

# TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

## 1. INTERPRETATION

The interpretation and construction of the Contract shall be subject to the following rules, except where the context makes it clear that a rule is not intended to apply:

- 1.1 reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it
- 1.2 a singular word includes the plural, and vice versa;
- 1.3 general words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms;
- 1.4 the headings in the Contract are for reference purposes only and shall not affect the interpretation or construction of the Contract;
- 1.5 in the event of conflict, the provisions of the Contract are to be read in the following order of precedence in relation to that conflict: (i) the Order (ii) clauses 1 to 24 (inclusive) of these terms and conditions; and (iii) any document incorporated by reference. The document higher in the order of precedence shall prevail to resolve the conflict; and

## 2. DEFINITIONS

**"Applicable Laws"** means any applicable statute or proclamation or any delegated or subordinate law, any applicable code of practice, national minimum standard, guidance, direction or determination, and any applicable judgment of a relevant court of law which is a binding precedent in any and all territories or jurisdictions in which the Contract is to be performed;

**"Computer Virus"** means a parasitic program or programming code written intentionally to enter a computer program or network without the user's permission or knowledge, which damages or is intended to damage, modify, or disrupt the operation of software or hardware, including trojan horses, worms, logic bombs, time bombs, back doors, trap doors, spyware, malware or other code or components within software which have no documented purpose in the operation of the software;

**"Charges"** means the charges for the Services as set out in the Order;

**"Confidential Information"** means any information or know how of either of HSBC (including any HSBC Group Member) or the Supplier, including in each case information relating to their facilities, premises, systems, security, procedures, products, business strategy, employees, officers, contractors and agents, customers, suppliers and contacts, and any other information that is supplied or made available to the other party pursuant to the Contract. Confidential Information shall exclude information that: (i) is or comes into the public domain without breach of any confidentiality obligation under the Contract; (ii) is disclosed by a third party (except where such third party discloses such information in breach of obligations of confidence), or (iii) is independently developed by a party without recourse to the Confidential Information of the other;

**"Contract"** means the contract between HSBC and the Supplier for the supply of Goods and/or Services comprising the Order and these terms and conditions;

**"Deliverable"** means any document or product that is to be delivered to HSBC by the Supplier in the course of providing the Services, including (without limitation) any such product or document that is described as such in the Order;

**"Delivery Location"** the location(s) for the supply of the Goods set out in the Order;

**"Electronic Document"** means a document sent electronically (including by electronic fax, email, or any other electronic medium);

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

**"Goods"** means the goods described in the Order;

**"HSBC"** means the member of the HSBC group specified in the Order;

**"HSBC Group Member"** means a legal entity from time to time (i) in which HSBC (or one or more of its subsidiary or holding companies, or subsequent

holding or subsidiary companies of such entity) owns at least fifty percent (50%) or more of the voting shares or (ii) over which HSBC (or one of its subsidiary or holding companies, or a subsequent holding or subsidiary company of such entity) either directly or indirectly exercises management control, even though it may own less than fifty percent (50%) of the shares or (iii) the legal entities notified by HSBC from time to time;

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

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

**"Order"** means the purchase order to which these terms and conditions are attached;

**"Premises"** means premises of HSBC or a HSBC Group Member;

**"Purchase Price"** means the price for the Goods set out on the Order;

**"Relevant HSBC Policies"** means the policies specified on the Order or otherwise communicated to the Supplier by HSBC from time to time;

**"Services"** means the services to be provided by the Supplier described in the Order;

**"Specification"** means any specification or specifications in respect of the Goods and/or Services described in the Order;

**"Supplier"** means the person or firm specified in the Order from whom HSBC purchases the Goods and/or Services;

**"Supplier Affiliates"** includes the Supplier or any business entity from time to time controlling, controlled by, or under common control with the Supplier;

**"Supplier Personnel"** means all employees, agents, suppliers, contractors and other representatives of the Supplier (or its subcontractors) who are involved, or proposed to be involved, in the provision of Services or the supply of Goods; and

**"Warranty Period"** means a period of twelve calendar months after the acceptance of the Goods and/or Deliverables (or such other period as may be specified in the Order).

