

ICS Participant Terms and Conditions

Version 2.0 dated [●]

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1. DEFINITIONS AND INTERPRETATION

These Terms and Conditions shall be interpreted in accordance with the provisions of the Schedule.

2. INFORMATION AND OTHER CO-OPERATION OBLIGATIONS OF PARTICIPANT

2.1 The Participant undertakes to the ICS Operator that it shall:

- 2.1.1** notify the ICS Operator immediately if it becomes aware of any inaccuracy in the information held within the ICS Central System or under the ICS services;
- 2.1.2** notify the ICS Operator immediately if it becomes aware of any problem or issue which in its opinion is likely to affect the security, integrity or efficiency of the ICS Central System or the ICS services;
- 2.1.3** notify the ICS Operator immediately if it is unable, or believes that it will become unable, to comply with any or all of the ICS Specifications applicable to it;
- 2.1.4** notify the ICS Operator of any changes in the information supplied to the ICS Operator as part of its application to become an ICS participant or to be admitted to any additional participant category from time to time and wherever possible notify the ICS Operator of any changes to such information that are expected to occur; and
- 2.1.5** provide such co-operation, by providing or otherwise making available information and/or records or otherwise, as the ICS Operator may reasonably request from time to time to enable or facilitate the performance of any or all of the ICS Operator Functions.

For the avoidance of doubt, nothing in clause 2.1.5 shall require the Participant to take or omit to take any action at the request of the ICS Operator if such action or omission:

- a) is prohibited by any law applicable to the Participant;
- b) would be in breach of any court order to which the Participant is subject;
- c) would be contrary to any regulatory requirement to which the Participant is subject; or
- d) would be in breach of any contractual or other requirement to keep information confidential to which the Participant is subject.

2.2 The Participant warrants, represents and undertakes to the ICS Operator that:

2.2.1 all information concerning it and provided by it to the ICS Operator was when provided correct and, where relevant, was duly authorised and validated in accordance with the Participant's own internal procedures;

2.2.2 all information concerning it and provided by it to the ICS Operator in the future will be correct as at the date such information is provided and, where relevant, will be duly authorised and validated in accordance with the Participant's own internal procedures;

2.2.3 it will notify the ICS Operator immediately if it becomes aware of any inaccuracy in the information referred to in clause 2.2.1 or clause 2.2.2;

2.2.4 insofar as it has provided, or in future provides, to the ICS Operator information other than that referred to in clause 2.2.1 or clause 2.2.2:

a) where relevant, such information was or (as appropriate) will be correctly reproduced from information provided to it; and

b) the Participant will notify the ICS Operator immediately if it becomes aware of any inaccuracy in such information;

2.2.5 the Participant shall:

a) only access and use the ICS Central System and the ICS services (and all associated intellectual property rights, including for the avoidance of doubt, copyright, rights in software and database rights) for the purposes set out in, or otherwise contemplated by, the ICS Manual and will not submit data or materials into the ICS Central System or the ICS services which infringe the intellectual property rights (including copyright, rights in software and database rights) of any third party;

b) not attempt to modify, alter or reverse engineer any element of the ICS Central System or the ICS services;

c) take all reasonable measures to ensure that it does not transmit or introduce any form of virus, bug or malware into the ICS Central System or the ICS services; and

d) procure that each of its PPSs and Indirect Participants shall comply with the terms of this clause 2.2.5 as if such PPS or Indirect Participant were a party to these Terms and Conditions.

2.3 The Participant acknowledges and agrees that it has no authority to give any instructions, advice or waiver or to make representations to or otherwise to communicate with the Supplier or any other person, in each such case on behalf of the ICS Operator.

3. DISCLOSURE OF INFORMATION AND GOVERNANCE OBJECTIVES

3.1 The Participant agrees to treat as confidential any information which comes into its possession or control or is learned as a result of its participation in the ICS (including any information which comes into its possession as a result of any shareholding it has in the ICS Operator) where such information is by its nature confidential or which the Participant knows or should reasonably know is confidential. The Participant shall comply promptly with any and all reasonable instructions of the ICS Operator from time to time in connection with the use of all or any of such confidential information, and shall take all necessary steps to ensure that any such confidential information is protected in accordance with appropriate security procedures (including the use of appropriate data encryption technology). This clause 3.1 does not apply to the extent that the relevant information:

- 3.1.1** is already in the public domain when received;
- 3.1.2** is subsequently brought into the public domain otherwise than as a result of an unauthorised disclosure by the Participant;
- 3.1.3** was already known to the Participant at the time of receipt and was not acquired by the Participant under any obligation of confidence;
- 3.1.4** was independently developed by the Participant without any use of confidential information provided by the ICS Operator or any other ICS participant; or
- 3.1.5** is required to be disclosed to enable or facilitate the Participant to comply with any of the ICS Specifications applicable to it.

3.2 The Participant shall not copy or disclose such confidential information (in whole or in part) to any third party nor permit access to it by any third party, in each case without the prior written consent of the ICS Operator. However, the Participant may disclose or make available such confidential information (without the ICS Operator's consent) to:

- 3.2.1** its accountants, auditors, legal or other professional advisers;
- 3.2.2** any Regulatory Authority to whose jurisdiction the Participant is subject (in connection with the performance of that Regulatory Authority's statutory or

other public law functions) where or to the extent that the Participant is required to do so by that Regulatory Authority;

3.2.3 any person where or to the extent that the Participant is required to do so by law or by a court order;

3.2.4 any person where or to the extent that the Participant is permitted to disclose such information to that person in accordance with the ICS Manual, or the ICS Manual otherwise contemplates the disclosure of such information to that person in the circumstances described in it;

3.2.5 any person where or to the extent that the Participant is permitted to disclose such information under any other term of these Terms and Conditions or under any other contract with the ICS Operator forming part of the ICS Specifications applicable to the Participant; and

3.2.6 any other persons approved by the ICS Operator,

PROVIDED THAT the Participant a) informs any such person of the confidential nature of the information and b) ensures that such person is obligated to keep such information confidential on terms no less onerous than those set out in clause 3.1 and this clause 3.2. This proviso shall not apply where the Participant is required to disclose the information under clause 3.2.2 or 3.2.3, but in such event the Participant shall give to the ICS Operator as much prior written notice of the disclosure as is practicable (provided that it is not prohibited from doing so) to allow the ICS Operator an opportunity to respond by, for example, consulting and determining with the relevant Regulatory Authority or other intended recipient of the information whether to require or make such disclosure would be consistent with the proper discharge of the recipient's statutory or other functions and/or whether the proper discharge of those statutory or other functions can be satisfied through means other than to require or make such disclosure. The Participant may disclose confidential information to a Regulatory Authority where required to do so by that Regulatory Authority without so notifying the ICS Operator where the Regulatory Authority has requested or directed that the ICS Operator is not notified or informed of such disclosure.

