

Regulatory Terms for Material and Critical Contracts

1. INTRODUCTION

This Annex is intended to ensure that the Supplier's provision of the Services complies with the third party vendor management requirements applicable to material and critical services, as imposed by the relevant Regulatory Authority.

2. DEFINITIONS

2.1 For the purpose of this Schedule the following terms shall have the following meanings:

Approved Subcontractor: means the third parties specified in Appendix 1.

Designated Location: means the locations set out in Appendix 2 from which the Supplier shall provide all or part of the Services and/or process HSBC Information.

Disaster means a situation which significantly impacts on or affects: (a) the Supplier's ability to perform the Services (or any part of them) in accordance with the Agreement; and/or (b) HSBC's (and/or any HSBC Group Member) ability to receive and/or obtain the benefit of the Services.

Investigatory Powers: the information gathering and investigatory powers of Regulatory Authorities under Applicable Laws, including the powers described in Article 63(1)(a) of Directive 2014/59/EU and Article 65(3) of Directive 2013/36/EU, in each case as implemented by national law.

Interim Period: for each Resolution Event, a period of twelve months after the date that the Resolution Event commenced (or any longer period required by any Regulatory Authority).

Regulatory Breach: any breach, or suspected breach, by a Supplier Affiliate or any Supplier Personnel of any Applicable Laws or any development, act, omission, event or circumstance that has or might put any HSBC Group Member in breach of Applicable Laws.

Service Failure: any breach of the Agreement by the Supplier which has or is likely to have an adverse effect on any HSBC Group Member or on the provision of any of the Services.

Service Level: a level of performance or delivery of the Services (or part of them) specified in paragraph 4 of this Annex 2.

Supplier Affiliate: (1) Supplier and any entity which at any time is Supplier's ultimate holding company or a subsidiary of such ultimate holding company and (2) any entity over which at any time any of the entities defined in paragraph (1) of this definition either directly or indirectly exercises significant influence, even though it may own less than 50% of the shares.

Virus: means program code, programming instruction or set of instructions intentionally constructed with the ability to damage, destroy, disable, interfere with or otherwise adversely affect computer programs, data files or operations or other code typically designated to be a virus, worm, trojan horse, time lock or time bomb or anything similar.

2.2 Unless otherwise indicated any defined term that is not defined within this paragraph shall have the meaning provided in the Agreement.

2.3 Unless the context otherwise required in the event of conflict between any parts of the Agreement and this Annex 2, the order of precedence shall be:

- (a) this Annex 2;
- (b) the Agreement,
- (c) save where such an order of priority would reduce the rights of HSBC under the Agreement (in which case the terms of this Annex 2 shall only be applied to the extent that the terms of this Annex 2 provide HSBC with any additional rights over and above those under the Agreement.

3. LOCATIONS

The Supplier shall supply the Services from the Designated Locations. The Supplier shall not allow the Services to be supplied from, or HSBC Information to be processed in, a country other than a Designated Location without obtaining HSBC's prior written consent.

4. SERVICE LEVELS

4.1 The Services shall be provided in accordance with the Service Levels detailed in Appendix 4 to this Annex 2.

4.2 If there is a Service Failure, the Supplier shall promptly at its own cost, without prejudice to HSBC's other rights and remedies:

- (a) notify HSBC of such Service Failure;
- (b) investigate the underlying causes and preserve any data indicating the cause thereof and provide details of such causes to HSBC and advise HSBC of the proposed plan to rectify the Service Failure. The Supplier shall amend the plan to reflect any reasonable comments raised by HSBC;
- (c) take whatever action is necessary to minimise the impact of the Service Failure and/or prevent it from recurring;
- (d) advise HSBC of the status of remedial efforts being undertaken with respect to the underlying cause of the Service Level Failure and regularly keep HSBC advised;
- (e) correct the Service Failure and resume performance in accordance with the Agreement.

