

DATED [] 2018

[COMPANY]

and

BANKING COMPETITION REMEDIES LIMITED

CAPABILITY AND INNOVATION FUND AGREEMENT

THIS AGREEMENT is made the [] day of [], 2018

PARTIES:

1. [●] whose registered office is at [●] (registered in England No. [●]) (the “**Company**”);

AND
2. Banking Competition Remedies Limited whose registered office is at [●] (registered in England No. 11001491) (the “**Independent Body**”).

1. Interpretation

1.1 In this Agreement:

- “Account”** [Company to insert details of relevant account];
- “Additional Review Meeting”** has the meaning given to it in Clause 5.4;
- “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 Business Case submitted by the Company in support of an application for funding from the Capability and Innovation Fund;
- “Assessment Information”** has the meaning given to it in Clause 4.1;
- “Assessment Period”** has the meaning given to it in Clause 4.1;
- “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;

“Business Case”	means the business case submitted by the Company in support of an application for funding from the Capability and Innovation Fund and attached as Schedule 2 to this Agreement;
[“Business Current Account”	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);] ¹
“Business Day”	means any day (other than a Saturday or Sunday) on which clearing banks are open for a range of banking transactions in London;
“Capability and Innovation Fund”	has the meaning given to it in the Terms and Conditions;
“Change of Control”	shall occur for the purposes of this agreement where: <ul style="list-style-type: none"> i. a person acquires Control of the Company where no person previously had Control of the Company; or ii. the parent undertaking of the Company ceases to have Control of the Company; or iii. a person acquires Control of the parent undertaking of the Company; or iv. a person who is not under the Control of the parent undertaking of the Company acquires control of the Company;
“Confidential Information”	has the meaning given to in Clause 14.1;
“Control”	in relation to a body corporate means the ability of a person to ensure that the activities and business of that body corporate are conducted in

¹ **[Note: Only relevant for Pool A or B Bodies]**

accordance with the wishes of that person and a person shall be deemed to have control of a body corporate if that person possesses or is entitled to acquire the majority of the issued share capital or the voting rights in that body corporate or the right to receive the majority of the income of that body corporate on any distribution by it of all of its income or the majority of its assets on a winding up;

["Fintech Product or Service"]	has the meaning given to it in the Terms and Conditions;] ²
"FCA"	has the meaning given to it in the Terms and Conditions;
"FCA Rules"	has the meaning given to it in the Terms and Conditions;
"Funding Amount"	has the meaning given to in Clause 2;
"HMRC"	means Her Majesty's Revenue & Customs;
"Material Breach"	has the meaning given to it in Clause 6.3;
["Overarching Principles"]	has the meaning given to it in the Terms and Conditions;] ³
"Periodic Confirmation"	has the meaning given to it in Clause 7.2;
"Permitted Purposes"	means those purposes set out in [condition 3.2(B)] ⁴ [condition 3.3(A)] ⁵ of the Terms and Conditions;
"PRA"	has the meaning given to it in the Terms and Conditions;
"PRA Rules"	has the meaning given to it in the Terms and Conditions;

² [Note: Only include for Pool D Bodies]

³ [Note: Only include for Pool A Bodies, Pool B Bodies and Pool C Bodies]

⁴ [Note: Only include for Pool A Bodies, Pool B Bodies and Pool C Bodies]

⁵ [Note: Only include for Pool D Bodies]

“Prohibited Purposes”	means those purposes set out in [condition 3.2(C)] ⁶ [condition 3.3(B)] ⁷ of the Terms and Conditions;
“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 Business(es)”	has the meaning given to it in the Terms and Conditions;] ⁸
“Representatives”	means in relation to each of the Company and the Independent Body, its directors, officers, employees, agents and professional advisers and, in the case of the Independent Body, also includes its third party contractors;
“Review Meeting”	has the meaning given to it in Clause 5.1;
“Revised Business Case”	has the meaning given to it in Clause 5.3;
“SME”	has the meaning given to it in the Terms and Conditions;
“Tax”	includes all forms of taxation and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies (including stamp duty) 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 the relevant person or any other 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

⁶ [Note: Only include for Pool A Bodies, Pool B Bodies and Pool C Bodies]