3.3 The ICS Operator agrees to treat as confidential any information about the Participant, its activities as an ICS participant and the Participant's customers which comes into its possession or control or is learned as a result of its operation of the ICS where such information is by its nature confidential or which the ICS Operator knows or should reasonably know is confidential (such information being the ***Participant Information***). Subject to clause 3.4, the ICS Operator shall not copy or disclose Participant Information (in whole or in part) to any third party nor permit access to it by any third party, in each case without the prior written consent of the Participant.

3.4 The Participant acknowledges, agrees and accepts that its Participant Information may (without the Participant's prior consent) be provided by the ICS Operator to (or the ICS Operator may permit access to its Participant Information from time to time by):

3.4.1 any Regulatory Authority or other regulatory or law enforcement body, whether or not the ICS Operator is required by law to do so (but where the ICS Operator is not required by law to provide or permit access to the Participant Information, the ICS Operator must first determine acting in good faith that such provision or access is necessary or appropriate to enable or facilitate its compliance with any direction or other requirement properly made, issued or otherwise imposed by the Regulatory Authority or other regulatory or law enforcement body concerned or its satisfaction of any requirement which is a condition to the designation of the ICS as a system under the SFRs);

3.4.2 any person where or to the extent that the ICS Operator is permitted to disclose the Participant Information to that person in accordance with the ICS Manual, or the ICS Manual otherwise contemplates the disclosure of the Participant Information to that person in the circumstances described in it;

3.4.3 any person where or to the extent that the ICS Operator is permitted to disclose the Participant Information under any other term of these Terms and Conditions or under any other contract with the Participant forming part of the ICS Specifications applicable to the Participant;

3.4.4 any person where or to the extent that the ICS Operator (or its Supplier) is required to do so by law or by a court order; and

3.4.5 any person in the event that the Participant Information is or becomes generally available in the public domain otherwise than as a result of an unauthorised disclosure by the ICS Operator,

PROVIDED THAT where the ICS Operator discloses information under clause 3.4.1, it shall (unless it is prohibited from doing so or the relevant Regulatory Authority has directed or requested that the ICS Operator should not do so) notify the Participant of the identity of the Regulatory Authority concerned and the nature of the Participant Information disclosed.

3.5 Without prejudice to clauses 3.3 and 3.4, the Participant agrees that its Participant Information held by the ICS Operator or within the ICS Central System or under the ICS services may be used or disclosed by the ICS Operator to enable or facilitate the ICS Operator's performance of its functions described or otherwise set out in the ICS Manual

or its performance or satisfaction of any other obligations or requirements under any relevant legislation or to any Regulatory Authority to whose jurisdiction (whether formal or informal) the ICS Operator or any part of the ICS is subject.

3.6 The Participant acknowledges that, as operator of:

3.6.1 a payment system that is subject to informal stability oversight by the Bank of England; and

3.6.2 a regulated payment system under the 2013 Act,

the ICS Operator's governance arrangements for the ICS (including the ICS Specifications) are designed and implemented so as to:

- a) promote the safety, efficiency and effectiveness of the ICS;
- b) support the stability of the broader financial system, other relevant public interest considerations and the objectives of relevant stakeholders; and
- c) permit fair and open access to the ICS.

These are the ICS Operator's **Governance Objectives** for the ICS for the purposes of clause 3.7.

3.7 In light of the ICS Operator's Governance Objectives for the ICS, the Participant acknowledges and agrees that:

3.7.1 the ICS Operator is committed to engage and deal with both:

- a) the Bank of England; and
- b) the Payment Systems Regulator (the **PSR**),

in an open and co-operative way so as to enable or facilitate the advancement of their respective statutory objectives and duties;

3.7.2 the ICS Operator may disclose to the Bank of England and the PSR appropriately anything relating to the Participant which could materially adversely impact the advancement of their respective statutory objectives and duties; and

3.7.3 the ICS Operator may otherwise perform its governance functions as

operator of the ICS in such way as the ICS Operator (acting in good faith) considers will or is likely to achieve or otherwise promote the Governance Objectives for the ICS.

If the ICS Operator makes a disclosure to the Bank of England or the PSR under clause 3.7.2, the ICS Operator shall (unless it is prohibited from doing so or the Bank of England or, as the case may be, the PSR has directed or requested that the ICS Operator should not do so) notify the Participant of the nature of the information relating to the Participant which has been disclosed.

3.8 Without limitation to the generality of clause 3.7, the Participant acknowledges that the ICS Operator may act upon any recommendation or guidance given by the Bank of England in connection with the exercise of any stabilisation power (as defined in section 1(4) of the 2009 Act) or any other power under Part 1 of the 2009 Act in relation to the Participant or any other ICS participant.

3.9 The Participant agrees that the ICS Operator shall not be obliged to reveal to the Participant any information disclosed to the ICS Operator by any Regulatory Authority. However, the ICS Operator undertakes to the Participant that if the ICS Operator receives information from any Regulatory Authority which the ICS Operator considers is material to the Participant or its business, then the ICS Operator shall determine (acting in good faith) whether it would be appropriate to disclose that information to the Participant having regard to the proper performance of its functions as operator of the ICS, the proper performance of the relevant Regulatory Authority's functions, the impact of non-disclosure on the Participant's business and any other relevant considerations. If the ICS Operator determines that such disclosure would be appropriate having regard to such considerations (but only in the event of any such determination), it shall disclose such information to the Participant in such form, in such manner and by such means as it thinks fit (acting in good faith).

3.10 The ICS Operator may publicise from time to time, in such manner as it may determine, information relating to any material or persistent failure by the Participant to comply with any of the ICS Specifications applicable to it. The power reserved to the ICS Operator under this clause 3.10 shall not (without prejudice to clauses 3.4, 3.5, 3.6, 3.7 or 3.8) entitle it:

3.10.1 to publicise the name of any person other than the Participant; or

3.10.2 to disclose the affairs of any customer of the Participant.

