

Dated [●] 2018

BANKING COMPETITION REMEDIES LIMITED

and

[COMPANY]

INCENTIVISED SWITCHING AGREEMENT

THIS AGREEMENT is made on

2018

BETWEEN:

- (1) Banking Competition Remedies Limited, a company limited by guarantee incorporated in England with registered number 11001491 and whose registered office is at [●] (the “**IB**”); and
- (2) [**COMPANY**] a [public / private] company incorporated in [●] with registered number [●] and whose registered office is at [●] (the “**Company**”).

WHEREAS:

- (A) The Company has applied for and been accepted by the IB for participation in the IS Scheme, subject to the terms set out in this Agreement.
- (B) The IB has been established in order to facilitate and oversee the delivery of the IS Scheme in accordance with the terms set out in this Agreement.
- (C) The Company has agreed to take such steps and comply with such obligations, undertakings, indemnities and commitments in favour of the IB and RBS relating to the IS Scheme as set out in this Agreement.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“**Account**” means [**Company to insert details of relevant account**];

“**Anti-Money Laundering Regulations**” means the Money Laundering Regulations 2007 (SI2007/2157) together with the Guidance Notes for the Financial Sector issued by the Joint Money Laundering Steering Group and any other relevant guidance issued by a regulatory authority or industry body;

“**Applicable Law**” means any and all law (whether civil, criminal or administrative), common law, statutes, statutory instruments, treaties, conventions, directives, regulations or rules made thereunder, by-laws, demands, decrees, injunctions, resolutions, orders or judgments in any applicable jurisdiction, including the PRA Rules, the FCA Rules and any related or similar rules of any other Authority, in each case which is binding on the relevant person or in respect of the relevant matter as the context requires;

“**Application Documents**” means the application form and Switching Proposal submitted by the Company in support of an application to participate in the IS Scheme;

“**Assessment Information**” has the meaning given in Clause 3.19;

“**Assessment Period**” has the meaning given in Clause 3.18;

“**Authority**” means (i) any government, (ii) any governmental or quasi-governmental authority, body, agency or association, (iii) any supranational, federal, state or local government, (iv) any statutory or regulatory body, agency or association, (v) any Tax Authority and (vi) any court, tribunal or other judicial body;

“**BCA**” means an account marketed to businesses rather than individuals, which provides the facility to hold deposits, receive and make payments by cheque and/or debit card, use automated teller machine facilities and make regular payments by direct debit and/or standing order, but does not include an account in which money is held on deposit in a currency other than the official currency of the United Kingdom or an account in which credit funds are held and offset against mortgage debt or a loan (other than an overdraft facility);

“**BCA Element**” has the meaning given in the Dowry Calculation Schedule;

“**BCA Threshold**” has the meaning given in the Dowry Calculation Schedule;

“**Branch Access**” means the proposal under which RBS (or one of its subsidiaries, being The Royal Bank of Scotland plc, National Westminster Bank plc or Adam & Company plc) would offer to provide cash and cheque handling services in certain of its RBS and NatWest-branded branches in England, Scotland and Wales to Transferring Target Customers on the terms and subject to the conditions set out in an Inter-Bank Agency Deed;

“**Business Day**” means any day (other than a Saturday or Sunday) on which clearing banks are open for business in London;

“**CASS**” has the meaning given to it at Clause 3.2;

“**Company Offering**” has the meaning given to it at Clause 3.6(A);

“**Confidential Information**” has the meaning given to it at Clause 16.1;

“**Contact Details**” means any contact details of Target Customers which RBS provides to the Company pursuant to the IS Communication Framework;

“**Data Controller**” has the meaning given to it in the Data Protection Legislation;

“**Data Protection Legislation**” means: (i) the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (ii) the General Data Protection Regulation (2016/679); and (iii) any other similar applicable national privacy law;

“**Data Security Breach**” has the meaning given to it at Clause 12.13;

“**Data Transfer Agreement**” means the standard contractual clauses for the transfer of Personal Data (or other information relating to Target Customers) outside of the United Kingdom or European Economic Area, or such other agreement for the transfer of Personal Data (or other information relating to Target Customers) as RBS may approve;

“**Deed of Priority**” means a deed substantially in the form set out in Schedule 5 to be entered into between RBS or another member of the Group and the Company in respect of any sharing of security between the Group and the Company;

“**Dowries**” has the meaning given in the Terms & Conditions, and “**Dowry**” shall be interpreted accordingly;

“**Dowry Calculation Schedule**” means Schedule 3 to this Agreement, as amended by the IB and communicated to the Company from time to time;

“**Eligibility Criteria**” has the meaning given in the Terms & Conditions;

“**FCA**” means the United Kingdom Financial Conduct Authority or any successor regulatory body;

“**FCA Rules**” means any rules and guidance made by the FCA under FSMA and set out in the FCA’s handbook of rules and guidance as amended from time to time, and includes any rules and guidance made by any successor regulatory body;

“**Fees Waiver Schedule**” has the meaning given to it at Clause 3.12;

“**FSMA**” means the Financial Services and Markets Act 2000, including any regulations made pursuant thereto;

“**Group**” means RBS, its subsidiaries and subsidiary undertakings, any holding company of RBS and all other subsidiaries and subsidiary undertakings of any such holding company from time to time;

“**Helpline**” has the meaning given to it at Clause 3.22;

“**HMRC**” means Her Majesty’s Revenue & Customs;

“**In-Flight Customer**” means a Target Customer which has applied to the Company to participate in the IS Scheme but has not yet become a Transferring Target Customer;

“**Inter-Bank Agency Deed**” means a deed substantially in the form set out in Schedule 4 to be entered into between RBS (or one of its subsidiaries, being The Royal Bank of Scotland plc, National Westminster Bank plc or Adam & Company plc) and the Company in respect of Branch Access;

“**IS Commencement Date**” means the date on which RBS first markets the IS Scheme, together with the Company Offering or such similar offering of any other company, to any Target Customer;

“**IS Communication Framework**” means the communication framework set out in Schedule 2 to this Agreement in respect of the communication of the IS Scheme to Target Customers, as amended from time to time by agreement between RBS and the IB and as communicated by the IB to the Company;

“**IS Scheme**” means the proposal pursuant to which the Company may be provided with funds, on the terms set out in this Agreement, to be used to encourage Target Customers to switch products and services from RBS to the Company;

“**Loan Element**” has the meaning given in the Dowry Calculation Schedule;

“**Loan Threshold**” has the meaning given in the Dowry Calculation Schedule;

“**Material Breach**” has the meaning given to it at Clause 7.3;

“**Minimum Information Security Requirements**” means the Group’s minimum information security requirements for the protection of confidential information and personal data, as notified to the Company from time to time;

“**Non-Compliance Notice**” has the meaning given to it at Clause 3.5;

“**Permitted Retention Period**” has the meaning given to it at Clause 12.10;

“**Personal Data**” means any personal data (as such term is defined in the Data Protection Legislation) as processed under this Agreement;

“**PRA**” means the United Kingdom Prudential Regulation Authority (as defined by FSMA), or any successor regulatory body;

“**PRA Rules**” means any rules and guidance made by the PRA under FSMA and set out in the PRA’s handbook of rules and guidance as amended from time to time, and includes any rules and guidance made by any successor regulatory body;

