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**PRODUCT SUPPLY AGREEMENT**

**Between**

**STANDARD CHARTERED BANK**

**And**

**CROSS WORLD POWER LIMITED**

**For the provision of product supply agreement - 330 KVA TEMPEST  
brand diesel generator**

**SCB Contract Reference: BD / AGM / 144161 / 0 / 2017**

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Prepared by:

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This Agreement is made on 18<sup>th</sup> July 2017,

Between:

- (1) STANDARD CHARTERED BANK established in England and Wales with limited liability by Royal Charter 1853 reference number ZC 18 and whose principal office in Bangladesh is at 67 Gulshan Avenue, Dhaka-1212 ("SCB");
- (1) CROSS WORLD POWER LIMITED, a company registered in Bangladesh registered number 03-00993 whose registered office is at House 1/B, Road 90, Gulshan-2 Dhaka 1212, (the "Supplier").

1.1 Recitals:

SCB requires certain Products (as defined below). The Supplier has agreed to provide such Products all on the terms and subject to the conditions of this Agreement.

IT IS AGREED:

1 Definitions

- 1.1 In this Agreement, unless inconsistent with the context or otherwise specified, the following words shall have the following meanings:

"Agreement" means this Supply Agreement as may be varied or amended from time to time in accordance with this Agreement including any Schedules attached;

"Authorised Representative" means in respect of each party the person described in Schedule 1 (or his or her successor or superior notified in writing to the other party);

"Change" means a change to a Purchase Order as defined in Clause 5.3;

"Confidential Information" means all proprietary and confidential information of the Parties and those of their customers, clients personnel or suppliers whether commercial, financial, technical or otherwise (whether oral, in writing, machine readable or in any other form) and material (whether electronically recorded, in writing or otherwise) which by its very nature should obviously be treated as secret and confidential or which is designated as such and which the Parties desire to protect against unrestricted disclosure or competitive use, including without limitation:

- (a) Customer Data and Personal Data;
- (b) information relating directly or indirectly SCB Group's business, including but not limited to details of trade secrets, know-how, strategies, ideas, operations, compliance information, processes, methodologies and practices;
- (c) information supplied to SCB Group by suppliers which SCB is not authorised to disclose;

“দেশত্রের শপথ নিন, দুর্নীতিকে বিদায় দিন”

  
Mesbah Uddin Ahamed  
Head of Property  
Standard Chartered Bank  
  
Iftekhar Karim  
Chief Operating  
CROSS WORLD POWER





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- (d) information relating directly or indirectly to a member of SCB Group's plans, intentions, know-how, market opportunities and business affairs, those of its suppliers, customers (including potential customers) and clients;
- (e) works of authorship, products and materials written and prepared by SCB or another member of SCB Group in relation to this Agreement including but not limited to computer programs, data, diagrams, charts, reports, specifications, sketches, inventions and working papers or similar materials of whatever nature or on whatever media relating thereto;
- (f) any information resulting directly or indirectly from the discussions or negotiations relating to this Agreement and all copies, notes, records and all related information (in any form) generated by SCB or another member of SCB Group based on or arising from any disclosures for this Agreement; and
- (g) the terms of any agreement reached by the Parties or proposed by either Party (whether agreed or not) in connection with the Agreement;

**"Contract Price"** means, in respect of any of the Products, the price for those Products set out in the Price List;

**"Customer Data"** means any data, records or information (in any form) relating directly or indirectly to a Person that is a customer or client of any SCB Group member (including but not limited to past, present and/or future customers or clients, third party guarantors or sureties of any member of SCB Group) and from which it is practicable for the identity of the Person to be directly or indirectly ascertained by reference to other data, records or information;

**"Data Breach"** means any loss or destruction of, or unauthorised Processing, disclosure or misuse of, or damage or accidental or unauthorised access to, SCB Group Confidential Information, or failure of or failure to implement the Information Security Controls;

**"Data Protection Laws"** means all statutes, laws, secondary legislation, regulations, guidelines and industry standards applicable to SCB Group and case laws pertaining to privacy, confidentiality, banking secrecy and/or the protection of Personal Data or Customer Data, including, without limitation, the Data Protection Act 1998 (UK), the Telecommunications (Data Protection and Privacy) Regulations 1999 (UK) and Information Communication and Technology Act 2006 (Bangladesh) and Bank Company Act 1991 (Bangladesh);

**"Defect"** includes:

- (a) any fault, failure, degradation, deficiency, error or non-conformance with the requirements of this Agreement; or
- (b) any partial performance or non-performance of the Products;

**"দশপেমের শপথ নিন, দনীতিকে বিদায় দিন"**

**"Delivery Date"** means the due date for delivery of Products to a Site, which date is specified in a Purchase Order;





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*[Signature]*

Mesbah Uddin Ahamed  
Head of Property  
Standard Chartered Bank

*[Signature]*  
Iftekhar Karim  
Chief Operating Officer  
CROSS WORLD PROPERTY

"Draft EMP" has the meaning given in Clause 10.1;

"Effective Date" has the meaning given in Clause 4.1;

"Exit Management Plan" means a Draft EMP approved by SCB under Clause 20.1, or a plan substituted by SCB for a Draft EMP under Clause 20.2;

"Good Industry Practice" means that degree of skill, diligence, care, prudence, foresight and operating systems and practice which would reasonably and ordinarily be expected of a skilled and experienced supplier engaged in the same or a similar type of business as that of the Supplier (within the financial services sector or otherwise) under similar circumstances.

"Personal Data" means any data, records or information (in any form) relating directly or indirectly to an individual (including but not limited to past, present and/or future personnel, customers, suppliers, third party guarantors or sureties of any member of SCB Group) and from which it is practicable for the identity of the individual to be directly or indirectly ascertained by reference to other data, records or information and as may be defined under applicable Data Protection Laws in the relevant jurisdiction(s) relating to the origin of the Personal Data processed under the Agreement;

"Person" means any individual including their personal representatives, sole proprietorship, partnership, corporation, limited liability company, unincorporated society or association, trust or other entity or organisation including the directors and officers of such entity or organisation;

"Price List" means the price list for the products set out in **Error! Reference source not found.**;

"Processing" means any processing operation(s) performed upon Confidential Information whether by automatic means or not, such as collecting, recording, using, accessing, copying, retaining, storing, handling, disclosing, modifying, altering, transferring, transmitting, deleting or destroying;

"Product" means the products listed in the Price List and specified in a Purchase Order, which is to be supplied by the Supplier under this Agreement;

"Project Manager" means the person described as a Project Manager in Schedule 1 or his or her successor or superior notified in writing to the other party;

"Purchase Order" means an order in writing substantially in the form set out in 0 or in some other form agreed in writing between the parties from time to time, which SCB places with the Supplier under this Agreement when SCB requires any Products;

"QMS" means quality management system referred to in Clause 15.1;

**"দেশপেমের শপথ নিন, দুর্নীতিকে বিদায় দিন"**

"Regulatory Authority" means in relation to SCB Group, any body (including without limitation any central bank, and government department or agency, or other authority in



any part of the world) which has the responsibility of supervising and/or regulating banks and other financial institutions generally including SCB Group and any branch or representative office of SCB Group;



**"Relevant Failure"** has the meaning given in Clause 17.1;

**"SCB Group"** means Standard Chartered Bank and

- (a) any person, body corporate, partnership, firm or other entity in which on or after the date of this Agreement from time to time Standard Chartered Bank directly or indirectly:
  - (i) owns more than half the capital, income, business assets or any other comparable equity or ownership interest; or
  - (ii) has the power to exercise fifty percent (50%) or more of the voting rights in such entity; or
  - (iii) has the legal power to direct or cause the direction or general management or affairs of the entity in question;
  - (iv) has the power to appoint or remove more than half the members of the supervisory board, board of directors or bodies legally representing such entity; or
  - (v) has the right to manage the business of such entity;
- (b) any person, body corporate, partnership, firm or other entity which directly or indirectly has in or over Standard Chartered Bank the rights or powers listed in (a) above ("**a Controller**"); and
- (c) any person, body corporate, partnership, firm or other entity in which a Controller directly or indirectly has the rights or powers listed in (a) above;



**"SCB Service Provider"** means any service provider, contractor or other third party who is engaged by or who contracts with SCB or SCB Group to provide, operate or otherwise manage services for the benefit of any member of SCB Group and/or third party customers of SCB Group;

**"Services"** means the services to be supplied to SCB by the Supplier in relation to this Agreement as specified in Schedule 2;

**"Security Interest"** means a right, interest, power or arrangement in relation to an asset which provides security for the payment or satisfaction of a debt, obligation or liability including under a bill of sale, mortgage, charge, lien, pledge, trust, power, deposit, hypothecation or arrangement for retention of title, and includes an agreement to grant or create any of those things;

**"Site"** means a location for the delivery of Products which is specified by SCB in a Purchase Order or in any delivery instruction given by SCB to the Supplier;

**"Specification"** means the specification and performance requirements for the Products listed in Schedule 2;

**"Staff"** means in respect of either party any staff engaged by such party (including employees, agents and sub-contractors) in connection with this Agreement;

**"Warranty Response Times"** means the periods set out in O, which commence upon either party notifying the other of a Defect and which expire upon the Supplier responding to that notification in accordance with Clause 16.4;

**"Working Day"** means the days on which a particular office or premises is open for business.

## 2 Interpretation

2.1 Clause headings are for ease of reference only and are not intended to be part of or to affect the meaning, interpretation or construction of any of the terms and conditions of this Agreement.

2.2 References to any gender includes any other gender, the plural shall include the singular and bodies corporate shall include unincorporated bodies and (in each case) vice versa.



- 2.3 References to any statute, enactment, ordinance, order, regulation or other similar instrument shall be construed to include a reference to the statute, enactment, ordinance, order, regulation or instrument as from time to time amended, extended, re-enacted or consolidated and all statutory instruments, orders, regulations or instruments made pursuant to it.
- 2.4 Unless the context otherwise requires those provisions contained in this Agreement which relate to any subject matter of which there are more than one shall apply severally to each.
- 2.5 Clauses, Sections, Pages, and the Schedules referenced by name shall refer to the Clause, Section, Page, or the Schedule having the title referred to.
- 2.6 References to currency in this Agreement, denoted by: "BDT" are references to Bangladesh Taka .