The ICS Operator shall not be liable to the Participant in respect of any Liabilities suffered or incurred by the Participant as a result of any such publicity or any errors in any such publicity made in good faith by the ICS Operator.

4. RESPONSIBILITIES OF THE ICS OPERATOR

4.1 The ICS Operator undertakes to the Participant that it shall:

4.1.1 take reasonable care to cause the ICS Central System and the ICS services to operate in all material respects in the manner described in the ICS Service Description; and

4.1.2 perform the ICS Regulatory Functions in good faith.

4.2 The undertakings in clause 4.1 are subject and without prejudice to:

4.2.1 the ability of the ICS Operator to alter the provisions of these Terms and Conditions and any part of the ICS Manual in accordance with these Terms and Conditions; and

4.2.2 the limitations on the scope of the ICS Operator's obligations to the Participant, and the limitations on, and exemptions from, the ICS Operator's liability to the Participant, provided for in these Terms and Conditions.

4.3 The Participant acknowledges, agrees and accepts that:

4.3.1 the ICS Operator shall not be liable to the Participant for any Liabilities which may be suffered or incurred by the Participant as a result of the ICS Central System or the ICS services or the manner in which the ICS Central System or the ICS services operate at any particular time not being adequate or sufficient for any specific purpose of the Participant or any other person, whether or not the ICS Operator is aware of any such purpose;

4.3.2 the ICS Operator does not owe the Participant any duty in relation to the admission of any other person as an ICS participant or in relation to the exercise or non-exercise of the ICS Operator's powers of termination or suspension of such other person, or power of direction or other ICS Regulatory Functions in relation to such other person;

4.3.3 the ICS Operator does not owe the Participant any duty to monitor or enforce compliance by any other ICS participant with any provision that relates to its participation in the ICS;

4.3.4 the ICS Operator does not undertake or assume any responsibility under or in connection with these Terms and Conditions towards any person other than the Participant in relation to the operation of the ICS Central System or the ICS services;

4.3.5 the ICS Operator is not responsible to the Participant for the Network Services or the SSP Services; and

4.3.6 the ICS Operator has no responsibility for instructions sent:

- a) by the Participant to the ICS Switch until they reach the DTS;
- b) by the ICS Switch to the Participant once they leave the DTS;
- c) by the Participant to the Back Office Modules until they reach the ICS Portal;
- d) by or through the SSP Link until they reach the SWIFT Bureau or other systems operated by the ICS Operator;
- e) from the SWIFT Bureau or other systems operated by the ICS Operator to the SSP Link after they leave the SWIFT Bureau or such other systems.

4.4 The ICS Operator undertakes to the Participant that any Relevant ICS Regulatory Action shall only be taken by the ICS Operator if:

4.4.1 (subject to clause 4.4.2) such action is authorised by the Board;

4.4.2 (in the case of any suspension pursuant to clause 10.1 of the Participant's participation in whole or in part in relation to any particular function or participant category) such action is authorised by the Board or the Chief Executive Officer.

4.5 If the Chief Executive Officer authorises suspension action in respect of the Participant in accordance with clause 4.4.2, s/he shall notify the ICS Operator's chairman (or, if s/he is unavailable, the ICS Operator's deputy chairman, or, in the absence of both the chairman and the deputy chairman, any Board director) of any such suspension. Any such suspension shall be reviewed by the Board as soon as it may be practicable to do so, but in any event within two ICS Business Days. Upon any such review by the Board, the Board shall determine whether:

4.5.1 to end the suspension or extend the suspension pursuant to clause 10.2;
or

4.5.2 to take such other action as it considers appropriate pursuant to clause 10.1; or

4.5.3 to terminate the Participant's participation pursuant to clause 10.6 in whole or in part in relation to any particular function or participant category.

5. GENERAL SYSTEM MATTERS

5.1 The Participant agrees with the ICS Operator that it accepts the ICS Specifications applicable to it as forming the basis of its participation in the ICS and undertakes to the ICS Operator that it will comply with the ICS Specifications applicable to it from time to time. The Participant acknowledges that the ICS Service Description describes the ICS Central System and the ICS services. Without limiting the generality of the previous sentences in this clause 5.1, the Participant acknowledges, agrees and accepts that:

5.1.1 the time within which any particular electronic image or instruction is processed may be affected by the factors described in the ICS Service Description;

5.1.2 the availability of or access to certain ICS services may be affected by the factors described in the ICS Service Description (including, without limitation, in those sections of the ICS Service Description entitled "*ICS Switch processing capability*", "*Contingency processing*", "*Suspension of the ICS*" and "*ICS Non-Core Services capacity*");

5.1.3 certain services provided as part of the ICS Central System and/or the ICS services are dependent upon access by the ICS Operator to, or the provision to the ICS Operator of, information and/or other systems or processes from or by the operator of another payment system or an infrastructure provider (excluding, for the avoidance of doubt, the Supplier and the SSP). The relevant services, information, systems and processes and the identity of any such operator or infrastructure provider are specified in the ICS Manual from time to time. The ICS Operator does not check the accuracy of any such information and does not monitor the operation or performance of any such system or process. The Participant accordingly acknowledges and agrees that the ICS Operator shall not be liable to the Participant for any Liabilities suffered or incurred by the Participant as a result of:

- a) any inaccuracy in the information to which the ICS Operator is given access or which is otherwise provided to it by such operator or infrastructure provider; or
- b) any error, failure or malfunction in any such system or process of such operator or infrastructure provider;

5.1.4 the ICS Operator may delegate the performance of some or all of its functions as operator of the ICS and, without prejudice to the generality of the foregoing, may perform or exercise any of its obligations or discretions under these Terms and Conditions or in the ICS Manual or otherwise in connection with the ICS Specifications by or through its employees (including, without limitation, employees of any third party seconded to the ICS Operator), delegates or agents or by or through the Supplier; and

5.1.5 the ICS Operator reserves the right to suspend the operation of the ICS Central System or the ICS services in whole or in part if it, in its absolute discretion, considers it appropriate to do so by reason of any circumstances described in the ICS Service Description or other circumstances beyond the ICS Operator's reasonable control. The ICS Operator reserves the right to vary the ICS Operational Timetable if it, in its absolute discretion, considers it appropriate to do so. Any such suspension or variation will, where reasonably practicable, be notified in advance to the Participant in accordance with the ICS Manual.