## 3. THE CONTRACT

- 3.1 The Order constitutes an offer by HSBC which may be accepted by the Supplier by acknowledgement or execution of the Order or by performance of the Services or supply of the Goods set out therein.
- 3.2 Acceptance of the Order shall be deemed to bind the Supplier to the Contract. The Contract shall prevail in the event of any conflict with any terms and conditions issued by the Supplier whether contained in any quotation or proposal or in any acknowledgement of the Order or any invoice issued by the Supplier in respect of the Goods and/or Services.
- 3.3 The Supplier shall provide the Goods and/or Services on the terms of the Contract. No Goods or Services shall be supplied or performed by the Supplier, its employees, agents or representatives, except in accordance with the Contract.
- 3.4 The Contract is not exclusive and HSBC shall not be restricted from purchasing services similar to the Services or goods similar to the Goods from third parties.

## 4. SUPPLIER'S WARRANTIES

- 4.1 The Supplier warrants, represents and undertakes to HSBC that:
  - (i) it has, and will have, full authority to enter into the Contract and to assign or licence Intellectual Property Rights which it agrees to assign or licence under the Contract;
  - (ii) in respect of the Goods and any Deliverables it has full clear and unencumbered title to all such items and at the date of delivery of such items to HSBC it will have full and unrestricted rights to sell and transfer all such items to HSBC, and that it will have full and

unrestricted rights to assign Intellectual Property Rights which it agrees to assign under the Contract;

- (iii) it shall ensure that any Goods shall be of the specific quality indicated in the Order and be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by HSBC, expressly or by implication, and in this respect HSBC relies on the Supplier's skill and judgment;
- (iv) the Goods shall, where applicable, be free from defects in design, materials and workmanship and remain so for the Warranty Period and (if longer) for any period of maintenance; and
- (v) it shall not make any payment or transfer anything of value, offer, promise or give a financial or other advantage or request, agree to receive or accept a financial or other advantage either directly or indirectly, where such payment, offer, request or transfer could, under Applicable Laws, be considered to have the purpose or effect of public or commercial bribery or to constitute the acceptance of, or acquiescence in, corruption, extortion, kickbacks, or other unlawful or improper means of obtaining business and that it shall not, in connection with the transactions contemplated by the Contract make any such payment or transfer.

4.2 Without prejudice to any other rights or remedies of HSBC, in the event of breach of any warranty, representation or undertaking the Supplier undertakes promptly to remedy the breach (or the circumstances giving rise to the breach) without charge.

4.3 Clause 4.2 shall survive the termination or expiry of the Contract.

## 5. INSURANCE

For the duration of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, employer's liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on HSBC's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## 6. DELIVERY AND ACCEPTANCE OF GOODS

6.1 The Supplier shall supply the Goods:

- (i) carriage paid to the Delivery Location as instructed by HSBC before delivery;
- (ii) on the date or dates indicated in the Order; and
- (iii) during HSBC's normal hours of business (on a business day), or as instructed by HSBC.

6.2 The Supplier shall be responsible for and shall bear the cost of unloading all Goods and of placing them as requested by HSBC at the Delivery Location.

6.3 The Supplier shall ensure that:

- (i) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (ii) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- (iii) the delivery notes contain the Supplier's confirmation of the load content (via the signature of the Supplier's authorised despatch person) as well as the signature of the haulier to confirm their receipt of the load and shall be signed by HSBC upon receipt of each delivery at the Delivery Location, such signature not to affect the invoicing procedures; and
- (iv) if the Supplier requires HSBC to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

6.4 HSBC shall have the right to inspect and test the Goods at any time before delivery. If any Goods are seen to be damaged upon delivery, these damaged Goods shall not be unloaded and shall be reworked or disposed of by the Supplier at its own expense.

6.5 HSBC reserves the right to reject at any time before or after delivery any Goods which in the opinion of HSBC are faulty and/or do not comply with the requirements of the Order. HSBC may at the Supplier's risk and expense return any rejected Goods to a place of business of the Supplier being the nearest such place of business or any such place of business which HSBC may reasonably consider convenient.

6.6 If the Goods are delivered in excess of the quantities ordered, HSBC shall not be bound to pay for the excess and any excess shall be and shall remain at the

Supplier's risk and shall be returnable at the Supplier's expense.

