purpose of this clause by each party in the Order to which the Dispute relates (the **Executives**).
- (b) The Executives must:
  - (i) negotiate in good faith to resolve the Dispute without resorting to any legal proceedings; or
  - (ii) attempt to agree on:
    - (A) a process to resolve all or at least part of the Dispute without resorting to any legal proceedings including by mediation, conciliation or independent expert determination;
    - (B) the selection and payment of any person to be appointed by the parties for, and the involvement of any dispute resolution organisation in, the process;
    - (C) any procedural rules;
    - (D) the timetable, including any exchange of relevant information and documents; and
    - (E) the place where any meetings will be held.

### **24.3 Legal proceedings**

- (a) If the Executives have not resolved the Dispute or agreed a process to resolve the Dispute within 20 Business Days from the date of escalation of the Dispute under clause 24.2, either party may commence legal proceedings.

- (b) Subject to clause 19, compliance with this clause 24 is a condition precedent to a party's entitlement to commence legal proceedings in relation to a Dispute.
- (c) This clause 24 does not prevent a party seeking urgent interim or interlocutory relief.

#### **24.4 General**

- (a) Any information or documents disclosed by a party to the other party under this clause must be kept confidential in accordance with clause 22.
- (b) Each party must bear its own costs of resolving a Dispute under this clause and the parties to the Dispute must bear equally the costs of any expert or other person jointly appointed by them to resolve or attempt to resolve a Dispute.

---

### **25 Insurance**

#### **25.1 General**

- (a) The Supplier must effect and maintain at its cost the insurances listed in clause 25.2. The Required Insurances must be effected with insurers which are currently rated not less than A- by Standard & Poor's (or an equivalent rating agency) and cover all risks which are reasonable and prudent in accordance with good business practice.
- (b) Upon execution of this Agreement by the parties, and upon request by the Bank, the Supplier must provide certificates of currency for the Required Insurances.
- (c) The Supplier will pay any excess/deductible under the Required Insurances.
- (d) The Supplier must not do or allow anything which would prejudice any of the Required Insurances, or cause them to be terminated.
- (e) The Supplier must ensure that any subcontractor it engages will effect insurances which comply with Required Insurances.

#### **25.2 Required Insurances**

- (a) Workers' Compensation insurance, Work Care or equivalent insurance in accordance with legislation applicable to any State or Territory in which the Services are to be performed and in which the Supplier employs persons together with unlimited cover for common law liability where permissible by law.
- (b) General Liability Insurance for not less than \$10,000,000 in respect of any single occurrence.
- (c) Professional Indemnity Insurance for an amount not less than \$2,000,000 for any one loss and \$4,000,000 in aggregate each policy year; for any civil liability arising from a breach of professional duty owed in contract or otherwise. Material Damage Insurance to cover physical loss, destruction or damage to the property of the Bank relevant to this Agreement or where the Supplier has accepted the risk of loss or damage. Such property must be insured for its replacement cost.

---

## **26 Assignment and subcontracting**

### **26.1 Assignment by the Bank**

- (a) Subject to paragraph (b), this Agreement and all rights and obligations hereunder may not be assigned or transferred by the Bank in whole or in part without the prior written consent of the Supplier, such consent not to be unreasonably withheld.
- (b) The Bank may at any time, by notice to the Supplier, novate, assign or transfer its rights and obligations under this Agreement to a Bank Group Member or any IT Service Provider. Such novation, assignment or transfer will be at no additional cost to the Bank, any other Bank Group Member or any IT Service Provider.
- (c) At the Bank's request, the Supplier agrees to enter, at the Supplier's own cost, into an agreement to formalise any novation, assignment or transfer by the Bank under paragraph (b).
- (d) The parties acknowledge that an incoming party, assignee or transferee of the Bank's obligations and/or rights under this Agreement may in turn exercise the rights set out in paragraph (b) and novate, assign or transfer its rights and obligations under this Agreement to any Bank Group Member or IT Service Provider.

### **26.2 Assignment by the Supplier**

The Supplier may not assign or transfer in whole or in part its rights and obligations under this Agreement without the prior written consent of the Bank, such consent not to be unreasonably withheld.

### **26.3 Subcontracting**

- (a) The Supplier may not subcontract the whole, or any material part, of its obligations under this Agreement without the prior written consent of the Bank.
- (b) Prior to commencing any work under a subcontract arrangement, the Supplier must ensure that:
  - (i) the proposed subcontractor is aware of all of the terms and conditions of this Agreement that are relevant to that part of the Services which the subcontractor proposes to perform under the subcontract agreement;
  - (ii) any proposed subcontract agreement contains clauses the same as those in this Agreement which relate to that part of the Services that the subcontractor proposes to perform under the subcontract agreement;
  - (iii) on request by the Bank, the Supplier provides a draft copy of the proposed subcontract agreement to the Bank for the Bank's review; and
  - (iv) it makes any changes to the proposed subcontract agreement that the Bank requests.
- (c) The Supplier must as soon as possible upon notice from the Bank, ensure that it either:

- (i) replaces any subcontractor performing Services for the Bank; or
  - (ii) resumes performance of the relevant Services itself,
- where the Bank determines (acting reasonably) that the performance of the subcontractor is unsatisfactory.
- (d) Notwithstanding any consent given by the Bank, the Supplier:
- (i) must ensure that each Supplier subcontractor complies with all of the terms and conditions of this Agreement;
  - (ii) will not be relieved of any of its liabilities or obligations under this Agreement as a result of entering into any subcontracts or its obligations under this Agreement;
  - (iii) will be liable to the Bank for the acts, omissions, defaults or negligence of each Supplier subcontractor as fully as if they were the acts, omissions, defaults or negligence of the Supplier; and
  - (iv) acknowledges that a subcontractor's failure to perform does not excuse its failure to perform any part of this Agreement in any way whatsoever.

---

## **27 Force Majeure**

- (a) Neither party will be liable for a failure or delay in performing its obligations under this Agreement to the extent that such failure or delay:
  - (i) is directly attributable to a Force Majeure Event; and
  - (ii) could not have been prevented by reasonable precautions or circumvented or minimised by the non-performing party (eg by means of alternative sources or work-arounds).
- (b) If a delay is directly attributable to a Force Majeure Event delay exceeds 30 calendar days, either party may immediately terminate this Agreement by giving notice to the other party.
- (c) For clarification, the Bank is not required to pay any Fees under this Agreement for any Services that the Supplier is unable to provide as a result of a Force Majeure Event.

---

## **28 Audit and inspection**

### **28.1 Audit rights**

On at least five business days' notice by the Bank, the Supplier must provide the Bank, or any Auditor appointed by the Bank, with access to:

- (a) the Resources used by either or both of the Supplier and any subcontractor in connection with the supply of the Services; and
- (b) any agreements, arrangements or undertakings relating to this Agreement between:
  - (i) the Supplier and any third party; and
  - (ii) the Supplier and any subcontractor;



- (c) any financial or operational records of either or both of the Supplier and any subcontractors relating to this Agreement;
- (d) any practices or procedures of either or both of the Supplier and any subcontractors relating to this Agreement, including any practices or procedures of the Supplier and subcontractors:
  - (i) for managing and monitoring risk in their own businesses; or
  - (ii) relating to their capacity or ability to provide complete, accurate and reliable financial reporting or related disclosures;
- (e) any Bank Data and records in the possession, custody or control of either or both of the Supplier and any subcontractor;
- (f) any premises from which the whole or any part of the Services are being provided; and
- (g) such other premises, documents, records, practices, data and matters as the Bank may from time to time wish to audit and inspect in connection with this Agreement,

for the purpose referred to in clause 28.2.

## **28.2 Purposes**

The purpose of carrying out the audit and inspection may include, but is not limited, to the following:

- (a) to ascertain compliance with the reporting, disclosure and accounting requirements of any Bank Group Member from time to time;
- (b) to verify whether the Supplier, and any subcontractor, is supplying the Services in accordance with any Laws and Regulatory and Industry Requirements that apply to the Supplier, any Supplier subcontractors or any Bank Group Member;
- (c) to enable the Bank to comply with any Laws or Regulatory and Industry Requirements or any request or requirement of a Governmental Agency, including a request for any information or documentation;
- (d) to verify whether the Supplier is complying with this Agreement, including whether the Fees invoiced are accurate and whether Service Levels are being met; and
- (e) such other purposes of which the Bank may notify the Supplier from time to time, having regard to the changing business needs and requirements of the Bank.