For the avoidance of doubt, nothing in clause 5.1.4 shall permit the ICS Operator to delegate the performance of any of its material functions as operator of the ICS to the Supplier or any other third party without the prior approval of the Board.

5.2 The ICS Operator undertakes to the Participant that any decision to suspend or vary the operation of the ICS Central System, the ICS services or the ICS Operational Timetable in accordance with clause 5.1.5 shall (if practicable) be taken only after consultation with:

5.2.1 the Bank of England; and

5.2.2 such other relevant Regulatory Authorities as the Board (or, as the case may be, the Chief Executive Officer) considers (acting in good faith) to be appropriate.

In any event, any such decision shall in all cases be taken by the Board, unless the Chief Executive Officer (acting in good faith) determines that it is necessary to implement such suspension or variation as an emergency and without reference to the Board in order to protect the integrity, safety, stability or efficiency of the ICS. Any such decision by the Chief Executive Officer shall be reviewed by the Board as soon as it may be practicable to do so, but in any event within one ICS Business Day.

5.3 The Participant authorises the ICS Operator to do on behalf of the Participant all or any of the acts and things which the ICS Manual or these Terms and Conditions provide may be done by the ICS Operator on behalf of the Participant.

6. PROVIDERS OF PARTICIPANT SERVICES

6.1 The Participant acknowledges that:

6.1.1 the ICS Operator may from time to time specify requirements in relation, amongst other things, to functionality, security and performance to be met by equipment, systems and/or services that may be used by ICS participants in connection with their participation in the ICS (including the use of data encryption technology);

6.1.2 the nature of such equipment, systems and/or services, and the requirements specified by the ICS Operator in respect of them, shall be as set out from time to time in the ICS Manual and/or the User Documents; and

6.1.3 PPSs may provide equipment, systems and/or services to the Participant in connection with its participation in the ICS.

6.2 Such PPSs provide their services as principal to the Participant and not as agent or delegate for the ICS Operator. Accordingly, the Participant acknowledges and agrees that:

6.2.1 each PPS and not the ICS Operator is responsible for the supply, upkeep and (where relevant) security of the relevant equipment, systems and/or services that it provides to or for the Participant, as well as the service levels to which such equipment, systems and/or services are provided;

6.2.2 the ICS Operator does not monitor or otherwise review the appointment of any such PPS by the Participant or the provision of the relevant equipment, systems and/or services by any such PPS to or for the Participant;

6.2.3 (without prejudice to the ICS Operator's undertaking in clause 6.4 as read subject to clause 6.5) the ICS Operator does not owe the Participant any duty in relation to the Participant's selection or appointment of any such PPS or its use of the equipment, systems and/or services provided by any such PPS;

6.2.4 it is the responsibility of the Participant (and not the ICS Operator) to determine whether such equipment, systems and/or services comply with the requirements specified by the ICS Operator from time to time and whether the use of such equipment, systems and/or services by the Participant complies with the ICS Specifications applicable to the Participant; and

6.2.5 the basis upon which any such PPS provides the relevant equipment, systems and/or services is a matter for agreement between the Participant and that PPS, and the Participant hereby accepts liability and responsibility to the ICS Operator for:

- a) all acts or omissions of its PPS in connection with the Participant's participation in the ICS, as if such acts or omissions were acts or omissions of the Participant; and
- b) ensuring that its PPS complies fully with all requirements for PPSs specified by the ICS Operator in the ICS Manual and/or the User Documents from time to time.

6.3 Without prejudice to clause 6.2, a PPS may elect to:

6.3.1 warrant in favour of the ICS Operator that the equipment, systems and/or services that the PPS provides to ICS participants comply, and shall at all material times comply, with the relevant requirements specified by the ICS Operator from time to time in the ICS Manual and/or the User Documents (a ***PPS compliance warranty***); and

6.3.2 undertake to the ICS Operator to provide a warranty in materially identical terms to the PPS compliance warranty in favour of each ICS participant to or for whom it provides such equipment, systems and/or services (a ***related undertaking***).

The Participant acknowledges and agrees that the ICS Operator does not, however, require any such PPS compliance warranty and related undertaking to be given by any person before it acts, or as a condition to its acting, as a PPS for an ICS participant.

6.4 If a PPS gives the ICS Operator a PPS compliance warranty and related undertaking, the ICS Operator undertakes to the Participant that:

6.4.1 it shall include in the ICS Manual and/or the User Documents and/or on the ICS Operator's website:

- a) the name and business address of the PPS concerned (as notified by the PPS to the ICS Operator from time to time); and
- b) the description of the equipment, systems and/or services (as provided to the ICS Operator by the PPS) in respect of which the PPS has provided a PPS compliance warranty and related

undertaking;

6.4.2 it shall at regular intervals not exceeding eighteen (18) months request each such PPS to confirm that its PPS compliance warranty remains true and correct; and

6.4.3 it shall promptly remove from the ICS Manual, the User Documents and the ICS Operator's website the name, business address and related details for any PPS:

- a) that does not confirm its PPS compliance warranty in the manner contemplated by clause 6.4.2 within the timeframe requested by the ICS Operator; or
- b) where the ICS Operator reasonably believes that the PPS is in material or persistent breach of its PPS compliance warranty and/or has failed to comply with the related undertaking; or
- c) where the ICS Operator receives written notice from an ICS participant that the PPS is unable, unwilling or refusing for any reason to perform, pay or otherwise discharge its obligations in full under or in relation to the warranty given or purportedly given by the PPS (as described in clause 6.3.2) in favour of the relevant ICS participant (a **corresponding warranty**); or
- d) where the PPS has requested the ICS Operator to remove its relevant details from the ICS Manual, the User Documents and/or the ICS Operator's website.

For the purpose of paragraph b) above, a PPS shall be considered to be in **material** or **persistent breach** of its PPS compliance warranty or to have **failed** to comply with its related undertaking only if the ICS Operator determines (acting in good faith) that the breach or (as the case may be) the failure is of sufficient seriousness or has been (or is likely to be) repeated sufficiently often so as to have or be likely to have a material impact upon the security, integrity, efficiency, effectiveness or reputation of the ICS. The Participant agrees that the ICS Operator may make any such determination on the basis of information supplied to the ICS Operator (whether orally or in writing) that the ICS Operator honestly believes to be true.