6.7 The Supplier shall not deliver the Goods in instalments without HSBC's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle HSBC to terminate the Contract under condition 0.

6.8 Title and risk Goods delivered by the Supplier to the premises of HSBC in connection with the Order shall pass to HSBC on satisfactory completion of delivery.

6.9 HSBC shall be entitled at any time to defer the date of delivery of the Goods or the date for performance of the Services. Any such deferment shall not give rise to any legal right of action of any kind whatsoever on the part of the Supplier.

6.10 Without prejudice to any other provisions contained in the Contract, the Supplier agrees that it shall be responsible for making good with all possible speed at its own expense any defect in or damage to any portion of the Goods which may develop during the Warranty Period, for that portion which results in a failure of the Goods to fulfil the Specification or function or to meet the level of performance detailed in the Contract or arises from either defective materials, including software, workmanship or design or any act or omission of the Supplier during the Warranty Period.

## 7. DELIVERY OF SERVICES

7.1 When providing the Services the Supplier shall:

- (i) complete the Services within the period or on the dates specified in the Order;
- (ii) co-operate with HSBC in all matters relating to the Services, and comply with all reasonable instructions of HSBC;
- (iii) use Supplier Personnel (i) who are suitably skilled, experienced and qualified for the roles they are selected to perform and the rates at which they are charged; and (ii) in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (iv) ensure that the Supplier Personnel shall at all times behave in a courteous, professional and appropriate manner and that no Supplier Personnel shall act or make any statement or otherwise behave in any manner that is reasonably likely to result in any prejudice to HSBC or any HSBC Group Member (including to its reputation);
- (v) ensure that the Services and Deliverables shall conform with all descriptions and specifications set out in the Specification of the Service, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by HSBC;
- (vi) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (vii) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to HSBC, shall be free from defects in workmanship, installation and design;
- (viii) act in accordance with the terms of the Relevant HSBC Policies and in particular with all applicable system usage, security and other policies and procedures in force from time to time;
- (ix) ensure that, where HSBC is reliant on the expertise of the Supplier or any Supplier Personnel in providing professional advice, such advice shall be given in an impartial, informed and independent manner and in the best interests of HSBC;
- (x) ensure that the Services are performed with due diligence, reasonable skill and care and in accordance with best industry practice at all times;
- (xi) ensure that (in the case of a Deliverable that includes software) there is and shall be nothing contained in that Deliverable or on any medium on which it is delivered which is capable of executing, facilitating or allowing any of the following acts: (i) deleting the Deliverable or any data; or (ii) restricting access to the Deliverable, the systems on which it is installed or any data normally accessible by such systems; or (iii) otherwise rendering any element of the Deliverable and such systems and data incapable of free and unfettered use; and
- (xii) shall and shall ensure that the Supplier Personnel shall: (i) ensure that no Computer Virus is introduced into any Deliverable on or prior to its delivery to HSBC; (ii) ensure that no Computer Virus is introduced into or on to HSBC's or any HSBC Group Member's computer equipment or systems as a consequence of the provision of the Goods or otherwise during the performance of the Services; and (iii) use best endeavours to ensure that no Computer Virus is introduced into or on to HSBC's or any HSBC Group Member's computer equipment or systems by any act, omission or negligence of the Supplier or any Supplier Personnel.

## 8. COMPLIANCE WITH LAWS

8.1 In the performance of the Services or supply of the Goods, the Supplier shall ensure that:

- (i) the Goods shall comply with all Applicable Laws relating to the design, manufacture, quality, labelling, packaging, storage, handling and delivery of the Goods;
- (ii) it shall comply (and shall procure that all Supplier Personnel shall comply) with all Applicable Laws in relation to the provision of the Goods and/ or Services;
- (iii) it shall procure for HSBC (unless otherwise agreed between the Supplier and HSBC in writing) all rights, licences, consents and permits that HSBC may require in order to use and enjoy the Services, Deliverables and Goods in accordance with the Contract; and
- (iv) that the sale or use of the Goods or Services by HSBC shall not infringe any patent, trade mark, trade name, design right, copyright or any other intellectual property right.