⁷ [Note: Only include for Pool D Bodies]

⁸ [Note: Only include for Pool A Bodies, Pool B Bodies and Pool C Bodies]

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);

“Terms and Conditions”

means the terms and conditions of the Capability and Innovation Fund attached as Schedule 1 to this Agreement, as amended from time to time by the Independent Body and provided by the Independent Body to the Company;

“Updated Business Case”

has the meaning given to it in Clause 5.2;

“VAT”

means (i) value added tax as provided for in Directive 2006/112/EC and charged in accordance with the provisions of the Value Added Tax Act 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); 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”;
- (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”, “subsidiary undertaking” and “parent 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;
- (J) references to "costs" and/or "expenses" incurred by a person shall not include any amount in respect of VAT comprised in such costs or expenses for which either that person or, if relevant, any other member of the VAT group to which that person belongs is entitled to credit as input tax; and
- (K) 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.

2. FUNDING AMOUNT

As soon as reasonably practicable and in any event no later than forty Business Days immediately following the date of this Agreement, the Independent Body shall transfer [●] (the “**Funding Amount**”) to the Account.⁹

3. COMPANY’S WARRANTIES AND UNDERTAKINGS

3.1 The Company represents, warrants and undertakes to the Independent Body (on the date of this Agreement and on the date on which the Funding Amount is transferred, in whole or in part, to the Account) 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 and all other information provided by the Company to the Independent Body in connection with the Capability and Innovation Fund and any Funding Amount is true, accurate and complete and not misleading and that there has been no material change in its circumstances or the Business Case since the date on which the Application Documents were submitted to the Independent Body;

⁹ [Note: The default position is that the Funding Amount will be paid as a lump sum unless phased payments are requested by the Company. If requested, clause 2 will need to be amended to reflect the agreement between the Company and the Independent Body.]

- (D) all expressions of opinion, intention and expectation contained in the Application Documents and any other information provided by the Company to the Independent Body in connection with the Capability and Innovation Fund and any Funding Amount 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 or any other information provided by the Company to the Independent Body in connection with the Capability and Innovation Fund and any Funding Amount misleading in any material respect; or (ii) affect the decision of the Independent Body to pay the Funding Amount to the Company;
- (F) the Application Documents do not omit any material information which would reasonably be required in order for the Independent Body to appraise the Business Case and/or determine whether or not the Funding Amount should be paid to the Company;
- (G) the Business Case complies with Applicable Law; and
- (H) to the extent applicable, the Business Case has been shared and discussed with the PRA and/or FCA.

3.2 The Company agrees to and accepts the Terms and Conditions and undertakes to use the Funding Amount for Permitted Purposes only (and not for Prohibited Purposes) and in the manner contemplated in its Business Case.

4. REPORTING OBLIGATIONS

4.1 Within ten Business Days of the end of each three calendar month period (beginning three calendar months immediately following the date of this Agreement) (each, an “**Assessment Period**”) and at such other times as the Independent Body may request, the Company shall, at its own cost, provide to the Independent Body in writing:

- (A) details of how the Funding Amount has been utilised during the Assessment Period, including the total amount spent from the Funding Amount during the relevant Assessment Period;
- (B) [a brief account of the developments in its Relevant Business(es) during the relevant Assessment Period and how such developments relate to its Business Case;
- (C) an overview and quantification of investments made in the Relevant Business(es) during the relevant Assessment Period;

- (D) details of its SME business volumes, including, but not limited to, customer numbers[, Business Current Account numbers]¹⁰ and lending and deposit balances;]¹¹
- (E) [an account of the developments relating to its Fintech Product or Service during the relevant Assessment Period and how such developments relate to its Business Case;]¹²
- (F) confirmation that spending of the Funding Amount during the relevant Assessment Period has been used for Permitted Purposes only [and in accordance with the Overarching Principles]¹³; and
- (G) any additional information requested by the Independent Body which is, in the opinion of the Independent Body, necessary or desirable in order for the Independent Body to assess the Company's compliance with the terms of this Agreement,

(together, (A) to [(●)] being "**Assessment Information**").