6.5 The ICS Operator does not assume any responsibility to any ICS participant to:

6.5.1 investigate the creditworthiness or status of any PPS or carry out any form of due diligence, auditing or monitoring of any PPS whatsoever;

6.5.2 verify or monitor the accuracy, completeness, correctness, validity, effectiveness, enforceability, performance or non-performance of any PPS compliance warranty (or any related undertaking) or any corresponding warranty; or

6.5.3 enforce or facilitate the enforcement of any PPS compliance warranty (or any related undertaking) or any corresponding warranty.

The Participant accordingly acknowledges and agrees that the ICS Operator gives no endorsement or recommendation of any PPS and shall not be liable to the Participant for any Liabilities suffered or incurred by the Participant as a result of:

- a) the inability, failure or refusal for any reason of any PPS appointed by the Participant (a **Relevant PPS**) to perform, pay or otherwise discharge its obligations in full under or in relation to any PPS compliance warranty (or any related undertaking) or any corresponding warranty or any other contractual obligation assumed by the Relevant PPS in favour of the Participant;
- c) the invalidity, ineffectiveness or unenforceability for any reason of any PPS compliance warranty (or any related undertaking) or any corresponding warranty given or purportedly given by a Relevant PPS;
- d) any omission, failure or refusal by the ICS Operator to verify or monitor the accuracy, completeness, correctness, validity, effectiveness, enforceability, performance or non-performance of any PPS compliance warranty (or any related undertaking) or any corresponding warranty given or purportedly given by a Relevant PPS; and/or
- e) any omission, failure or refusal by the ICS Operator to enforce or facilitate enforcement of any PPS compliance warranty (or any related undertaking) or any corresponding warranty given or purportedly given by a Relevant PPS,

PROVIDED ALWAYS THAT in any such case the ICS Operator complies or has complied with its undertakings set out in clause 6.4 in respect of the Relevant PPS.

7. INSTRUCTIONS (ELECTRONIC AND OTHERWISE)

7.1 Any:

7.1.1 electronic image received by the ICS Central System or the ICS services which is sent (or purports to be sent) by or on behalf of the Participant shall be incapable of being withdrawn; and

7.1.2 electronic instruction received by the ICS Central System or the ICS services which is sent (or purports to be sent) by or on behalf of the Participant shall be irrevocable,

except to the extent (if at all) that the electronic image may be withdrawn or (as the case may be) the electronic instruction may be revoked or amended in accordance with the ICS Service Description.

7.2 The Participant agrees that the ICS Operator shall be entitled without further enquiry to process, execute or otherwise act upon any:

7.2.1 image or purported image;

7.2.2 instruction or information or purported instruction or information,

which in any such case is received by or through:

a) the ICS Central System;

b) the ICS services; or

c) the SSP Link,

as well as any instruction or information or purported instruction or information received in accordance with the ICS Manual otherwise than by or through the ICS Central System, the ICS services or the SSP Link.

7.3 Clause 7.2 shall apply notwithstanding that it may afterwards be discovered that:

7.3.1 any such image, instruction or information (or purported image, instruction or information) was not genuine or was not correct or was not sent with the authority of the person on whose behalf it was expressed or purported to have been sent;

7.3.2 the sending of any such image, instruction or information (or purported

image, instruction or information) was not initiated by the person entitled to send it or was not initiated through the systems and equipment (as the case may be) operated by such person;

7.3.3 the sending of any such image was not initiated by the true owner of the instrument of which the image was a copy or purported to be a copy;

7.3.4 any such image was a copy of an instrument or other document that had no legal effect; or

7.3.5 any such image was a copy of an instrument or other document that was not Eligible Paper.

7.4 Without prejudice to clauses 7.2 and 7.3, the Participant agrees that the ICS Operator shall be entitled without further enquiry to act or otherwise rely upon any written instructions or information or purported instructions or information relating to the Participant received in accordance with the ICS Manual whether from the Participant or any person reasonably believed by the ICS Operator to be a person who is legally able to act on behalf of the Participant or to be a person notified to it as having authority to act on the Participant's behalf notwithstanding that it may afterwards be discovered that such instruction or information was not genuine or was not correct or was unauthorised.

7.5 Nothing in clauses 7.2 to 7.4 (each inclusive) shall entitle the ICS Operator to process, execute or otherwise act upon any:

7.5.1 image or purported image; or

7.5.2 instruction or information or purported instruction or information,

if at the time it received it or at any time thereafter the ICS Operator had actual notice that:

a) it was not genuine; or

b) any information contained in it was not correct; or

c) it was not sent with the authority of the person on whose behalf it was expressed or otherwise purported to be sent; or

d) its sending was not initiated by the person entitled to send it; or

e) its sending was not initiated through the systems and equipment (as the case may be) operated by the person entitled to send it; or

- f) its sending was not initiated by the true owner of the instrument of which the image was a copy or purported to be a copy; or
- g) it was an image of an instrument or other document that had no legal effect; or
- h) it was an image of an instrument or other document that was not Eligible Paper,

and at the time it received the actual notice it was practicable for the ICS Operator to halt the processing of the image, instruction or information or purported image, instruction or information; or

if the processing or further processing of the image, instruction or information or purported image, instruction or information would be a breach of the ICS Operator's undertaking set out in clause 8.4.

7.6 The ICS Operator shall not be liable to the Participant for any Liabilities suffered or incurred by the Participant as a result of the ICS Operator having processed, executed or otherwise acted upon any:

7.6.1 image or purported image; or

7.6.2 instruction or information or purported instruction or information,

that it was entitled to process, execute or otherwise act upon pursuant to clauses 7.2 to 7.4 (each inclusive), or that it was entitled to process through the THIR in accordance with the ICS Service Description or as part of the ICS services that are specifically described in the ICS Service Description as applying to any such image, instruction or information or purported image, instruction or information.

7.7 The Participant hereby indemnifies and holds harmless the ICS Operator from and against any Indemnified Claims arising out of or in connection with any claim brought against the ICS Operator by any customer of the Participant, any Indirect Participant for whom the Participant is acting or any other person who has suffered or incurred any Liabilities as a result of the ICS Operator having processed, executed or otherwise acted upon a Relevant Image or a Relevant Instruction. For this purpose:

7.7.1 a **Relevant Image** is an image or purported image that the ICS Operator was entitled to process, execute or otherwise act upon in accordance with these Terms and Conditions and which was sent or which was purportedly sent through the ICS Switch by the Participant; and

7.7.2 a **Relevant Instruction** is any instruction or information or purported instruction or information that the ICS Operator was entitled to process, execute or otherwise act upon in accordance with these Terms and Conditions and which was sent or which was purportedly sent to the ICS Central System, the ICS services or otherwise to the ICS Operator by or on behalf of the Participant (or an Indirect Participant for whom the Participant is acting or was acting at the time the Relevant Instruction was received by the ICS Central System, the ICS services or, as the case may be, the ICS Operator).