4.3 The Supplier shall provide HSBC with monthly reports detailing the achievement of the Service Levels and the Suppliers performance of the Services. The reports shall contain sufficient details to allow HSBC to monitor and verify the Suppliers performance.

5. INFORMATION SECURITY PRACTICES

5.1 Supplier shall conduct third-party penetration testing and vulnerability scanning of the Services, including evidence of data isolation in any multi-tenant services, and provide HSBC with a summary report upon request. Any contract between Supplier and third-party testers must require sound management of penetration testing results and ensure that any processing of those results does not create risks for HSBC.

- (a) HSBC may conduct (or appoint a third party to conduct) vulnerability and penetration testing of the Services and Supplier shall participate in and fully cooperate with those tests.

5.2 If any penetration testing identifies a security failure or that Supplier has failed to perform its obligations under this Agreement, HSBC may require Supplier to rectify the relevant failures and, where HSBC reasonably considers the failure as significant and which is not remedied within 30 days, HSBC shall be entitled to terminate the Agreement on written notice.

5.3 The Supplier shall promptly notify HSBC of (and manage) any security incidents which relate to the unauthorised disclosure of (or access to) HSBC Information, while in the Supplier's (or their sub-contractor's) control and assist HSBC in relation to any security incidents at Supplier's expense.

5.4 The Supplier shall ensure that no Virus is coded or otherwise introduced into the Supplier Systems or into any systems used and/or owned by any HSBC Group Member as a result of the acts or omission of the Supplier, its staff or contractors. Should a Virus be found the Supplier shall take all immediate action necessary to eliminate the Virus, and should the Virus have caused any loss to operational efficiency or HSBC Information then the Supplier shall provide all assistance required to mitigate such loss or damage.

5.5 The Supplier shall ensure that:

- (a) HSBC, and the HSBC Group Members, are promptly able to access, extract and download all HSBC Information in the control of the Supplier or any Approved Contractors in a commercially reasonable readily available, market standard and comprehensible electronic format throughout the Term, which shall include any Insolvency Event;

- (b) HSBC Information is segregated and compartmentalised from that of the Supplier and its other clients and ensure that HSBC will have access to it if the Supplier ceases to provide, or is no longer able to provide, the Services.
 - (c) cybersecurity awareness training is provided at least annually to all its staff, from senior to junior levels, and is followed by assessments to assess whether staff are equipped with a strong cybersecurity awareness culture.
- 5.6 To the extent that HSBC considers it necessary for the Supplier's provision of the Services, the Supplier shall take part in relevant IT security or operational resilience training provided by HSBC.

6. BUSINESS CONTINUITY

- 6.1 The Supplier shall maintain and comply with a comprehensive business continuity and disaster recovery plan in accordance with Good Industry Practice which:
- (a) complies with ISO 22301 standards;
 - (b) is appropriate for the Services;
 - (c) has been approved by HSBC in writing either prior to [Date] or within [x] months of [Date]; and
 - (d) details the processes and arrangements the Supplier shall follow to ensure continuity of the Services and to anticipate, withstand, respond and recover from a Disaster and set out the business processes and operations of HSBC Group Members on which the Services depend, (the BCDR Plan)
- 6.2 The Supplier shall test the BCDR Plan at least once every 12 months and, where reasonably required, support testing of HSBC's own business continuity plans relating to the Services. The Supplier shall provide HSBC with the test results within 10 days of receiving them, with sufficient detail to enable HSBC to understand the results. Where such testing shows deficiencies in the BCDR Plan, the Supplier shall update the plan as required to remedy these, with such updates being agreed with HSBC. The Supplier shall provide HSBC with an updated plan and in doing so confirm what amendments have been made.
- 6.3 The Supplier shall immediately notify HSBC and implement the BCDR Plan on the occurrence of a Disaster.
- 6.4 The Supplier shall provide assistance and co-operation with HSBC, or such HSBC Group Member, in connection with HSBC's own business continuity and disaster recovery arrangements related to the Agreement, including participating in scenario testing.