## **28.3 Co-operation**

The Supplier must co-operate fully in any audit and inspection, including:

- (a) providing appropriate and secure office facilities in the relevant premises;
- (b) providing copies of any documents, records or data;
- (c) making appropriate Personnel available to answer questions;
- (d) installing and running audit software on the Supplier Systems; and

- (e) assisting with, and if requested, participating in, joint audits.

#### **28.4 Supplier audits**

The Supplier must provide the Bank with copies of any audit reports, or parts of such reports, which relate to the provision of the Services and which are conducted by, or on behalf of, the Supplier.

#### **28.5 Regulator audits**

- (a) If a Regulator considers it necessary, the Supplier must provide the Regulator the same rights which the Supplier has provided to the Bank under this clause 28.
- (b) The Supplier acknowledges that if the Regulator exercises its rights under clause 28.5(a):
  - (i) the Bank will have no obligations to the Supplier for the Regulator's exercise of the right; and
  - (ii) the Regulator may do so without notifying the Bank.
- (c) The Supplier must not disclose or advertise that the Regulator has conducted a visit under this clause, except as necessary to coordinate with any other institutions regulated by the Regulator which are existing clients of the Supplier.

#### **28.6 Discrepancies**

- (a) Without limiting any other rights or remedies of the Bank, if an audit or inspection reveals that the Supplier is not complying with any Law, any audit requirement or otherwise with this Agreement, the Supplier must take such action as is necessary promptly to remedy the non-compliance.
- (b) If an audit or inspection reveals that the Supplier has overcharged the Bank, then without limiting the Bank's other rights or remedies, the Supplier must reimburse the Bank the amount of the overcharge, plus interest on such amount calculated at the Prescribed Rate for the period beginning on the day the Bank paid such amount and ending on the date the amount is reimbursed.

#### **28.7 Costs of the audit**

- (a) Subject to paragraph (b), each party will bear its own costs associated with audits and inspections.
- (b) Without limiting the Bank's other remedies, if an audit or inspection reveals that the Supplier has:
  - (i) overcharged the Bank 5% or more of the Fees in any month; or
  - (ii) breached this Agreement other than in a minor or inconsequential way,then the Supplier must immediately reimburse the Bank for its audit and inspection costs.

#### **28.8 Document maintenance and retention**

The Supplier must generate all financial and operational records (including adequate archival records of the Bank's transactions and other relevant data), which:

- (a) are reasonably required to demonstrate the Supplier's compliance with this Agreement, and the proper calculation of Fees charged to the Bank; or
- (b) are required by any Law,

and maintain such records in an accessible and secure form for a period of at least 7 years from the date of their creation, or longer if required by this Agreement or by Law.

---

## **29 Occupational Health and Safety**

- (a) The Supplier warrants that it is familiar with and has the capability and resources to comply with all relevant Safety Legislation and Safety Requirements.
- (b) The Supplier must comply with, and ensure that any and all subcontractors or other persons engaged in the provision of the Services comply with, all such Safety Legislation and Safety Requirements. The Supplier must, upon reasonable request by or on behalf of the Bank, demonstrate compliance with such requirements including providing evidence of measures taken to achieve such compliance.
- (c) The Supplier must:
  - (i) cooperate with any other suppliers or contractors or other persons engaged in or associated with the business of the Bank in order to maintain uniform and appropriate safety and industrial practices; and
  - (ii) cooperate with the Bank to enable the Bank to comply with its obligations under all relevant Safety Legislation; and
  - (iii) immediately advise the Bank in writing of any act, fact or circumstance associated with the activities of the Supplier or any other person relevant to the ability of the Supplier to provide the Services in a manner that is safe and without risks to health.
- (d) The Supplier must, prior to the provision of the Services, undertake an assessment of the risks associated with the provision of the Services and identify and implement appropriate measures to control all such risks. Details of the risk assessment and evidence of implementation of adequate risk control measures will be provided to the Bank upon and in accordance with any reasonable request by or on behalf of the Bank.
- (e) The Supplier must perform all relevant functions and fulfil all relevant duties under all relevant Safety Legislation of an employer or otherwise applicable to the role of the Supplier under this Agreement, including notification of incidents as may be required under the Safety Legislation.
- (f) The Supplier acknowledges that disclosure of the Confidential Information may compromise the occupational health and safety of persons and the ability of the Bank and the Supplier to comply with their respective obligations under relevant Safety Legislation.
- (g) The Supplier must promptly notify the Bank of any accident, injury, property or environmental damage which occurs during the carrying out of and associated with the provision of the software and/or Services. The Supplier must, within two business days of any such incident, provide a written report to the Bank giving complete details of the incident, including the results of investigations

into its cause and any recommendations or strategies for prevention of a recurrence.

- (h) The Supplier must, where appropriate, supply adequate health and safety information concerning any goods it (or its agents or subcontractors) may use for the purpose of providing the software and/or Services and must ensure that any such goods will be safe when properly used and/or stored. The Supplier must at all times keep the Bank informed of all relevant information which becomes known to the Supplier (or its agents or subcontractors) concerning the use, supply and maintenance and/or storing of the goods.
- (i) Any breach by the Supplier of any part of this clause 29 will be considered a material breach by the Supplier of its obligations under this Agreement which is not capable of remedy, and will entitle the Bank at its option to:
  - (i) suspend the whole or part of the work under this Agreement and any cost incurred by the Bank or the Supplier by reason of the suspension (including the cost of the replacement of the software and/or Services provided or to be provided by the Supplier) will be borne by the Supplier; and/or
  - (ii) terminate this Agreement in accordance with clause 21.1(a)(ii).

---

### **30 Business Continuity**

- (a) The Supplier must develop and implement a business continuity management plan prior to execution of this Agreement, to provide for the continuity of critical business functions at agreed Service Levels in the event of the loss, disablement, impairment or suspension of key facilities, resources, technologies or suppliers due to a Force Majeure Event, and also for normal Service Levels to be fully restored within a timeframe acceptable to the Bank after such an event.
- (b) The Supplier will liaise with the Bank in the development of the plan and ensure that the plan is acceptable to the Bank.
- (c) The plan must:
  - (i) be based upon a formal assessment of the applicable risks and business impacts;
  - (ii) be developed in accordance with recognised best practice standards ;
  - (iii) be reviewed and updated at least annually;
  - (iv) be available to be audited by or on behalf of the Bank at least annually;
  - (v) be available to be tested at least annually in accordance with the Bank's requirements (including performing the tests contemplated by the Supplier's plan in conjunction with any Bank testing), with a representative of the Bank present to verify the results of any actions for rectification; and
  - (vi) adequately protect the Bank's interests at all times in relation to this Agreement to a level reasonably acceptable to the Bank.
- (d) The Supplier will provide the Bank with:

- (i) a copy of the business continuity management plan upon execution of this Agreement; and
    - (ii) a copy of the updated plan and test results upon request.
  - (e) The Supplier will allow the Bank, its authorised representatives and any regulatory authority reasonable site visits, at reasonable times, to the Supplier's premises for the purpose of monitoring, reviewing or auditing business continuity risks for the Bank associated with the Services provided under this Agreement.
  - (f) The Supplier will ensure that paragraphs (a) to (e) above will apply equally to any subcontracting or outsourcing by the Supplier permitted under this Agreement.
- 

## **31 Costs, expenses and duties**

### **31.1 Costs and expenses**

Each party must pay its own costs and expenses in relation to the negotiation, preparation, execution and variation of this Agreement or any Order including any administration costs of the parties in connection with the matters referred to in this clause, and any legal costs and expenses and any professional consultant's fees for any of the above.

### **31.2 Duties**

The Supplier must pay all stamp and other duties (including without limitation, any fines, penalties or interest) on or in respect of:

- (a) this Agreement (including any Order); and
  - (b) any transaction or instrument contemplated by this Agreement.
- 

## **32 General**

### **32.1 Precedence of documents**

This Agreement is comprised of various documents, which will, if there is any inconsistency between them, prevail according to the following order of priority with the higher taking precedence to the extent of that inconsistency:

- (a) clauses 1 to 31 of this Agreement;
- (b) the Schedules to this Agreement;
- (c) an Order;
- (d) the Documentation; and
- (e) any other exhibits, annexures and any other documents incorporated by reference in this Agreement,

except where expressly stated otherwise in clauses 1 to 31 of this Agreement or in an Order or Change Request. If two or more provisions having the same priority deal with the same subject matter, then:

- (f) to the extent there is no inconsistency between the relevant provisions, all of those provisions will apply; and

- (g) if there is an inconsistency between the relevant provisions, the more onerous provisions will apply to the extent of that inconsistency.