“**Privacy Shield**” means the Privacy Shield scheme and principles operated by the US Department of Commerce, and approved by the European Commission, or any replacement scheme and principles approved by the European Commission for that purpose from time to time;

“**RBS**” means The Royal Bank of Scotland Group plc, a public company incorporated in Scotland with registered number 45551 and whose registered office is at 36 St Andrew Square, Edinburgh, Scotland EH2 2YB;

“**Relevant Communication Period**” has the meaning given to it at Clause 3.10(B);

“**Representatives**” means: (i) in the context of RBS and its Group, the directors, officers, employees, agents, professional advisers and third party contractors of RBS and its Group; (ii) in the context of the IB, the directors, officers, employees, agents, professional advisers and third party contractors of the IB; and (iii) in the context of the Company, the directors, officers, employees, agents and professional advisers of the Company;

“**Restrictions**” has the meaning given to it at Clause 5.1;

“**Review Meeting**” has the meaning given to it at Clause 6.2;

“**Revised Switching Proposal**” has the meaning given to it at Clause 6.1;

“**Switching Proposal**” means the switching proposal submitted by the Company in support of an application to participate in the IS Scheme and attached as Schedule 6 to this Agreement;

“**Target Customer**” has the meaning given in the Terms & Conditions;

“**Tax**” includes all forms of taxation and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies and any charges, deductions or withholdings, in each case in the nature of taxation, imposition, duty, contribution or levy, whether of the United Kingdom or elsewhere in the world, whenever imposed and whether chargeable directly or primarily against or attributable directly or primarily to any person and all penalties, charges, costs and interest relating thereto;

“**Tax Authority**” means any government, state, municipal, local, federal or other fiscal, revenue, customs or excise authority, body or official anywhere in the world having the power to impose, collect or administer any Tax or exercising a fiscal, revenue, customs or excise function with respect to Tax (including, without limitation, HMRC);

“**Term**” means 18 months from the IS Commencement Date or such later date as may be communicated by the IB to the Company from time to time¹;

“**Terms & Conditions**” means the terms and conditions set out in Schedule 1 to this Agreement in respect of the IS Scheme, as amended from time to time by the IB and communicated by the IB to the Company;

“**Transferring Target Customer**” has the meaning given in the Terms & Conditions;

“**Turnover**” has the meaning given in the Dowry Calculation Schedule;

“**Turnover Band**” has the meaning given in the Dowry Calculation Schedule;

“**VAT**” means: (i) value added tax as provided for in Directive 2006/112/EC and charged in accordance with the provisions of the VATA 1994; and (ii) any tax of a similar nature which is introduced in substitution for or in addition to the tax referred to in (i);

“**VATA 1994**” means the Value Added Tax Act 1994; and

“**Working Hours**” means 9.00 am to 5.00 pm on a Business Day.

1.2 In this Agreement, unless otherwise specified:

- (A) references to clauses, sub-clauses and schedules are to clauses and sub-clauses of, and schedules to, this Agreement;
- (B) the words “include” and “including” shall be deemed to be followed by the phrase “without limitation”;

¹ [Note: Term at the time of entry to any IS Agreement must not extend beyond the anticipated termination date of the IS Scheme.]

- (C) headings and sub-headings in this Agreement are included for ease of reference only and shall not affect the interpretation of this Agreement;
 - (D) any reference to a “person” shall be construed so as to include any individual, firm, company, corporation, body corporate, government, state or agency of a state, local or municipal authority or governmental body or any joint venture, association or partnership (whether or not having separate legal personality);
 - (E) any reference to a statute, statutory provision or rules or regulations made thereunder shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, re-enacted or replaced;
 - (F) the expressions “subsidiary” and “subsidiary undertaking” shall have the meaning given in the Companies Act 2006;
 - (G) any reference to any other document is a reference to that document as amended, varied or supplemented at any time;
 - (H) any reference to a “day” shall mean a period of 24 hours running from midnight to midnight;
 - (I) the rule known as the *ejusdem generis* rule shall not apply and accordingly general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
 - (J) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.
- 1.3 The schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the schedules
- 1.4 Reference in this Agreement to RBS shall be read as including, where applicable, a reference to any relevant subsidiary of RBS undertaking the relevant activity within the Group and, in this context, any obligation on RBS shall be read as including, where applicable, an obligation on RBS to procure that the relevant subsidiary complies with the relevant obligation.

2. EFFECTIVENESS

All provisions of this Agreement shall have full force and effect upon execution and delivery of this Agreement by the parties to it.

3. IS SCHEME

- 3.1 Subject to and in accordance with the provisions of this Agreement and the Terms & Conditions the IB shall make Dowry payments to the Company in accordance with the Dowry Calculation Schedule in respect of any Transferring Target Customer.
- 3.2 The transfer of Target Customers shall be performed, as far as reasonably practicable, in accordance with current business-as-usual customer switching propositions and, to the extent possible, through the Current Account Switch Service (“**CASS**”). The Company shall agree in good faith such switching propositions with RBS. Any failure of RBS and/or the Company to agree such procedures in good faith shall be referred to the IB which shall investigate such failure and take such action as it may deem necessary or desirable. Any decision of the IB shall be final and binding on the Company.
- 3.3 During the Term, the Company shall review its arrangements with respect to CASS and take such other steps as shall be necessary to ensure that it shall be able to operate the IS Scheme in respect of the transfer of BCAs through CASS.
- 3.4 If the IB at any time determines that the Company is failing to comply with the Eligibility Criteria, the Terms & Conditions or the IS Communication Framework, the obligations of the IB pursuant to this Agreement shall be suspended until such time as the IB determines the Company to be in full compliance.
- 3.5 The IB shall notify RBS and the Company promptly of any determination pursuant to Clause 3.4, setting out in reasonable detail the areas of non-compliance (“**Non-Compliance Notice**”).
- 3.6 The Company accepts and agrees that:
- (A) all of the Company’s communication materials in respect of the IS Scheme (the “**Company Offering**”) shall be supplied by the Company to the IB prior to such Company Offering being made available to any Target Customers and in compliance with the specifications and timelines provided for in the IS Communication Framework from time to time;
 - (B) the Company is solely responsible for its Company Offering;
 - (C) the IB and RBS bear no responsibility for any material distributed and the IB or RBS may refuse the distribution of any materials in order to comply with ongoing obligations to RBS’s customers, including RBS’s internal policy considerations and/or Applicable Laws;
 - (D) RBS shall be entitled to: (i) use, distribute, publish, copy and otherwise reproduce (in each case, in whole or in part) any copyrights subsisting in, or otherwise protecting, the Switching Proposal and the Company Offering (each as may be updated by the Company from time to time); and (ii) use the Company’s name, trade marks and logos used by the Company in connection with the Switching Proposal and the Company Offering, in each case, for the sole purpose of RBS making communications (in any medium,

including telephone calls, in-branch prompts, contact from relationship managers, email, microsites, post, text messages and digital capability) to relevant Target Customers in relation to the Company's products and incentives to be offered to relevant Target Customers by the Company in accordance with the IS Communication Framework;

- (E) the Company Offering will at all times make switching offers to Target Customers which are materially better, taking into account the Dowries, than offers which are made by the Company to new customers or customers which might switch their banking products to the Company (other than through the IS Scheme);
- (F) the IB and RBS shall have no liability in relation to a failure or refusal to communicate the Company Offering to Target Customers where the Company Offering does not comply with the IS Communication Framework or is otherwise not in compliance with Applicable Law; and
- (G) if, following the transfer of any Target Customer products to the Company, RBS retains any existing secured credit exposure to such Target Customer, RBS shall not be obliged to release such security and the Company will enter into a Agreement of Priority with RBS, whereby RBS will rank first in the order of priority, substantially in the form set out in Schedule 5.