### 3 Precedence

- 3.1 If there is any conflict or inconsistency between the terms in the various parts of this Agreement, the following order of precedence will apply:

- (a) terms and conditions of the Agreement (excluding the Schedules );
- (b) the Schedules;
- (c) a Purchase Order.

- 3.2 No purported variation to this Agreement or any conflicting or inconsistent terms and conditions to this Agreement in any written communication from the Supplier including but not limited to Purchase Orders will not be binding upon SCB. Any variations to this Agreement will only be valid if agreed between the parties in accordance with Clause 24.10 below.

### 4 Term

- 4.1 This Agreement shall take effect from 1<sup>st</sup> July 2017 (the "**Effective Date**") and shall continue unless terminated earlier in accordance with this Agreement.
- 4.2 This Agreement shall be fixed and continue for 1 year from the Effective Date and shall continue until the expiry of the fixed term, unless terminated earlier in accordance with this Agreement.

### 5 Supply of Products

- 5.1 The Supplier must supply the Products to SCB, free from Security Interests and in consideration of the Contract Price all in accordance with the Specification and otherwise on the terms of this Agreement.
- 5.2 A Purchase Order is required to order Products.
- 5.3 SCB may request and the Supplier may propose changes to a Purchase Order (a "**Change**") at any time in accordance with the Change Control Procedure set out in 0.
- 5.4 SCB may place Purchase Orders with the Supplier for Products in accordance with this Agreement. The Supplier acknowledges and agrees that SCB is not obliged to purchase a Product unless and until it places a Purchase Order with the Supplier under this Agreement.
- 5.5 The Supplier acknowledges that nothing in this Agreement restricts SCB from acquiring goods or services from third parties, including goods or services substantially the same as the Products.
- 5.6 The Supplier must report to SCB in accordance with the requirements of 0.
- 5.7 In the event that another member of SCB Group places a Purchase Order with the Supplier in accordance with this Clause 5, that member of SCB Group will become SCB for the purposes of the Purchase Order and the terms and conditions of this Agreement will apply to such Purchase Order as if the member of SCB Group was SCB under this Agreement.
- 5.8 The Supplier shall promptly notify SCB as soon as it becomes aware of any change to the Products to ensure that the Products conform to any major change of legislation or





new legal or regulatory requirement which affects the application of any function or facility of the Products. Upon request from SCB, the Supplier will undertake to carry out any necessary change required to the Products at costs to be agreed between the parties.



## 6 Anti-Bribery and Corruption

6.1 The Supplier represents, warrants and undertakes that:

- (a) It has not and shall not offer, promise, give, encourage, solicit, receive or otherwise engage in acts of bribery or corruption in relation to this Agreement (including without limitation any facilitation payment), or to obtain or retain business or any advantage in business for any member of the SCB Group, and has and shall ensure to the fullest extent possible that its employees and agents and others under its direction or control do not do so. For the purposes of this clause it does not matter if the bribery or corruption is (i) direct or through a third party; (ii) of a public official or a private sector person; (iii) financial or in some other form; or (iv) relates to past, present, or future performance or non-performance of a function or activity whether in an official capacity or not, and it does not matter whether or not the person being bribed is to perform the function or activity to which the bribe relates, or is the person who is to benefit from the bribe. For the purposes of this clause, a "person" is any individual, partnership, company or any other legal entity, public or private.
- (b) Where, if permitted under this Agreement, the Supplier subcontracts to another person any right or obligation under this Agreement, or has another person perform any act, or not perform any act in relation to this Agreement, the Supplier shall require such other person to agree in writing to comply with Clause (a), Clause (b) and Clause (c) of this Clause 6. The Supplier shall also incorporate such clauses (so that the Supplier obliges that person not to commit bribery on behalf of any member of SCB Group or the Supplier) into any contract the Supplier has with the other person in relation to this Agreement and or the act. For the purposes of this clause, a "person" is any individual, partnership, company or any other legal entity, public or private.
- (c) The Supplier shall, immediately upon becoming aware of them, give SCB all details of any non-compliance with Clause (a), and of any non-compliance by any of other person envisaged by Clause(b).
- (d) at all times throughout the term of this Agreement, it will comply with SCB's Supplier Charter, a copy of which can be found on SCB's website.



## 7 Inspection

- 7.1 SCB may inspect the Products and witness tests on the materials, workmanship and performance of the Products and the process of fabrication at any time during or subsequent to fabrication at the Supplier's premises. For the purposes of this Clause 7.1, the Supplier must provide to SCB or its nominees reasonable rights of access to the Supplier's premises.
- 7.2 SCB may reject any Products which do not comply with the requirements of this Agreement and may direct the Supplier to either repair or replace promptly and within any reasonable time specified by SCB wholly at the Supplier's expense.
- 7.3 Inspection or examination of Products or witnessing of tests by SCB at any time shall not be construed as evidence of acceptance of the Products or otherwise release the Supplier from any of its responsibilities or liabilities under this Agreement.

## 8 Testing

- 8.1 The Supplier must give prior written notice of not less than one (1) Working Day to SCB of the place, date and time of any tests to be carried out on the Products. SCB or its nominated representative may attend any such tests and the Supplier must provide any test results requested by SCB.
- 8.2 The Supplier must carry out all additional tests reasonably requested by SCB. If the Products fail any test so requested, the Supplier must bear the cost of such test. If the Products pass the test or tests requested by SCB, SCB must bear the cost of all such tests.



- 8.3 Where the Products or any part of the Products fail to meet test requirements or in the reasonable opinion of SCB are defective, the relevant tests on the Products as repaired or replaced must be repeated within a reasonable time if so requested by SCB. The Supplier must bear all costs associated with retesting. Any costs associated with retesting incurred by SCB may be deducted from the moneys due otherwise to the Supplier under this Agreement.



## 9 Storage

- 9.1 The Supplier must store Products upon completion of fabrication. The Products so stored must at all times be:
- (a) available for immediate delivery to SCB;
  - (b) free from any Security Interests or other rights or interests of third parties; and
  - (c) when payment has been made pursuant to Clause 13, clearly marked as the property of SCB, and set aside in a secure area separate from other goods and materials not relating to this Agreement.
- 9.2 The Supplier must maintain an accurate and up-to-date report of all Products in storage, and provide the report to SCB monthly or as otherwise required by SCB.
- 9.3 SCB or its representatives may audit and inspect Products in storage monthly or as otherwise required by SCB.

## 10 Packing and Transportation

- 10.1 The Supplier must at its own cost:
- (a) pack Products for containerised delivery; and
  - (b) load the Products for transportation,
- so as to prevent damage during delivery, and otherwise in accordance with the standards generally accepted within the Supplier's industry.
- 10.2 The Supplier indemnifies SCB against all costs, liability, damage or loss incurred or suffered by SCB arising out of any failure to comply with Clause 10.1.
- 10.3 At the time of delivery, the Supplier must provide or ensure that there is provided to SCB or its representative, a detailed list identifying the components comprising the Products.
- 10.4 The Supplier must legibly mark all items and part items of the Products with:
- (a) SCB's name;
  - (b) the name of the project, as advised by SCB to the Supplier;
  - (c) the "Reference Code Number", as described on the Price List; and
  - (d) the Site to which the items are to be delivered.



## 11 Delivery

- 11.1 If SCB requires the Supplier to deliver the Products, the Supplier must ensure the Products are delivered in accordance with its obligations under this Agreement, and:
- (a) by the Delivery Date(s); and
  - (b) at the correct Site(s)

## 12 Property, Title and Risk

- 12.1 Title in any Products shall pass to SCB on either payment by SCB to the Supplier for the Products or upon delivery whichever is the earliest to occur.
- 12.2 The risk of loss, damage or depreciation in the Products shall rest with the Supplier until the Products have been delivered to the Site and then unloaded whereupon risk of loss, damage or depreciation shall pass to SCB provided that the risk of unloading shall be that of the Supplier.





### 13 Charges and Payment

- 13.1 The Supplier will invoice SCB in electronic format for countries where SCB has eSettlements in place. Where electronic invoices are submitted electronically, the Supplier agrees to produce hardcopy invoices upon request.
- 13.2 Except as otherwise specified herein SCB shall pay the Contract Price for the Products in accordance with the payment terms in **Error! Reference source not found.** The Contract Price shall be payable by SCB in [CurrencyCode].
- 13.3 All charges and expenses quoted in this Agreement are exclusive of Valued Added Tax or equivalent which shall also be paid by SCB if required under law, as a withholding or agreed in writing between the parties, but which shall only be paid if a receipt which is valid for such tax purposes is given to SCB. All other taxes and charges are included in the Contract Price. All invoices submitted will be marked clearly with SCB's contract reference and marked for the attention of the relevant Project Manager.
- 13.4 Other than value added tax and any other goods sales tax, the Contract Price and any recurring charges includes all taxes, duties (including import and customs duties), and charges relating to delivery such as carriage and insurance charges and, subject to Clause 24.4, withholding taxes.
- 13.5 Invoices must describe the Products supplied in sufficient detail so that tax (including import or custom duties, sales tax or withholding tax) is not charged incorrectly. Invoices under or pursuant to this Agreement shall be submitted by the third day of the month following the month for which any amount is payable to the Supplier. In relation to invoices for Services the Supplier shall certify payment of salary, allowances, benefits and other payables to Supplier Staff, along with the submission of any or all of records, and any documents, registers or other papers required by the SCB from time to time, including those related to the performance of obligations of the Supplier as an employer of the Supplier Staff involved in the Services and otherwise under this Agreement as approved by the SCB. SCB shall not be liable to pay any invoice submitted beyond the foregoing time period within any date or time.
- 13.6 If any sum due and payable under this Agreement is not paid by the party liable to make such payment within 60 days after receipt of the relevant invoice or demand, the party to whom such money is owed shall be entitled (without prejudice to any of its other rights) following receipt by the party in default, of written notice from it, to charge interest at the rate of interest SCB pays on its savings account from time to time from the date of such notice until the date of actual payment. Such interest shall aue from day-to-day and be payable after as well as before any judgment. Interest shall not aue or be payable on any monies or payment withheld, deducted or suspended pursuant to Clauses 13.7, 13.10 or 13.12 below. The parties agree that the right to claim interest under this Clause is a substantial remedy for late payment and is in substitution for any statutory or other right to claim interest and/or other remedy for late payment.
- 13.7 SCB may withhold payment against any invoice which is not submitted in accordance with this Agreement or which covers or relates to any Products which have not been provided in accordance with this Agreement and shall notify the Supplier in writing accordingly.
- 13.8 SCB may withhold payment against any invoice which is not submitted in accordance with this Agreement.
- 13.9 Any payment made by SCB shall not imply acceptance by SCB of the Products or the components of the Products.
- 13.10 SCB may deduct or set-off from any payment due under a valid invoice or otherwise payable by SCB any sums owed by the Supplier to any member of SCB Group.
- 13.11 The Supplier may invoice SCB in accordance with **Error! Reference source not found.** and any relevant Purchase Order.
- 13.12 SCB may suspend the payment of any sums due or falling due to the Supplier where the Supplier is in breach of its obligation(s) to SCB under this Agreement and such payment or sums relate to the obligation(s) in respect of which the Supplier is in breach.
- 13.13 The Supplier must maintain an account at SCB to facilitate SCB's payment of invoices by electronic transfer.