7.8 The Participant acknowledges and agrees that it is responsible for the performance of such matters as are described in the ICS Manual as being the responsibility of the Participant with a view to protecting the security and integrity of electronic images and/or instructions which it sends to or receives from the ICS Central System and the ICS services.

7.9 The Participant agrees that, notwithstanding any other obligation imposed upon it, whether under these Terms and Conditions or otherwise, the ICS Operator shall not be obliged to take any action upon or in response to an image or instruction (whether electronic or not) sent by the Participant, to the extent that any such action or any result of it would be (or, in the ICS Operator's reasonable opinion, would be likely to be) in breach of any relevant law, order of a court or requirement of the Bank of England or the PSR or any other Regulatory Authority having jurisdiction (whether formal or informal) over the ICS Operator or any part of the ICS.

8. ELECTRONIC PRESENTMENT AND OTHER PROCESSING

8.1 Without prejudice to clause 8.4, the Participant acknowledges that it is its responsibility (or the responsibility of the Indirect Participant for whom it is acting) to ensure that any electronic image that the Participant sends to the ICS Switch is a copy of an instrument or other document that is Eligible Paper.

8.2 Without prejudice to clause 8.4, the ICS Operator shall have no responsibility to the Participant for the effectiveness under applicable law of any presentment for payment through the ICS Switch of an image of an instrument or other document (whether or not such image is a copy or purports to be a copy of Eligible Paper).

8.3 Without prejudice to clause 8.4, the Participant acknowledges that it (or its Indirect Participant) is responsible for ascertaining whether under applicable law:

8.3.1 the sending of an electronic image of an instrument or other document through the ICS Switch in accordance with the ICS Service Description is

(where relevant) an effective presentment for payment of that instrument or other document;

8.3.2 settlement in accordance with the ICS Service Description against any electronic image of an instrument or other document sent through the ICS Switch is (where relevant) an effective discharge by payment of the instrument or other document.

8.4 The ICS Operator undertakes to take reasonable care not to cause or permit the processing or further processing of an electronic image of an instrument or other document through the ICS Central System if at the time the image is received at the ICS Switch or at any time thereafter the ICS Operator has actual notice that:

8.4.1 it is a copy of an instrument or other document that is not Eligible Paper;

8.4.2 (where relevant) the sending of the image through the ICS Switch in accordance with the ICS Service Description is not, under applicable law, an effective presentment for payment of that instrument or other document; or

8.4.3 (where relevant) settlement in accordance with the ICS Service Description against the image is not, under applicable law, an effective discharge by payment of the instrument or other document,

and at the time it receives the actual notice it is practicable for the ICS Operator to halt the processing (or further processing) of the image through the ICS Central System.

For the avoidance of doubt, this clause 8.4 shall not affect:

a) the operation of the THIR as described in the ICS Service Description; or

b) the ICS services that may be provided by the ICS Operator in relation to any image in respect of which processing or further processing through the ICS Central System has been halted or is not permitted by the ICS Operator pursuant to this clause and are specifically described in the ICS Service Description as applying to any such image.

8.5 The Participant undertakes to notify the ICS Operator immediately in accordance with the ICS Manual if it believes or becomes aware of, any of the following:

8.5.1 that an application is to be made for a court order which, if granted, would in any way restrain the Participant (or any Indirect Participant for whom it is

acting) from:

- a) making an effective presentment for payment of an instrument or other document by the sending of an electronic image of it through the ICS Switch in accordance with the ICS Service Description;
- b) settling in accordance with the ICS Service Description against an electronic image of an instrument or other document so as to bring about the effective discharge by payment of the instrument or other document;
- c) settling in accordance with the ICS Service Description against any electronic instruction sent through the ICS Switch so as to bring about the effective discharge of any underlying obligation to which the instruction relates; or
- d) otherwise using or accessing any of the services, functions and facilities that in accordance with the ICS Service Description are provided or otherwise made available to an ICS participant admitted under the participant category or participant categories to which the Participant is admitted;

8.5.2 that any other event is likely to occur or that circumstances exist or are likely to arise which could affect its ability (or the ability of an Indirect Participant for which it is acting) to:

- a) make an effective presentment for payment of an instrument or other document by the sending of an electronic image of it through the ICS Switch in accordance with the ICS Service Description;
- b) settle in accordance with the ICS Service Description against an electronic image of an instrument or other document so as to bring about the effective discharge by payment of the instrument or other document;
- c) settle in accordance with the ICS Service Description against any electronic instruction sent through the ICS Switch so as to bring about the effective discharge of any underlying obligation to which the instruction relates; or
- d) otherwise use or access any of the services, functions and facilities that in accordance with the ICS Service Description are provided or otherwise made available to an ICS participant admitted under the participant category or participant categories to which the Participant

is admitted;

- 8.5.3** that either it (or an Indirect Participant for which it is acting):
- a) has sent (or is proposing to send) for processing through the ICS Switch an electronic image of an instrument or other document which is not Eligible Paper; or
 - b) has made payment (or is proposing to make payment) against an electronic image of an instrument or other document sent (or to be sent) through the ICS Switch and which is not Eligible Paper; or
- 8.5.4** the receipt of any court order of the type described in clause 8.5.1 or becomes aware that any such order has been or is to be served on any other person.

8.6 Where any notification is given pursuant to clause 8.5, it shall be confirmed in writing and the Participant shall provide the ICS Operator with all relevant information that it has relating to the matter. The ICS Operator may take such action as it in its absolute discretion thinks fit with a view to preventing (so far as practicable) any event or circumstances or threatened event or circumstances from:

- 8.6.1** rendering any action taken or to be taken through the ICS Central System or ICS services following the sending of such image or instruction through the ICS Switch (or the result of any such action) void, voidable or otherwise ineffective or liable to reversal;
- 8.6.2** threatening the security, integrity or reputation of the ICS Central System or ICS services; or
- 8.6.3** involving the ICS Operator in material expense or legal proceedings.