7. CO-OPERATION

- 7.1 The Supplier shall co-operate fully with the HSBC, any third party supplier and each HSBC Group Member, in each case to the extent necessary to perform the Services in accordance with this Agreement and to resolve any issues relating to technical and/or operational matters relating to the Services and/or this Agreement.
- 7.2 The Supplier shall, without prejudice to the other requirements of this paragraph:
- (a) co-operate fully with each Regulatory Authority having jurisdiction over HSBC (or any HSBC Group Member) and any person appointed by a Regulatory Authority;
 - (b) make available on request to HSBC and/or any Regulatory Authority all information necessary to enable such Regulatory Authority to supervise the performance of the Services in accordance with all Relevant Laws or as otherwise requested by a Regulatory Authority; and
 - (c) provide any Regulatory Authority with any information, or comply with any request made by such Regulatory Authority in exercise of its Investigatory Powers.
- 7.3 The Supplier shall:
- (a) ensure that it has in place consistent and effective internal risk management and internal audit policies;
 - (b) avert identified risks, and/or potential failures in performance of the Agreement, and demonstrate to HSBC that the risks have been averted; and
 - (c) ensure that the Supplier's staff are appropriately trained to use the internal risk management and internal audit policies.
- 7.4 The Supplier shall, with respect to the Services and the Agreement, carry out as a minimum once per annum, an internal audit to ensure the adequacy of and compliance with its internal risk management and internal audit policies, including a comprehensive internal audit of its provision of the Services. The Supplier shall store and record all documentation and information relating to such internal audits and risk analysis.

8. GOVERNANCE

- 8.1 HSBC shall be entitled to monitor the Supplier's performance of its obligations under the Agreement, and the parties shall:
- (a) hold quarterly meetings to discuss the performance of the Services, including discussion of topics reasonably proposed by HSBC;
 - (b) an annual meeting to assess the Supplier's performance and wider relationship of the parties, both parties shall ensure that the stakeholders attending have appropriate seniority; and
 - (c) such other meetings that would be reasonably expected for a Service of this nature.

9. AUDIT AND RECORDS

- 9.1 The Supplier shall, upon written request, provide to HSBC, a HSBC Group Member, their representatives (including internal or external auditors), Regulatory Authorities and any persons appointed by any of them (**Auditing Body**), unrestricted rights of inspection, access and audit the Supplier, Supplier Affiliates' and each of their Supplier Personnel's, information (including financial information), property, systems, data, devices, networks, business premises, materials, equipment, resources or such other assets as required to enable monitoring of the provision of the Services and the Suppliers compliance with the Agreement.
- 9.2 HSBC shall give the Supplier reasonable prior notice of any intended on-site audit, except in circumstances where such notice:
- (a) is not possible due to an emergency or crisis;
 - (b) would lead to a situation where the audit would no longer be effective; or
 - (c) where HSBC is aware of or has reasonable grounds to suspect fraud or a breach of the Agreement or where an audit or other inspection is required or requested by law of any Regulatory Authority.
- 9.3 Without prejudice to HSBC's other rights and remedies, if a significant issue is identified (an **Audit Default**) Supplier will immediately, at its own cost:
- (a) develop a plan to rectify the Audit Default (the Rectification Plan), amended in accordance with HSBC's reasonable comments; and
 - (b) report progress to HSBC as agreed in the Rectification Plan.
- 9.4 The Rectification Plan may not be materially changed without HSBC's prior written consent.

- 9.5 To the extent any third party or the Supplier certifications or audit reports are used in support of HSBC's rights in paragraph 7, HSBC may expand the scope of such certifications or audit reports and request any additional information as may be reasonably required.
- 9.6 The Supplier shall keep records to show compliance with its obligations under the Agreement during the Term for 7 years from the date of creation, or such other period as required by the Relevant Law, and shall provide such information to HSBC upon request.