- 13.14 The withholding, suspension or delay in payment by SCB under this Agreement shall not constitute a default by SCB nor constitute cause for the Supplier to suspend or failure to the supply of Services in part or in whole under this Agreement.
- 13.15 Any statement in writing or other document showing the amounts to be or then due and payable, or paid, by SCB to the Supplier in connection with this Agreement derived from the books, records or documents of the SCB and signed and certified by an authorised signatory appointed for such purpose by SCB, shall be conclusive and binding on the Supplier, save for manifest error proved.

#### 14 Limitation of Liability

- 14.1 Nothing in this Agreement excludes or limits the liability of either party in respect of:

- (a) death or personal injury caused by its negligence (including negligence by Supplier Staff);
- (b) any indemnity given in this Agreement;
- (c) dishonesty, or the tort of deceit, or wilful neglect by its employees, agents or contractors;
- (d) fraudulent misrepresentation; and
- (e) liability which may not otherwise be limited or excluded under applicable law.

- 14.2 Subject to Clause 14.1 above, in no event will either party be liable to the other for indirect or consequential damages arising out of or in connection with this Agreement.

- 14.3 Subject to Clause 14.1 above, the liability of each party to the other arising out of or in connection with this Agreement whether arising from contract, tort, negligence or otherwise shall be limited as follows:

- (a) for loss of or damage to physical property, the limit for any one event shall be the contracting price or if ascertainable and if greater, 150% of the total amount of the Contract Price which would have been payable (had this Agreement been fully and properly performed) to the Supplier by SCB under this Agreement;
- (b) for any other liability, the aggregate liability for any one event shall be limited to the contracting price or 150% of the total amount of the Contract Price which would have been payable (had this Agreement been fully and properly performed) to the Supplier by SCB under this Agreement.

- 14.4 SCB may recover directly from the Supplier any damages suffered by other members of SCB Group as a result of any failure of the Supplier to comply with the terms of this Agreement or at SCB's election require that such damages be paid direct to the relevant member of SCB Group.

- 14.5 As security for claims against SCB for any statutory payments to Supplier Staff under applicable labour laws and regulations and any other claims, losses or damages in connection with this Agreement, the Services and/or Supplier Staff, the Supplier shall pay and retain in deposit with SCB at all times during the term of this Agreement and for a period of 150 days after termination or expiry of this Agreement a deposit of Tk. \_\_\_\_\_ (Taka \_\_\_\_\_ only) (the "**Security Deposit**") – not applicable for this agreement as the supplier is providing 24 months warranty. SCB shall have an exclusive right to set off, debit, deduct, pay, secure, invest or otherwise deal with amounts from the Security Deposit from time to time in payment, reimbursement, compensate, settlement or otherwise fund any claims, losses, damages, payables, receivables, or other dealings by or against the Supplier under, arising from or otherwise in connection with this Agreement, the Services and/or the Supplier Staff, or any part thereof. The Supplier shall promptly on demand pay to SCB any amount of the Security Deposit paid or otherwise dealt with by SCB as aforesaid so as to maintain the amount of Security Deposit under this Agreement, failing which SCB reserves the right to retain all or any part of payments payable by SCB under this Agreement.

#### 15 Quality

- 15.1 The Supplier must ensure that all Products delivered comply with:

- (a) the Specification and the terms of this Agreement; [and]







- (b) all relevant standards and
- (c) the requirements of the Supplier's QMS.

15.2 The Supplier acknowledges and agrees that SCB is not obliged to accept any Products which do not conform with the requirements of this Agreement.

## 16 Warranties and Undertakings

16.1 The Supplier represents and warrants that the Products will comply with the Specification and the other requirements of this Agreement, and with the quantity, quality and description specified in:

- (a) the Purchase Order; and
- (b) any applicable description or technical specifications, drawings, catalogues or illustrations contained in any relevant promotional material of the Supplier.

16.2 The Supplier represents and warrants to SCB that:

- (a) the Supplier has the right to sell the Products free from all Security Interests and other rights or interests of third parties and that SCB will enjoy quiet possession of the Products;
- (b) the Products will be of merchantable quality and fit for any purpose which SCB makes known to the Supplier or for which the Products are commonly supplied;
- (c) the Products will be free from defects in design, material and workmanship;
- (d) where the Products are supplied by reference to a sample, the Products will correspond with the sample;
- (e) the Products and their sale or use, alone or in combination, will not infringe any patent, copyright, trade mark, design or other intellectual property right of any other person; and
- (f) the Products will comply with all relevant statutory requirements and regulations relating to:
  - (i) the safety, manufacture, packaging, labelling, transportation, importation and sale of the Products; and
  - (ii) the nature, substance and quality of the Products.
- (g) the Products will be and remain free from Defects for a period of 12 months from the Delivery Date.
- (h) at all times throughout the term of this Agreement, it will comply with all laws, regulations, official guidelines and directions of competent courts and national and local authorities when providing the Services, including, without limitation, Data Protection Laws;

16.3 The Supplier agrees that O regarding Operational Continuity in Resolution will apply upon the parties' execution of this Agreement.

16.4 The Supplier must, at no cost to SCB:

- (a) respond to the notification of any Defects, including attendance on site if necessary, in accordance with the Warranty Response Times; and
- (b) repair, replace or rectify any Defect which occurs within the period in Clause 16.2(g).

16.5 If either party becomes aware that the Products do not comply with any of the warranties specified in this Clause 16, that party must notify the other party of the non-compliance.

16.6 The Supplier indemnifies and holds SCB, its directors, officers, employees and agents harmless against all liability, loss, damage, costs and expenses (including court and any legal costs on a solicitor and own client basis) awarded against or incurred or paid by SCB as a result of or arising out of or in connection with:





- (a) a breach of this Agreement by the Supplier including a breach of any warranty or representation given by the Supplier in relation to the Products;
- (b) any claim that the Products infringe, or their use, sale or resale infringes, the patent, copyright, trade mark, design or other intellectual property rights of any other person;
- (c) any defects or omissions in the design of the Products, materials used in the Products or workmanship in the fabrication of the Products;
- (d) any injury to or death of, a natural person and any loss of or damage to, a third party's property, real or personal caused or contributed to by the Supplier, its employees, subcontractors or agents;
- (e) any loss of or damage to, the property, real or personal of SCB or SCB Group caused or contributed to by the Supplier, its employees, subcontractors or agents;
- (f) any claim, action or proceeding by a third party against SCB or SCB Group caused or contributed to by the Supplier its employees, contractors or agents; or
- (g) any wilful, unlawful or negligent act or omission of the Supplier, its directors, officers or Staff.



## 17 Supplier's Default or Delay

17.1 Despite any other provision of this Agreement, if the Supplier:

- (a) breaches any provision of this Agreement (including by failing to comply with the Specification requirements set out in Schedule 2 or by reason of any warranty being untrue, and fails to remedy such breach within 30 days of notice from SCB specifying such breach; or
- (b) without limiting the generality of Clause 17.1(c), fails to deliver any Product by the Delivery Date, (a "**Relevant Failure**"), then without limiting any other rights or remedies of SCB, SCB may do any or all of the following:
- (c) suspend payment of any amounts then due and which may subsequently become due to the Supplier under this Agreement until such time as the Supplier remedies the Relevant Failure;
- (d) deduct from payment of the Supplier's invoices an amount which SCB reasonably considers appropriate, having regard to the extent of the Relevant Failure and its impact on SCB;
- (e) procure products of a substantially similar nature to the Products from one or more third parties at the Supplier's cost, until such time as the Supplier remedies the Relevant Failure.

## 18 Termination

- 18.1 It is a condition of this Agreement that the Supplier fully complies with Clause 6. If it does not do so, without prejudice to any other remedy available to SCB, SCB shall have the right (but not the obligation) in its absolute discretion to terminate the whole of this Agreement, or that part of this Agreement to which the bribery or corruption relates (without entitling the Supplier to receive any compensation in respect of the termination of this Agreement). For the avoidance of doubt, any breach of Clause 6 of this Agreement by the Supplier shall be deemed to be incapable of remedy.
- 18.2 SCB shall have the right to terminate this Agreement with immediate effect by written notice to the Supplier (without entitling the Supplier to receive any compensation in respect of the termination of this Agreement) if without SCB's prior written consent there is a change in the Control of the Supplier or the management of the Supplier is devolved to a third party company;
- 18.3 Either party ("**the first party**") may terminate this Agreement with immediate effect by written notice to the other party if:
  - (a) the other party ceases to carry on business or goes into liquidation (other than voluntary liquidation for the purpose of a bona fide solvent reconstruction or amalgamation the terms of which have been approved in advance by the first party in writing) or is dissolved or struck off;





- (b) the other party is unable to pay its debts as they mature or suffers the appointment of a receiver, administrative receiver or administrator (or any similar official or process under the law of its domicile or place of incorporation) of the whole or any part of its assets or is the subject of any bankruptcy proceedings;
  - (c) the other party is in breach of any provision of this Agreement and fails to remedy such breach (where it is capable of being remedied) within 30 days of notice from the first party specifying such breach
- 18.4 SCB may terminate this Agreement at any time for its convenience (without liability and without entitling the Supplier to receive any compensation in respect of the termination of this Agreement) by giving at least thirty (30) days prior written notice to the Supplier.
- 18.5 In the event that a Regulatory Authority of SCB directs, instructs or gives guidance that SCB should terminate all or part of this Agreement and/or continuation of this Agreement would cause SCB or any other member of SCB Group to be in breach of any laws or regulatory requirements or guidance to which it is subject, SCB shall be entitled to terminate this Agreement immediately without entitling the Supplier to receive any compensation in respect of the termination of this Agreement. Upon such termination, the Supplier shall provide a pro-rata refund of the Contract Price to SCB for fees paid in advance for the period from the date of termination.
- 18.6 Subject to Clause 19, on termination of this Agreement for any reason SCB shall be discharged from any further liability to perform arising under or pursuant to this Agreement.
- 18.7 The Supplier must immediately notify SCB if the Supplier shall be in breach of this Agreement, there is any material alteration to the ownership or Control of the Supplier, the management of the Supplier is devolved to a third party company or any of the events referred to in Clause 18.3 occurs to it.