## 9. HEALTH AND SAFETY

9.1 When performing work at any Premises, the Supplier shall minimise disruption to the normal operations of HSBC (including the operations of other parties employed by HSBC) and shall comply with the instructions given by HSBC's representatives at the Premises. The Supplier shall comply with the site and security regulations relating to the Premises and with HSBC's then-current Health and Safety Guidelines for Contractors, a copy of which may be obtained from HSBC on request.

9.2 All electrical portable equipment to be used by the Supplier at the Premises must conform to the Electricity at Work Regulations 1989 or any comparable legislation in the relevant jurisdiction in which the Services are performed or Goods are provided.

9.3 The Supplier shall immediately remove from the Premises any Supplier Personnel who fail to comply with HSBC's orders, the regulations and codes of practice relating to Health and Safety or in the sole opinion of HSBC has been guilty of misconduct or has been negligent or incompetent. Compliance with this obligation shall not constitute a valid reason for the Supplier's failure to comply with any obligation in accordance with, and at the time required by the Contract.

## 10. OWNERSHIP OF MATERIALS

10.1 All Intellectual Property Rights in all drawings, designs, patterns, specifications, samples, materials, tools and other data provided by HSBC in connection with the Contract, shall vest in and remain at all times the property of HSBC and be used by the Supplier solely for the purpose of the Contract and all copies thereof shall be sent if requested to HSBC on completion of the Contract.

10.2 The Supplier hereby irrevocably and absolutely assigns (and shall procure that all Supplier Personnel irrevocably and absolutely assign) by way of present assignment of future rights where applicable and with full title guarantee to HSBC (or such other HSBC Group Member nominated by HSBC) all Intellectual Property Rights in any Deliverables and all other Intellectual Property Rights created in the performance of the Services for the full term of such rights (including any extensions and renewals) throughout the world, to the intent that all such Intellectual Property Rights shall belong absolutely to HSBC (or the relevant HSBC Group Member).

10.3 The Supplier shall procure the irrevocable and unconditional waiver of all moral rights (or similar rights) in the Deliverables or otherwise arising in the performance of the Services or, if HSBC so elects, shall procure that any such moral rights (or similar rights) are exercised only as HSBC shall direct.

10.4 The Supplier shall take all steps necessary to ensure HSBC and their respective licensees and transferees may use the Deliverables and receive the Services without restriction of any kind.

10.5 The Supplier may only use the Deliverables as strictly necessary to provide the Services to HSBC in accordance with the Contract.

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

10.7 The Supplier warrants, represents and undertakes that: (i) the Deliverables shall contain only original work of the Supplier or work of which the Supplier is entitled freely to assign the title; and (ii) in particular (but without limitation) no Deliverable shall at any time contain, be derived from, use, incorporate, embed, link to, combine with or otherwise include any Open Source Software.

10.8 The Supplier represents, warrants and undertakes to HSBC that any Deliverables (including any source code) and Services do not and shall not if used by HSBC constitute an infringement or misappropriation of any Intellectual Property Rights of any third party and the Supplier shall perform its

responsibilities under the Contract in a manner that does not constitute an infringement or misappropriation of any Intellectual Property Rights of any third party.

10.9 The Supplier shall fully and effectively indemnify and keep indemnified, HSBC and the HSBC Group Members from and against any and all losses, liabilities, damages and expenses (including legal fees on a full indemnity basis) incurred by or awarded against HSBC as a result of, or in connection with, any claim for infringement of any Intellectual Property Rights relating to any Deliverables (including any source code) or Services provided by or on behalf of the Supplier under the Contract.

## 11. PAYMENT

11.1 The Purchase Price for the Goods shall be the price set out in the Order and shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by HSBC. No extra charges shall be effective unless agreed in writing and signed by HSBC.

11.2 The Charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by HSBC, such Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

11.3 Valid invoices for payments due in respect of Goods and/ or Services supplied shall be payable in Australian Dollars by HSBC within forty two (42) days from date of receipt of invoice subsequent to full completion of delivery to HSBC's satisfaction or, as the case may be, pursuant to acceptance as set out in condition 6. Payment shall be by electronic funds transfer (or equivalent) and the Supplier shall provide HSBC with its relevant account details.

