

INCENTIVISED SWITCHING: TERMS AND CONDITIONS**1. INTRODUCTION**

- 1.1 These terms and conditions (“**Terms and Conditions**”) form part of the agreement between you (the “**Applicant Company**”) and us, ~~[•]~~ [Banking Competition Remedies Limited](#) (the “**Independent Body**”) in relation to your application to participate in Incentivised Switching.
- 1.2 The Independent Body shall have absolute discretion on the interpretation and application of these Terms and Conditions and any determination or decision of the Independent Body in relation to any matter related to Incentivised Switching shall be conclusive.
- 1.3 The Independent Body may amend these Terms and Conditions from time to time and shall, upon such amendment, promptly provide each Applicant Company with a copy of the revised Terms and Conditions.
- 1.4 Any approval of an Applicant Company’s application to participate in Incentivised Switching, and any subsequent distribution of funds to such Applicant Company in connection with Incentivised Switching, will be subject, amongst other things, to the Applicant Company and the Independent Body entering into a legally binding agreement on terms satisfactory to the Independent Body (the “**IS Deed Agreement**”).
- 1.5 If any provision of these Terms and Conditions is inconsistent with the IS ~~Deed Agreement~~, the IS ~~Deed Agreement~~ will take priority.

2. ELIGIBILITY, APPLICATION AND SUPPORTING DOCUMENTS

- 2.1 In order to be eligible to participate in Incentivised Switching, the Applicant Company must be a deposit-taking entity with Business Current Account capabilities:
- (A) which is authorised by the PRA to take deposits;
 - (B) which has (or has publicly stated its intention to launch) a Business Current Account offering;
 - (C) ~~whose ultimate parent entity is (or, if such deposit-taking entity is not a member of a group or is the ultimate parent entity of the group, which is), at the time of the application, an entity~~ which is domiciled in the United Kingdom, the European Union, the European Economic Area or Switzerland ~~and is a deposit-taking entity or financial holding company~~;
 - (D) which has gross assets in the United Kingdom of less than £350 billion shown in its latest published consolidated accounts (or interim balance sheet);

- (E) whose income in the United Kingdom relates primarily to the provision of deposit-taking, lending or payment services to individuals and businesses in the United Kingdom;
- (F) which has expressed an intention to expand its business offering to SMEs [in the United Kingdom](#) through the development of new products, expansion into new geographical markets ~~in the United Kingdom~~ or new business segments and/or investing in its customer service levels; and
- (G) which participates in CASS.

2.2 Eligibility to participate in Incentivised Switching will be determined at the absolute discretion of the Independent Body and any determination of the Independent Body as to eligibility of an Applicant Company to participate in Incentivised Switching and/or receive any distribution of funds in connection with Incentivised Switching shall be conclusive.

2.3 In determining whether the Applicant Company should be eligible to participate in Incentivised Switching, the Independent Body shall:

- (A) have regard to the amount of the Dowry that will be passed directly to a Transferring Target Customer and the amount of the Dowry that will be retained by the Applicant Company and applied for other purposes which benefit Transferring Target Customers, in each case in the context of the aims of Incentivised Switching;
- (B) consider whether, and the extent to which, (in the opinion of the Independent Body) the Applicant Company's Switching Proposal will, if implemented, incentivise Target Customers to become Transferring Target Customers; and
- (C) consider whether, and the extent to which, (in the opinion of the Independent Body) the Applicant Company's Switching Proposal makes switching offers to Target Customers across the full range of Turnovers of all Target Customers and which are materially better, taking into account the Dowries, than the offers which are made by them to new customers or customers (across the full range of Turnovers) which might switch their banking products to them (other than through Incentivised Switching), in each case provided that the Applicant Company shall not be required to make switching offers to particular Target Customers if it does not, at the time of its application, have a suitable Business Current Account and/or Loan Product offering for such Target Customers.

2.4 The Applicant Company must provide to the Independent Body on request such information as the Independent Body considers necessary or desirable in order to determine whether such applicant is eligible to participate in Incentivised Switching.

2.5 The Applicant Company must submit a switching proposal (the "**Switching Proposal**") along with its completed application form (the "**Application Documents**") by the date specified by the Independent Body in the relevant marketing materials or such later date as the Independent Body may specify (the "**Application Period**"). If the Application

Documents are not submitted within the Application Period, the Independent Body reserves the right not to consider the application.