- 4.2 The Company shall provide to the Independent Body evidence to the Independent Body's satisfaction, and such other information as the Independent Body may reasonably request, in support of the Assessment Information.
- 4.3 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 Independent Body), that the Assessment Information and any evidence provided by the Company to the Independent Body in support of the Assessment Information is true, accurate and complete and not misleading and does not omit any material information which would reasonably be required in order for the Independent Body to consider and assess such information.
- 4.4 The Company shall, upon the request of the Independent Body, meet with representatives of the Independent Body to report on and discuss the performance of the Company's obligations under this Agreement and/or any of the Assessment Information provided by the Company to the Independent Body in respect of any Assessment Period.
- 4.5 The Independent Body shall have the right to:
 - (A) retain, copy and use the Assessment Information for the purposes of exercising its rights under this Agreement or performing its obligations (under this

¹⁰ **[Note: Only include for Pool A Bodies or Pool B Bodies]**

¹¹ **[Note: Include for Pool A Bodies, Pool B Bodies and Pool C Bodies]**

¹² **[Note: Include for Pool D Bodies]**

¹³ **[Note: Include for Pool A Bodies, Pool B Bodies and Pool C Bodies]**

Agreement or otherwise) in connection with the Capability and Innovation Fund;
and

- (B) use and/or disclose the Assessment Information and any evidence provided in support of the Assessment Information on its website or otherwise in order to publish its annual report summarising how funding from the Capability and Innovation Fund has been used.

4.6 The Company shall notify the Independent Body in writing as soon as reasonably practicable in the event of any change in the Company's circumstances which may reasonably affect the Business Case or the feasibility of the Business Case or which might otherwise reasonably require any change to the Business Case.

5. UPDATES TO THE BUSINESS CASE

5.1 As soon as reasonably practicable after the date falling six months after the date of this Agreement (or at such earlier time as may be agreed between the Independent Body and the Company), representatives of the Independent Body shall meet with representatives of the Company in order to report on and discuss the Business Case and in order to consider any changes to the Business Case which may be necessary or desirable (the "**Review Meeting**").

5.2 If the Company wishes to propose and discuss a change to the Business Case at the Review Meeting, the Company shall provide the Independent Body with a copy of the updated business case proposed by the Company (the "**Updated Business Case**") at least ten Business Days prior to the date of the Review Meeting.

5.3 If the Company considers that it is necessary or desirable to make a change to the Business Case at any other time, the Company shall notify the Independent Body in writing of this fact and provide the Independent Body with a copy of the updated business case proposed by the Company (the "**Revised Business Case**").

5.4 If the Company provides the Independent Body with a Revised Business Case pursuant to Clause 5.3, the Independent Body may request a meeting with representatives of the Company in order to consider the proposed changes to the Business Case (the "**Additional Review Meeting**").

5.5 The Company represents and warrants at the time of provision of any Updated Business Case or Revised Business Case that:

- (A) all information provided in any Updated Business Case or Revised Business Case and all other information provided by the Company to the Independent Body in connection with any Updated Business Case or Revised Business Case is true, accurate and complete and not misleading;
- (B) all expressions of opinion, intention and expectation contained in any Updated Business Case or Revised Business Case and any other information provided by the Company to the Independent Body in connection with such Updated Business Case or Revised Business Case 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 Updated Business Case or Revised Business Case and all other information provided by the Company to the Independent Body in connection with any Updated Business Case or Revised Business Case misleading in any material respect;
- (D) the Updated Business Case or Revised Business Case does not omit any material information which would reasonably be required in order for the Independent Body to appraise the Updated Business Case or Revised Business Case; and
- (E) the Updated Business Case or Revised Business Case complies with Applicable Law.

5.6 The Independent Body shall consider any Updated Business Case or Revised Business Case and shall assess such Updated Business Case or Revised Business Case (including against the requirements set out in the Terms and Conditions). The Company shall provide the Independent Body with any additional information requested by the Independent Body which is, in the opinion of the Independent Body, necessary or desirable in order for the Independent Body to assess the Updated Business Case or Revised Business Case.

5.7 The Independent Body may, at its sole discretion, approve or reject any Updated Business Case or Revised Business Case and shall notify the Company of its decision:

- (A) in the case of an Updated Business Case, within 10 Business Days of the Review Meeting; or
- (B) in the case of a Revised Business Case, within 10 Business Days of: (i) the date on which the Company submitted the Revised Business Case if no Additional Review Meeting is held; or (ii) the Additional Review Meeting.