## 19 Effect of Termination

- 19.1 Upon request by SCB, the Supplier must following termination of this Agreement fully co-operate with and assist SCB free of charge in order to ensure that such termination and its consequences cause the minimum disruption to SCB's business and affairs and the performance of its responsibilities. The Supplier must take all reasonable steps to mitigate any costs which SCB Group may incur as a result of termination of this Agreement.
- 19.2 SCB will decide on notice of termination of this Agreement whether any outstanding Purchase Orders shall be terminated or completed and if completed the Purchase Order shall be completed upon the terms and conditions of this Agreement unless otherwise agreed in writing between the parties.
- 19.3 Termination of this Agreement shall be without prejudice to any rights of either party which may have ailed up to the date of such termination and the rights to terminate this Agreement are not intended to be exclusive but shall be in addition to every other remedy or right now or hereafter existing including the right to recover damages and to a decree requiring any appropriate performance required by this Agreement.
- 19.4 The provisions of Clauses 1, 2, [12], 14, 16, 17, 19, 20, 21, 23 and 24 shall survive any termination or expiry of this Agreement and continue indefinitely.
- 19.5 In the event that this Agreement is terminated the Supplier undertakes within 10 Working Days of receipt of a written request from SCB and at the option of SCB to:
- (a) return all property in its possession or under its control that belongs to SCB;
  - (b) return all Confidential Information in its possession together with all copies thereof;
  - (c) destroy all Confidential Information in its possession by shredding or incineration of all documents and other materials in its possession, custody or control and/or irretrievably delete the same if stored on electronic or magnetic media and certify to SCB that this has been done.

## 20 Exit Management

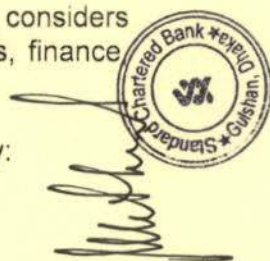
- 20.1 Upon request by SCB, the Supplier must at no charge to SCB prepare and submit to SCB a draft exit management plan by a date required by SCB that satisfies the





requirements of the Exit Management Schedule at 0, including the requirement that it be capable of being implemented immediately if required by SCB (the "Draft EMP"). SCB may approve or reject the Draft EMP in its discretion.

- 20.2 The Supplier must make such changes to the Draft EMP as SCB requires. If SCB rejects the Draft EMP or has not approved the Draft EMP within [14] days after receipt by SCB of the Draft EMP, SCB may substitute any other plan for the Draft EMP.
- 20.3 Either party may from time to time instigate a review of the Exit Management Plan, provided that no variation of the Exit Management Plan shall be effective unless agreed by the parties in writing.
- 20.4 The Supplier must at its cost comply with the Exit Management Plan, and ensure that the Supplier's project manager:
- (a) manages any implementation of the Exit Management Plan; and
  - (b) reports to a steering committee which shall be formed at the discretion of SCB and chaired by SCB.
- 20.5 SCB may provide such assistance to the Supplier's project manager as SCB considers appropriate, including assistance in the functional areas of human resources, finance service provision and internal audit.
- 20.6 The Supplier must co-operate fully with any SCB Service Provider, including by:
- (a) permitting access to the Supplier's Staff; and
  - (b) assisting such SCB Service Provider to undertake operational reviews and due diligence during the implementation of the Exit Management Plan.
- 20.7 The Supplier must use all reasonable endeavours to procure the assignment or novation of any third party contracts and other contracts entered into by the Supplier for the purposes of this Agreement to SCB or to such third party as SCB shall nominate and in default the Supplier hereby appoints SCB as its attorney for the purpose of signing and executing all such documents in its name and on its behalf as shall be necessary to effect such assignments or novations.
- 20.8 The Supplier must maintain information notified from time to time by SCB so as to enable SCB to assess the ability of the Supplier to effectively implement the Exit Management Plan.



## 21 Confidentiality

- 21.1 Except as otherwise expressly provided in this Agreement, a party shall (and shall ensure that its employees, agents, consultants, sub-contractors and professional advisers shall) not during the term of this Agreement or thereafter disclose to any person or use, copy, adapt or alter for any purpose any Confidential Information obtained by it (the "Recipient Party") from the other (the "Disclosing Party") without the prior written consent of the Disclosing Party.
- 21.2 The Recipient Party shall treat and keep Confidential Information confidential and take all necessary precautions to ensure that all Confidential Information is held in confidence (whether communicated orally, in writing, electronic form or otherwise) and minimise the risk of unauthorised disclosure or use of such Confidential Information.
- 21.3 No party will be under an obligation to keep Confidential Information confidential that it can demonstrate:
- (a) is publicly available or generally known to the public at the time of disclosure or has subsequently entered into the public domain, except as a result of a breach of this Agreement; or
  - (b) was already in the Recipient Party's possession from another source prior to disclosure by the Disclosing Party and the Recipient Party was not under any obligation of confidentiality in respect of the Confidential Information when it was received from the other source not connected to a party under this Agreement.
- 21.4 The following circumstances shall not constitute a breach of the obligations of confidence set out in this Clause 21 by the Recipient Party where Confidential Information is disclosed:





- (a) to the Recipient Party's employees, agents, sub-contractors and professional advisers to the extent necessary to enable the Recipient Party to exercise its rights and perform its obligations under the Agreement, provided that prior to disclosure such employees, agents, sub-contractors and professional advisers have entered into an appropriate written confidentiality undertaking or non disclosure agreement with the Recipient Party to treat and keep such Confidential Information confidential on terms no less onerous than contained in this Agreement;
- (b) where necessary to members of SCB Group:
- (i) for the purposes of this Agreement; and
  - (ii) for the proper exercise of any licences granted to SCB and any member of SCB Group under the Agreement;
- (c) if and to the extent it is required to do so by any law or regulation or by any court, Regulatory Authority or government agency or authority provided that to the extent that it is permitted to do so, the Recipient Party:
- (i) provides the Disclosing Party(s) with prompt notice of such request; and
  - (ii) co-operates with the Disclosing Party(s) and uses all reasonable endeavours to avoid or limit disclosure and to obtain any necessary confidentiality undertakings relating to the onward disclosure from the intended recipient.
- 21.5 Upon SCB's reasonable request or where required by a Regulatory Authority, the Supplier shall obtain from its employees, agents, sub-contractors and professional advisers a written confidentiality agreement in favour of SCB in a form approved by SCB containing confidentiality obligations no less onerous than those contained in this Agreement prior to receiving or accessing any SCB Group Confidential Information.
- 21.6 Where SCB makes Confidential Information available to the Supplier belonging to a third party, the Supplier shall if requested to do so by SCB enter into a confidentiality agreement with that third party prior to receipt of such information.
- 21.7 Without prejudice to any other rights or remedies that the parties may have, the parties agree that damages may not be an adequate remedy for any breach of this Clause and that the parties shall be entitled to seek the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of this Clause 21.
- 21.8 This Clause 21 shall survive termination or expiry of the Agreement.
- 22 Data Protection**
- 22.1 The Supplier acknowledges that SCB Group is subject to laws and regulations in jurisdictions which impose strict obligations relating to the protection of Confidential Information (including but not limited to Personal Data and Customer Data). The Supplier shall comply (and shall ensure that its employees, agents, sub-contractors and professional advisers shall comply) with the requirements set out in this Clause 22 relating to Processing SCB Group Confidential Information.
- 22.2 SCB shall retain all rights in, title to and interest in SCB Group Confidential Information and Supplier agrees not to Process such SCB Group Confidential Information other than in relation to the performance of its obligations under this Agreement.
- 22.3 The Supplier shall in respect of SCB Group Confidential Information, take all appropriate physical, technical and organisational security measures and observe Good Industry Practice to protect SCB Group Confidential Information against unauthorised or accidental, loss, destruction, damage, access, processing, erasure, transfer, use, modification, disclosure or misuse (the "**Information Security Controls**").
- 22.4 The Supplier shall at the request of SCB at any time provide any relevant information and documentation requested by SCB in relation to how the Supplier operates in compliance with the Information Security Controls including any certifications.
- 22.5 In the event of a Data Breach, the Supplier shall assist SCB in conducting any investigations and analysis that SCB may require. The Supplier shall take all necessary steps consistent with Good Industry Practice, taking in to account the severity of the risk, to resolve such Data Breach as quickly as possible and to prevent its recurrence.