2.6 The Switching Proposal must:

- (A) outline the Applicant Company's proposal to incentivise some or all Target Customers to become Transferring Target Customers;
- (B) outline how the Applicant Company proposes to apply any Dowries received in connection with Incentivised Switching, including in the form of incentives to be offered to relevant Target Customers and paid or applied to such customers after they become Transferring Target Customers (including (i) the formula to be used to determine any cash amounts to be paid in respect of each Transferring Target Customer, (ii) the minimum and maximum amount that each Transferring Target Customer may receive, and (iii) any phasing or conditions attached to any cash amounts to be paid to each Transferring Target Customer) and otherwise demonstrate how any Dowries will benefit Transferring Target Customers;
- (C) set out how the incentives to be offered to relevant Target Customers and paid or applied to such customers after they become Transferring Target Customers are different to and materially better, taking into account the Dowries, than the offers which are made by them to new customers or customers which might switch their banking products to them (other than through Incentivised Switching);
- (D) comply with all Applicable Law (including any rules and guidance made by the FCA and/or PRA); and
- (E) set out the Applicant Company's proposal in respect of the communication materials to be used by RBS in relation to the products and incentives to be offered to relevant Target Customers by the Applicant Company (the "**Company Offering**").

2.7 The Application Documents must be approved by the board of directors (or equivalent body) of the Applicant Company and proof of such approval in certified form must be submitted to the Independent Body with the Application Documents.

2.8 The application form and any marketing materials in respect of Incentivised Switching have been prepared for information and discussion purposes only and should be treated as indicative only. No warranties or representations, express or implied, are being made as to the completeness or accuracy of any facts or information contained therein and no liability shall attach to the Independent Body, RBS or HMT as a result of making such materials available to Applicant Companies. Applicant Companies should seek their own independent legal, financial, tax, regulatory and/or accounting advice before making any decision to apply to participate in, or receive funding in connection with, Incentivised Switching.

- 2.9** The publication of an application form and/or any marketing materials by the Independent Body does not:
- (A) constitute an offer for any Applicant Company to participate in Incentivised Switching or receive funding in connection with Incentivised Switching;
 - (B) oblige the Independent Body to provide any Dowries or any other funding in connection with Incentivised Switching; or
 - (C) create any commitment or obligation of the Independent Body to enter into any IS ~~Deed~~[Agreement](#).

2.10 The Independent Body shall be free at its sole discretion to establish the process in connection with the participation in, and grant of funding in respect of, Incentivised Switching and to supplement or change this process from time to time. Without limiting the foregoing, the Independent Body expressly reserves the right, at its sole discretion, at any time and without specifying any reason, without any liability or obligation of any kind to:

- (A) accept or reject any and all applications, not allow any Applicant Companies to participate in Incentivised Switching, not grant any funding or proceed with Incentivised Switching in whole or in part and/or cancel or withdraw funding at any stage;
- (B) amend each Dowry Calculation Schedule; and/or
- (C) alter this process in any manner (including any requirements in respect of the Switching Proposal as set out in these Terms and Conditions) or terminate this process entirely and decide not to proceed with Incentivised Switching or granting funding in respect of Incentivised Switching,

and the Applicant Company acknowledges that it is not relying on any express or implied representation of any kind concerning the manner in which such process will proceed.

2.11 The Applicant Company shall bear all its own costs and expenses in relation to: (i) any application to participate in, or receive funding in respect of Incentivised Switching and participation in Incentivised Switching; and (ii) any review of the information provided to the Applicant Company in connection with the Incentivised Switching. To the fullest extent permitted by law, neither the Independent Body, nor RBS, nor HMT have any liability for any losses, costs or expenses (including any loss of profit or indirect or consequential loss or any loss of goodwill or possible business, whether actual or prospective), incurred by any Applicant Company in connection with, or by reason of or arising out of Incentivised Switching.

2.12 In submitting an application for participation in Incentivised Switching, the Applicant Company agrees not to make any claim against the Independent Body, RBS or HMT with respect to the application process in the event that its application is not accepted by the Independent Body and the Independent Body does not enter into an IS ~~Deed~~[Agreement](#) with such Applicant Company or provide such Applicant Company with

funding in respect of Incentivised Switching (whether or not the Independent Body accepts the application of, enters into an ~~Incentivised Switching Deed~~ [IS Agreement](#) with, and/or provides Dowries and/or any other funding in connection with Incentivised Switching to, any other Applicant Company).