3.7 The IB agrees to review the Company Offering and notify the Company within ten Business Days of any deficiency therewith prior to such Company Offering being made available to any Target Customers. The Company agrees to incorporate such comments into the Company Offering as the IB may request.

3.8 The IB agrees to monitor RBS's communication of the IS Scheme and the Company Offering to Target Customers in accordance with the IS Communication Framework.

3.9 The IB shall communicate the IS Communication Framework in respect of Target Customers to the Company from time to time. The Company accepts and agrees that, during the term of the IS Scheme, the IB may amend:

- (A) the Dowry Calculation Schedule, including the formula for making any Dowry payments;
- (B) the IS Communication Framework;
- (C) the Eligibility Criteria;
- (D) the Terms & Conditions; and/or
- (E) the Term.

3.10 The IB agrees that any amendments made pursuant to Clause 3.9 shall:

- (A) be communicated to the Company and RBS promptly and, in any event, reasonably in advance of such amendments taking effect; and
 - (B) only take effect from the start of the following communication period (the “**Relevant Communication Period**”) as set out in the IS Communication Framework from time to time.
- 3.11 The Company agrees that, following any amendment made pursuant to Clause 3.9, it shall review its Company Offering and, if desired or necessary, shall submit a revised Company Offering to the IB for review in accordance with Clauses 3.6(A) and 3.7. The Company agrees that it shall submit such revised Company Offering to the IB for review within such timeframes as the IB may determine and communicate to the Company. The Company acknowledges and agrees that if it does not submit a revised Company Offering to the IB for review within such timeframes (and in any event by no later than the date falling fifteen Business Days prior to the start of the Relevant Communication Period), the IB shall be under no obligation to consider or approve such revised Company Offering for the purposes of the Relevant Communication Period.
- 3.12 The IB agrees that, from time to time, it shall communicate to the Company a schedule setting out: (i) those break fees or other costs in respect of loans or other financial products held by a Target Customer that will be waived or reimbursed by RBS in the event that the Target Customer chooses to transfer such loan or other financial product to the Company; and (ii) where applicable, the procedure by which such fees and/or costs will be reimbursed by RBS (the “**Fees Waiver Schedule**”). No other fees and/or costs (other than those communicated by the IB to the Company in accordance with (i)) shall be waived or reimbursed by RBS as a direct or indirect result of a Target Customer transferring from RBS to the Company pursuant to the IS Scheme.
- 3.13 If and to the extent that it is necessary for a Target Customer’s Contact Details to be provided to the Company in connection with the operation of the IS Scheme:
- (A) if a Target Customer has consented and its Contact Details have been provided to the Company, the Company shall use reasonable efforts to: (i) establish contact with such Target Customer(s); and (ii) discuss its Company Offering in good faith with a view to the transfer of that Target Customer to the Company; and
 - (B) the Company accepts and agrees that contact with a Target Customer shall be limited to such contact as is necessary in relation to the IS Scheme and the transfer of any other relevant banking relationship that such Target Customer may have with RBS.
- 3.14 The IB shall notify the Company in writing:

- (A) of the aggregate amount of BCA Element and Loan Element distributed to all eligible bodies under the IS Scheme promptly following the end of each three calendar month period (beginning on [date]²);
 - (B) promptly upon becoming aware that the total aggregate amount of Loan Element paid by the IB to all eligible bodies under incentivised switching agreements between the IB and other eligible bodies, is equal to or exceeds 90% and 95% of the Loan Threshold; and
 - (C) promptly upon becoming aware that the total aggregate amount of BCA Element paid by the IB to all eligible bodies under incentivised switching agreements between the IB and other eligible bodies, is equal to or exceeds 90% and 95% of the BCA Threshold.
- 3.15 Upon notification by the IB to the Company, communication of the IS Scheme to Target Customers shall cease and the Company agrees to cease any independent communication of its Company Offering in connection with the IS Scheme.
- 3.16 The Company may at any time notify the IB in writing that it wishes for the Group to offer Branch Access to the Transferring Target Customers of the Company on reasonable commercial terms and conditions and in accordance with the terms of the Inter-Bank Agency Deed, to be provided on such terms for up to three years from IS Commencement Date and thereafter on such terms as may be agreed between the Company and the Group. Upon receipt of such notification, the IB shall use reasonable endeavours to procure that RBS (or one of its subsidiaries, being The Royal Bank of Scotland plc, National Westminster Bank plc or Adam & Company plc) enters into the Inter-Bank Agency Deed with the Company as soon as reasonably practicable.
- 3.17 Promptly following the end of each three calendar month period (beginning on [date]³), the IB shall notify the Company in writing of:
- (A) the aggregate number of Target Customers sent communication materials in respect of any participant Company in the IS Scheme; and
 - (B) the aggregate number of Target Customers who have consented to participation in the IS Scheme.
- 3.18 Within five Business Days of the end of each calendar month period (beginning with the first full first calendar month occurring after the date of this Agreement) (each an “**Assessment Period**”) and at such other times as the IB may request (acting reasonably), the Company shall, at its own cost, provide to the IB in writing:
- (A) the aggregate number of Target Customers who have become Transferring Target Customers;

² [Note: insert the next quarter date following the date of this Agreement.]

³ [Note: insert the next quarter date following the date of this Agreement.]

(B) if applicable, a list (amalgamated by reason(s) for rejection and by Turnover Band) of Target Customers who have been rejected from becoming customers of the Company during the relevant calendar month and an explanation (in reasonable detail) of the reason(s) for such rejection(s); and

(C) the aggregate number of In-Flight Customers.

3.19 Within five Business Days of the end of each Assessment Period (beginning with the first Assessment Period occurring after the date on which the first Dowry payment is made pursuant to this Agreement) and at such other times as the IB may request (acting reasonably), the Company shall, at its own cost, provide to the IB in writing:

(A) the proportion of the relevant Dowry payment that has been paid directly to Transferring Target Customers during the relevant Assessment Period and a brief explanation of how any remaining amounts of the Dowry payment have been applied for the benefit of Transferring Target Customers; and

(B) any additional information requested by the IB which is, in the opinion of the IB, necessary or desirable in order for the IB to assess the Company's compliance with the terms of this Agreement,

((A) and (B), together with Clauses 3.18(A) to (C), being the "**Assessment Information**").

3.20 The Company shall provide to the IB evidence to the IB's satisfaction in support of the Assessment Information and such other information as the IB may reasonably request.

3.21 The Company represents and warrants (on the date of this Agreement and on each date on which any Assessment Information and/or supporting evidence is provided by the Company to the IB), that the Assessment Information and any evidence provided by the Company to the IB in support of the Assessment Information is true, accurate and complete and not misleading.

3.22 The IB shall use reasonable endeavours to procure that a dedicated helpline to support Target Customers who are interested in transferring to the Company will be provided by RBS (the "**Helpline**"). The Company shall provide the IB with such details and information as may be requested by the IB in connection with the Helpline. The Company acknowledges and agrees that no advice or information on the Company Offering or any other product offering of the Company will be provided by the Helpline.