## **32.2 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

## **32.3 Discretion in exercising rights**

- (a) Unless expressly required by the terms of this Agreement, the Bank is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Agreement.
- (b) The Bank may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver.

## **32.4 Notices**

- (a) notice or other communication including any request, demand, consent or approval, to or by a party to this Agreement:

- (i) must be in legible writing and in English addressed as shown below:

- (A) if to the Bank:

Address: 1 Harbour St, Sydney NSW 2000

Attention: Michael Harte

Facsimile: +61 (0) 2 9118 7192;

with a copy to:

Address: Ground Floor, Tower 1, 201 Sussex Street, Sydney NSW 2000

Attention: Company Secretary

Facsimile: +61 (0) 2 9118 7192; and

- (B) if to the Supplier:

Address: 5718 Central Avenue, Boulder, CO 80301 USA

Attention: Meredith Chavel

Facsimile: (303) 444-2586

or as specified to the sender by any party by notice;

- (ii) is regarded as being given by the sender and received by the addressee:

- (A) if by delivery in person, when delivered to the addressee;

- (B) if by post, 10 Business Days from and including the date of postage; or

- (C) if by facsimile transmission, when transmitted to the addressee provided that the facsimile transmission is legible or regarded as legible under paragraph (b),

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and

- (iii) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 24 hours after transmission is received or regarded as received under paragraph (a)(ii)(C) and informs the sender that it is not legible.
  - (c) In this clause 32.4, a reference to an addressee includes a reference to an addressee's officers, agents or employees.

### **32.5 Relationship of the parties**

Nothing in this Agreement is to be construed as creating a partnership or joint venture between the parties nor to constitute any party the agent of the other party.

### **32.6 Governing law and jurisdiction**

- (a) This Agreement is governed by the laws of England and Wales.
- (b) Each party irrevocably submits to the non exclusive jurisdiction of the courts of England and Wales.
- (c) Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) Each party irrevocably waives any immunity in respect of its obligations under this Agreement that it may acquire from the jurisdiction of any court or any legal process for any reason including any immunity relating to the service of notice, attachment prior to judgment, attachment in aid of execution or execution.

### **32.7 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this Agreement or any right, power, authority, discretion or remedy which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

### **32.8 Waivers**

- (a) Waiver of any right, power, authority, discretion or remedy arising from any breach of this Agreement must be in writing and signed by the party granting the waiver.

- (b) A party is not entitled to rely on a delay in the exercise or non exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or on a default under this Agreement as constituting a waiver of that right, power, authority, discretion or remedy.
- (c) A party may not rely on any conduct of another party (including the issuance of an Acceptance Certificate) as a defence to exercise of a right, power, authority, discretion or remedy by that other party.
- (d) This clause 32.8 may not itself be waived except by writing.

### **32.9 Variation**

A variation of any term of this Agreement must be in writing, signed on behalf of the Supplier by the Supplier Commercial Representative or by a person authorised in writing by the Supplier Commercial Representative to vary this Agreement, and signed on behalf of the Bank by the Bank Commercial Representative or by a person authorised in writing by the Bank Commercial Representative to vary this Agreement.

### **32.10 Cumulative rights**

The rights, powers, authorities, discretions and remedies of the Bank arising out of or under this Agreement are cumulative and do not exclude any other right, power, authority, discretion or remedy of the Bank except to the extent specified in this Agreement.

### **32.11 Further assurances**

Each party must do all things and execute all further documents necessary to give full effect to this Agreement.

### **32.12 Entire agreement**

This Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

### **32.13 Survival**

- (a) The rights, obligations and indemnities in clauses 19, 20, 21, 22, 23 and this clause 31 survive the termination or expiry of this Agreement.
- (b) Any clause which contemplates that a party has any rights or obligations after the termination or expiry of this Agreement survives the termination or expiry of this Agreement.
- (c) Where this Agreement contemplates that Services are to be provided after the termination or expiry of this Agreement, such Services are to be provided in a manner, and to a standard, consistent with this Agreement.

### **32.14 Counterparts**

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Agreement by signing any counterpart.

### **32.15 To the extent not excluded by law**

The rights, duties and remedies granted or imposed under the provisions of this Agreement operate to the extent not excluded by law.



### **32.16 Trust**

- (a) The parties acknowledge that the Supplier's obligations under this Agreement are expressed as obligations to each Bank Group Member and IT Service Provider. The Bank holds the benefits of such obligations as principal and as agent for the other Bank Group Members and IT Service Providers.
- (b) The Bank will act in its own right and as the agent of each Bank Group Member and IT Service Provider in respect of the enforcement of any rights and remedies under this Agreement, including the recovery of Service Credits for and on behalf of each Bank Group Member.
- (c) The Bank may sue the Supplier and recover from the Supplier such damages that any Bank Group Member or IT Service Provider would have been entitled to recover against the Supplier directly, to the extent such damages would have been recoverable by the Bank from the Supplier had they been suffered by the Bank.
- (d) The Bank may vary, amend, enforce or otherwise act under, this Agreement without seeking the approval of the other Bank Group Members or the IT Service Provider.
- (e) Without limiting any of the foregoing, the Bank is entitled to exercise all rights, powers, authorities, discretions or remedies conferred on the Bank by this Agreement, or any applicable Laws, as if the Bank were the sole beneficiary of the obligations of the Supplier under this Agreement.

### **32.17 Severability**


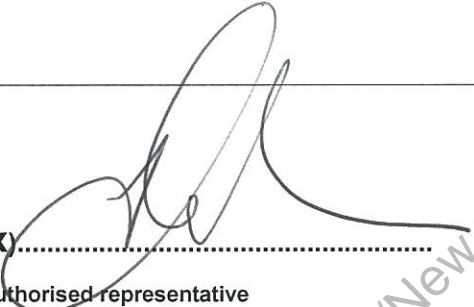
If any provision of this Agreement is held to be invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force apart from such provision which will be deemed deleted.



### **32.18 Public statements**

A party may not make any public statement about this Agreement, or anything related to the subject matter of this Agreement, without the prior express written consent of the other party.

Executed by the parties as an agreement {please date and sign where marked (X)}

Dated: (X).....2/25/2013.....

<b>Signed for and behalf of Commonwealth Bank of Australia by its authorised representative in the presence of:</b>	
(X).....  ..... Witness	(X).....  ..... Authorised representative
(X).....Lisa Muggli..... Print name	(X).....Michael Harte..... Print name

<b>Signed for and behalf of Markit On Demand by its authorised representative in the presence of:</b>	
(X).....  ..... Witness	(X).....  ..... Authorised representative
(X).....Jessica Pappas..... Print name	(X).....Catherine Allegra..... Print name

---

## Schedule 1 - Dictionary

### 1 Dictionary

In this Agreement:

**Acceptance** means, in relation to a particular Service, the issuance of an Acceptance Certificate by the Bank pursuant to clause 15(c) in respect of that Service.

**Acceptance Certificate** has the meaning given to that term in clause 15(c).

**Acceptance Test Plan** means, in relation to a particular Service, the Acceptance test plan prepared by the Supplier and approved by the Bank in respect of that Service, and which sets out (amongst other things) the Acceptance Tests for that Service.

**Acceptance Tests** means, in relation to a particular Service, the acceptance tests in respect of that Service conducted in accordance with an approved Acceptance Test Plan.

**Agreement** means this document, including any Schedules and Annexures, and any Orders.

**Annexure** means an Order annexed to Schedule 5 (Executed Orders) of this Agreement.

**Associate** has the meaning given to that term in the Corporations Act.

**At-Risk Amount** means the total amount of Service Credits payable by the Supplier to the Bank under an Order in any particular month, as set out in the relevant Order.

**Auditor** means any auditor, inspector, regulator or other representative (with or without auditing backgrounds or skills) of a Bank Group Member, any Government Agency or any other body, which the Bank nominates in writing from time to time.

**Bank Data** means all data and information (including Personal Information) relating to any Bank Group Member or associate and their respective operations, facilities, customers, Personnel, assets, products, sales and transactions in whatever form such information may exist, including any data produced, generated, or processed in the provision of the Services for the Bank, and includes any:

- (a) database in which such information is contained;
- (b) documentation or records related to such data or information;
- (c) products resulting from the use or manipulation of such data or information;
- (d) any other data and other information entered into, generated by, stored by, or processed by any Bank equipment or Bank Systems; and
- (e) any and all copies of the above.