2.13 [By submitting an application for participation in Incentivised Switching, the Applicant Company represents and warrants to the Independent Body that:](#)

- (A) [it is not a Sanctioned Person; and](#)
- (B) [none of its group members, or, to the best of its knowledge and belief, Substantial Shareholders are Sanctioned Persons.](#)

2.14 [Each Applicant Company is entitled to the benefit of, is bound by, and is deemed to have notice of, the provisions of the Trust Deed \(to the extent that the provisions of such document have been made available publicly or to such Applicant Company by the Independent Body\).](#)

2.15 ~~2.13~~ The Independent Body is not authorised to carry out regulated activities so will not be able to consider applications where receipt or processing of those applications would require any form of regulatory authorisation or permission.

3. COMMUNICATION PROCESS, SWITCHING PROCESS AND CREDIT DECISIONS

3.1 The Applicant Company acknowledges and agrees that, if its application is successful, all directed communication of Incentivised Switching to Target Customers shall be undertaken by RBS in accordance with the Company Offering provided by the Applicant Company to the Independent Body (as updated from time to time with the approval of the Independent Body). The Applicant Company will, if its application is successful, be entitled to communicate Incentivised Switching to Target Customers through its usual general marketing, communication and advertising channels, but shall not be permitted to communicate directly with or to Target Customers without the prior consent of RBS.

3.2 The Applicant Company accepts and agrees that, if its application is successful, the transfer of Target Customers will be performed, as far as reasonably practicable, in accordance with current business-as-usual customer switching propositions. If its application is successful, the Applicant Company agrees that it will take all steps that may be reasonably necessary in order to facilitate customer switching proposals, including by reviewing its arrangements with respect to CASS.

3.3 The Applicant Company acknowledges and agrees that:

- (A) any credit decisions taken by it in respect of a Target Customer shall be made entirely at its own risk;
- (B) any credit decisions will be based on the information provided to the Applicant Company by the Target Customer which shall be subject to the Applicant Company's standard verification requirements;

- (C) it will carry out, and will be solely responsible for, all necessary “know your customer” or other similar checks required under Applicable Laws;
- (D) neither RBS nor the Independent Body shall have any obligation to verify information provided by the Target Customer to the Applicant Company, have any responsibility for the accuracy of any information provided by the Target Customer to the Applicant Company or otherwise be liable for any information provided by a Target Customer to the Applicant Company; and
- (E) all existing claims between RBS and any Target Customer will remain unaffected by their transfer to the Applicant Company.

3.4 The Applicant Company will have absolute discretion to accept or reject the transfer of a Target Customer and neither RBS nor the Independent Body shall be liable to the Target Customer and/or the Applicant Company in respect of such decision.

3.5 If the Applicant Company’s application is successful, the Applicant Company may not contact any Target Customer which has withdrawn its consent to receiving further communications in relation to Incentivised Switching and will ensure that Target Customers are informed of their right to opt out of further communications in all promotional and communication activity provided by the Applicant Company (including the Company Offering).

4. USE OF FUNDS

4.1 By submitting an application to participate in, and receive Dowries in connection with, Incentivised Switching, the Applicant Company agrees that the use of any Dowries it receives in connection with Incentivised Switching must be in accordance with its Switching Proposal (as amended from time to time in accordance with the terms of the relevant IS [Deed Agreement](#)) and will be restricted as set out in these Terms and Conditions and/or the relevant IS [Deed Agreement](#).

4.2 If an application is successful, the Applicant Company:

- (A) may only use the Dowries it receives in connection with Incentivised Switching in accordance with its Switching Proposal (as amended from time to time in accordance with the terms of the relevant IS [Deed Agreement](#)) and Company Offering;
- (B) acknowledges and agrees that Dowries will accrue on a periodic basis after the date on which a Target Customer becomes a Transferring Target Customer (provided that the Applicant Company has provided the Independent Body with evidence to the Independent Body’s satisfaction to this effect) and not immediately upon the Target Customer becoming a Transferring Target Customer;
- (C) shall pay no more than 50% of any Dowry payment made by the Independent Body to the Applicant Company in respect of a Transferring Target Customer with a Turnover of more than £1 million to such Transferring Target Customer in

cash during the first 12 months after such Target Customer has become a Transferring Target Customer; and

- (D) agrees that the Independent Body shall have discretion as to the applicability of the Dowry Calculation Schedule and payment of Dowries and that the determination by the Independent Body on any application of the Dowry Calculation Schedule and payment of Dowries shall be final and binding on the Applicant Company.