3.23 Save as expressly set out above, the rights and obligations of the IB, RBS and the Company pursuant to this Clause 3 shall automatically terminate at the end of the Term.

4. **COMPANY'S WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

4.1 The Company represents and warrants to the IB that:

(A) it has the requisite capacity, power and authority to enter into and perform this Agreement and that its obligations under this Agreement constitute valid

and binding obligations of the Company in accordance with their respective terms;

- (B) the execution and delivery of, and the performance by the Company of its obligations under, this Agreement will not result in a breach of any order, judgment or decree of any court or governmental agency or regulatory body by which the Company is bound;
- (C) all information provided in the Application Documents, Company Offering and all other information provided by the Company to the IB in connection with the IS Scheme is true, accurate and complete and not misleading and that there has been no material change in its circumstances since the date on which such information was provided to the IB;
- (D) all expressions of opinion, intention and expectation contained in the Application Documents, Company Offering and any other information provided by the Company to the IB in connection with the IS Scheme are made on reasonable grounds after due and careful enquiry and consideration and are fairly based and honestly held;
- (E) there are no other facts known to the Company the omission of which would: (i) make any statement or expression contained in the Application Documents, Company Offering or any other information provided by the Company to the IB in connection with the IS Scheme misleading in any material respect; or (ii) affect the decision of the IB to make any payments under this Agreement; and
- (F) the Switching Proposal and Company Offering complies with Applicable Law.

4.2 The Company undertakes and agrees:

- (A) to comply with Applicable Law in respect of any Target Customers which become Transferring Target Customers;
- (B) not to make any unauthorised statement or representation in relation to the IS Scheme;
- (C) not to engage in any conduct which, in the IB's opinion, is or may be prejudicial to the functioning of the IS Scheme.

5. USE OF DOWRIES

5.1 The Company agrees to and accepts the Terms & Conditions. In particular, the Company agrees that:

- (A) it shall use Dowries for the benefit of the Transferring Target Customers and in the manner contemplated in its Switching Proposal and Company Offering and in accordance with the Terms & Conditions; and

- (B) no more than 50% of any Dowry in respect of a Transferring Target Customer with a Turnover of more than £1 million may be paid in cash to such Transferring Target Customer during the first 12 months of it becoming a Transferring Target Customer,

(such requirements being the “**Restrictions**”).

6. UPDATES TO THE SWITCHING PROPOSAL

- 6.1 If the Company considers that it is necessary or desirable to make a change to the Switching Proposal at any time, the Company shall notify the IB in writing of this fact and provide the IB with a copy of the updated switching proposal proposed by the Company (the “**Revised Switching Proposal**”).
- 6.2 If the Company provides the IB with a Revised Switching Proposal pursuant to Clause 6.1, the IB may request a meeting with representatives of the Company in order to consider the Revised Switching Proposal (the “**Review Meeting**”).
- 6.3 The Company will be treated as having represented and warranted at the time of provision of any Revised Switching Proposal that:
 - (A) all information provided in any Revised Switching Proposal and all other information provided by the Company to the IB in connection with any Revised Switching Proposal is true, accurate and complete and not misleading;
 - (B) all expressions of opinion, intention and expectation contained in any Revised Switching Proposal and any other information provided by the Company to the IB in connection with such Revised Switching Proposal are made on reasonable grounds after due and careful enquiry and consideration and are fairly based and honestly held;
 - (C) there are no other facts known to the Company the omission of which would make any statement or expression contained in any Revised Switching Proposal and all other information provided by the Company to the IB in connection with any Revised Switching Proposal misleading in any material respect;
 - (D) the Revised Switching Proposal does not omit any material information which would reasonably be required in order for the IB to appraise the Revised Switching Proposal; and
 - (E) the Revised Switching Proposal complies with Applicable Law.
- 6.4 The IB shall consider any Revised Switching Proposal and shall assess such Revised Switching Proposal (including against the requirements set out in the Terms & Conditions). The Company shall provide the IB with any additional information requested by the IB which is, in the opinion of the IB, necessary or desirable in order for the IB to assess the Revised Switching Proposal.

- 6.5 The IB may, at its sole discretion, approve or reject any Revised Switching Proposal and shall notify the Company of its decision within 10 Business Days of: (i) the date on which the Company submitted the Revised Switching Proposal if no Review Meeting is held; or (ii) the Review Meeting.
- 6.6 If the IB approves any Revised Switching Proposal:
- (A) any reference in this Agreement to the Switching Proposal shall be read as referring to such Revised Switching Proposal; and
 - (B) the representations and warranties set out in Clause 6.3 shall be deemed to be repeated by the Company on the date on which the IB approves such Revised Switching Proposal.
- 6.7 If the IB does not approve any Revised Switching Proposal:
- (A) the Company may continue to use the Dowries in accordance with the previous Switching Proposal; and
 - (B) if the Company is unable to continue to use the Dowries in accordance with the previous Switching Proposal, the Independent Body may request the repayment (in full or in part) of any Dowries paid pursuant to this Agreement (in which case the Company shall make such repayment (together with interest at an annual interest rate equal to the Bank of England base rate, compounded quarterly and accruing from the date on which the IB made the relevant payment to the Company until the date of repayment) within five Business Days of the date of the demand).

7. AUDIT RIGHTS AND CLAWBACK

- 7.1 Subject to Clause 7.2, at the IB's request upon reasonable notice to the Company during the Term, the Company shall grant, and shall procure that all relevant members of its group grant to the IB or its Representatives access during normal business hours to all premises, records, officers, employees, agents and Representatives of the Company, to the extent necessary or desirable for the purpose of:
- (A) verifying whether any Dowries paid by the IB to the Company have been used in the manner contemplated in the Switching Proposal or Company Offering and in accordance with the Restrictions;
 - (B) assessing whether the Company has complied with its obligations under this Agreement; and/or
 - (C) verifying the Assessment Information.
- 7.2 The IB shall only request an audit pursuant to Clause 7.1 if it believes that:

- (A) any Dowries paid by the IB to the Company have not been used in the manner contemplated in the Switching Proposal or Company Offering and in accordance with the Restrictions;
 - (B) the Company has not complied with its obligations under this Agreement; or
 - (C) the Assessment Information is not true, accurate and complete or is misleading.
- 7.3 If, in the opinion of the IB, any audit carried out by or on behalf of the IB pursuant to Clause 7.1 reveals any material breach of this Agreement (which shall include any failure to use any Dowries paid by the IB to the Company in accordance with the Restrictions and any breach of Clause 4.2) (a “**Material Breach**”), the Company shall, on demand, reimburse the IB in full for any costs and expenses incurred in carrying out or having carried out such audit (including the costs of the IB’s Representatives).
- 7.4 The IB shall procure that any person carrying out any inspection and/or audit pursuant to Clause 7.1 complies with all reasonable access and security regulations notified to such person at such time by or on behalf of the Company.
- 7.5 If the IB determines at its sole discretion (and whether or not an audit has been carried out in accordance with Clause 7.1) that there has been a Material Breach, the IB shall promptly notify the Company in reasonable detail of the Material Breach and may:
- (A) if such Material Breach is capable of remedy, require the Company to: (i) remedy the breach within twenty Business Days of the date on which the IB notifies the Company of the Material Breach (or such shorter period as the IB may determine); and (ii) promptly and in any event within five Business Days of the date of remedy of such Material Breach provide evidence to the satisfaction of the IB demonstrating that the Material Breach has been remedied;
 - (B) if the Material Breach is not capable of remedy or the Company has not provided the IB with evidence to the IB’s satisfaction that the Material Breach has been remedied within the period specified by the IB, request the repayment (in full or in part) of the relevant Dowries (in which case the Company shall make such repayment (together with interest at an annual interest rate of 8% above the Bank of England base rate, compounded quarterly and accruing from the date on which the IB paid such Dowries to the Company until the date of repayment) within five Business Days of the date of the demand); and
 - (C) require the Company to take such steps going forwards as the IB may consider necessary or desirable in the context of such Material Breach.