11.4 The Purchase Price and all Charges are expressed exclusive of value added tax or other equivalent tax which shall be charged in accordance with applicable tax legislation. Where the Purchase Price or the Charges are subject to value added tax or any other tax or duty, invoices shall comply with applicable tax legislation and the tax amount rendered as a separate item of account. If it does not do so, the invoice shall not be treated as correct for the purposes of clause 11.3.

11.5 In the event of late payment by HSBC of any undisputed sums due and payable (and provided HSBC has been given at least fifteen (15) days' written notice to cure such late payment), the Supplier reserves the right to charge interest in respect of the undisputed late payment at the rate of one percent (1%) per annum above the base rate from time to time of HSBC (or if HSBC does not have a base rate then the base rate of the Bank of Australia) from the due date thereof until judgment (or if earlier the date on which payment is received by the Supplier).

11.6 The Supplier agrees to indemnify and keep HSBC and the HSBC Group Members indemnified in respect of any claims or demands which may be made by the relevant authorities against HSBC in respect of income tax or National Insurance payments relating to the provision of Goods and/or Services by the Supplier.

## 12. TERMINATION

12.1 The Contract shall commence on the date set out in the Order or (if no such date is specified) on the acceptance of the Order pursuant to clause 3.1 and shall (without prejudice to condition 12.2) subsist: (i) for the duration of the period of the Contract specified in the Order; or (ii) until the date on which all Goods have been delivered and accepted and all Services have been provided to the satisfaction of HSBC; or (iii) until terminated in accordance with this clause 12, whichever shall first occur.

12.2 HSBC may terminate the Contract and, at its option, the provision of any Goods and/ or Services:

(i) at any time by giving the Supplier notice in writing signed by a duly authorised person for and on behalf of HSBC, and in such case a fair and reasonable price shall be paid for all Goods and/or Services completed or expressly committed to at the time of cancellation but subject thereto HSBC shall not be liable for any loss (including consequential loss) caused to the Supplier whether directly or indirectly by any such termination;

(ii) if the Supplier is in material breach of any of its obligations under the Contract and either the breach is incapable of remedy or the Supplier has not remedied such breach within thirty (30) days of written notice requiring it to remedy that breach; or

(iii) immediately on written notice if the Supplier becomes insolvent or has a receiver, administrative receiver, administrator or similar officer appointed or applies for or has called a meeting of creditors or resolves to go into liquidation (except for a bona fide amalgamation or reconstruction while solvent where the resulting entity agrees to be bound by and assumes the Supplier's obligations under the Contract) or has a petition lodged against it in relation to any potential insolvency

which is not successfully opposed within thirty (30) days of being lodged or an application is made to appoint a provisional liquidator of the Supplier or for an administration order or notice of intention to appoint an administrator is given or a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with or assignment for the benefit of any of the Supplier's creditors, or any event analogous to any of the foregoing occurs in any jurisdiction other than England in respect of the Supplier or if the Supplier ceases or threatens to cease to carry on business.

12.3 The Supplier shall have the right without prejudice to its other rights or remedies, to terminate the Contract with immediate effect by written notice to HSBC if HSBC is in material breach of any of its obligations under the Contract and either the breach is incapable of remedy or HSBC has not remedied such breach within thirty (30) days of written notice requiring it to remedy that breach.

### **13. CONSEQUENCES OF TERMINATION**

13.1 Termination or expiry of the Contract, however caused, shall be without prejudice to any obligations or rights of either of the parties which may have accrued before termination or expiry and shall not affect any provision of the Contract which is expressly or by implication intended to come into effect on, or to continue in effect after, such termination or expiry.

13.2 Subject to clause 13.4 upon termination or expiry of the Contract, each party shall promptly return any property (including Confidential Information) of the other which it has in its possession or control.

13.3 Upon termination of this Contract clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13.4 Without prejudice to any other right or remedy of HSBC under the Contract, in the event of the expiry or any termination of the Contract for any reason whatsoever, HSBC may keep copies of all or any Deliverables or other products or documents delivered under the Contract for archival and/or regulatory purposes as stipulated by any regulatory body that has authority over HSBC (or to whose rules and guidance HSBC is accustomed to comply), and the Supplier shall procure that such party is entitled to retain such Deliverables, products or documents for such purposes.