- 4.3 The Independent Body will have certain rights under the IS [Deed Agreement](#) which it will be entitled to exercise if the Applicant Company breaches any of the requirements of conditions 4.1 or 4.2. The exercise of such rights may result in the Applicant Company being required to repay the Dowries it has received in connection with Incentivised Switching or a proportion of such Dowries.

5. INFORMATION, REPORTING AND AUDIT REQUIREMENTS

- 5.1 The Independent Body is entitled to request additional information and clarification of information and access to personnel, and make all enquiries it considers necessary or desirable in relation to the application and the Independent Body's assessment of the application. Refusal to provide such information, grant and facilitate such meetings and/or respond to such enquiries may lead to an Applicant Company's application being rejected. If the Independent Body does not receive a response from any Applicant Company within ten Business Days, the Independent Body shall be entitled to assume that such Applicant Company has withdrawn its application
- 5.2 The Applicant Company will report to the Independent Body on a regular basis in accordance with the terms set out in the IS [Deed Agreement](#).
- 5.3 The Independent Body will have certain audit rights during the term of the IS [Deed Agreement](#) and these audit rights will give the Independent Body the right to access the Applicant Company's records, premises, and employees.

6. CONFIDENTIALITY AND DISCLOSURE

- 6.1 Applicant Companies should note that information received by the Independent Body may be disclosed by the Independent Body to RBS. Applicant Companies should note that information received by the Independent Body may be published or disclosed in accordance with the access to information regimes (including under the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). Applicant Companies should mark as confidential or commercially sensitive any information that they consider should be treated as such and explain why this is the case (automatic confidentiality disclaimers produced by IT systems will not, in themselves, be regarded as binding). The Independent Body will take account of such explanations, but no assurance can be given that confidentiality will be maintained in all circumstances.
- 6.2 No part of the application form or any other marketing materials in connection with Incentivised Switching should be published, reproduced or otherwise made available (in

whole or in part) (i) to any other person without the prior written consent of the Independent Body; and (ii) in any jurisdiction where to do so would be unlawful.

6.3 The Applicant Company shall not (and shall procure that members of its group shall not) make any statement or representation about (or otherwise disclose any terms of or information regarding) Incentivised Switching, these Terms and Conditions, any Incentivised Switching marketing materials or any IS ~~Deed~~[Agreement](#) without the prior written consent of the Independent Body except if and to the extent: (i) required by Applicable Laws; or (ii) such information has come into the public domain other than as a result of a breach of confidence or contractual obligations.

7. DEFINITIONS AND INTERPRETATION

7.1 In these Terms and Conditions:

“Applicable Laws”	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;
“Applicant Company”	has the meaning given to it in condition 1.1, 7.2(A) and 7.2(B) ;
“Application Documents”	has the meaning given to it in condition 2.5;
“Application Period”	has the meaning given to it in condition 2.5;
“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);
“Business Day”	means any day (other than a Saturday or Sunday) on which clearing banks are open for business in

London;

“CASS”

means the current account switch service;

“CIN”

means a unique Customer Identification Number held by RBS in respect of each Target Customer;

“Collections and Recoveries”

means those accounts that have ~~been overdrawn beyond agreed limits or in arrears on repayments for more than two months, or have otherwise been placed in~~ been placed in one of the following business teams by RBS, taking into account in each case factors including (without limitation) credit risk rating deterioration, account conduct and volume of unpaid items, loan arrears, actual or potential insolvency events, covenant breaches, deterioration in trading and cash absorption and defaults: (a) Collections and Recoveries² in Customer Financial Support Services (Debt Management Operations), Business Banking; (b) Specialised Relationship Management Telephony, Commercial & Business Banking; (c) Recoveries and Litigation, Commercial & Business Banking; and/or (d) Strategic Relationship Management (Restructuring) and/or any Strategic Management Unit equivalent for lower exposures, Commercial & Business Banking, and in each case including any such equivalent business team to those set out in (a) to (d) above in respect of accounts of such other group of customers as the Independent Body may determine (if any) and/or any equivalent replacement ~~categorisation by RBS~~ categorisations and/ or business teams;

“Company Offering”

has the meaning given to it in condition 2.6(E);

“Dormant Account”

mean an account where there has been no activity for five years or more;

“Dowries”

means the amounts to be paid by the Independent Body to an Applicant Company whose application is successful in respect of any Transferring Target Customer in accordance with the Dowry Calculation Schedule;