The Participant undertakes to co-operate with the ICS Operator to facilitate the taking of any such action. The ICS Operator shall not, provided it has acted in good faith, be liable to the Participant for any Liabilities suffered or incurred by the Participant as a result of any such action and shall be entitled to recover from the Participant any costs or expenses reasonably incurred by it in connection with the taking of any such action, or arising as a result of its taking such action.

9. EXCLUSION EVENT AND FORCE MAJEURE EVENT

9.1 The Participant agrees that the ICS Operator may assume that no Exclusion Event or Force Majeure Event has occurred in respect of the Participant and (where relevant) any

of its Associates, unless an officer of the ICS Operator actively involved in the operation of the ICS Central System and the ICS services has actual notice to the contrary and shall not be obliged to enquire as to the occurrence or continuation of an Exclusion Event or Force Majeure Event in respect of the Participant or (where relevant) any of its Associates.

9.2 The Participant undertakes to the ICS Operator to notify the ICS Operator immediately in accordance with the ICS Manual upon becoming aware of:

9.2.1 an Exclusion Event or a Force Majeure Event in respect of the Participant; or

9.2.2 an Exclusion Event in respect of any Associate of the Participant.

9.3 Upon the ICS Operator becoming aware of a Force Majeure Event in respect of the Participant, the ICS Operator shall, acting in good faith, determine whether any action is necessary or desirable to manage the continued participation of the Participant in the ICS and, if it determines (acting in good faith) that any such action is necessary or desirable, it shall carry out those acts. Any such action may include, without limitation, the issue of a direction in accordance with the ICS Manual or the suspension of the operation of the ICS Central System and/or the ICS services in whole or in part under the power reserved to the ICS Operator in clause 5.1.5. The ICS Operator shall not, provided it has acted in good faith, be liable to the Participant for any Liabilities suffered or incurred by the Participant as a result of it carrying out any such acts and shall be entitled to recover from the Participant any costs or expenses reasonably incurred by it in connection with the carrying out of such acts, or arising as a result of its carrying out such acts.

9.4 The Participant shall procure compliance by each of its Indirect Participants with any direction issued by the ICS Operator as contemplated by clause 9.3 that relates to any service, function or facility (or set of services, functions or facilities) to which each such Indirect Participant is given indirect access under or by virtue of its contractual arrangement with the Participant.

10. SUSPENSION AND TERMINATION OF PARTICIPATION

10.1 The ICS Operator may suspend the Participant's participation in whole or in part in relation to any particular function or participant category, with immediate effect (or with effect from such time and date as the ICS Operator may specify) in the following circumstances:

10.1.1 where, in the opinion of the ICS Operator, the Participant is in material or persistent breach of any provision of these Terms and Conditions or any provision of the ICS Specifications applicable to it or where, in the opinion of the ICS Operator, any such breach is or appears to be threatened or likely to

occur;

- 10.1.2** where, in the opinion of the ICS Operator, the Participant is in breach of any direction for the time being in force given by or for the ICS Operator in accordance with the ICS Manual;
- 10.1.3** if, in the opinion of the ICS Operator, circumstances have arisen in relation to the Participant which make it necessary or appropriate to do so to manage or mitigate risks which could be prejudicial to the ICS Operator or represent a threat to the security, integrity or reputation of the ICS Central System or the ICS services or which could involve the ICS Operator in material expense or legal proceedings, not being proceedings solely between the ICS Operator and the Participant arising out of these Terms and Conditions or any other ICS Specifications applicable to the Participant;
- 10.1.4** if, in the opinion of the ICS Operator, the Participant's participation is disruptive to other ICS participants or the Network Services;
- 10.1.5** if any of the events set out in clause 8.5 occurs or, in the opinion of the ICS Operator, appears likely to occur; or
- 10.1.6** if any Exclusion Event occurs in respect of the Participant or an Associate of the Participant or, in the opinion of the ICS Operator, appears likely to occur.

For the purposes of clause 10.1.1, the Participant is in ***persistent breach*** of a provision of these Terms and Conditions or of the ICS Specifications applicable to it if the breach is repeated sufficiently often so as to have or be likely to have a material impact upon the security, integrity, efficiency, effectiveness or reputation of the ICS.

For the avoidance of doubt, and without prejudice to the ICS Operator's obligations under clause 4.1.2, the ICS Operator shall not:

- a) suspend the participation of the Participant, in whole or in part, under clause 10.1.6; or
- b) terminate the participation of the Participant, in whole or in part, under clause 10.6,

in either case on the basis that an Exclusion Event has occurred or, in the opinion of the ICS Operator, appears likely to occur in respect of an Associate of the Participant where the Participant is a ring-fenced body (for the purposes of section 142A of the Financial Services and Markets Act 2000).

- 10.2** Any suspension pursuant to clause 10.1 shall continue for so long as the ICS Operator shall in its absolute discretion determine is appropriate and shall end on such date and on such conditions as the ICS Operator shall determine. The Participant agrees that the ICS Operator may suspend the Participant on the basis of information supplied to the ICS Operator (whether orally or in writing) which the ICS Operator in good faith believes to be true.
- 10.3** At any time, the ICS Operator may, without cause, terminate the Participant's participation in whole, or in part in relation to any particular function or participant category. At any time, the Participant may, without cause, terminate its participation in whole, or in part in relation to any particular participant category. Any termination under this clause 10.3 shall be effected by giving written notice and shall be subject to clauses 10.4 and 10.5.
- 10.4** Where notice is given by the ICS Operator pursuant to clause 10.3, the Participant's participation shall terminate:
- 10.4.1** (where or to the extent that the termination is in respect of the Participant's participation in whole) on the expiry of eleven (11) months from the date on which the notice is treated as served under clause 18.3 or on such later date as may be specified in the notice;
- 10.4.2** (where or to the extent that the termination is in respect of the Participant's participation in part in relation to any particular function or participant category) on the expiry of five (5) months from the date on which the notice is treated as served under clause 18.3 or on such later date as may be specified in the notice.
- 10.5** Where notice is given by the Participant pursuant to clause 10.3, the Participant's participation shall terminate, to the extent specified by such notice (where applicable), on the expiry of 30 days from the date on which the notice is treated as served under clause 18.3 or on such later date as may be specified in the notice.
- 10.6** The ICS Operator may terminate the Participant's participation in whole, or in part in relation to any particular function or participant category, with immediate effect, or with effect from such time and date as the ICS Operator may determine, if any of the circumstances set out in clause 10.1 occur.
- 10.7** The Participant's participation in the ICS Central System and/or the ICS services to the extent not terminated (in whole or in part) under any of clauses 10.4, 10.5 and 10.6 shall remain enabled and shall continue to be subject to these Terms and Conditions and any other ICS Specifications applicable to such continuing participation.