10. COMPLIANCE WITH APPLICABLE LAWS

10.1 The Supplier shall:

- (a) comply, and ensure that the Supplier Personnel and its subcontractors comply with Applicable Laws, including Data Protection Legislation;
- (b) assist HSBC as may be reasonably required to investigate or correct any Regulatory Breach (including taking all steps, at its cost, necessary to minimise the impact of any Regulatory Breach).

10.2 The Supplier shall notify HSBC immediately in writing of:

- (a) any development or circumstance which may have a material or adverse impact on delivery of the Services in accordance with the Agreement, Service Levels, Applicable Laws and/or the requirements of a Regulatory Authority, including where such impact is the result of an Approved Subcontractor;
- (b) any breach or suspected breach of Applicable Laws by the Supplier or Approved Subcontractor;

10.3 The Supplier shall monitor any proposed changes to Applicable Laws, develop plans to accommodate such changes and notify the HSBC of such changes and plans. The Supplier shall not withhold or delay its consent to a change to the Agreement or any Services requested by HSBC, or HSBC Group Member, to enable compliance with the Applicable Law or any instruction, guidance, notification or other communication from a Regulatory Authority where such change is technically possible (**Mandatory Change**). Subject to HSBC's approval, the Supplier shall develop all Mandatory Changes and implement the same within an agreed planned maintenance window.

11. INSURANCE

11.1 The Supplier shall take out and maintain for the term as defined in the Agreement and 6 years following expiry or termination, each insurance policy as set out in Appendix 3 with a reputable insurance company with good financial standing on customary terms for the insurance market.

11.2 The Supplier shall on request promptly furnish evidence of such insurance policies.

12. SUB-CONTRACTING

12.1 The Supplier shall not (and shall procure that the Approved Subcontractors shall not) without the prior written consent of HSBC:

- (a) subcontract any part of the Agreement nor permit any subcontractor to process or store HSBC Information (other than to an Approved Subcontractor providing the elements of the Services and processing HSBC Information to the extent specified in Appendix 1);
- (b) change the Approved Subcontractors; or
- (c) change the subcontracting in a material way.

12.2 The Supplier will provide reasonable notice, being no less than 3 months or such other period of notice specified in Appendix 1, of any request to implement any of 12.1(a)-(c) above. Such notice will detail the Services, the proposed subcontractor (including financial standing and qualifications), results of due diligence, and any such further information that HSBC may require.

12.3 Notwithstanding any approved subcontracting, Supplier shall:

- (a) maintain oversight and control of its subcontractors in accordance with the requirements of the Agreement and to ensure that the obligations of the Agreement are continuously met; and
- (b) ensure there is a formal written agreement that is substantially similar to the terms of the Agreement, which for the avoidance of doubt shall include:
 - (i) clear definition of the subcontracted services;
 - (ii) require compliance with all Applicable Laws, HSBC Code of Conduct, and HSBC Data and Security Requirements;
 - (iii) reflects the audit right granted under this Agreement; and
 - (iv) does not permit further sub-contracting of material elements of the Service.

12.4 If HSBC reasonably demonstrates that a subcontractor's failure to perform threatens the performance of the Services, HSBC may require Supplier to remove or replace the subcontractor.

12.5 The Supplier represents and undertakes that it has and will continue to have (a) the ability and resources to oversee the subcontracted Services (including in line with relevant policies) and (b) robust testing, monitoring and controls over its subcontracting. The Supplier shall, with respect to each Approved Subcontractor, carry out appropriate due diligence and monitoring in accordance with Good Industry Practice and shall:

- (a) on an annual basis, review the Approved Subcontractors financial standing and review their performance to ensure the agreement is being complied with;
- (b) promptly on request of HSBC provide due diligence, risk assessment, reports, testing and reviews conducted on the Approved Subcontractors; and
- (c) without prejudice to HSBC's other rights and remedies ensure that any failings identified in the subcontracts and Approved Subcontractors controls are promptly rectified.