“Dowry Calculation Schedule”

means the schedule to the IS ~~Deed~~ Agreement (as amended by the Independent Body and communicated to the relevant body from time to time), setting out the method for calculation of the

amount of Dowries and the procedure for payment of Dowries;

“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;
“FSMA”	means the Financial Services and Markets Act 2000 (as amended, modified, re-enacted or replaced from time to time) , including any regulations made pursuant thereto;
“HMT”	means the Commissioners of Her Majesty’s Treasury of 1 Horse Guards Road, London, SW1A 2HQ;
“Incentivised Switching”	means the proposal under which eligible bodies would be provided with funds to be used to encourage certain RBS customers to switch from RBS to that eligible body;
“Independent Body”	has the meaning given to it in condition 1.1;
“IS Deed Agreement”	has the meaning given to it in condition 1.4;
“OFAC”	<u>means the Office of Foreign Assets Control of the US Department of the Treasury;</u>
“Perimeter”	means the division of RBS known <u>previously described</u> as Williams and Glyn or such other group of customers as the Independent Body may determine;
“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;

“Primary Account(s)”

means:

(i) where a Target Customer has only one Business Current Account within the Perimeter, that account; or

(ii) where a Target Customer has more than one Business Current Account within the Perimeter, that account or accounts of a Target Customer through which an aggregate of 50% or more of the Turnover of that customer has been processed in the 12 months prior to their transfer to an Applicant Company ~~and shall not include,~~

in each case, excluding any Dormant Account or any account in Collections and Recoveries;

“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;

“Sanctioned Country”

means, at any time, a country or territory that is subject to country-or territory-wide Sanctions;

“Sanctioned Person”

means, at any time: (i) any person listed in any Sanctions-related list of designated persons maintained by the United Nations Security Council, HMT, the European Union, OFAC or the US Department of State; (ii) any person operating, organised or resident in a Sanctioned Country; or (iii) any person owned or controlled by a person or persons included in paragraph (i);

“Sanctions”

means any sanctions administered or enforced by the United Nations Security Council, HMT, the European Union or the United States Government (including, without limitation, OFAC);

“SME”

means a small or medium-sized enterprise, being a business (including incorporated legal entities, sole traders, partnerships, not-for-profit organisations and clubs, charities and societies) that, in respect of any given financial year applying to it, has annual revenues (exclusive of VAT and other turnover-related taxes) not exceeding £25 million;

“Substantial Shareholder” means any person who: (a) owns 10% or more of the shares in the Applicant Company or any member of the Applicant Company’s group; or (b) is entitled to exercise, or control the exercise of, 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the Applicant Company or any member of the Applicant Company’s group;

“Switching Proposal” has the meaning given to it in condition 2.5;

“Target Customer” means a customer of RBS (or a subsidiary of RBS) within the Perimeter as at the date on which the Independent Body first marketed Incentivised Switching to any Applicant Company (or such later date as may be specified in the Dowry Calculation Schedule) which is an SME;

“Terms and Conditions” has the meaning given to it in condition 1.1;

“Transferring Target Customers” means a Target Customer that closes its Primary Account(s) with RBS and opens a BCA with an Applicant Company; ~~and~~

“Trust Deed” means a trust deed entered into by RBS and the Independent Body in order to establish, amongst other things, the trust in respect of Incentivised Switching; ~~and~~

“Turnover” means ~~the~~ annual aggregate credit turnover with ~~accounts~~ Business Current Accounts held within the Perimeter (excluding (i) any turnover between those accounts of a customer with the same CIN) ~~or such other measure of turnover as may be proposed by the Applicant Company and agreed by the Independent Body in accordance with the terms of an IS Deed; and (ii) any monies held by a customer on behalf of that customer’s clients or for the benefit of third parties).~~

7.2 In these Terms and Conditions:

- (A) references to “Applicant Company” shall be deemed to include, where applicable and where the context requires, the Applicant Company’s holding company (which is domiciled in the United Kingdom, the European Union, the European Economic Area or Switzerland) and wholly-owned subsidiaries and the wholly-owned subsidiaries of such holding company (in each case where

such subsidiaries are domiciled in the United Kingdom, the European Union, the European Economic Area or Switzerland);

- (B) the expressions “holding company”, “wholly-owned subsidiary” “subsidiary” and “subsidiary undertaking” shall have the meaning given in the Companies Act 2006;
- (C) 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; and
- (D) references 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.

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