8. FINAL DETERMINATION

- 8.1 The Company accepts and agrees that any decision or determination of the IB under or in accordance with the terms of this Agreement (and the IS Communication Framework, the

Terms & Conditions, the Eligibility Criteria and/or the Dowry Calculation Schedule) shall be made at the absolute discretion of the IB and shall be final and binding on all parties. In this regard, the IB shall act as an expert and not an arbitrator and the provisions of the Arbitration Act 1996 shall not apply.

- 8.2 The Company accepts and agrees that it shall have no claims or right of recourse against the IB or RBS in respect of any determination or decision of the IB except as explicitly set out in this Agreement.

9. LIABILITY AND INDEMNITY

- 9.1 To the fullest extent permitted by law, the IB and RBS have no liability for any losses (including any loss of profit or indirect or consequential loss or any loss of goodwill or possible business after termination of this Agreement, whether actual or prospective), costs or expenses incurred by the Company and the Company shall have no claim against the IB or RBS except as expressly set out in this Agreement.

- 9.2 The Company shall indemnify RBS, the IB and their respective Representatives on demand and on an after-Tax basis from and against all loss, payments, costs, expenses, damage, actions, claims or demands (including any loss of profit or indirect or consequential loss or any loss of goodwill or possible business after termination of this Agreement, whether actual or prospective) which RBS, the IB and/or their respective Representatives may incur or suffer in relation to or arising out of:

- (A) the performance of its obligations under or in connection with this Agreement;
- (B) the content of (including any untrue statement contained in) the Company Offering or any other communication materials or conduct of the Company in relation to the IS Scheme;
- (C) the Company's use of the Personal Data of the Target Customer whether obtained from RBS, the Target Customer or otherwise (including any breach by the Company of its obligations in Clause 12);
- (D) any conduct of the Company in relation to a Target Customer;
- (E) any failure by the Company to comply with Applicable Law (including Data Protection Legislation), the terms of this Agreement (including any breach or alleged breach by the Company of the representations, warranties or undertakings contained or referred to in this Agreement or any circumstances which constitute such a breach), the IS Communication Framework or the Terms & Conditions;
- (F) any breach of, or failure by the Company to comply with, "know your customer" or other similar checks required under the Anti-Money Laundering Regulations and all other Applicable Laws in relation to any Target Customer that transfers to the Company;

(G) any matters relating to the treatment of a Target Customer after they have transferred any products or services to the Company; and/or

(H) the fraud, negligence or wilful default of the Company,

and, in each case, the Company shall reimburse RBS and/or the IB and/or their respective Representatives for any legal or other expenses reasonably incurred by such person in connection with investigating or defending any such action or claim as such expenses are incurred; provided that, in each case, the Company will not be liable to the extent that any such loss, payment, cost, expense, damage, action, claim or demand is proven to have arisen as a result of the fraud, gross negligence or wilful default of the person making the claim.

10. TERMINATION

10.1 Subject to Clause 10.2, the rights and obligations of the parties under this Agreement shall terminate automatically upon the expiry of the Term.

10.2 The rights and obligations of the Parties under Clause 9, 13 – 18, 20 and 22, together with any accrued rights and obligations, shall survive termination of this Agreement.

11. COSTS AND EXPENSES

11.1 Except as expressly set out in this Agreement, each of the IB and the Company shall pay their own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and the IS Scheme.

12. DATA PROTECTION

12.1 The Company acknowledges that it is a Data Controller in respect of any Personal Data (including Contact Details) made available to it by or on behalf of RBS. The Company acknowledges and agrees that it is not a joint controller with RBS for the purposes of the Data Protection Legislation and it and RBS do not determine the purposes and means of the processing jointly or carry out processing on behalf of one another.

12.2 The Company shall comply (and shall take reasonable steps to procure the compliance of its Representatives) with the Company's obligations under the Data Protection Legislation in connection with the processing of the Personal Data, including the obligations to provide fair processing notices, obtain any required marketing consent and respond to requests of data subjects.

12.3 The Company shall not do anything which would place RBS or any member of its Group in breach of the Data Protection Legislation and shall provide such reasonable assistance to RBS as RBS may reasonably require in order to comply with any inquiry of an Authority and/or to conduct privacy impact assessments. The Company acknowledges that RBS is not responsible for any processing of the Personal Data carried out by the Company or its Representatives.

- 12.4 The IB and the Company acknowledge that RBS is a Data Controller of any Personal Data collected in relation to its own customers (including any customers who have accounts with both the Company and RBS).
- 12.5 The Company shall not acquire any rights or interest in the Personal Data made available to it by RBS (including any Contact Details), and shall ensure that its employees, agents and sub-contractors shall only use such Personal Data for the purpose of contacting the applicable Target Customer about the IS Scheme.
- 12.6 The Company will not transfer any Personal Data (or other information relating to Target Customers) outside of the United Kingdom or the European Economic Area except with the prior written consent of RBS and in accordance with any terms RBS, acting reasonably, may impose on such transfer. As a condition of granting such consent, RBS may, among other requirements, require the Company to:
- (A) enter into an appropriate Data Transfer Agreement; or
 - (B) for transfers to the United States of America, ensure that the recipient has and continues to maintain a current, valid certification under the Privacy Shield program and complies with the Privacy Shield principles.

The foregoing provisions of this Clause 12.6 shall also apply to any further transfer of the Personal Data or other information relating to Target Customers.

- 12.7 In the event that the data transfer mechanism entered into under Clause 12.6 ceases to be valid, the Company shall use reasonable endeavours to enter into an appropriate alternative data transfer mechanism and/or procure that any relevant sub-contractor enters into a data transfer mechanism that complies with obligations set out in the Data Protection Legislation and, where applicable, that imposes obligations on the sub-contractor equivalent to those set out in the Company's alternative data transfer mechanism. If the Company is unable to enter into and/or procure that any relevant sub-contractor enters into an appropriate alternative data transfer mechanism, the Company shall: (i) at the Company's discretion, either return to RBS or destroy any Personal Data in its possession; and (ii) use reasonable endeavours to procure that its sub-contractors return to RBS or destroy any Personal Data in their possession.
- 12.8 The Company will not engage any processor to process Contact Details without RBS's prior written consent.
- 12.9 If the relevant Target Customer informs the Company, or RBS who in turn informs the Company, that it withdraws its consent to be contacted by the Company, the Company shall immediately cease all contact with that Target Customer in relation to the IS Scheme and shall erase or destroy all Personal Data relating to that Target Customer within one week of being informed of the withdrawal of consent. The erasure and/or destruction processes must adhere to the Minimum Information Security Requirements.
- 12.10 The Company agrees that it shall implement automated processes to enforce strict retention periods in relation to Personal Data made available to it by RBS. In particular, the Company shall ensure that Contact Details for an individual Target Customer shall not be

used or retained after the end of the Term (the “**Permitted Retention Period**”), if that Target Customer has not chosen to become a Transferring Target Customer Company before the end of the applicable Permitted Retention Period.