12.6 Without prejudice to any other of HSBC rights or remedies, HSBC may terminate the Agreement in whole or in part immediately for cause by written notice to Supplier if:

- (a) Supplier is in breach of any obligation under this paragraph; or
- (b) any change in connection with subcontracting in HSBC's reasonable opinion poses a material risk to HSBC.

12.7 The Supplier shall not terminate or amend its contract with any Approved Subcontractor in a way which would or may materially or adversely affect the provision of the Services without HSBC's prior written consent.

13. ENHANCED TERMINATION

13.1 HSBC may, without prejudice to its other rights and remedies, terminate the Agreement in whole or in part immediately by written notice if:

- (a) the Supplier commits a material or persistent breach of the Agreement (for the purpose of this paragraph only a persistent breach shall be considered to be any combination of breaches which when considered together would amount to a material breach);
- (b) the Supplier commits a Critical Failure of the service levels in the Agreement;
- (c) the Supplier, or any member of the Supplier Group, is affected by an Insolvency Event, or in HSBC's reasonable opinion is likely to be affected by an Insolvency Event;

- (d) a breach of the confidentiality provisions contained in the Agreement;
- (e) HSBC considers, in its absolute discretion, that:
 - (i) impediments capable of altering the performance of Supplier's obligations under the Agreement are identified; and/or
 - (ii) termination is required by any rule, guidance or instruction by a Regulatory Authority or any Applicable Laws, or continuing with the Agreement would cause any HSBC Group Member to breach the Applicable Laws;
 - (iii) there are material changes adversely affecting the provision of any of the Services, Approved Sub-contractor and/or the Supplier;
 - (iv) the Supplier is in breach of Applicable Law;
 - (v) termination is necessary in the interests of any HSBC Group Member's clients; or
 - (vi) there are weaknesses regarding the management and security of Confidential Information, Personal Data and/or other sensitive data or information; or
- (f) there is a change of Controlling Interest in the Supplier.

13.2 Termination of the Agreement in whole or in part for any reason shall be without prejudice to any rights which may have accrued up to the end of the Term.

14. TRANSITION AND TERMINATION ASSISTANCE

14.1 The Supplier shall maintain and comply with an exit plan ("**Exit Plan**") which shall detail the processes and arrangements required on exit (including both stressed and non-stressed scenarios) to ensure an orderly handover of the Services in the event of expiry or termination for any reason. Such Exit Plan shall be written by Supplier and agreed by HSBC.

14.2 The Supplier shall review, update and test the Exit Plan on a regular basis (and in any event no less than every 12 months and prior to any material change to, or impact the, Services), including updating the Exit Plan to take into account lessons learned from testing. The Supplier shall on completion of testing promptly provide the test results to HSBC. Changes to the Exit Plan shall only be made with both parties prior written consent.

14.3 The Supplier shall provide such reasonable assistance and cooperation required by HSBC in connections with planning, testing, updating and implementation of HSBC's own exit strategy.

14.4 Without prejudice to any obligations that Supplier may already have under the Agreement, if reasonably required by HSBC, the Supplier shall continue to provide the Services for such further period as HSBC may require following termination or expiry of the Agreement provided that the duration is no longer than 12 months after the effective date of termination or expiry (**Termination Assistance Period**), during which period HSBC shall pay the Supplier the undisputed charges for the relevant Services in accordance with the Agreement, and the terms of such Agreement shall continue to apply.

14.5 In the event of expiry or termination for any reason, the Supplier shall:

- (a) implement the Exit Plan, support HSBC in the orderly transfer of Services, provide full assistance and co-operation, including to any successor supplier, as required by HSBC to ensure continued provision of the Services during the Termination Assistance Period and a smooth handover of the Services;
- (b) not take any action to alter, remove or delete HSBC data, without HSBC's consent;
- (c) use all reasonable endeavours to ensure transition of responsibility for the provision of the Services to HSBC or the successor supplier, so as to ensure there is no detrimental effect on the quality of the Services;
- (d) make available to HSBC a suitably qualified and skilled representative to oversee the transfer of the Services; and
- (e) answer all reasonable questions from HSBC or the successor supplier.