13.5 Upon termination or expiry of the Contract the Supplier shall promptly repay HSBC as a debt due all Charges paid for Services which are not performed before the date of termination or expiry or any Purchase Price paid for Goods that have not been delivered and the Supplier shall, for no charge, cooperate with any transfer of the Supplier's obligations for the provision of the Services or delivery of the Goods from the Supplier to a third party.

### **14. LIABILITY**

14.1 Neither HSBC nor any HSBC Group Member shall be liable to the Supplier in tort (including negligence), breach of contract, breach of statutory duty or otherwise due to, under and/or arising out of or in connection with the Contract if and to the extent that the loss or damage in respect of which such liability arises or is claimed to arise falls within any of the following categories: (i) loss of profits; (ii) loss of revenue or business; (iii) loss of goodwill or reputation; (iv) loss of or corruption or damage to data; (v) consequential, indirect, special or punitive loss or damage; in each case whether or not HSBC had been advised of the possibility of such loss, corruption or damage.

14.2 Where the Contract includes the delivery of Services by the Supplier, in relation to the provision of those Services, the aggregate liability of HSBC and the HSBC Group Members to the Supplier in respect of the Contract in tort (including negligence), breach of contract, breach of statutory duty or otherwise shall not exceed a sum equal to one hundred percent (100%) of the Charges paid or payable in respect of the calendar year in which the claim (or first in a series of connected claims) occurred.

14.3 Where the Contract includes the supply of Goods, in relation to the provision of those Goods, the aggregate liability of HSBC and the HSBC Group Members to the Supplier in respect of the Contract in tort (including negligence), breach of contract, breach of statutory duty or otherwise shall not exceed a sum equal to 100% of the Purchase Price paid or payable in respect of those Goods.

14.4 The limitations in this clause 14 shall not apply to the liability of HSBC to pay any undisputed Charges or Purchase Price that have become properly due and payable.

14.5 HSBC shall be entitled to recover from the Supplier damages in respect of any liability of the Supplier to an HSBC Group Member arising out of or relating to the Contract as though the relevant loss or damage had been suffered by HSBC.

14.6 Notwithstanding any provision of the Contract no limit on or exclusion of liability shall apply to claims for death and personal injury arising out of the negligence of the defaulting party, fraudulent misrepresentations, any breach of the warranty in condition 0 (Computer Viruses), any breach of or any claims

for indemnity under condition 10 (Ownership of Materials), or any breach of the obligations of confidentiality under condition 15 (Confidential Information).

### **15. CONFIDENTIAL INFORMATION**

15.1 Each of HSBC and the Supplier shall (and shall procure that its personnel shall): (i) keep confidential all Confidential Information of the other party; (ii) not disclose or transfer to any third party (other than as permitted hereunder) any Confidential Information; and (iii) not use (including by making unnecessary copies) other than as strictly necessary for the performance of the Contract any Confidential Information of the other party.

15.2 The Supplier shall not remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices properly placed or embedded by any HSBC Group Member on or in any of its Confidential Information.

15.3 The Supplier shall not disclose the making of the Contract in any journal, magazine or other publication or any other medium or use HSBC's name or logo (including any trade mark) in any of its advertising or publicity material without HSBC's prior written consent, which may be withheld or given in HSBC's absolute discretion.

15.4 The Supplier shall hold all materials, equipment and tools, drawings, specifications and data supplied by HSBC to the Supplier ("**HSBC Materials**") in safe custody at its own risk, maintain HSBC Materials in good condition until returned to HSBC, and not dispose or use HSBC Materials other than in accordance with HSBC's written instructions.

15.5 The Supplier shall not infringe any copyright, patent, trade mark, trade name, registered design or any other intellectual property right vested from time to time in HSBC.

15.6 This condition 15 shall survive the termination of the Contract.

### **16. SUPPLIER'S SECURITY OBLIGATIONS**

16.1 When providing the Services and, where applicable, delivering the Goods the Supplier undertakes to comply with industry best IT security practice.