- 12.11 After the Permitted Retention Period, if the relevant Target Customer has not chosen to become a Transferring Target Customer Company, the Company shall erase or destroy all Personal Data relating to that Target Customer. The erasure and/or destruction processes must adhere to the Minimum Information Security Requirements.
- 12.12 The Company will implement and maintain appropriate technical and organisational measures to guard against unauthorised or unlawful processing of, and against accidental loss or destruction of or damage to, Personal Data or other information relating to customers of the Group. That shall include: (i) a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage, and the nature of the Personal Data or other information relating to customers of the Group to be protected; and (ii) any other reasonable and proportionate measures requested by RBS. Without prejudice to the foregoing, the Company will identify and protect at all times the confidentiality, integrity and availability of the Personal Data or other information relating to customers of the Group in accordance with the Minimum Information Security Requirements.
- 12.13 Upon any known actual or reported suspected breach of the Minimum Information Security Requirements or any obligations or duties owed by the Company to RBS or the IB (including under this Clause 12) relating to the confidentiality, integrity or availability of Personal Data or other information relating to customers of the Group (a “**Data Security Breach**”), the Company will, as soon as practicable, at its own expense:
- (A) investigate the Data Security Breach to seek to identify, prevent and mitigate the effects of the Data Security Breach and carry out any recovery or other action reasonably necessary to remedy the Data Security Breach;
 - (B) within one Business Day, notify the IB and RBS of the breach (and follow-up with a detailed description in writing, including (if known) the cause of the breach, remedial action taken and the potential consequences of the breach);
 - (C) conduct or support RBS in conducting computer forensic investigations and analysis that RBS reasonably requires; and
 - (D) implement any additional actions or remedial measures which RBS reasonably considers necessary as a result of the breach.
- 12.14 In the event of a Data Security Breach involving an actual compromise of the security, confidentiality or integrity of Personal Data or other information relating to RBS or the Group’s customers, including but not limited to any unauthorised access or use or any loss of Personal Data or such information:
- (A) the Company shall notify RBS and the IB of the type of data that was the subject of the Data Security Breach and the identity of each affected person

as soon as such information can be collected or otherwise becomes available. Except to the extent required to do so by Applicable Law (in which case the Company shall provide RBS with as much prior notice as is possible), the Company will not issue any filings, communications, notices, press releases, or reports related to any Data Security Breach which would lead to the identification of the RBS or any member of the Group without prior written approval from RBS;

- (B) the Company shall promptly return or delete all Personal Data and certify in writing that it has done so. Any deletion processes must adhere to the Minimum Information Security Requirements; and
- (C) RBS shall not be obliged to provide further Personal Data to the Company until the IB is satisfied that the Company has carried out all its obligations under Clause 12.10.

12.15 The Company shall provide RBS with such information, cooperation, access and assistance as is reasonably requested by RBS from time to time to demonstrate the Company's compliance with this Clause 12.

12.16 The provisions of this Clause 12 shall survive the term of this Agreement.

13. TAX MATTERS

13.1 All payments by the Company under or in connection with this Agreement shall be paid without any deduction or withholding, unless required by Applicable Law. If any Tax is required by Applicable Law to be deducted or withheld from or in connection with any such payment, the amount payable shall be increased so as to ensure that the amount received by the IB (after such deduction or withholding, including for the avoidance of doubt any additional deduction or withholding required as a result of such increase) is equal to the amount which the IB would have received if no such deduction or withholding had been required.

13.2 If the IB is subject to Tax in respect of any sum payable by the Company under or in connection with this Agreement (other than any sum of interest payable in accordance with Clause 6.7(B) or 7.5(B)) (a "**Relevant Payment**"), or if any such Relevant Payment is taken into account in computing the income, profits or gains of the IB for Tax purposes, the sum payable by the Company shall be increased so as to ensure that the amount retained by the IB (after the payment of such Tax, including for the avoidance of doubt any additional Tax payable as a result of such increase, and after giving credit for any Tax relief in respect of the matter giving rise to the Relevant Payment that will be obtained and utilised by the IB) is equal to the amount which the IB would have retained in the absence of such Tax.

13.3 Each sum payable by the Company under or in connection with this Agreement is expressed exclusive of any amount in respect of VAT however it arises. If the IB makes (or is deemed to make) any supply for VAT purposes for which such sum (or any part thereof) is in consideration and VAT is or becomes chargeable in respect of such supply, the Company shall pay to the IB (within 14 days of the receipt of a valid VAT invoice) an

additional sum equal to the amount of any VAT so chargeable for which the IB is liable to account.

14. NOTICES

14.1 Except as otherwise provided in this Agreement, a notice under this Agreement shall only be effective if it is in writing. E-mail transmissions are permitted.

14.2 Notices under this Agreement shall be sent to the postal address, number or email address and for the attention of the individual set out below:

<u>Party</u>	<u>Address</u>	<u>Email address</u>
IB	[address] Attention: [position]	[email]
Company	[address] Attention: [position]	[email]

14.3 Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

- (A) if delivered personally, on delivery;
- (B) if sent by first class post, two clear Business Days after the date of posting; and
- (C) if sent by email, when despatched.

14.4 Any notice given under this Agreement outside Working Hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of Working Hours in such place.

15. PUBLICITY

15.1 Subject to this Clause 15, the Company shall not (and shall procure that no member of its group shall) make, publish, issue or release any announcement or public statement in relation to, or which refers to, this Agreement, the IB in connection with this Agreement or the IS Scheme (including in any annual report and accounts or other documents issued or made available to the holders of securities, whether in electronic or paper written form, or in any oral announcement or statement).

15.2 Notwithstanding Clause 15.1, the Company (or any member of its group) may make, publish, issue or release such an announcement provided that:

(A) it is consistent in all respects with and otherwise reflects (and contains only information which has been contained in) any announcement or public statement which has previously been made by the IB or communication materials which have been publicly released by RBS; or

(B) it is in form and substance satisfactory to the IB.

16. CONFIDENTIALITY

16.1 The Company and the IB shall treat as confidential any information received or obtained by the Company as a result of entering into or performing this Agreement (“**Confidential Information**”).

16.2 The Company shall not:

(A) disclose any Confidential Information to any person other than to its Representatives who need to know such information in order to discharge their duties; or

(B) use any Confidential Information other than to exercise its rights or perform its obligations as set out in this Agreement.

16.3 The Company shall procure that any person to whom any such Confidential Information is disclosed by it complies with the restrictions contained in this clause as if such person were a party to this Agreement and have in place and maintain security measures and procedures to protect the confidentiality of Confidential Information.

16.4 The IB shall not:

(A) disclose any Confidential Information to any person other than to its Representatives; or

(B) use any Confidential Information other than to exercise or assist in exercising its rights or perform or assist in performing its obligations as set out in this Agreement.