14.6 The Supplier shall take all necessary steps to ensure that HSBC can continue to access HSBC Information for reasonable period in the event of an Insolvency Event, a Resolution Event or the discontinuation of Supplier's business operations.

15. CONFLICTS

15.1 The Supplier shall ensure that during the Term no conflict of interest shall exist or arise in the performance of its obligations under the Agreement between the Supplier, its Approved Subcontractors and the HSBC Group Member, nor shall any circumstances exist or arise which may restrict the Supplier's performance under this Agreement.

15.2 If during the Term any such conflict, restriction, risk of conflict or risk of restriction arises, the Supplier shall provide notice to HSBC in writing immediately. If HSBC have reasonable grounds for believing that the Supplier is in breach of this paragraph it shall notify the Supplier and if the Supplier cannot refute those grounds within 30 days then it shall be considered a material breach which is incapable of remedy and HSBC shall be entitled to terminate the Agreement.

15.3 Supplier shall not be in breach of this paragraph merely because Supplier provides services and/or products similar to the Services to other customers including customers in the financial services industry.

16. SUPPLIER PERSONNEL

16.1 HSBC may require the replacement of any Supplier Personnel if in its reasonable opinion the Supplier Personnel in question has failed or is likely to fail to meet the requirements set out in this Agreement or is otherwise inappropriate. The Supplier shall promptly arrange for the removal of such Supplier Personnel and shall replace them with personnel acceptable to HSBC.

16.2 HSBC may, without prejudice to its other rights and remedies, terminate this Agreement (in whole or in part) immediately by written notice if the Supplier persistently provides Supplier Personnel who in the reasonable opinion of HSBC fail or are likely to fail to meet the requirements set out in this Agreement or are otherwise inappropriate.

17. INVOICING

17.1 No invoice shall be payable if it is received by HSBC more than twelve (12) months after receipt of the relevant Services.

18. AMENDMENTS

Amendments to this Annex shall only be effective if they are made in writing and executed by both parties, in accordance with the provisions detailed in the Agreement.

Appendix 1 to Annex 2

Approved Subcontractors

Approved Sub-contractor	Registered Company Address	Element of Services to be provided	Notice period for change

Appendix 2 to Annex 2

Designated Location

Service element	Approved location	Scope of access to and process of HSBC Information
■		[Insert]
		[Insert]

Appendix 3 to Annex 2

Insurance

1. INSURANCE POLICIES

1.1 The Supplier shall procure and maintain the following insurance policies in accordance with paragraph 11 (Insurance) of this Annex 2:

Policy Type	Minimum Cover Limit
<i>[Insert types and amounts of insurance required; examples are set out below]</i>	
[Professional indemnity insurance]	[£] million per occurrence and unlimited in respect of the number of occurrences covered by such insurance during any one insurance period]
[Public liability insurance, including cover for bodily injury and property damage arising in connection with the Agreement, including as a result of the acts or omissions of any Supplier Affiliate and/or any Supplier Personnel]	[£] million per occurrence and unlimited in respect of the number of occurrences covered by such insurance during any one insurance period]
[Employer's liability insurance, including cover for legal liability to make payment in respect of death, personal injury and/or disability]	[£] million per occurrence and unlimited in respect of the number of occurrences covered by such insurance during any one insurance period]

Appendix 4 to Annex 2

Service Levels

[insert detailed description of any service levels - these must be precise enough to allow effective monitoring, both in terms of quantity and quality]

[if applicable, insert or cross-reference the service credit mechanism]

[Example wording: "Availability service level – The Services shall be available 24 hours a day, 7 days a week."]