16.2 The Supplier shall ensure that it implements and maintains appropriate security controls, in compliance with HSBC's IT security standards, to ensure the confidentiality and integrity of all data and information belonging to HSBC or any HSBC Group Member which may be delivered to, generated by or otherwise used or processed by or on behalf of the Supplier or may otherwise come into the possession or control of the Supplier or the Supplier Personnel ("**HSBC Data**"), and warrants and represents that such appropriate security controls are, and shall remain, operational and effective.

16.3 Without prejudice to the generality of the foregoing, the Supplier shall ensure that all HSBC Data is protected at all times, in such manner as is consistent with the data security classification applicable to such data, from corruption and from unauthorised access and interference both while such HSBC Data is within the possession and control of the Supplier and while (if transmission is consistent with the classification of such HSBC Data and is strictly required for the purpose of performing the Services) it is in transit across a network (whether public or private).

16.4 The Supplier confirms that it shall comply with any additional requirements in relation to data integrity, handling or storage which HSBC may from time to time reasonably request

### **17. ELECTRONIC DOCUMENTS**

17.1 The parties to the Contract agree to be bound by Electronic Documents and specifically agree that: no written document shall be required in order to make an Electronic Document legally binding notwithstanding any requirement in law; and that no signature shall be required in order to make an Electronic Document legally binding. All Electronic Documents must identify the sender and recipient(s) and must include a means of verifying their completeness and authenticity. The parties to the Contract agree that an Electronic Document shall be deemed delivered when it is issued by the sender. Each party accepts the integrity of all Electronic Documents and agrees to accord these the same status as would be applicable to information sent other than by electronic means, unless such Electronic Documents can be shown to have been corrupted as a result of technical failure of any applicable machine, system or transmission line. Where there is evidence that an Electronic Document has been corrupted or if any Electronic Document is identified or capable of being identified as incorrect it shall be re-transmitted by the sender as soon as practicable with a clear indication that it is a corrected Electronic Document.

17.2 Each party to the Contract agrees, in the event of a dispute, to make available to the other party the record of its receipt of Electronic Documents. The parties shall not, in the event of litigation between them or otherwise, challenge the admissibility of the information so provided as evidence. The sender is responsible and liable for the completeness and accuracy of each Electronic Document it sends. The recipient must immediately inform the sender of any transmission error such as unintelligible or garbled transmission or of any error which is reasonably obvious to the recipient in order to enable the sender to

take corrective actions.

17.3 Subject to any requirements of applicable data protection laws and the confidentiality undertakings in the Contract, each of the parties to the Contract shall:

- (i) take reasonable care to ensure that Electronic Documents are secure, and to prevent unauthorised access to its systems; and
- (ii) treat as confidential and not provide or otherwise make available the whole or any portion of the other party's network procedures, passwords or computer telephone numbers to any person other than its employees on a strict "need to know basis".

#### **18. FORCE MAJEURE**

Neither party to the Contract shall be liable for any delays or failures attributable to its being affected by an Event of Force Majeure, but the party so affected shall use best endeavours to resume performance as quickly as possible and shall promptly give the other party full particulars of the failure or delay and consult with the other party concerning the failure or delay from time to time as appropriate. If any such delay or failure on the part of the Supplier continues for a period of three (3) months, or for sixty (60) days in any one hundred and twenty (120) day period, HSBC shall be entitled to terminate the Contract, and the provision of any Goods, Services and/or any Deliverables immediately on giving written notice to the Supplier.

#### **19. NOTICES**

Any notice required by the Contract to be given by either party to the other shall be in writing and shall be served by fax, express post or courier and shall be deemed (in the absence of evidence of earlier receipt) to have been delivered (in the case of post or courier) forty-eight (48) hours after despatch to the relevant address indicated on the Order or (in the case of fax) on the first working day following its despatch provided notification of a successful and complete transmission is obtained.

#### **20. ASSIGNMENT**

20.1 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of HSBC.

20.2 HSBC may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

#### **21. ENTIRE AGREEMENT**

The provisions of the Contract constitute the entire agreement between HSBC and the Supplier in relation to their subject matter and, except as otherwise expressly provided, supersede any and all prior agreements, representations, statements, negotiations and undertakings between the parties relating to such matters.

#### **22. GENERAL**

22.1 Except where otherwise explicitly agreed, all right and remedies granted in the Contract are cumulative and not exclusive of any other remedy or right in the Contract or at law, and no exercise of any right or remedy shall restrict or prejudice any further exercise of it.