16.5 The restrictions contained in Clauses 16.1 to 16.4 shall not prevent the IB from:

(A) announcing or otherwise disclosing: (i) the identity of the companies participating in the IS Scheme (including the Company); (ii) reasonable details of the offerings of such companies in connection with the IS Scheme (including the Company Offering); and/or (iii) any other information regarding the IS Scheme and the Company which the IB considers necessary or desirable in connection with the operation of the IS Scheme;

(B) disclosing Confidential Information to HMT (and/or any third party monitor appointed by HMT in connection with, amongst other things, Incentivised Switching) or RBS;

- (C) announcing or otherwise disclosing that the Company has committed a Material Breach, together with reasonable details of such Material Breach and any steps required by the IB and taken (or to be taken) by the Company in remedying such Material Breach; or
 - (D) announcing or otherwise disclosing that any Dowry has been (or will be) clawed back in whole or in part from the Company pursuant to Clause 7 and the reasons for the IB's decision to claw back such funds.
- 16.6 The restrictions contained in Clauses 16.1 to 16.4 shall not prevent RBS from announcing or otherwise disclosing: (i) the identity of the companies participating in the IS Scheme (including the Company); (ii) reasonable details of the offerings of such companies in connection with the IS Scheme (including the Company Offering); and/or (iii) any other information regarding the IS Scheme and the Company which RBS reasonably considers necessary or desirable in connection with the operation of the IS Scheme.
- 16.7 The restrictions in Clauses 16.1 to 16.4 shall not prevent either party from disclosing Confidential Information:
- (A) which is required by: (i) Applicable Law, or (ii) the rules of any securities exchange, clearing system or authority (including the PRA, the FCA and the European Commission) to which it is subject or submits;
 - (B) which is required by a Tax Authority in connection with the Tax affairs of the disclosing party;
 - (C) if and to the extent such disclosure is required or contemplated by the terms of this Agreement or strictly required in order to implement the Company Offering;
 - (D) if and to the extent required for the purpose of any judicial proceedings;
 - (E) if and to the extent the information has come into the public domain other than as a result of a breach of confidence or contractual obligations; and
 - (F) where the other party, and RBS, have agreed in advance to such disclosure.
- 16.8 The Company agrees that it will not (and will procure that members of its group and the respective Representatives of the Company and members of its group will not) make either orally or in writing, any disparaging or derogatory remarks concerning the Group, the IB, any of their Representatives or the IS Scheme. The Company further agrees that it will not (and will procure that members of its group and the respective Representatives of the Company and members of its group will not) take any action which could reasonably be expected to damage the reputation or be detrimental to or otherwise critical of the Group, the IB or any of their Representatives.
- 16.9 The restrictions contained in this clause shall continue to apply after the termination of this Agreement without limit in time.

17. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

- 17.1 Clauses 3, 8.2, 9, 12, 16 and 20 confer benefits on RBS and, subject to the remaining provisions of this clause, are intended to be enforceable by RBS by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 17.2 Clause 9 confers benefits on the Representatives of the IB and, subject to the remaining provisions of this clause, is intended to be enforceable by such Representatives by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 17.3 Subject to Clauses 17.1 and 17.2, the parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.
- 17.4 Notwithstanding the provisions of sub-Clauses 17.1 and 17.2, and save in respect of (i) Clauses 3, 8.2, 9, 12, 16, 20 and this Clause 17 which in each case may not be rescinded or varied in a way which would be adverse to the rights of RBS without the prior written consent of RBS; and (ii) Clause 9 and this Clause 17 which in each case may not be rescinded or varied in a way which would be adverse to the rights of the IB's Representatives without the prior written consent of the IB's Representatives, this Agreement may be rescinded or varied in any way and at any time by the parties to this Agreement without the consent of any third party.

18. INVALIDITY

- 18.1 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:
- (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
 - (B) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

19. NO PARTNERSHIP

- 19.1 Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, joint venture or agency relationship between any of the parties.

20. ASSIGNMENT

- 20.1 Neither party (and no person with the benefit of third party rights under this Agreement) shall assign, or purport to assign all or any part of the benefit of, or its rights or benefits under, this Agreement.
- 20.2 Notwithstanding Clause 20.1, the IB may sub-contract or enter into any arrangement whereby another person is to perform any or all of its obligations under this Agreement.

- 20.3 RBS may assign the benefit of the whole or any part of this Agreement within the Group, provided that if the assignee ceases to be a subsidiary or subsidiary undertaking of RBS, it shall before ceasing to be so assign the benefit, so far as assigned to it, back to a member of the Group.

21. GROUP MEMBERS

- 21.1 Where the Company has applied for participation in the IS Scheme in whole or in part for other eligible group members, the following provisions will apply:
- (A) the representations, warranties and undertakings in Clauses 3.21, 4 and 6.3 are treated as given by the Company on its own part and separately on the part of all other members of the Company's group participating in the IS Scheme;
 - (B) the Company will procure that all other relevant members of its group provide all relevant Assessment Information under Clauses 3.18 and 3.19 and where appropriate the Company will consolidate all relevant information so as to facilitate the review by the IB of the Assessment Information;
 - (C) the provisions of Clauses 5, 6.7, 7.5, 12 and 13 will extend to relevant members of the Company's group and the Company will procure that all relevant members of its group comply with the requirements of Clauses 5, 6.7, 7.5, 12 and 13. Clause 10 will also be construed accordingly; and
 - (D) Confidential Information may be disclosed to relevant members of the Company's group under Clause 16, subject always to the requirements of Clause 16.3 and to the provisions of Clause 16.7.

22. COUNTERPARTS

- 22.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts together shall constitute one and the same instrument.

23. CHOICE OF GOVERNING LAW

- 23.1 Any matter, claim or dispute arising out of or in connection with this Agreement, whether such matter, claim or dispute is contractual or non-contractual, shall be governed by and determined in accordance with the laws of England.
- 23.2 The courts of England have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, arising out of or in connection with this Agreement, and for these purposes, the parties irrevocably submit to the jurisdiction of the courts of England.

24. [AGENT FOR SERVICE

- 24.1 The Company irrevocably appoints [] of [] to be its agent for the receipt of Service Documents. It agrees that any Service Document may be effectively served on it in connection with proceedings in England by service on its agent effected in any manner permitted by the Civil Procedure Rules.
- 24.2 If the agent at any time ceases for any reason to act as such, the Company shall appoint a replacement agent having an address for service in England and shall notify the IB of the name and address of the replacement agent. Failing such appointment and notification, the IB shall be entitled by notice to the Company to appoint a replacement agent to act on behalf of the Company. The provisions of this clause applying to service on an agent apply equally to service on a replacement agent.
- 24.3 A copy of any Service Document served on an agent shall be sent by post to the Company. Failure or delay in so doing shall not prejudice the effectiveness of service of the Service Document.
- 24.4 “**Service Document**” means a claim form, application notice, order or judgment.]⁴

IN WITNESS whereof this Agreement has been entered by the parties hereto on the date first herein written.

Signed by [*name of signatory*]
for and on behalf of
Banking Competition Remedies Limited

Signed by [*name of signatory*]
for and on behalf of
[*name of Company*]

⁴ [Note: only required for Companies incorporated outside the UK]

Schedule 1
IS Terms & Conditions

[See separate document]

Schedule 2
IS Communication Framework

[To be agreed between RBS and Independent Body]

Schedule 3
Dowry Calculation Schedule

[SEE ANNEX 7 OF THE INFORMATION PACK]

**Schedule 4
Inter-Bank Agency Deed**

[SEE ANNEX 8 OF THE INFORMATION PACK]

Schedule 5 Deed of Priority

THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD TAKE LEGAL ADVICE BEFORE SIGNING.