**Bank Group** means the Bank and its Related Bodies Corporate from time to time.

**Bank Group Member** means the Bank and any other member of the Bank Group.

**Bank Owned Deliverables** means any information, materials or literary works created by Supplier for Bank under this Agreement, including any software, data, processes, manuals, reports and training materials.

**Bank Policies** mean those policies (including any ITIL policies and security policies) notified to the Supplier by the Bank from time to time.

**Bank Related Activities** means:

- (a) providing services to the Bank Group;
- (b) third parties offering Bank Group products or services to the public or using Bank Group technology under a Bank Group Member's oversight; and
- (c) all other use of Services in connection with the Bank Group's business.

**Bank Systems** means the information technology, communications or business systems (including hardware, software and networks) in conjunction with which the Services are required to operate.

**Bank Task** means any specific task or obligation expressly specified as a "Bank Task" in this Agreement, and which is to be performed by, or on behalf of, the Bank.

**Business Day** means:

- (a) for the purposes of clause 4, a day on which banks are open for business in the city where the notice or other communication is received, excluding any Saturday, Sunday or public holiday; and
- (b) for all other purposes, a day on which banks are open for business in New York and Sydney, excluding any Saturday, Sunday or public holiday.

**Business Hours** means 8.00am to 6.00pm on a Business Day.

**Change in Control** of the Supplier means that after the date of this Agreement:

- (a) a Competitor, either alone or together with any Associate of that person, becomes entitled (as defined in the Corporations Act) to more than 5% of the issued voting shares of the Supplier or any of its Related Bodies Corporate;
- (b) the Supplier or any of its Related Bodies Corporate, either alone or together with any Associate of that person, becomes entitled (as defined in the Corporations Act) to more than 5% of the issued voting shares of a Competitor;
- (c) any other person, either alone or together with any Associate of that person, becomes entitled (as defined in the Corporations Act) to more than 15% of the issued voting shares of the Supplier or any of its Related Bodies Corporate;
- (d) a Competitor appoints a member of the Board of Directors of the Supplier or any of its Related Bodies Corporate; or
- (e) the Supplier or any of its Related Bodies Corporate appoints a member of the Board of Directors of a Competitor.

**Change Request** has the meaning given to that term in clause 3.4.

**Commencement Date** means Feb. 25, 2013

**Commercial Representative** means a party's representative nominated for the purposes of clause 3.4 and clause 7.

**Competitor** means any person that conducts business in competition with any Bank Group Member from time to time.

**Conditions Precedent** means the conditions precedent set out in clause 4.

**Confidential Information** of a party means any information:

- (a) regarding the business or affairs of that party or its Related Bodies Corporate;
- (b) regarding the customers, employees or contractors of, or other persons doing business with, that party or its Related Bodies Corporate;
- (c) regarding the terms of this Agreement, or the commercial arrangements between the parties;
- (d) which is by its nature confidential or which is designated as confidential by that party;
- (e) where the Bank is the disclosing party, which is Bank Data;
- (f) which is "personal information" as that term is defined in the Privacy Act 1988 (Cth), and which the Supplier holds, creates or receives in relation to the Services; or
- (g) which the other party knows, or ought to know, is confidential.

**Confidentiality Deed** means a deed substantially in the form of Schedule 3 (Confidentiality Deed).

**Copyright Material** has the meaning given to that term in clause 18.3.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Cut Off Date** means the date 14 days after the Commencement Date.

**Deal** means sell, transfer, assign, dispose of, commercialise, lease, rent, convert, grant an option over, allot, declare a trust over, or otherwise deal with.

**Deed of Guarantee** means a document in the form of Schedule 6 (Form of Parent Guarantee).

**Defect** means anything that results in the Services or Supplier Owned Deliverables:

- (a) failing to comply with the warranties in clause 18 (where applicable) or any other part of this Agreement (including any Schedule);
- (b) doing something that they were not designed to do;
- (c) results in them not doing something that they were designed to do;
- (d) without limiting the generality of paragraph (a), (b) or (c) above, not operating in accordance with the Service Levels or Specifications; and/or
- (e) in clause 15, failing to pass its Acceptance Tests.

**Delay** occurs when the Supplier:

- (f) is late in complying with any provision of this Agreement for which the Bank specifies that time is critical or of the essence, where such delay is due solely to the action or inaction of Supplier; or
- (g) is more than 3 calendar days late in carrying out any work under this Agreement, where such delay is due solely to the action or inaction of Supplier.

**Disabling Code** means any virus, bomb, Trojan horse or other malware or computer programming code, including source and object code, which may impair, deny or otherwise adversely affect Use of the Services.

**Dispute** means any dispute of any form which arises out of or relates to:

- (a) the Services; or
- (b) this Agreement, including the entry into, breach, termination or validity of this Agreement.

**Dispute Notice** means a notice that a Dispute exists and which complies with clause 24.1(a).

**Documentation** means manuals including release notes, reference guides, specifications or other documents relating to the Services provided to the Bank by the Supplier.

**Due Diligence Screening** means [the screening procedures set out in Schedule 8 (AML Due Diligence Screening)].

**Executives** means the party's representatives nominated in an Order for the purposes of clause 24.2

**Fees** means all amounts payable by the Bank under this Agreement for the Services, as set out in the relevant Order.

**Force Majeure Event** means fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, terrorist acts, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strikes by employees of a third person. A strike by employees of a party or employees of a subcontractor of a party (or both) is not a Force Majeure Event unless the strike is part of an industry-wide campaign which does not arise out of a dispute between that party or subcontractor and one or more of its employees (proof of which will fall on the party claiming that the strike is a Force Majeure Event).

**Government Agency** means any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**GST Law** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Industry Standard** means those generally accepted industry standards prevailing from time to time in the information technology business. For the avoidance of doubt this includes to ISO 9001, ISO/IEC 90003:2004, Cobit Version 4 and CMMI-Dev Version 1.2.

**Insolvency Event** means the occurrence of any one or more of the following events:

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator (as defined in section 9 of the Corporations Act) or a controller (as defined in section 9 of the Corporations Act) is appointed to any of its assets;

- (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (e) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (g) it becomes, or states that it is, an insolvent under administration (as defined in section 9 of the Corporations Act) or action is taken which could result in that event;
- (h) an order is made, a resolution is passed, proposal put forward or any other action taken, in each case which is preparatory to or could result in any of the matters referred to in paragraphs (i) to (vii) inclusive;
- (i) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (j) a notice is issued under sections 601AA or 601AB of the Corporations Act ;
- (k) a writ of execution is levied against it or a material part of its property;
- (l) any step is taken by a mortgagee to enter into possession of or dispose of the whole or any part of the other party's assets or business; or
- (m) anything that occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

**Intellectual Property Rights** means:

- (a) all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how, confidential information and circuit layouts; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

**IPR Claim** has the meaning given to that term in clause 19.5(a).

**Issue** has the meaning given to that term in clause 2.2(b).

**IT Service Provider** means any person or persons providing information technology services to the Bank Group from time to time.

**Jurisdiction** means:

- (a) Australia and the United States; and
- (b) any other jurisdiction specified in Schedule 9 (Supplier Sites).

**Key Personnel** means the Personnel of the Supplier specified in an Order who are required to undertake the supply of the relevant Services.

**Knowledge Management Materials** means:

- (a) the Documentation;
- (b) the materials that the Supplier is required to develop or capture under clause 10.2; and
- (c) any additional materials specified as such in this Agreement.

**Law** means any:

- (a) law of Australia or another Jurisdiction, including Commonwealth, State, Territory, local government legislation or any regulations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law;
- (c) Government Agency requirement or authorisation (including conditions in respect of any authorisation); and
- (d) code of conduct, writ, order, injunction or judgment.

**ML/TF Risk** means the risk that the Bank may face that the provision of services by it might involve or facilitate money laundering or the financing of terrorism.

**Moral Rights** has the meaning given to that term in the Copyright Act 1968 (Cth).

**Objectives** means the objectives set out in clause 2.1.

**Order** means an order for Services in the form of Schedule 2 (Template Order) (with such changes to the form as the parties may agree), executed by the parties, containing the contract details for the provision of the Services.

**Open Source Software** means software that, as a condition of its Use or development requires that such software, any developments to that software or any other software with which such software is combined or distributed be:

- (a) disclosed or distributed in source code or object code form;
- (b) licensed to the general public for development or other purposes; or
- (c) redistributable;

**Operational Representative** means the person specified in paragraph 8 of an Order as being a point of contact in relation to the operational aspects of that Order.