- 22.6 At the request of SCB upon reasonable notice and during working hours, the Supplier shall submit its data processing facilities for an audit, assessment or inspection of the Information Security Controls and provide reasonable assistance to carry out appropriate system tests relating to such Information Security Controls. Such audit shall be carried out by SCB, a Regulatory Authority or an independent inspection body selected by SCB composed of members in possession of the required professional qualifications and bound by a duty of confidentiality.
- 22.7 The Supplier shall in respect of SCB Group Confidential Information Processed pursuant to the Agreement:
- (a) only Process SCB Group Confidential Information in compliance with SCB's instructions and the terms of the Agreement;
  - (b) comply with any instruction given by SCB in connection with the requirements of any Data Protection Laws which relate to the jurisdiction(s) from which and for which the relevant obligations of the Supplier under the Agreement are to be performed;
  - (c) not disclose or provide access to SCB Group Confidential Information without the written authority of SCB (except for the purposes of fulfilling its obligations under the Agreement);
  - (d) ensure that all reasonable steps are taken to ensure the reliability of the Supplier personnel, agents, sub-contractors and professional advisers who will Process SCB Group Confidential Information (in particular, performing appropriate background screening checks, staff training and disciplinary measures in case of non-compliance) and limit such Processing to those personnel who have a need to know the SCB Group Confidential Information for the purposes of providing services under or in relation to the Agreement; and
  - (e) ensure that any Supplier personnel, agents, sub-contractors and professional advisers which Process SCB Group Confidential Information are under a written legal duty or obligation not to Process SCB Group Confidential Information except in performing their duties pursuant to the Agreement.
- 22.8 The Supplier shall in respect of SCB Group Confidential Information Processed pursuant to the Agreement:
- (a) segregate SCB Group Confidential Information held and Processed pursuant to this Agreement from its own data and from any data of its other customers;
  - (b) not retain SCB Group Confidential Information for any longer than is necessary for the purpose of fulfilling its obligations under this Agreement; and
  - (c) upon SCB's request, or as soon as such retention is no longer required for the performance of the Supplier's obligations under the Agreement, delete, destroy or return SCB Group Confidential Information. Upon SCB's request, the Supplier shall certify that deletion or destruction has taken place. Such deletion or destruction must be carried out in an appropriate and auditable manner that ensures that the SCB Group Confidential Information cannot be re-created, accessed or read, including:
    - (i) for electronic media that will be redeployed, a sanitation process that deletes data before redeployment, which destroys boot partitions, file pointers, and user data, and prevents all data from being reconstructed and read, in accordance with Good Industry Practice guidelines for example, as set out in National Institute of Standards Technology (NIST) SP800-88 or US Department of Defence (DoD) 5220.22-M Directives; and
    - (ii) for disposal of documents, by cross shredding or using a secure waste disposal process designated for SCB Group Confidential Information.
- 22.9 The Supplier shall not subcontract any of its Processing operations or obligations relating to SCB Group Confidential Information under this Agreement (including to its affiliates) without the prior written consent of SCB.
- 22.10 Where the Supplier subcontracts its obligations under this Agreement, the Supplier shall be fully responsible and liable for the performance of the sub-contractor's obligations and shall ensure that the sub-contractor is subject to a written agreement with the







Supplier which imposes the same obligations on the sub-contractor as are imposed on the Supplier under this Agreement in relation to SCB Group Confidential Information.

- 22.11 The Supplier shall keep and maintain an up to date list of the name of its sub-contractors Processing SCB Group Confidential Information relating to the Agreement. The list shall be provided to SCB upon request.
- 22.12 The Supplier shall inform SCB as soon as reasonably possible and in any event not later than 24 hours from when it first becomes aware of:
- (a) any legally binding request for disclosure of SCB Group Confidential Information by a Regulatory Authority or a law enforcement authority unless the Supplier is otherwise prohibited by law, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - (b) any accidental or unauthorised disclosure or access to SCB Group Confidential Information;
  - (c) any security incident affecting the operations of the Supplier, or any breach or attempted breach of security, security incident or Data Breach relating to SCB Group Confidential Information and report to SCB on the cause of the breach, attempted breach, incident or Data Breach and planned corrective action;
  - (d) any material changes to be made to Supplier systems retaining SCB Group Confidential Information, which must be risk reviewed and communicated to SCB prior to implementing the change;
  - (e) any request received directly from individuals relating to their Personal Data Processed under the Agreement and shall not respond to that request without the written consent of SCB;
  - (f) any change to be made by the Supplier to the country location(s) or data centres where SCB Group Confidential Information is retained, hosted or accessed from;
  - (g) any change to be made by the Supplier in relation to its sub-contractors processing SCB Group Confidential Information under this Agreement; and
  - (h) any relevant change of laws or regulations applicable to the Supplier affecting the Supplier's ability to comply with the terms of this Agreement in relation to Processing SCB Group Confidential Information.

22.13 This Clause 22 shall survive termination or expiry of this Agreement.

## **23 Audit**

- 23.1 The Supplier will maintain a complete audit trail and maintain records and supporting documentation of all financial and non-financial transactions relating to this Agreement.
- 23.2 The Supplier agrees to comply with the audit policies set out in 0.
- 23.3 SCB and its internal and external auditors, inspectors, Regulatory Authority and such other representatives as SCB may designate from time to time will have the right to perform audits and inspections of the Supplier and its sub-contractors to:
- (a) verify the make up and accuracy of all charges and invoices;
  - (b) verify the integrity of Personal Data and examine the systems that process, store, support and transmit Personal Data;
  - (c) examine the Supplier's performance of the Agreement including verifying compliance with applicable service levels and performing audits of Supplier's practices and procedures, Supplier's systems, Supplier's general controls and security practices and procedures, Supplier's disaster recovery and back-up procedures and contingency plans and Supplier's compliance with all applicable regulatory requirements, in particular relating to all equipment and services supplied to SCB or other members of SCB Group.
- 23.4 The Supplier will (at no additional cost to SCB) give SCB and its audit representatives full access at all reasonable times and on reasonable notice to the premises at which or from which the Supplier supplies the Products, including those facilities where any Supplier Staff, equipment, software, data, records and systems relating to the Products are located.







23.5 The Supplier must make available promptly to SCB, at no additional charge, the results of any internal or external review or audit conducted by the Supplier or its contractors, agents or representatives, relating to the Supplier's operating practices and procedures to the extent relevant to the Agreement provided by the Supplier under this Agreement.

23.6 For the purposes of complying with this Clause 23, the Supplier will provide full co-operation to SCB and its internal and external auditors, inspectors, Regulatory Authority and representatives.

## **24 General Terms**

### **24.1 Provision of Information**

- (a) The Supplier must provide at SCB's reasonable request, project, financial, management, business and/or any other reasonable information related to this Agreement, which is normally recorded in any form in the Supplier's business environment such as details of SCB's spend profile with the Supplier (excluding any trade secret information).
- (b) The Supplier must (where relevant) supply on request from SCB all reasonable data required by SCB to support the revision of the measures used to gauge performance standards.
- (c) The Supplier must provide the information referred to in paragraphs (a) and (b) above at no additional cost promptly to SCB and in any event within 7 days of request from SCB and where relevant shall be subject to Clause 21.

### **24.2 Publicity**

The Supplier shall not publicise (for example by making press statements or by issuing press releases) or release any information in relation to or about this Agreement except with SCB's prior written consent.



### **24.3 Insurance**

- (a) The Supplier warrants that it has in effect and will maintain in effect suitable and sufficient insurance with a reputable insurance company (approved by SCB) naming SCB as loss payee or note SCB's interest on the policy for to the minimum cover specified Schedule 1 naming SCB as loss payee or note SCB's interest on the policy for to the minimum cover specified in Schedule 1. The insurance policy shall
  - (i) name the Supplier as the insured and its employees, contractors and agents as co-insured persons so that there is a separate contract of insurance between each co-insured person and the insurer and name SCB as a loss payee or note SCB's interest on such policy;
  - (ii) require the insurer to obtain SCB's written approval to any change of the policy in relation to the preceding provisions such as changes in the limit or restriction of cover or in the deductibles permitted to the cover; and
  - (iii) require the insurer to notify SCB of any claim (whether or not relating to this Agreement) under or cancellation or non-renewal of the policy.
- (b) The Supplier must maintain the insurance policy referred to above until the number of years specified in Schedule 1 after completion of all of the Supplier's obligations under this Agreement.
- (c) Upon request from SCB the Supplier must produce to SCB adequate proof of insurance cover in respect of its entire liability under this Agreement which shall include copies of the Supplier's policies of insurance and the receipt for the last premium.

### **24.4 Withholding Tax**

- (a) In the event that any payment to be made in respect of any invoice is subject by law to any withholding tax, the payer shall make payment to the payee of the amount owing, less a deduction for such withholding tax and shall account to the relevant tax authority for the withholding tax. Provided always that the payer has possession, as furnished by the payee, of declaration(s) of tax residence on the prescribed forms and certification of the relevant taxation authorities which are current and accurate in order to confirm the applicability and availability of any





reduced rate of withholding tax under the provisions of the relevant double taxation convention and/or treaty, the amount of withholding tax deducted will be calculated by the payer in accordance with any appropriate double taxation convention and/or treaty between the states in which the payer and the payee respectively reside. The payee shall furnish declaration(s) of tax residence on the prescribed forms and obtain certification of the relevant taxation authorities in order that the payer may confirm the applicability and availability of any reduced rate of withholding tax under the provisions of the relevant double taxation convention and/or treaty as envisaged above. Payment of such net sum to the payee and to the relevant tax authority of the said withholding tax shall, for the purposes of this Agreement, constitute full settlement of the sums owing under the relevant invoice.

- (b) Without prejudice to payment in accordance with Clause 13 constituting full settlement of the sums owing under the relevant invoice, the payer shall use reasonable endeavours to obtain and provide to the payee evidence from the relevant local tax authority of the payment of the said withholding tax (including, where available, tax deduction certificates or the equivalent thereof). Where the payer is not able to obtain such evidence (having used reasonable endeavours), the payer will provide written confirmation itself to the payee of the payment of said withholding tax.

#### 24.5 Force Majeure

If either party fails to perform its obligations under this Agreement due to causes beyond its reasonable control including but not limited to war, fire, blockade, strikes (excluding strikes by its own personnel) or natural catastrophe, then that party shall not be held responsible for any loss or damage which may be incurred by the other party as a result of such failure provided that, if the performance by the Supplier of its duties is substantially prevented for a continuous period of [fifteen] days (or more than [fifteen] separate days in any period of [thirty] days), SCB may, on thirty days written notice terminate this Agreement or any part affected by such cause. Each party will give notice to the other as soon as possible upon becoming aware of an event that may lead to the invocation of this Clause.



#### 24.6 Relationship

Nothing in this Agreement creates a joint venture, relationship of partnership or agency between the parties. Accordingly, except as expressly authorised under this Agreement neither party has authority to pledge the credit of or make any representation or give any authority to contract on behalf of another party. No Supplier Staff shall be construed as being an employee of SCB by virtue only of this Agreement or the performance of the Supplier's obligations under this Agreement.

This Agreement is being entered on a non-exclusive basis and nothing contained herein shall restrict SCB's rights to receive similar Product from any other party.

#### 24.7 Waivers

- (a) No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights in relation to a breach of this Agreement operate as a waiver of any subsequent breach.
- (b) No right, power or remedy given to or reserved to either party under this Agreement is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

#### 24.8 Assignment and Sub-Contracting

- (a) Subject to Clause (b) below, neither party may assign or sub-contract any of its rights or obligations under this Agreement to any other third party without first obtaining the express written consent of the other party.
- (b) SCB may on written notice, without prior consent from the Supplier, transfer, assign or sub-licence the benefit of the whole or any part of its obligations and rights under this Agreement to any member of SCB Group, SCB Service Provider or any successor of all or part of SCB or SCB Group's business.
- (c) In the event that SCB permits the Supplier to sub-contract any of its obligations under this Agreement, the Supplier agrees to procure that the sub-contractor



complies with the obligations of the Supplier under this Agreement as if it were a party to this Agreement.