22.2 Where the Supplier has incurred any liability to HSBC under or in connection with the Contract, without limiting its other rights or remedies, HSBC may set-off the amount of such liability against any sum that would otherwise be due to the Supplier by HSBC (whether under the Contract or otherwise).

22.3 No relaxation, forbearance, delay or negligence by either HSBC or the Supplier in enforcing any provision of the Contract or in exercising any right or remedy to which it is entitled under the Contract or the granting of time by either party to the other party shall constitute a waiver or prejudice, affect or restrict the rights and powers of that party. No waiver of any provision of the Contract shall be effective unless made in writing and signed by the party against which enforcement of the waiver is sought and communicated to the other party in accordance with condition 19) (Notices). The waiver of any breach of the Contract shall not be constitute a waiver of any subsequent or other breach, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any

other right or remedy.

22.4 The Supplier shall ensure that it maintains complete and accurate records pertaining to this Contract.

22.5 The Supplier shall, upon request and reasonable prior notice, provide to or procure for HSBC and/or internal and/or external auditors and/or examiners and/or regulators of HSBC and/or any HSBC Group Member, copies of the Supplier's records pertaining to the transactions contemplated under the Contract including records of time spent and materials used by the Supplier in providing the Goods and/ or Services.

22.6 The Supplier shall comply with any request of HSBC for information relating to the Services and Deliverables that may be required by HSBC to enable it to comply with any general regulatory requirements applicable to HSBC and/or any HSBC Group Member and also in relation to the US Sarbanes-Oxley Act of 2002 (and any resultant, similar or replacement legislation, rules or guidance).

22.7 No variation to the Contract, including any additional terms and conditions, shall be effective unless in writing signed by a duly authorised officer of each of HSBC and the Supplier.

22.8 The Supplier shall, at its sole cost and expense, do and/or procure to be done all such further acts and things and execute and/or procure the execution of all such other documents as HSBC may from time to time reasonably require for the purpose of giving HSBC the full benefit of the provisions of the Contract and for the fulfilment of the Supplier's obligations under the Contract.

22.9 If any provision (or any part of any provision) of the Contract is held by a court or any other competent authority to be invalid, illegal or unenforceable and can be deleted without altering the essence of the Contract, the invalid, illegal or unenforceable provision shall be severed and the remaining provisions shall remain in full force or effect. If the invalid, illegal or unenforceable provision cannot be deleted without altering the essence of the Contract, the parties shall immediately commence good faith negotiations to remedy such invalidity, illegality or unenforceability (as appropriate).

22.10 Save for HSBC Group Members a person who is not a party to the Contract has no right to enforce any term of the Contract.

#### **23. EMPLOYEES**

23.1 Nothing in the Contract shall be construed as or have the effect of constituting any relationship of employee and employer between the Supplier and HSBC.

23.2 Where the Contract includes the provision of services, the Contract shall not be a contract of employment. Accordingly, the Supplier shall be responsible for the payment of all remuneration payable to and benefits provided for the Supplier Personnel under his or her contract of employment, including (without limitation), making appropriate PAYE (or equivalent) deductions for tax and national insurance contributions from the remuneration which it pays to the Supplier Personnel.

23.3 The Supplier shall indemnify and keep HSBC and the HSBC Group Members indemnified against all other liability, loss, damage, cost, claim or expense which HSBC or the relevant HSBC Group Member suffers or incurs as a result of any claims against HSBC for sums and other claims arising out of the Supplier and/or any Supplier Personnel being found to be an employee of HSBC, including any employment costs or the costs of the termination of any such employment, whether before, on or after the termination or expiry of the Contract.

23.4 The Supplier shall not during the period of the Contract and for six months thereafter, approach, or induce with offers of employment, directly or indirectly, any HSBC staff it comes into direct contact with in performing its duties under the Contract whilst supplying the Goods or providing the Services without the prior written agreement of HSBC.

#### **24. GOVERNING LAW**

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall in all respects be governed by and construed in accordance with the laws of New South Wales and the parties hereto irrevocably submit to the non-exclusive jurisdiction of the Courts of New South Wales in respect of the same.

September 2013