**Personnel Due Diligence Program** has the meaning given to that term in clause 13(a).

**Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

**Personnel** means the officers, employees, agents, contractors and subcontractors of a party, and includes the officers, employees, agents, contractors and subcontractors of any subcontractor.

**Prescribed Rate** means the interest rate for overdrafts of \$100,000 or more charged by the Bank, calculated on daily rests from the due date to the day of payment.

**Priority** means the priority assigned by the Bank to a problem as more specifically set out in the Service Levels.



**Privacy Legislation** means:

- (a) the Privacy Act 1988 (Cth);
- (b) any legislation (to the extent that such legislation applies to the Bank Group or the Supplier or any other recipient of Personal Information) from time to time in force in:
  - (i) [the Jurisdiction][any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia)]; and
  - (ii) any other jurisdiction (to the extent that the Bank or any Personal Information or the Supplier is subject to the laws of that jurisdiction),affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal data;
- (c) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraph (b) above, as amended from time to time; and
- (d) without limiting any of the foregoing clauses of this definition, any relevant privacy laws in the Supplier's jurisdiction.

**Protected Information** means:

- (a) any Personal Information (including tax file numbers, credit information files or credit reports or any other information relating to an individual), whether in a written, oral or other form, in respect of which the Supplier or the Bank:
  - (iii) has a duty not to engage in any act or practice which constitutes; or
  - (iv) is required to undertake a specified act or practice, or to provide specified protection, failure to do or provide which is,an interference with privacy; or
- (b) any information which any Bank Group Member must at law or in equity keep confidential.

**Regulator** means any body having regulatory or supervisory authority over any part of the business or affairs of the Bank including the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission.

**Regulatory and Industry Requirements** mean any:

- (a) financial services industry-wide non-statutory rule or obligation;
- (b) other non-statutory rule or non-statutory mandatory code of conduct; and
- (c) any industry-wide voluntary code, contract or arrangement,

applicable and in force in the Jurisdiction or any other jurisdiction where the Services are provided.

**Repeated Breach** means a breach of a warranty that has occurred two or more times in any rolling 12 month period during the term of this Agreement.

**Required Insurances** means the insurance policies required to be effected and maintained by the Supplier in accordance with clause 25.

**Resources** means Personnel, facilities, systems, software, equipment, procedures, processes and other resources.

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Risk** means any reasonably foreseeable internal or external event or issue (whether relating to Personnel, process, technology or otherwise) that is likely to or could adversely affect the delivery or performance of the Services or the reputation of the Bank Group.

**Risk Assessment and Mitigation Plan** means:

- (a) an assessment performed and documented by the Supplier for the purpose of assessing risk to the Bank Group resulting from any proposed act or matter; and
- (b) a plan formulated by the Supplier for the purpose of mitigating the risk contemplated by paragraph (a).

**Risk Control** means any processes, policies, activities, actions or things used to mitigate Risks (and which may specify relevant individuals who are responsible for such processes, policies, activities, actions or things).

**Root Cause Analysis** means the process by which the underlying root cause(s) of a Defect is/are identified.

**Safety Legislation** means all applicable Occupational Health and Safety, Environment Protection, Dangerous Goods and Electricity Safety legislation and regulations made thereunder, together with any directions on safety or notices issued by any relevant authority or any Code of Practice or Compliance Code appropriate or relevant to the supply of the Services.

**Safety Requirements** means any and all directions, instructions, requests or requirements relevant to, associated with or necessary for compliance by the Supplier or the Bank with Safety Legislation and including any such matters of which the Supplier has been informed by the Bank orally or in writing.

**Security Requirements** means the security requirements set out in Schedule 7 (Bank Security Requirements).

**Service Credits** means the service credits awarded against the Supplier for a failure to meet Service Levels, as set out in the applicable Order.

**Service Levels** means the service levels to be met by the Supplier in relation to the Services, as set out in the applicable Order.

**Services** means the services specified in an Order and any other services provided by the Supplier under this Agreement.

**Specifications** means the following documents (in the following order of priority if there is any inconsistency between the documents):

- (a) any specifications in this Agreement, including an Order, which specify the agreed requirements for quality, functionality, performance, interoperability, testing and other requirements;
- (b) the Documentation; and
- (c) the Supplier's or the manufacturer's published specifications,

for the Services.

**Standards** means any regulatory or industry standards which are relevant to the Services being provided under any Order.

**Supplier Employee** means, in relation to the Supplier, any employee, seconded, agent, principal, contractor and subcontractor (including any subcontractor involved in the supply of the Services regardless of whether they are engaged directly by the Supplier or by one of the Supplier's subcontractors) who is an individual and includes any person who is a prospective employee, seconded, agent, principal, contractor or subcontractor.

**Supplier Owned Deliverables** means any information, materials or literary works provided by the Supplier under this Agreement, including any software, data, processes, manuals, reports and training materials (but excluding any Bank Owned Deliverables or Bank Data).

**Supplier Parent** means the Supplier's ultimate parent company, which as at the date of execution of this Agreement is Markit Group Limited.

**Supplier Sites** means any site, facility or other premises used in the performance of the Services (including sites, facilities or other premises not directly controlled by the Supplier), as set out in Schedule 9 (Supplier Sites) or an Order.

**Supplier Systems** means the Supplier's information technology, communications or business systems (including hardware, software and networks).

**Tax** means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding (including GST) which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above.

**Tax Deduction** means a deduction or withholding for or on account of Taxes from a payment.

**Tax Invoice** has the meaning given to that term in the GST Law and includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

**Term** has the meaning given to that term in clause 3.2.

**Use** includes install, use, access, modify, copy, develop, enhance, reproduce, distribute, transmit, perform and display.

**Workaround** means a change to the Services, or a different way of using the Services, which materially reduces the impact of a Defect or error.

---

## Schedule 2 - Template Order

---

### Parties

**Commonwealth Bank of Australia** (ACN 123 123 124) of Ground Floor, Tower 1, 201 Sussex Street, Sydney NSW 2000, Australia (Bank)

**Markit On Demand, Inc.**, of 5718 Central Avenue, Boulder, CO 80301 USA (Supplier)

### 1 Background

- (a) The parties acknowledge and agree that:
  - (i) this Order is made pursuant to and is governed by the terms and conditions of the Master As-a-Service Agreement between the Supplier and the Bank dated {insert date} (Agreement);
  - (ii) any terms used but not defined in this Order have the meaning given to them in the Agreement;
  - (iii) this Order forms part of the Agreement and all provisions of the Agreement are applicable to this Order;
  - (iv) any amendments to this Order must be evidenced in writing, signed by the Supplier and signed on behalf of the Bank by the Bank Commercial Representative or a person authorised in writing by the Bank Commercial Representative to do so.
- (b) The Supplier will provide the Services, as set out in paragraph 2 of this Order to the Bank, subject to the terms and conditions of the Agreement.
- (c) The Bank must in consideration of the Supplier performing the Services, pay the Supplier the Fees, as set out in paragraph 4 of this Order.
- (d) The persons identified in paragraph 5 of this Order are Key Personnel for the Services which are the subject of this Order.

### 2 Commencement and duration

### 3 Services

### 4 Fees

### 5 Key Personnel

{Insert names of Key Personnel.}

### 6 Acceptance

- (a) Acceptance
  - (i) Acceptance Tests: {Briefly outline the acceptance tests required to be performed on each part of a Service in accordance with clause 15(a) of the Agreement}

- (ii) Acceptance Test Plan delivery date: {Insert date by which the Supplier will provide the Acceptance Test Plan to the Bank}

(A) Acceptance Date for the Service: {Insert date}

- (b) For every Business Day past the Acceptance Date that the Service remains not accepted, the aggregate Fees otherwise payable for the relevant Service will be reduced by an amount equalling {insert} percent (insert%) per day
- (c) The Supplier acknowledges that time is of the essence in respect of the dates specified in this paragraph 5.

## 7 Service Levels and Service Credits

{Insert details of the Service Levels and Service Credits, and the At-Risk Amount (if any)}

### 7.1 Notification by Bank

- (a) The Bank will notify the Supplier's helpdesk of any Defect with the Service. At that time, the Bank will instruct the Supplier Personnel of the Priority assigned to such Defect, which the Bank must reasonably determine in accordance with paragraph 7.2.
- (b) Both the Supplier Personnel receiving the call and the Bank Personnel reporting the Defect will agree on the time of the call (to the nearest minute) and will record that time.
- (c) On receipt of the call by the Bank to the Supplier, the Supplier will take the actions set out below in paragraph 7.2 for the applicable Priority.
- (d) The "Response Time" set out below in paragraph 7.2 is measured as the time between:
- (i) the recorded time of the relevant call from the Bank to the Supplier is made; and
  - (ii) the time of receipt of a return call from a representative of the Supplier qualified to manage the Defect or inquiry.
- (e) The time-frames for "Response Action" set out below in paragraph 7.2 will be measured as the time between:
- (i) the recorded time of the relevant call from the Bank to the Supplier is made; and
  - (ii) the time the Supplier completes all required actions.