#### 24.9 Severability

Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.

#### 24.10 Variations

- (a) Any terms of the Supplier or any third party purporting to vary this Agreement shall be of no effect unless the provisions of this Clause 24.10 have been followed.
- (b) This Agreement may only be changed or added to by a written variation referencing this Clause 24.10, agreed and signed by both parties' Authorised Representatives.
- (c) The parties' Authorised Representatives as at the date of this Agreement are set out in Schedule 1.

#### 24.11 Notices

- (a) Addresses for notices or other communications under this Agreement are set out in Schedule 1 under the heading "Legal Notices".
- (b) Any notice required under this Agreement shall be given in writing and in the English language and sent to the address of the party for which it is intended to be given, or such other address as shall have been notified to the other party in accordance with this Clause and be delivered by hand, sent by registered post or equivalent, courier; and
  - (i) if posted, shall be deemed to have been received three Working Days after the date of posting or, in the case of a notice to an addressee not in the country of the sender, ten Working Days after the date of posting; or
  - (ii) if couriered, on delivery.



#### 24.12 Third Party Rights

- (a) This Agreement does not create or confer any rights or benefits enforceable by any person not a party to it except:
  - (i) a member of SCB Group shall have the right to enforce any rights or benefits in this Agreement;
  - (ii) a member of SCB Group shall have the right to enforce the rights or benefits of any indemnity, limitation and/or exclusion of liability in this Agreement;
  - (iii) a person who is a permitted successor or assignee under Clause 24.8 of the rights or benefits of this Agreement may enforce such rights or benefits.
- (b) No consent from the persons referred to in this Clause is required for the parties to vary or rescind this Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of such third parties).

#### 24.13 Contingency Planning

- (a) The Supplier must maintain adequate disaster recovery and back-up procedures and contingency plans to ensure the Supplier's business continuity and that the Supplier is able to perform this Agreement without interruption.
- (b) The Supplier must test, and permit SCB to inspect the results of such tests or to carry out its own tests upon, the procedures and plans referred to in paragraph (a) to verify they serve the purpose described in paragraph (a). Such tests shall be carried out bi-annually or more frequently as agreed by the parties.





#### 24.14 Entire Agreement

This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter. Except as may be expressly stated in this Agreement, it supersedes and cancels all prior agreements, statements, representations, understandings, negotiations and discussions, whether oral or written, between the parties. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any statement, representation, warranty or understanding made prior to this Agreement save to the extent that such statement, representation, warranty or understanding is incorporated into this Agreement. Each of the parties acknowledges and agrees that in entering into this Agreement it has not relied on (or has been induced to enter into this Agreement by) any statement, representation, warranty or understanding made prior to this Agreement.

#### 24.15 Dispute Resolution

The parties agree that any disputes ("Disputes") in relation to this Agreement shall be resolved in the following manner:

- (a) A party must not commence court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement unless it has complied with this Clause 24.15.
- (b) A party claiming that a dispute has arisen in relation to this Agreement must notify the Authorised Representative of the other party to the dispute giving details of the dispute.
- (c) If any dispute arising out of this Agreement remains unresolved for twenty Working Days from the date on which notice setting out the nature of the dispute is served by one party on the other, either party may request a meeting within a further five Working Days between senior personnel (as notified by each party to the other for this purpose) who shall have power to resolve the dispute. In the event that the dispute is not resolved under this procedure either party shall be free to commence court proceedings in respect of that dispute.
- (d) If the other party does not agree to such procedure it shall notify the other that it wishes to terminate the dispute resolution process within seven days of receiving such notice.

#### 24.16 Applicable Law and Jurisdiction

- (a) This Agreement and any matters relating to this Agreement shall be governed by and construed in accordance with the laws of Bangladesh.
- (b) The parties submit and agree to the non-exclusive jurisdiction of the courts of Bangladesh.

#### 25 Counterparts

This Agreement may be executed in counterparts, all of which shall constitute one agreement between the parties.

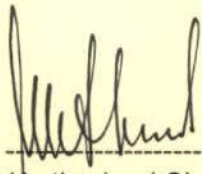




We accept the terms and conditions set out in this Agreement.

Signed for and on behalf of **Standard Chartered Bank** by:

Signature:



Mesbah Uddin Ahamed  
Head of Property  
Standard Chartered Bank

(Authorised Signature)

Name (Block Letters):

**MESBAH UDDIN AHAMED**

Position:

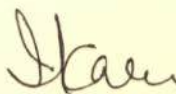
Head of Property

Date:

18<sup>th</sup> July 2017

Signed for and on behalf of **Cross World Power Limited** by:

Signature:



**Iftekhar Karim**  
Chief Operating Officer

CROSS WORLD POWER LTD

(Authorised Signature)

Name (Block Letters):

**IFTEKHAR KARIM**

Position:

Chief Operating Officer

Date:

18<sup>th</sup> July 2017



**Schedule 1**  
**Contract Details**



**1 Authorised Representatives**

<b>SCB's Representative:</b>	
Name:	Md Muktadir Khan Chowdhury
Address:	Portlink Tower, Level-6, 67 Gulshan Avenue, Dhaka-1212, Bangladesh
Office Phone:	+88 096663 56515
Mobile Phone:	+88 01847200264
Fax:	+88 02 989 6722
E-mail:	MdMuktadirKhan.Chowdhury@sc.com

<b>The Supplier's Representative:</b>	
Name:	Md. Moshiur Rahman
Address:	House # 1/B, Road # 90, Gulshan - 2, Dhaka 1212, Bangladesh
Office Phone:	+880 2 5881 1858, 989 1442
Mobile Phone:	0175 5514703
Fax:	+880 2 5881 6205
E-mail:	moshiur@cross-world.com

**2 Project Managers**

<b>SCB's Project Manager:</b>	
Name:	Md Muktadir Khan Chowdhury
Address:	Portlink Tower, Level-6, 67 Gulshan Avenue, Dhaka-1212, Bangladesh
Office Phone:	+88 096663 56515
Mobile Phone:	+88 01847200264
Fax:	+88 02 989 6722
E-mail:	MdMuktadirKhan.Chowdhury@sc.com





The Supplier's Project Manager:	
Name:	Md. Moshir Rahman
Address:	House # 1/B, Road # 90, Gulshan - 2, Dhaka 1212, Bangladesh
Office Phone:	+880 2 5881 1858, 989 1442
Mobile Phone:	0175 5514703
Fax:	+880 2 5881 6205
E-mail:	moshir@cros-world.com

### 3 Legal Notices

All notices to or by the respective parties shall be addressed as follows:



SCB Local Legal	
Name:	SCB Head of Legal
Address:	Legal & Compliance, Standard Chartered Bank Bangladesh Portlink Tower, Level-6, 67 Gulshan Avenue Dhaka-1212, Bangladesh

With a copy to SCB Supply Chain Management	
Name:	SCB Head of Supply Chain Management
Address:	Standard Chartered Bank Bangladesh Portlink Tower, Level-6, 67 Gulshan Avenue Dhaka-1212, Bangladesh

Supplier	
Name:	Md. Moshir Rahman
Address:	House # 1/B, Road # 90, Gulshan - 2, Dhaka 1212, Bangladesh

### 4 Insurance Cover

Insurance Cover to be maintained:

- Public and product liability covering legal liability in respect of any bodily injury and property damage claims arising from or related to this Agreement: equivalent to contract value.
- Professional Indemnity covering SCB Group's potential financial loss and damage as a result of any breach, error or omission by the Supplier under this Agreement: equivalent to contract value.
- All risks insurance (including but not limited to fire liability) for any of SCB's on loan goods, tools, equipment or other property whilst they are in the Supplier's possession for their full replacement "as new" value as notified to the Supplier from time to time by SCB.
- Employer's Liability covering legal liability to make any payment in respect of death, injury or disability of employees under applicable law: equivalent to contract value or such higher amount as is required by local legislation.
- Number of years after completion 7.



**Part 2 – Form of Modification Note**

Ref No:

Date:

Title of Change:

Details of Change:

Reasons for Change:

Impact of Change:

Acceptance Procedures:

Timetable:

Date of Expiry of Validity of the Modification Note:

Charges for Change:

Originator:

Signed.....

SCB Response: Accept/Reject

Signed.....

*Ikasir*  


*Muhammad*  






**Schedule 2**  
**Specification**



**Specification Details - 330 KVA TEMPEST brand diesel generator**

**Generator Details:**

Tempest (Manufactured by Allam Marine Limited, UK) Diesel Generator Set Model: PM300 (NEW) (300KVA Prime & 330 KVA Standby) at 1500 rpm, 50 Hz, 3 phase, 4 wire, 400/230 volts at 0.8 power factor. All other details are as follows:

BRAND : Tempest	MODEL : PM300 (NEW)
COUNTRY OF ORIGIN : UK	PORT OF SHIPMENT: Any port, UK
CAPACITY (Prime) : 300 KVA	CAPACITY (stand by): 330 KVA
START SYSTEM : Automatic Microcontroller based as well manual Start / Stop System	
EMERGENCY STOP : Emergency Stop available as protection on device	
VIBRATION SKID : Built-in vibration on skid for smooth operation	
BATTERY CHARGER : Auto Battery Charger (ABC) included	
DIMENSION (Open Set) (cm) : 275X111X186 (LxWxH)	FUEL TANK CAPACITY : 435 Litter
FUEL CONSUMPTION : 48.00 Ltr./Hr. at 75% Load	

**Engine Details:**

BRAND/ORIGIN : Perkins, UK/USA	MODEL : 1506A-E88TAG5
SPEED : 1500 RPM	INDUCTION SYSTEM : Turbocharged
ENGINE TYPE : 4 stroke multi cylinder industrial diesel Engine suitable for tropical environment	
COOLING SYSTEM : Water cooled (Radiator cooled with engine driven fan)	
PROTECTION : Over speed, under speed, oil pressure, Over heating etc	
FUEL TANK : Built in with base	