Owner: **Registered No:**

Bank: The Royal Bank of Scotland plc

Lender:

Charged Property:

Bank's Address:

1 Security

1.1 The **Bank's Security** is a [fixed charge on the Charged Property and associated assets dated __ [and a Debenture (to the extent only that it creates a security on the same property) dated __ both]] [Debenture dated __ creating fixed and floating charges] granted by the Owner (and includes any substituted or further security taken in the future).

1.2 The **Lender's Security** is a [fixed charge on the Charged Property and associated assets dated __ [and a Debenture (to the extent only that it creates a security on the same property) dated __ both]] [Debenture dated __ creating fixed and floating charges] granted by the Owner (and includes any substituted or further security taken in the future).

2 Priority Agreement

2.1 The **Bank's Priority** is £___ [and the **Lender's Priority** is £___] (or any other Priority amount as agreed in writing between the Bank and the Lender) and, in addition, interest on that amount and expenses as secured by the Bank's or the Lender's Security.

2.2 The Bank's Security will rank first in priority as a continuing security up to the Bank's Priority.

2.3 [The Lender's Security will rank second in priority as a continuing security without limit.] [The Lender's Security will rank second in priority as a continuing security up to the Lender's Priority.]

2.4 [The Bank's Security will rank third in priority as a continuing security without limit.]

2.5 [If either the Bank or the Lender holds an effective fixed charge and the other a floating charge over the same asset or class of assets then the fixed charge will rank in priority to the floating charge without limit.]

2.6 The Bank and the Lender will hold on trust any net receipts from the enforcement of their Security or from an administrator or liquidator of the Owner in respect of their Security to give effect to the priorities under this deed.

2.7 The priorities above will not be affected by:

2.7.1 any fluctuations in the amounts secured by the Security, or any advances being made after the date of this deed;

- 2.7.2 the existence at any time of a credit balance on any account; or
- 2.7.3 the crystallisation of the Bank's or Lender's floating charge before the other's.

3 Transfer

- 3.1 The Bank or the Lender will ensure when transferring their Security that the transferee enters into a deed with the other party on the same terms as this deed.
- 3.2 References to the **Bank** and the **Lender** include their respective successors.

4 Registration

- 4.1 The Owner agrees to the registration of this deed at the Land Registry.
- 4.2 [The Bank and the Lender each consent to the registration of the other's Security at the Land Registry.] [The Bank consents to the registration of the Lender's Security at the Land Registry [,on condition that the Lender registers this deed at the same time]⁵ and the Lender consents to the registration of the Bank's Security at the Land Registry.]

5 Debts and Deposits

- 5.1 The Owner will not be in breach of any terms concerning debts in the Lender's Security if it pays those debts into an account with the Bank, and the Bank may apply them in reduction of any liability of the Owner to the Bank.
- 5.2 If a credit balance exists at any time on an account of the Owner with the Bank, regardless of whether the Lender has any charge over that credit balance, the Bank may:
 - 5.2.1 prior to the Lender enforcing its security, permit the Owner to draw on the credit balance; and
 - 5.2.2 at any time, set off any amount due to it from the Owner against the credit balance.

6 Enforcement

- 6.1 Unless urgent independent action is considered necessary by either party to protect their security interests, the Bank and the Lender will:
 - 6.1.1 give notice to the other of their intention to enforce their Security before any enforcement takes place; and
 - 6.1.2 consult with each other over the appointment of a suitable receiver or administrator.
- 6.2 If independent action is considered urgent without notice or consultation, then written notice must be given immediately to the other party and in any event:
 - 6.2.1 the Lender will not, without the Bank's consent, apply to the court for an administration order; and
 - 6.2.2 the Lender will not, without giving the Bank two business days' notice:
 - (i) take steps to appoint an administrator of the Owner or a receiver of any charged property; or

⁵ Include where "Lender's Charge" is being granted at same time as sharing arrangement formalised.

- (ii) issue a petition for the winding up of the Owner.

A **business day** is a weekday other than a national holiday.

- 6.3 Any receiver appointed by the Bank has a prior right to possession of the charged property.

7 Waiver of Confidentiality

The Owner agrees that the Bank and the Lender can disclose to each other any confidential information concerning the Owner's business affairs and accounts.

8 Title Deeds and Documents

The Bank is entitled to hold all title deeds and documents relating to any charged property.

9 Notices

- 9.1 All notices must be in writing.
- 9.2 Any notice by the Bank may be sent by post, fax or delivered to the Lender's registered office or to the contact details last known to the Bank.
- 9.3 Any notice by the Lender may be sent by post or delivered to the Bank's Address.
- 9.4 A notice signed by an official of the Bank or the Lender will be effective at the time of personal delivery; on the second business day after posting; or, if by fax, at the time of sending, if sent before 6.00 p.m. on a business day or otherwise on the next business day. A **business day** is a weekday other than a national holiday

10 Pre-enforcement Receipts

Only net receipts from the enforcement of the Bank's or the Lender's Security will reduce or count towards the Bank's or the Lender's Priority. A receipt is from the "enforcement" of a Security if the Bank or the Lender has exercised a power in the Security to realise any of its security. Repayments or receipts in return for the release of any of the property charged or other rights, or the proceeds of set-off, are not receipts from "enforcement" and will not reduce or count towards the Bank's or the Lender's Priority.

11 Companies House Registration

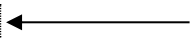
If either the Bank's or the Lender's Security is required to be registered at Companies House but is not registered (either within the required time or later by Court order) this deed will not have effect and the party whose Security is unregistered will not be entitled to any priority over the other.

12 Governing Law

- 12.1 This deed is governed by English law and the English courts have exclusive jurisdiction.
- 12.2 The Bank, the Lender and the Owner irrevocably submit to the jurisdiction of the English courts and irrevocably agree that a judgment or ruling in any proceedings in connection with this deed in those courts will be conclusive and binding on all parties and may be enforced against any party in the courts of any other jurisdiction.

Date

D	D	M	M	Y	Y
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The final signatory must date the document

Executed and Delivered as a deed by the Lender

)
)
)
)
)

Director/Member

Secretary/Director/Member

Executed and Delivered as a deed by the Owner

)
)
)
)
)

Director/Member

Secretary/Director/Member

[Single Signature option
A witness is required if only one Director/Member signs

Signed by the Director/Member in the presence of:
Witness' name _____
Witness' signature _____
Address _____
Occupation _____]

[Signature option if Owner is an individual or a partnership
Signed and Delivered as a deed by _____
the first named Owner

Witness' name in full _____

Signature _____

Address _____

Occupation _____

Signed and Delivered as a deed by _____
the second named Owner

Witness' name in full _____

Signature _____

Address _____

Occupation _____]

Signed and Delivered as a deed)
for and on behalf of the Bank)
by a duly authorised Attorney) _____
in the presence of:-

Witness' Signature - Bank Employee

Bank ref:

Schedule 6
Switching Proposal

[Company to provide at time Agreement is entered into]