5.8 If the Independent Body approves any Updated Business Case or Revised Business Case:

- (A) any reference in this Agreement to the Business Case shall be read as referring to such Updated Business Case or Revised Business Case; and
- (B) the representations and warranties set out in Clause 5.5 shall be deemed to be repeated by the Company on the date on which the Independent Body approves such Updated Business Case or Revised Business Case.

5.9 If the Independent Body does not approve any Updated Business Case or Revised Business Case:

- (A) the Company may continue to use the Funding Amount in accordance with the previous Business Case; or
- (B) if the Company is unable to continue to use the Funding Amount in accordance with the previous Business Case, the Independent Body may request the repayment (in full or in part) of the Funding Amount (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 Independent Body paid the Funding Amount to the Company until the date of repayment) within five Business Days of the date of the demand).

6. AUDIT RIGHTS

6.1 Subject to Clause 6.2, at the Independent Body's request upon reasonable notice to the Company during the term of this Agreement, the Company shall grant, and shall procure that all relevant members of its group grant, to the Independent Body or its Representatives access during Working 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 the Funding Amount has been used for Permitted Purposes (and not for Prohibited Purposes) and in accordance with the Business Case;
- (B) assessing whether the Company has complied with its obligations under this Agreement; and/or
- (C) verifying the Assessment Information.

6.2 The Independent Body shall only request an audit pursuant to Clause 6.1 if it believes that:

- (A) the Funding Amount has not been used for Permitted Purposes or in accordance with the Business Case or has been used for Prohibited Purposes;
- (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.

6.3 If, in the opinion of the Independent Body, any audit carried out by or on behalf of the Independent Body pursuant to Clause 6.1 reveals any material breach of this Agreement (which shall include: (i) any failure to use the Funding Amount for Permitted Purposes or in accordance with the Business Case; or (ii) use of the Funding Amount for Prohibited Purposes) (a "**Material Breach**"), the Company shall, on demand, reimburse the Independent Body in full for all costs and expenses incurred in carrying out or having carried out such audit (including the costs of the Independent Body's Representatives).

6.4 The Independent Body shall procure that any person carrying out any inspection and/or audit pursuant to Clause 6.1 complies with all reasonable access and security regulations notified to such person at such time by or on behalf of the Company.

7. CLAWBACK

7.1 Subject to Clauses 7.2 and 7.3, if the Independent Body determines at its sole discretion (and whether or not an audit has been carried out in accordance with Clause 6) that there has been a Material Breach, the Independent Body shall 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 three months of the date on which the Independent Body notifies the Company of the Material Breach (or such shorter period as the Independent Body may determine); and (ii) promptly, and in any event within ten Business Days of the date of remedy of such Material Breach, provide evidence to the satisfaction of the Independent Body 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 Independent Body with evidence to the Independent Body's satisfaction that the Material Breach has been remedied within the period specified by the Independent Body, request the repayment (in full or in part) of the Funding Amount (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 Independent Body paid the Funding Amount 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 forward as the Independent Body may consider necessary or desirable in the context of such Material Breach.

7.2 [At the same time as it provides the Assessment Information to the Independent Body, the Company may request that the Independent Body give confirmation to the Company that amounts of the Funding Amount spent in the relevant Assessment Period have been used for Permitted Purposes (and not for Prohibited Purposes) and in accordance with the Business Case (a "**Periodic Confirmation**").

7.3 If the Company requests a Periodic Confirmation, the Independent Body shall consider the Assessment Information (and any additional information which it may request from the Company and the Company may provide). If, on the basis of such information, the Independent Body is satisfied that amounts of the Funding Amount spent in the relevant Assessment Period have been used for Permitted Purposes (and not for Prohibited Purposes) and in accordance with the Business Case, the Independent Body shall issue a Periodic Confirmation and no amount of the Funding Amount spent during the

Assessment Period subject to the Periodic Confirmation shall be capable of Clawback by the Independent Body pursuant to Clause 7.1.]¹⁴

- 7.4 If there is a Change of Control of the Company such that the Company's parent undertaking or another subsidiary undertaking of such parent undertaking is a bank with an SME market share in the United Kingdom of more than 14%, the Company shall within 10 Business Days of such Change of Control return to the Independent Body any part of the Funding Amount which it has not spent as at the date that the transaction which would give rise to the Change of Control is announced.