### 7.2 Priority Assignment and Service Levels

Priority	Definition	Response Time	Response Action
----------	------------	---------------	-----------------

Priority 1 "Critical Defect"	A Defect which causes a critical service impact and/or a critical part of the Service is not available or not working correctly.	<b>10 minutes</b>	<p>The Supplier will immediately commence continual problem resolution using best endeavors to isolate and diagnose the Defect.</p> <p>Within <b>30 minutes</b> the Supplier will provide the Bank with an evaluation of the Defect and a plan to resolve it.</p> <p>The plan will include time-frames required to effect a work-around and/or permanent resolution.</p> <ul style="list-style-type: none"> <li>•The time-frames set out in the plan must be acceptable to the Bank.</li> <li>•As a minimum, the Supplier must effect a work-around within <b>4 hours</b> of the initial call to the Supplier's helpdesk.</li> <li>•The Supplier will implement the agreed plan and continue work until either: <ol style="list-style-type: none"> <li>1. permanent resolution is effected; or</li> <li>2. a work-around is effected and, upon agreement by the technical representatives of both parties (acting reasonably), the problem is downgraded.</li> </ol> </li> </ul>
Priority 2 "Significant Defect"	A Defect affects normal operation or service quality of the Service and/or prevents or inhibits the Bank's Use of the Service.	<b>30 minutes</b>	<ul style="list-style-type: none"> <li>•The Supplier will commence problem resolution using best endeavors to isolate and diagnose the Defect.</li> <li>•Within <b>2 hours</b> the Supplier will provide the Bank with an evaluation of the Defect and a plan to resolve it.</li> <li>•The plan will include time-frames required to effect a work-around and/or permanent resolution.</li> <li>•The time-frames set out in the plan must be acceptable to the Bank.</li> <li>•As a minimum, the Supplier must effect a work-around within <b>8 hours</b> of the initial call to the Supplier's helpdesk.</li> <li>•The Supplier will implement the agreed plan and continue work until either: <ol style="list-style-type: none"> <li>1. permanent resolution is effected; or</li> <li>2. a work-around is effected and, upon agreement by the technical representatives of both parties (acting reasonably), the problem is downgraded.</li> </ol> </li> </ul>
Priority 3 "Low-impact Defect"	A minor Defect that does not affect normal operation or service	<b>2 hours</b>	<ul style="list-style-type: none"> <li>•The Supplier will commence problem resolution using reasonable endeavors to isolate and diagnose the Defect, or assess the error in the Documentation or answer the inquiry, as the case may be.</li> <li>•In the case of a Defect, within <b>24 hours</b></li> </ul>

	quality of the Service, or an error in the documentation, or a technical inquiry.		<p>the Supplier will provide the Bank with an evaluation of the Defect and a plan to resolve it. The plan will include time-frames required to effect a work-around and/or permanent resolution. The time-frames set out in the plan must be acceptable to the Bank. As a minimum, the Supplier must effect a work-around within <b>72 hours</b> of the initial call to the Supplier's helpdesk. The Supplier will implement the agreed plan and continue work until permanent resolution is effected.</p> <ul style="list-style-type: none"> <li>• In the case of an error in the Documentation, within <b>24 hours</b> the Supplier will clarify the error and, if applicable, provide the Bank with the corrected information.</li> <li>• In the case of an inquiry, within <b>24 hours</b> the Supplier will answer the inquiry to the satisfaction of the Bank.</li> </ul>
--	---	--	---

- (a) Service Credits If the Supplier fails to meet a specified combination of Service Levels as defined below in any calendar month, then without limiting any other right or remedy, the Bank will be entitled to Service Credits for that calendar month.
- (b) At the commencement of each calendar month the Supplier must provide a report (a **Service Level Report**) to the Bank reporting on all failures to comply with the Service Levels in the previous month and indicating the total amount of Service Credits for that month.
- (c) Service Credits will be credited to the Bank in accordance with clause 16.2(c) of the Agreement.
- (d) The amount of Service Credit payable by the Supplier to the Bank in any particular month is based on an amount of money deemed to be at risk (the **At-Risk Amount**). The total At-Risk Amount equals the greater of:
- (i) [20% of the Fees paid or payable by the Bank under Order in the then-current Year]; or
  - (ii) {INSERT}.
- (e) The Service Level failures that give rise to Service Credits and the associated Service Credit amounts are:
- (i) for any two breaches of timeframes defined in paragraphs 7.1 and 7.2 during a calendar month the Supplier will credit the Bank with 20% of the At-Risk Amount;
  - (ii) for any three breaches of timeframes defined in paragraphs 7.1 and 7.2 during a calendar month the Supplier will credit the Bank with 40% of the At-Risk Amount;

- (iii) for any four breaches of timeframes defined in paragraphs 7.1 and 7.2 during a calendar month the Supplier will credit the Bank with 60% of the At-Risk Amount; or
- (iv) for any five breaches of timeframes defined in paragraphs 7.1 and 7.2 during a calendar month the Supplier will credit the Bank with 80% of the At-Risk Amount.
- (f) The Service Level failures set out in paragraph (e) pertain only to the calendar month in which they occur. For the avoidance of doubt they cannot be counted from one calendar month to another.
- (g) Service Credits are a reduction in the amounts payable by the Bank in respect of the Services and do not include GST. If a Service Credit applies in respect of Services for which the Bank has already paid the Supplier, the Supplier will pay to the Bank an amount equal to the Service Credit, together with the amount representing the overpaid GST in accordance with clause 17 of this Agreement.

### 7.3 Limitation on Defect Correction

The Supplier is not permitted to use a correction process to correct a Defect if:

- (a) the correction process will result in the Service becoming unusable (or its performance becoming degraded) for more than a length of time to be agreeable to the Bank on any one occasion, such time to be agreed prior to the commencement of any correction process; or
- (b) the correction will require the Bank to upgrade any of the software that is used, or that the Bank uses, with the Service,

and must correct the Defect using an alternative process, unless the Supplier proves to the Bank's satisfaction that there is no other way to correct the Defect.

### 7.4 Interface Procedure

The Supplier's helpdesk contact details are as follows:

Telephone (Business Hours)	1800 .....
Telephone (all other times)	(02) .....
Minimum information to be supplied by the Bank when placing a call to the helpdesk	{e.g. reference numbers, on-line access order etc.}

### 7.1 Escalation Procedures

If there is no response from the Supplier's helpdesk numbers in accordance with the Service Levels:

First point of escalation	{name and title}	{mobile number}
Second point of escalation	{name and title}	{mobile number}

## 8 Documentation

{Insert details, and number of copies of any Documentation to be provided by the Supplier}



**9 Bank Tasks**

{Specify any tasks that it is essential for the Bank or an IT Service Provider to perform in order to enable the Supplier to fulfil its obligations under this Order}

**10 Reporting**

{Insert any specific reporting requirements}

**11 Contact Details**

**EXECUTIVES**

The Executives nominated for the purposes of **clause 3.4** and **clause 24.2(b)** of the Agreement, in relation to the Services set out in this Order are:

- (a) for the Bank: the Chief Information Officer of the Bank; and
- (b) for the Supplier: {insert job title} of the Supplier.

(i) Bank Operational Representatives

Bank's first point of contact with respect to the operational aspects of this Order	{name and title}	{mobile number}
---	------------------	-----------------

Bank's second point of contact with respect to the operational aspects of this Order	{name and title}	{mobile number}
--	------------------	-----------------

(ii) Supplier operational representatives

Supplier's first point of contact with respect to the operational aspects of this Order	{name and title}	{mobile number}
---	------------------	-----------------

Supplier's second point of contact with respect to the operational aspects of this Order	{name and title}	{mobile number}
--	------------------	-----------------

**Executed by the parties as a work order {please date and sign where marked (X)}**

**Dated: (X).....**

**Signed for and behalf of Commonwealth  
Bank of Australia by its authorised  
representative in the presence of:**

**(X)**.....

Witness

**(X)**.....

Authorised representative

**(X)**.....

Print name

**(X)**.....

Print name

**Signed for and behalf of Markit On  
Demand, Inc. by its authorised  
representative in the presence of:**

**(X)**.....

Witness

**(X)**.....

Authorised representative

**(X)**.....

Print name

**(X)**.....

Print name

---

## Schedule 3 - Confidentiality Deed

### Deed Poll

---

#### Parties

{Insert name and ABN of disclosing party} of {insert address of disclosing party} (Disclosing Party)

{Insert name and ABN of receiving party} of {insert address of receiving party} (Recipient),

---

#### Background

- A** The Supplier has entered into a services agreement with the Bank dated {insert date}.
- B** The {insert name of disclosing party} has agreed to disclose the Confidential Information to the Recipient so that the Recipient can supply goods and services to the Bank Group.
- C** The Recipient agrees that the Confidential Information is provided to it on the terms of this Deed Poll and that it will not use or disclose the Confidential Information except as provided in this Deed Poll.