**Alternator Details:**

BRAND/ORIGIN : Mecc Alte, UK	Model / Frequency : ECO38-2LN , 50 Hz
PHASE : 3 Phase	Output (Volts) : 400/415 volts (Line to line)
COOLING : Air cooling	Insulation Type : Class " H "
PROTECTION : Industrial brushless design screen protected, fan ventilated, drip-proof, self exciting in accordance with IP21/IP23	
VOLTAGE REGULATOR : Automatic Voltage Regulator (AVR)	
VOLTAGE REGULATION : $\pm 1\%$ / $\pm 1.5\%$ power factor between 0.8 lagging & unity (Depends on Connected Load)	

**Control Module:** Deep Sea Electronics (DSE), UK control system is incorporated with automatic set to manually & automatically start & stop the generator indicating the operation status and fault conditions via a graphical LCD display and a flashing LED on the front panel. All other details are as follows:



- **CONTROL MODULE TYPE:** Auto start (AMF) digital control module
- **OPERATION:** Operation of the module is via push buttons mounted on the front panel with STOP, AUTO and MANUAL positions etc
- **DIGITAL INSTRUMENTS:** Ammeter, Voltmeter, Frequency meter, run hour meter, Oil Pressure, Water, Temperature etc.
- **ALARM INDICATOR:** Under/Over Volts, Under/over speed, Under/Over Frequency, Low Oil Pressure, High Engine Temperature, Fail to Start and Loss of speed sensing etc.
- **LOAD TRANSFER TIME:** Adjustable, Delay on start 1 to 25 sec, Delay on transfer 1 to 70 sec
- **ENGINE COOLING TIME:** 5 minutes maximum
- **PHASE FAILURE RELAY:** Digital on & control for Main's upper lower cut off voltage setting and adjustable hysteresis voltage, sensing on etc

**Standard Items:** The following items will be supplied with the gen-set as standard:

- Lead Acid battery 12/ 24 Volts as required
- Silencer
- Rubber anti vibration mountings
- Flexible Bellows
- Battery charger
- Main Line 3 pole Circuit Breaker
- Alternator mounted deep sea UK original main controlling panel
- Fuel tank for 10 hours operation
- Operational manual & keys etc.



Please note that toolbox is beyond this scope of supply.

#### **Warranty/Guarantee:**

As per standard of manufacturer, we provide 3000 hours or 2 year warranty whichever comes first, effective from the date of delivery at the client's premises. Our warranty policy is for any manufacturing defects or any premature wear & tears due to usage. The faulty part(s) is/are replaced/repared within the warranty period. However, Warranty doesn't cover improper maintenance by the user, consumable items, servicing by unauthorized person, running the genset above it's capacity or any unauthorized modification of the genset.

**Warranty Response Times:** 24 hours

**Commissioning Materials Charge:** Materials charges (which are required for installation) will be provided by the supplier and payment will be made at actual basis.

**Carrying, Loading & Unloading cost:** Carrying, Loading & Unloading cost to any premises of SCB will be borne by the supplier and the Bank will not make any payment for Carrying, Loading & Unloading



### Schedule 3

### Charges



Price of 330 KVA TEMPEST brand diesel generator:

Specifications	Price (BDT)
Generator Brand : Tempest	3,000,000.00
Generator Model : PM300 (NEW)	
Country of Origin: UK	
Volts : $\pm 1\%$ / $\pm 1.5\%$ power factor between 0.8 lagging & unity (Depends on Connected Load)	
Frequency: 50 Hz	
Phase 3	
Output - 400/415 volts (Line to line)	
Protection: Industrial brushless design screen protected, fan ventilated, drip-proof, self exciting in accordance with IP21/IP23	
Engine : Perkins, UK/USA - 1506A-E88TAG5	
Alternator : Mecc Alte, UK	
Auto Transfer Switch (ATS)	185,000.00
Consumable Spares for 6 nos Periodic Servicing <ul style="list-style-type: none"> <li>Fuel filter -6pc</li> <li>Lube oil filter 6pc</li> <li>Air filter - 3pc</li> <li>Lube oil - 270 Ltr</li> <li>Radiator water coolant -18 Ltr</li> <li>Battery water - 18 Ltr</li> </ul>	220,770.00
<b>Total Price</b>	<b>3,405,770.00</b>

### Other variable cost:

SL	Product Name	Unit	Unit Price (BDT)
01	Earthing Cable (1cx35rm)	Meter	315
02	Silencer Pipe 6" with 2 elbow, 4 flange	Feet	2266
03	Power Cable (1cx249rm)	Meter	2310
04	Control Cable 4cx1.2rm)	Meter	110
05	Earthing Works (70")	Job	30,000



## Schedule 4

### Reporting



The Supplier must compile a monthly report within 5 Working Days after month end listing consumption or ordered quantity of goods or services under this Agreement. Such report must be submitted to:-

SCB's Project Manager:


Name:	Md Muktadir Khan Chowdhury
Address:	Portlink Tower, Level-6, 67 Gulshan Avenue, Dhaka-1212, Bangladesh
Fax:	+88 02 989 6722
E-mail:	MdMuktadirKhan.Chowdhury@sc.com



Schedule 5

Exit Management

Will be included later after agreed by both parties – The Bank and The Supplier

  
*Heaven*

*Michael*  




## Schedule 6

### Change Control Procedure

#### Part 1 – Change Control Procedure

##### 2 General

- 2.1 The Supplier shall not unreasonably withhold its agreement to any Change.
- 2.2 There shall be no presumption that the obligations undertaken by either party in connection with the Agreement are in any way changed until an amendment has been effected in writing signed by Authorised Representatives.
- 2.3 No amendments to the Agreement shall be valid and no Change shall be effective unless and until they have been agreed in writing by the Authorised Representative of each party.

##### 3 Procedure

- 3.1 SCB and the Supplier shall discuss any Change proposed by either party and such discussion shall result in either:
  - (a) agreement in writing not to proceed further with the Change;
  - (b) a written request for a Change by SCB;
  - (c) a recommendation for a Change by the Supplier.
- 3.2 Where a written request for a Change is received from SCB, the Supplier shall, unless otherwise agreed, submit a Modification Note to SCB within fifteen (15) days (or such other time as the parties may agree in writing) containing the information set out in Part 2 of this Schedule and any other relevant information.
- 3.3 A recommendation for a Change by the Supplier shall be submitted as a Modification Note at the time of such recommendation.
- 3.4 For each Modification Note submitted SCB shall, within the period of the validity of the Modification Note:
  - (a) allocate a sequential number to the Modification Note;
  - (b) evaluate the Modification Note and either:
    - (i) request further information, which the Supplier shall promptly provide; or
    - (ii) discuss the terms of the Modification Note with the Supplier and request amendments thereto; or
    - (iii) approve the Modification Note, as submitted by the Supplier or as amended pursuant to (ii) above; or
    - (iv) reject the Modification Note.
- 3.5 SCB shall notify the Supplier of its approval or rejection of the Modification Note by notice in writing to the Supplier. No such notice shall be valid unless signed by a duly authorised officer of SCB.
- 3.6 If SCB and the Supplier agree a Change and the relevant Modification Note then signature of the Modification Note and any supplement or amendment thereto by both parties shall constitute a formal amendment to the Agreement to the extent only specified in the Modification Note and any such supplement or amendment.
- 3.7 Any charges specified in a Modification Note shall, unless expressly stated otherwise in the Modification Note, be the maximum cost of the Change.
- 3.8 If the Supplier modifies the whole or any part of the Purchase Order in accordance with any Change it shall make all appropriate related modifications to the Purchase Order, the cost of which (if any) shall be included within the charges specified in the Modification Note, and such amended documents when approved in writing by SCB shall be the applicable documents for the purpose of this Agreement.





## Schedule 7

### Audit Policies



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#### 1. Purpose

The purpose of this Schedule (**Audit Policies**) is to define the technical audit activities (and requirements associated therewith) which SCB or Supplier are entitled to carry out or to procure in respect of the provision of the services under this Agreement (**'Services'**).

#### 2. Scope

2.1 This Schedule (**Audit Policies**) relates to the auditing of Supplier's use of computer hardware, software and other resources to deliver the Services.

2.2 An audit of Supplier's use of computer hardware, software and other resources used to deliver the Services must be conducted annually by Supplier's internal auditors (**Supplier IA**) to assess the risk and control environment and compliance with generally accepted standards for the operation of IT with specific focus on compliance with:

- (a) regulatory and legal requirements;
- (b) data protection legislation;
- (c) adherence to requirements stated in this Agreement;
- (d) accuracy of resource consumption data as used in billing;
- (e) achievement of Performance Standards;
- (f) Supplier's internal operating policies and procedures; and
- (g) any other SCB operating policies and procedures to the extent set out in this agreement or as may be notified from time to time by SCB in writing to Supplier.

Any work which is required by SCB to be carried out by Supplier after the date of execution of this Agreement and which is necessary to ensure compliance with any changes to the requirements listed in paragraphs (a) to (g) above must be processed and implemented in accordance with the agreed change control procedures, provided that if any such work would not result in Supplier incurring substantial additional cost then Supplier will undertake the work as directed by SCB at Supplier's own cost.

2.3 Audits will also check that the agreed process for reporting regulatory and compliance problems has been adequately followed.

#### 3. Supplier's Internal Audit

3.1 In order to comply with the operating policies and procedures under which SCB operates, Supplier must maintain an effective internal control environment. This will include the operation of an internal audit function. Supplier must ensure that:

- (a) Supplier IA staff have suitable skills, qualifications and experience;
- (b) Supplier IA staff have access to such Supplier personnel, documentation, relevant records and other information required for the purpose of completing the audits; and
- (c) Supplier IA team have the organisational status and the objectivity required to undertake independent audits.

3.2 SCB will have the right to escalate issues to a committee of two or more representatives consisting of a minimum of one representative from each party to this Agreement, (**the 'Joint Executive Committee'**), who will have the authority to resolve any ongoing dispute SCB may have with the Supplier where:

- (a) evidence is found that the resource within Supplier IA is not sufficient to deliver the contractual obligations described in this Schedule (**Audit Policies**); and
- (b) evidence and results, or subsequent feedback, indicate that Supplier IA staff are not suitably qualified, or if the audit carried out is not of appropriate quality.

The Joint Executive Committee may require further actions to be performed including the re-conducting of an audit if either of (a) and (b) above is found to be the case.

3.3 The Joint Executive Committee will initially comprise:

- one representative from SCB; and
- one representative from Supplier.