8. LIABILITY AND INDEMNITY

- 8.1 To the fullest extent permitted by law, the Independent Body has 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.
- 8.2 The Company shall indemnify the Independent Body and its Representatives on demand 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 the Independent Body and/or its 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 Application Documents;
 - (C) the use of the Funding Amount by the Company;
 - (D) any failure by the Company to comply with Applicable Law or 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) or the Terms and Conditions; or
 - (E) the fraud, negligence or wilful default of the Company,

and, in each case, the Company shall reimburse the Independent Body and/or its 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: (i) in the event of a claim brought by the Independent Body, the Independent Body; or (ii) in the

¹⁴ **[Note: Clauses 7.2 and 7.3 are only relevant where the Funding Amount is material to the Company.]**

event of a claim brought by a Representative, such Representative as is making the claim.

- 8.3 The total aggregate liability of the Company under Clause 8.2 shall not in any event exceed the Funding Amount.
- 8.4 The Company accepts and agrees that any decision or determination of the Independent Body under or in accordance with the terms of this Agreement (and the Terms and Conditions) or otherwise in relation to any matter related to the Capability and Innovation Fund shall be made at the absolute discretion of the Independent Body and shall be conclusive.
- 8.5 The Company accepts and agrees that it shall have no claims or right of recourse against the Independent Body in respect of any determination or decision of the Independent Body except as explicitly set out in this Deed.

9. TAX MATTERS

- 9.1 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 Independent Body (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 Independent Body would have received if no such deduction or withholding had been required.
- 9.2 If the Independent Body 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 5.9(B) or 7.1(B)) (a “**Relevant Payment**”), or if any such Relevant Payment is taken into account in computing the income, profits or gains of the Independent Body for Tax purposes, the sum payable by the Company shall be increased so as to ensure that the amount retained by the Independent Body (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 Independent Body) is equal to the amount which the Independent Body would have retained in the absence of such Tax.
- 9.3 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 Independent Body 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 Independent Body (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 Independent Body is liable to account.

10. TERMINATION

10.1 Subject to Clause 10.2, this Agreement shall terminate on the earlier of:

- (A) the date falling [eighteen/nine]¹⁵ months after the date of this Agreement;
- (B) the date on which the Company repays the Funding Amount in full pursuant to Clause 7.1(B); and
- (C) the date on which the Company repays any Funding Amount pursuant to Clause 7.4.

10.2 The rights and obligations of the parties under Clauses 8, 9, 13 - 16, 18 and 21, together with any accrued rights and obligations, shall survive termination of this Agreement.

11. COSTS AND EXPENSES

Except as expressly set out in this Agreement, the Independent Body and the Company shall each pay their own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and the use of the Funding Amount.

12. NOTICES

12.1 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.

12.2 Notices under this Agreement shall be sent to a party to this Agreement at its 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>
Independent Body	[address] Attention: [position]	[email]
Company	[address] Attention: [position]	[email]

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

¹⁵ [Note: initial phase Capability and Innovation Fund Agreements (Pools A-D) should have terms of 18 months and subsequent Capability and Innovation Fund Agreements (in respect of any additional amount) should have terms of 9 months.]

- (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.

12.4 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.

13. PUBLICITY

13.1 Subject to this Clause 13, 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 Independent Body in connection with this Agreement or the Capability and Innovation Fund (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).

13.2 Notwithstanding Clause 13.1, 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 Independent Body; or
- (B) it is in form and substance satisfactory to the Independent Body.

14. CONFIDENTIALITY

14.1 Each party shall treat as confidential any information received or obtained as a result of entering into or performing this Agreement (“**Confidential Information**”).

14.2 The Company 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 its rights or perform its obligations as set out in this Agreement.

14.3 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 has security measures and procedures in place to protect the confidentiality of Confidential Information.