#### 12 Definitions and interpretation

##### 12.1 Definitions

In this Deed Poll:

**Bank** means the Commonwealth Bank of Australia

**Bank Group** means the Bank and its Related Bodies Corporate from time to time;

**Confidential Information** means any information:

- (a) regarding the business or affairs of the Owner or its Related Bodies Corporate;
- (b) regarding the customers, employees or contractors of, or other persons doing business with, the Owner or its Related Bodies Corporate;
- (c) regarding the terms of this Deed Poll, or the commercial arrangements between the parties;
- (d) which is by its nature confidential or which is designated as confidential by the Owner;
- (e) which the Recipient knows, or ought to know, is confidential; or
- (f) in the case of the Bank, bank data, account information, customer information, transaction information of any kind and any other information processed, stored or transmitted by the Bank in connection with its operations.

**Law** means any:

- (a) Commonwealth, State, Territory or local government legislation, including regulations, by-laws, declarations, ministerial directions and other subordinate legislation;

- (b) common law;
- (c) government agency requirement or authorisation (including conditions in respect of any authorisation); or
- (d) code of conduct, writ, order, injunction or judgment;

**Owner** means {insert name of owner of Confidential Information}; and

**Related Body Corporate** has the meaning given to that term in the Corporations Act 2001 (Cth).

## 12.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) In this Deed Poll, unless the context otherwise requires:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) a reference to any thing (including any right) includes a part of that thing but nothing in this paragraph (ii) implies that performance of part of an obligation constitutes performance of the obligation;
  - (iii) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency; and
  - (iv) a reference to a person includes that person's successors and legal personal representatives.

## 13 Disclosure and use of confidential information

- (a) In consideration of the Disclosing Party disclosing Confidential Information to the Recipient, the Recipient agrees:
  - (i) to use the Confidential Information solely as permitted by this paragraph (a);
  - (ii) to keep confidential the Confidential Information (subject to disclosure permitted under paragraph (c)); and
  - (iii) otherwise to comply with the terms of this Deed Poll.
- (b) The Recipient may use the Confidential Information solely for the purpose of {state purpose eg supplying goods and services to the Bank Group} (the **Permitted Purpose**).
- (c) The Recipient may disclose the Confidential Information:
  - (i) required to be disclosed by applicable Law or the rules of any stock exchange on which the Recipient's securities are listed, as long as the Recipient:
    - (A) discloses only the minimum amount of Confidential Information required to satisfy the Law or rules; and
    - (B) before disclosing any Confidential Information, gives a reasonable amount of notice to the Owner and takes all reasonable steps (whether required by the Owner or not) to maintain that Confidential Information in confidence; and

- (ii) to officers and employees of the Recipient who:
  - (A) have a need to know (and only to the extent that each has a need to know) for the Permitted Purpose; and
  - (B) have been directed and have agreed to keep confidential the Confidential Information on terms not inconsistent with this Deed Poll.
- (d) The Recipient must, at its own expense:
  - (i) ensure, at all times, that each officer and employee to whom the Confidential Information has been disclosed under paragraph (c) keeps that information confidential;
  - (ii) notify the Owner immediately if it becomes aware of a suspected or actual breach of paragraph (i) ; and
  - (iii) immediately take all steps to prevent or stop, and comply with any direction issued by the Owner from time to time regarding, a suspected or actual breach.

#### **14 Exceptions to confidentiality obligations**

The obligations of confidence in this Deed Poll do not apply to Confidential Information that is:

- (a) in the public domain otherwise than as a result of a breach of this Deed Poll or another obligation of confidence;
- (b) independently developed by the Recipient; or
- (c) already known by the Recipient independently of its interaction with the Owner and free of any obligation of confidence.

#### **15 Security and control**

- (a) The Recipient will:
  - (i) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
  - (ii) keep the Confidential Information under its control; and
  - (iii) immediately notify the Owner of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information.
- (b) The Recipient will provide assistance, reasonably requested by the Owner in relation to any proceedings that the Owner may take against any person for unauthorised use, copying or disclosure of the Confidential Information.

#### **16 Acknowledgment**

- (a) The Recipient acknowledges that it is aware that any breach of this Deed Poll may result in damage to the Owner and that the Owner is entitled to enforce its rights by specific performance or injunction proceedings as monetary damages may not be sufficient relief.
- (b) The Supplier and the Recipient agree that the Owner may enforce the terms of this Deed Poll as if the Owner were a party to it.

**17 Return of confidential information**

The Recipient must immediately on request from the Owner:

- (a) return to the Owner;
- (b) destroy and certify in writing to the Owner the destruction of; or
- (c) destroy and permit an employee of the Owner to witness the destruction of;

all the Confidential Information in the Recipient's possession or control other than one copy of any notes and other records that the Recipient is required by Law to retain.

**18 Governing law and jurisdiction**

- (a) This Deed Poll is governed by the laws of New South Wales.
- (b) The Recipient irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

**19 Waivers**

- (a) Waiver of any right, power, authority, discretion or remedy arising on default under this Deed Poll must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising on default under this Deed Poll does not result in a waiver of that right, power, authority, discretion or remedy.

**20 Variation**

Any variation of this Deed Poll must be in writing and signed by the parties.

**21 Entire agreement**

This Deed Poll is the entire agreement between the parties in respect of its subject matter.

**Executed by the parties as a deed poll {please date and sign where marked (X)}**

**Dated: (X).....**

**Signed for and behalf of {insert name of disclosing company} by its authorised representative in the presence of:**

**(X).....**

Witness

**(X).....**

Authorised representative

**(X).....**

Print name

**(X).....**

Print name

Signed for and behalf of {insert name of recipient} by its authorised representative in the presence of:

(X).....

Witness

(X).....

Authorised representative

(X).....

Print name

(X).....

Print name

michael@justbuildit.com - Jul 29, 2024, 1:14:36 PM America/New\_York

## Schedule 4 - Change Request

<b>Title</b>			
<b>Proposed Change No.</b>	<b>#</b>	<b>Associated Order No.</b>	<b>#</b>
<b>Date raised</b>			
<b>Raised by</b>	<b>Name</b>		
	<b>Position</b>		
	<b>Company</b>		
	<b>Phone</b>		
	<b>Email</b>		
	<b>Signature</b>		

<b>Detailed description of change</b>
{Outline the full nature of the change, i.e. what is to be changed and how is it to be changed}
<b>Reason for change</b>
{Outline the rationale and justification for the change}
<b>Impact on the Business from the change (impacts can be positive or negative)</b>
{Outline the impact, if any, on Business quality, functionality, effectiveness, efficiency, processes, training, etc}
<b>Impact on the Fees from the change (impacts can be positive or negative)</b>



{Outline the impact, if any, on the Fees to be payable by the Bank under the related Order}

**Detail all changes to the information contained in the related Order**

{Since this change is related to an existing executed Order, all changes required to that Order must be written precisely here}

**Executed by the parties as a change request** {please date and sign where marked **(X)**}

**Dated: (X)**.....

**Signed for and behalf of Commonwealth  
Bank of Australia by its authorised  
representative in the presence of:**

**(X)**.....

Witness

**(X)**.....

Authorised representative

**(X)**.....

Print name

**(X)**.....

Print name

**Signed for and behalf of {insert name of  
supplier} by its authorised representative  
in the presence of:**

**(X)**.....

Witness

**(X)**.....

Authorised representative

**(X)**.....

Print name

**(X)**.....

Print name

---

## Schedule 5 - Executed Orders

The Annexures to this Schedule 5 set out the agreed and duly executed Orders under the Agreement.