- 3.4 Each party will notify the other of the name and contact details of their representative of the Joint Executive Committee on or before the date of this Agreement.
- 3.5 If a party wishes to replace its representative on the Joint Executive Committee, both parties will consult with one another and use their best endeavours to agree on the individual to be the replacement member of the Joint Executive Committee.
- 3.6 Supplier is not required to obtain a third party review or external audit as an obligation under this Schedule (**Audit Policies**).
- 3.7 If SCB is dissatisfied with any aspect of an audit carried out by Supplier it will be entitled, at its own cost, to conduct an audit of the areas in relation to which it has concerns and Supplier must co-operate fully with SCB's audit.

#### 4. **Regulatory Requirements**

- 4.1 In the financial services industry it is common for regulatory bodies to impose new, or changes to existing, regulations or standards which impact the design of control systems and the application of internal control. Should such changes in regulations or standards be specified by the regulatory bodies, SCB must decide whether any consequential change to this Agreement is required.
- 4.2 Any such change following the Effective Date must be processed and implemented by the application of the agreed change control procedures. Upon completion of the change control procedures, Supplier will work with SCB to implement any changes (approved as part of the change control procedures) within the agreed time frames indicated by the regulatory bodies. Following the implementation of the change control procedures, Supplier must implement any systems changes necessary to meet these requirements and allow reasonable inspection of its services/premises used to provide the Services from time to time if legally required by such regulatory bodies.
- 4.3 SCB must communicate to Supplier in writing such regulatory changes of which it becomes aware and which it requires to be implemented. A written communication, if sent to Supplier notifying Supplier of a regulatory change, shall be deemed to be a notification of a request by SCB for implementation of that regulatory change.

#### 5. **Costs**

- 5.1 The implementation of any audit findings relating to provision of the Services (including but not limited to any computer hardware, computer software, processes or services included within the scope of this Agreement) found by Supplier IA will be implemented at Supplier's own cost. Any audit findings and required changes which alter the scope of the Services will be processed and implemented by the application of the change control procedures.
- 5.2 In respect of any audit findings by any third party, a report must be prepared of the findings of such audit and discussed with SCB's internal audit personnel (SCB IA). If necessary, these findings must be submitted to the next meeting of the Joint Executive Committee. If the Joint Executive Committee considers that the findings highlight critical problems associated with Supplier's provision of the Services, the Joint Executive Committee must agree an action plan (including a timetable) for remedying defects found, and must agree the implementation costs to be borne by the parties.
- 5.3 The costs of audits of the provision of the Services undertaken by Supplier IA must be borne by Supplier.

#### 6. **External Audits**

- 6.1 Copies of extracts from any external audit reports showing all (non-commercially confidential) items directly relating to the Services or this Schedule (**Audit Policies**) are to be provided to SCB IA within 30 days of receipt by Supplier.
- 6.2 SCB IA will, at any time, on reasonable notice and not more than once in any twelve month period, also have the right to undertake an audit of Supplier's provision of the Services as described in this Schedule (**Audit Policies**). Supplier must ensure that SCB IA have unrestricted access to Supplier staff, documentation, relevant records and other information required for the purpose of completing the audit (but excluding information and records relating to Supplier's internal costs and margins for the Services), provided that the SCB IA members are either personnel of SCB or are approved by Supplier, such approval not to be unreasonably withheld or delayed. Those SCB IA members requiring approval from Supplier and who have been so approved, must sign a non-disclosure agreement in a reasonable form approved by Supplier and must otherwise comply with



Supplier's reasonable security requirements. Notwithstanding the notice and frequency restrictions contained within this paragraph, should SCB reasonably suspect that there is a material breach of system security then SCB may immediately notify Supplier of the grounds for its suspicion and, upon such notification having been given, SCB will have the right to undertake an immediate audit.



- 6.3 Supplier's provision of the Services may also be subject to periodic audits by SCB's external auditors or regulators, including but not limited to the PRA or FCA or any similar Government Agency, and Supplier must procure that where necessary all subcontractors provide all necessary assistance and co-operation in connection with such audits. Each party will bear its own costs in relation to any such audit.
- 6.4 SCB IA must not unduly interfere with Supplier's ability to comply with its obligations under this Agreement and, to the extent of any such undue interference, Supplier will be relieved from performing its corresponding obligations under this Agreement.

## 7. Supplier Audit Process

### 7.1 Supplier Internal Audit Calendar

Supplier will provide to SCB IA an internal audit calendar no later than [date] prior to the commencement of each audit year. The calendar will outline all the audit activities for the year.

### 7.2 Supplier Audit Planning

In respect of each audit, SCB IA must on a timely basis be provided with copies of, and reserves the right to provide input into, the following:

- (a) Risk identification and weighting assessment;
- (b) Terms of reference;
- (c) Scope and coverage;
- (d) Audit programme; and
- (e) Key dates, including:
  - (i) Commencement of the audit;
  - (ii) Commencement of fieldwork;
  - (iii) Completion of fieldwork;
  - (iv) Written audit findings;
  - (v) Obtaining management responses;
  - (vi) Issue of draft report; and
  - (vii) Issue of completed report.

The timing and location of these reviews will normally be agreed at the outset of the audit.

### 7.3 Implementation of Recommendations

Subject as stated below, Supplier will comply with any audit recommendations arising from:

- (a) any Supplier internal audit of Supplier's provision of the Services; and
- (b) any external audit of Supplier's provision of the Services; and
- (c) any SCB audit of Supplier's provision of the Services,

applying, where required by this Schedule (**Audit Policies**) or as is otherwise appropriate, the agreed change control procedures.

### 7.4 Issues Tracking

SCB IA will be provided with quarterly updates on the status of the implementation of recommendations. Supplier IA will establish an effective issue tracking process to ensure that recommendations are implemented in accordance with agreed time-scales.





## Schedule 8

### RESOLUTION AND OPERATIONAL CONTINUITY

The purpose of this schedule is to support SCB's operational arrangements and ensure that SCB, when in financial distress, may continue providing financial services – thereby minimising any adverse effects on the provision of financial services to the wider economy.

The Supplier acknowledges that SCB or any member of the SCB Group may therefore be required to: (i) restructure, amalgamate, reorganise and/or divest all or any part of the business, assets or liabilities of any entity within the SCB Group pursuant to Resolution (each such action being a "Divestment"); and (ii) procure that such entity, its successor or assign, or product of such Divestment or its successor (each a "Restructured Entity") will be able to operate independently of the SCB Group.

#### 1.1 Definitions

"Resolution" means the implementation by a regulator of its resolution powers in relation to SCB (or any member of the SCB Group or the Restructured Entity) under:

- (i) the United Kingdom ("UK") Banking Act 2009 (as amended) or any other future legislative measures extending to financial institutions or their affiliates; or
  - (ii) equivalent resolution-related legislation applicable to non-UK parties,
- "Resolution Authority" in relation to SCB (or any member of the SCB Group or the Restructured Entity), means any resolution authority, including:

- (i) the Bank of England and the resolution administrator; or
- (ii) any central bank, government department or agency in any part of the world which has the responsibility for Resolution in its jurisdiction.

1.2 This Schedule will apply from the date of Resolution, and will continue subject to the agreed Charges under this Agreement being paid.

1.3 Notwithstanding any termination rights under this Agreement, for the purposes of facilitating recovery action, Resolution and post-Resolution restructuring, the Supplier agrees that it will, from the date of Resolution for at least 12 months (unless a Resolution Authority requires another period from the date of Resolution, in which case such other period will apply) (such 12 months or other period being the "Resolution Supply Term"):

- (a) continue providing the Services/Products/Software/Materials (or the relevant part thereof) to or for the benefit of the Restructured Entity and permitting the Restructured Entity to use such Services/Products/Software/Materials as if there has been no Divestment. Where it is for a part of the Services/Products/Software/Materials only, the Supplier will make a fair and equitable adjustment of the agreed Charges that would be payable for such part; and
- (b) where appropriate, allow any relevant entity within the SCB Group to act as a service provider to provide to the Restructured Entity with the relevant Services/Products/Software/Materials (or the relevant part thereof); and
- (c) where required (including where the Restructured Entity is no longer a member of the SCB Group), enter into an agreement ("Separate Contract") with the Restructured Entity for the provision of the Services/Products/Software/Materials (or the relevant part thereof) to the Restructured Entity for the Resolution Supply Term, on the same terms and conditions as this Agreement except as amended where required to:
  - (i) comply with any orders or directions of the Resolution Authority or a court or the applicable law; and
  - (ii) reflect the separation of liability of the Restructured Entity under the Separate Contract from any liability of SCB under this Agreement to the extent that this Agreement continues; and
- (d) subject to Clause 1.4, suspend any of its rights to terminate this Agreement from the time that any such right arises until such time when Resolution is no longer required.

This Clause 1.3 will operate in its entirety, except to the extent that the Supplier will be in breach of applicable laws or mandatory professional regulations (including mandatory audit independence rules) by continuing to provide the Services/Products/Software/Materials (or the relevant part thereof) to the Restructured Entity following Resolution.

1.4 Notwithstanding Clause 1.3(d), the Supplier will retain the following termination rights:

- (a) right to terminate for SCB's non-remedied material breach of:
  - (i) the intellectual property rights expressly granted under this Agreement by the Supplier to SCB; or
  - (ii) the confidentiality provisions under this Agreement;subject to the Supplier promptly notifying SCB after becoming aware of such material breach, and permitting SCB to remedy such breach in accordance with:



*Handwritten signature*





- (iii) the remedy period specified in the termination clause (for remediable breach) of this Agreement; or
- (iv) where no such remedy period is specified in the termination clause (for remediable breach) of this Agreement – within 60 days of the Supplier's notification to SCB pursuant to this paragraph (a); and
- (b) right to terminate if such termination is expressly required by any Resolution Authority or other regulator or other applicable laws,
- provided that no such retained termination right will be exercisable by the Supplier in the event that the grounds for its exercise result from or are connected with any of the following:
- (c) the occurrence of the Resolution;
- (d) the deterioration in the financial circumstances of SCB or any member of SCB Group; or
- (e) any actions or steps taken by, or omissions made by, SCB in accordance with any:
- (i) legal or regulatory requirement of;
  - (ii) any direction of; or
  - (iii) any action taken by,
- any Resolution Authority or other regulator.

1.5 SCB agrees that Supplier's provision of the Services/Products/Software/Materials (or the relevant part thereof) to the Restructured Entity under Clauses 1.3(a) is subject to the Restructured Entity agreeing in writing to be bound by this Agreement.