14.4 The Independent Body 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.
- 14.5 The restrictions contained in Clauses 14.1 to 14.4 shall not prevent the Independent Body from:
- (A) announcing or otherwise disclosing: (i) the identity of the companies to which funding has been given from the Capability and Innovation Fund (including the Company); (ii) reasonable details of the business plans of and other information provided by such companies (including the Application Documents); and/or (iii) any other information regarding the Capability and Innovation Fund and the Company which the Independent Body considers necessary or desirable in connection with the operation of the Capability and Innovation Fund;
 - (B) disclosing Confidential Information to HMT and/or any third party monitor appointed by HMT in connection with, amongst other things, the Capability and Innovation Fund;
 - (C) using and/or disclosing the Assessment Information and any evidence provided in support of the Assessment Information in order to publish its annual report summarising how funding from the Capability and Innovation Fund has been used;
 - (D) 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 Independent Body and taken (or to be taken) by the Company in remedying such Material Breach;
 - (E) announcing or otherwise disclosing that the Funding Amount has been (or will be) clawed back in whole or in part from the Company pursuant to Clause 7 and the reasons for the Independent Body's decision to claw back such funds; or
 - (F) using Confidential Information in the production or publication of aggregated or anonymised data.
- 14.6 The Company will be entitled to discuss with the Independent Body any disclosure to be made under Clause 14.5(A) or 14.5(C) and to make representations as to the extent of any disclosure. The Independent Body shall give consideration to any reasonable requests made by the Company.
- 14.7 The restrictions in Clauses 14.1 to 14.4 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 disclosed to 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's Business Case;
- (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 has agreed in advance to such disclosure.

14.8 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 Independent Body, its Representatives or the Capability and Innovation Fund. 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 Independent Body or any of its Representatives.

14.9 The restrictions contained in this clause shall continue to apply after the termination of this Agreement without limit in time.

15. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

15.1 Clause 8 of this Agreement confers benefits on the Representatives of the Independent Body 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.

15.2 Subject to Clause 15.1, 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.

15.3 Notwithstanding the provisions of Clause 15.1, and save in respect of Clause 8 which may not be rescinded or varied in a way which would be adverse to the rights of the Representatives of the Independent Body without the prior written consent of the Representatives of the Independent Body, 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.

16. INVALIDITY

- 16.1 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.

17. NO PARTNERSHIP

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.

18. ASSIGNMENT

- 18.1 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.
- 18.2 Notwithstanding Clause 18.1 above, the Independent Body may sub-contract or enter into any arrangement whereby another person is to perform any or all of its obligations under this Agreement.

19. GROUP MEMBERS

- 19.1 Where the Company has applied for the Funding Amount in whole or in part for other eligible members of its group, the following provisions will apply:
- (A) the representations, warranties and undertakings in Clauses 3 and 4.3 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 Funding Amount;
 - (B) the Company will procure that all other relevant members of its group provide all relevant Assessment Information under Clause 4 and, where appropriate, the Company will consolidate relevant information so as to facilitate the review by the Independent Body of the Assessment Information;
 - (C) the notification requirements on the part of the Company under Clause 4.6 will extend to all relevant members of the Company's group;
 - (D) the provisions of Clauses 5.9, 7 and 9 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 5.9, 7 and 9. Clause 10 will be construed accordingly; and

- (E) Confidential Information may be disclosed to relevant members of the Company's group under Clause 14, subject always to the requirements of Clause 14.3 and to the provisions of Clause 14.7.

20. COUNTERPARTS

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.

21. CHOICE OF GOVERNING LAW

- 21.1 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.
- 21.2 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.

22. AGENT FOR SERVICE

- 22.1 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.
- 22.2 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 Independent Body of the name and address of the replacement agent. Failing such appointment and notification, the Independent Body 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.
- 22.3 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.
- 22.4 "**Service Document**" means a claim form, application notice, order or judgment.]¹⁶

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

¹⁶ [Note: only required for Companies incorporated outside the UK]

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*]

.....

SCHEDULE 1

TERMS AND CONDITIONS OF THE CAPABILITY AND INNOVATION FUND

[SEE ANNEX 3 OF THE INFORMATION PACK]

SCHEDULE 2
BUSINESS CASE