Annexure Number	Date Executed	Date Terminated

---

## Schedule 6 - Form of Parent Guarantee

michael@justbuildit.com - Jul 29, 2024, 1:14:36 PM America/New\_York

---

## Schedule 7 - Bank Security Requirements

### INTRODUCTION

Without limiting the Supplier's obligations in clauses 22 (Confidentiality) and 23 (Privacy) of this Agreement, Supplier must satisfy the Security Requirements set out in this Schedule 7 (Bank Security Requirements) in respect of the delivery of the Services and software.

### PART A – ISMS AND STATEMENT OF APPLICABILITY

#### 1 Information Security Management System

The Supplier shall be responsible for establishing, maintaining, operating, reviewing and improving an Information Security Management System which consists of organisational structure, policies, planning activities, responsibilities, practices, procedures, processes and resources used to manage information security within the Supplier's group of companies (which includes ITS) including all Services and software provided to the Bank under the Agreement (**ISMS**). The Supplier must ensure that its ISMS:

- (a) is commensurate with industry best practices, including any future updates or amendments; and
- (b) establishes and maintains appropriate technical and organisational security measures to protect against:
  - (i) unauthorised or unlawful access or use or accidental loss or destruction or damage; and
  - (ii) any anticipated threats or hazards to the security or integrity or availability,

of the Bank Data and the software and hardware the Supplier uses to provide the Services. For the avoidance of doubt, the ISMS will apply to the Supplier as well as to ITS.

#### 2 Controls

- (a) The Supplier must ensure that, by no later than the go live, each of the Supplier and ITS has controls in place to meet the Security Requirements. Such controls must be identical to:
  - (i) the controls of the Supplier which are described, and which the Bank has deemed sufficient, in the Bank's Supplier Security Assessment Questionnaire; and
  - (ii) the controls of the Supplier which the Bank has, at the Commencement Date, deemed not sufficient in the Bank's Supplier Security Assessment Questionnaire, but which are rectified in accordance with the Supplier's obligations under paragraph 3 of this Schedule.
- (b) The Bank will undertake a review, at its own cost, of the controls of each of the Supplier and ITS has in place under the Supplier's ISMS to determine whether they are deemed sufficient to meet the necessary Security Requirements.

#### 3 Secure Software development Controls

The Supplier must ensure that:

- (a) software developed for or delivered to the Bank provides protection against unauthorised access to or use thereof;
- (b) software developed for or delivered to the Bank is protected against any anticipated threats or hazards to the security or integrity or availability thereof;
- (c) software developed for the Bank is developed using secure development methodologies and secure coding techniques in accordance with Industry Best Practice;
- (d) software developers are appropriately trained in the approved secure development methodologies and secure coding techniques;
- (e) information security requirements are considered as part of the software development process, and consequently defined, documented and met; and
- (f) software developed for the Bank (including all aspects of the software delivered, such as custom code, components, products, and system configuration) does not have any known or reasonably expected to be known vulnerabilities.

#### **4 Rectification of controls**

- (a) The Supplier must, at its own cost, and within a timeframe agreed between the parties (and, in any event, prior to go live), implement any rectification measures or controls stipulated by the Bank in order that each of the Supplier and ITS may sufficiently meet the Security Requirements
- (b) At least 30 days prior to go live, the Supplier must provide the Bank, or any Auditor appointed by the Bank, with access to the Supplier's ISMS for the purposes of determining whether the controls which each of the Supplier and ITS has in place to meet the Security Requirements, are in accordance with the descriptions provided by the Supplier and sufficient. If such audit reveals that the controls are:
  - (i) not in accordance with the descriptions provided by the Supplier; or
  - (ii) not sufficient to meet the Security Requirements;

the Supplier must, at its own cost, implement, or must procure the implementation of, any rectification measures or controls stipulated by the Bank in order that the Supplier and ITS may sufficiently meet the Security Requirements.

#### **4 Changes to controls**

- (a) In the event of any changes to the controls which the Supplier or ITS has in place Security Requirements the Supplier must immediately update the description of its or ITS' controls in the Supplier's ISMS and provide the updated document to the Bank.
- (b) The Supplier must:
  - (i) upon written request by the Bank, conduct a review of its ISMS, including the controls which each of the Supplier and ITS has in place to meet the Security Requirements and provide a written report of its

findings and an updated description of the controls to the Bank within 30 calendar days of conducting the review;

- (ii) from time to time (but no more than twice per year), complete a Supplier Security Assessment Questionnaire from the Bank relating to its ISMS;
  - (iii) participate in a Security Governance Forum chaired by the Bank at intervals as determined by the Bank;
  - (iv) provide security metrics and reporting at a frequency and in a format and with content as agreed at the Security Governance forums; and
- (iv) All reports, responses or updates provided to the Bank under this paragraph must be approved by an appropriately qualified and authorised representative of the Supplier (for example, Chief Information Officer or equivalent). The Supplier represents and warrants any information which it provides to the Bank in accordance with this paragraph is accurate, complete and up to date at the time it is provided to the Bank.
- (c) The Supplier acknowledges that the Bank will perform regular security reviews, testing and validation of the continuing suitability, adequacy and effectiveness of the Supplier's ISMS. The Supplier must:
- (i) cooperate with all reasonable requests for further information as part of these reviews;
  - (ii) permit the Bank to conduct on-site reviews at its and ITS' premises, up to a maximum of two on-site reviews per Financial Year (unless an on-site review is required by the Bank as a result of a Security Breach (as defined below), in which case the Bank will be given permission to conduct the on-site review notwithstanding that such maximum may have then been reached); and
  - (iii) provide or procure, as applicable, appropriate technical and management support to the Bank or an independent third party in performing these reviews.

## **5 Responsible Disclosure**

- (g) The Supplier acknowledges that the Bank believes in the responsible and coordinated disclosure of security Vulnerabilities and adheres to the "Guidelines for Security Vulnerability Reporting and Response V2.0" document published by the Organization for Internet Safety (OIA), as updated from time to time, when issuing Vulnerability Advisories to vendors.
- (h) If either party discovers a Vulnerability (as defined in the document referenced above) within the Supplier developed software:
- (i) the party who discovers the Vulnerability will issue a Vulnerability Advisory to the other party;
  - (ii) if the Bank issues the Vulnerability Advisory to the Supplier, then the Supplier will replicate the issue and confirm the accuracy of the Vulnerability Advisory;

- (iii) the Supplier must, at the Bank's request, promptly implement processes to remove or minimise the effect of any Vulnerability;
- (iv) the Supplier will recommend and implement a solution to remediate the risk must in accordance with any specified Service Levels;
- (i) The Bank may publish vulnerabilities as soon as they are agreed upon. .

## 5 Notification and Reporting of Security Breaches

- (a) Under the ISMS, the Supplier must implement, and must procure that ITS implements, best practice monitoring controls to enable identification and detection of any actual, alleged or suspected security breaches.
- (b) If the Supplier becomes aware of an act or omission relating to the security of the Services, Software or Hardware which impacts or is likely to impact the confidentiality or integrity of the Bank Data or the availability or security of the Services (**Security Breach**), it must in accordance with any specified Service Levels:
  - (i) notify the Bank of such Security Breach;
  - (ii) identify the cause of the Security Breach;
  - (iii) remedy the Security Breach and its consequences;
  - (iv) ensure that any potential Security Breach does not become an actual Security Breach;
  - (v) provide the Bank with a report detailing the cause of, and procedure for correcting, the Security Breach or potential Security Breach;
  - (vi) provide the Bank with reasonable evidence that the Security Breach or potential Security Breach will not occur again; and
  - (vii) certify that the Supplier has taken all reasonable action to prevent any recurrence of such Security Breach or potential Security Breach.

## 6 Rectification

Without limiting any other rights or remedies of the Bank, if the Bank considers that any audit, review, certification, site visit or penetration test reveal that the Supplier's ISMS is unable to meet the requirements or objectives set out in this Schedule, the Supplier must, in a timeframe specified by the Bank or, if no timeframe is specified, as soon as is reasonably practical:

- (a) implement, or procure the implementation of, rectification measures approved by the Bank, and confirm to the Bank in writing when the rectification has been completed; or
- (b) request an exception or exemption by the Bank, in which case the Bank will determine, in its absolute discretion, whether to grant an exception or exemption and any applicable terms.

---

**Schedule 8 - Not in use**

michael@justbuildit.com - Jul 29, 2024, 1:14:36 PM America/New\_York



---

## **Schedule 9 - Supplier Sites**

Markit On Demand, 5718 Central Avenue, Boulder, CO 80301 USA

michael@justbuildit.com - Jul 29, 2024, 1:14:36 PM America/New\_York