- 10.8** Without prejudice to clause 15.3, termination or suspension of participation shall not affect any rights or obligations arising prior to or continuing during or after the date of such termination or suspension or which arise in consequence of it or which relate to the Participant's period of participation. All such rights and obligations shall continue to be subject to these Terms and Conditions and any other ICS Specifications applicable to the participation.
- 10.9** Without prejudice to clause 11.4, the ICS Operator shall not be liable to the Participant for any Liabilities suffered or incurred by the Participant arising out of the exercise of the ICS Operator's rights of suspension or termination pursuant to these Terms and Conditions.
- 10.10** Upon termination or suspension of the Participant's participation, the manner of settling any matters concerning the participation or the termination or suspension of the participation shall be as for the time being prescribed in the ICS Manual.

11. LIABILITY

- 11.1** The Participant acknowledges and agrees that the ICS Operator shall not be liable to the Participant for any Liabilities suffered or incurred by the Participant which result directly or indirectly from the ICS Operator taking any action authorised by or permitted or provided for in these Terms and Conditions, the ICS Manual or under or in connection with the ICS Specifications applicable to the Participant. For the avoidance of doubt, nothing in this clause 11.1 is intended to or shall authorise or permit the ICS Operator to perform any act negligently, in wilful default or fraudulently (but without prejudice to the limitations on the scope of the ICS Operator's obligations to the Participant, and the limitations on, and exemptions from, the ICS Operator's liability to the Participant, provided for in any other provision of these Terms and Conditions).
- 11.2** The ICS Operator undertakes that if the services provided by the ICS Central System or the ICS services are interrupted (whether by the ICS Operator or otherwise) for any reason (including, but without limitation, as a result of software error or fault) it will take reasonable care to minimise the duration of any interruption or to otherwise take the action provided for or described in the ICS Manual and (wherever practicable and appropriate) to operate the contingency processing procedures referred to in the ICS Manual. Provided that the ICS Operator complies with this undertaking, the ICS Operator shall not be liable to the Participant for any Liabilities which may be suffered or incurred by the Participant as a result of any such interruption, whether caused by the ICS Operator's negligence or otherwise howsoever, except where such interruption is caused by the ICS Operator's fraud or wilful default.
- 11.3** Any liability of the ICS Operator to the Participant, whether such liability arises under any express or implied term of these Terms and Conditions or (where the Participant is a

settlement participant) of any of the Relevant Settlement Contracts, in tort, for misrepresentation, for breach of any other duty imposed by law or in any other way (and whether such liability is to make any payment of any kind or to deliver or reinstate property or is of any other kind), shall be limited as set out in clauses 11.4 to 11.9 (each inclusive).

11.4 Notwithstanding any other provision of these Terms and Conditions, the ICS Operator shall not be liable in damages to the Participant for anything done or omitted in the discharge of any or all of the ICS Regulatory Functions, unless it is shown that the action or omission was in bad faith.

11.5 (Without prejudice to clause 11.4) the ICS Operator shall not incur any liability to the Participant save to the extent that such liability results from the ICS Operator's negligence, wilful default or fraud.

11.6 The ICS Operator shall not incur any liability for:

11.6.1 any indirect, special or consequential loss of any kind; or

11.6.2 any loss of revenue or profits, damage to goodwill or injury to reputation, or loss of business opportunity or contracts (in each case, whether direct or indirect).

11.7 If it is the case that the total liability of the ICS Operator to the Participant and to all other claimants (if any) against the ICS Operator in relation to the ICS Central System and/or the ICS services for amounts claimed in respect of Liabilities arising out of:

11.7.1 any single act or omission, or related acts or omissions; or, if there be no such acts or omissions,

11.7.2 any one event or series of related events,

would otherwise exceed the amount of the Liability Cap, then the total liability of the ICS Operator to the Participant for such Liabilities suffered or incurred by the Participant shall be limited to a proportion of the Liability Cap corresponding to the proportion which the amount the ICS Operator would otherwise be liable to pay to the Participant, or to meet a claim made by the Participant, bears to the aggregate of the amounts that the ICS Operator would otherwise be liable to pay to, or to meet claims made by, the Participant and all other claimants against the ICS Operator in relation to the ICS Central System or the ICS services or, if there are no such other claimants, to the amount of the Liability Cap.

11.8 Where the Liability suffered or incurred by the Participant arises from anything done or

omitted in the discharge of any or all of the ICS Regulatory Functions, clause 11.7 shall not apply to limit the ICS Operator's liability in respect of any such act or omission shown to be in bad faith.

11.9 The ICS Operator shall on no account be liable for any Liabilities suffered or incurred by the Participant unless written notice of the claim has been given to the ICS Operator by or on behalf of the Participant on or before the date which is six months after the date on which the Participant became aware of the specific act, fact, circumstance or event which gave rise to the claim or, if earlier, the date on which it ought reasonably (having regard to all the circumstances) to have become so aware.

11.10 If the ICS Operator has paid to the Participant an amount in respect of a claim for breach of these Terms and Conditions or of any term of any other contract that forms part of the ICS Specifications applicable to the Participant or otherwise, and subsequent to the date of making such payment the Participant recovers from a third party a sum which is referable to the subject-matter of that claim, then the Participant shall apply the amount recovered (less the actual cost of recovery), first, in satisfaction of any Liabilities suffered or incurred by it which were not recovered from the ICS Operator due to the operation of the limit set out in clause 11.7 and, second, shall forthwith repay to the ICS Operator so much of the amount paid by the third party as does not exceed the sum paid by the ICS Operator to the Participant. The Participant undertakes to use all reasonable endeavours to enforce any right to recover any such sum.

11.11 The Participant agrees to indemnify and hold harmless the ICS Operator from and against all Liabilities suffered or incurred by the ICS Operator in connection with the Participant's participation arising directly or indirectly from the actions and/or omissions of:

11.11.1 the Participant, including any failure by it to comply with the ICS Specifications applicable to the Participant;

11.11.2 any PPS appointed by it (or which was appointed by it at the time of the relevant act or omission); and

11.11.3 every Indirect Participant for whom the Participant is acting (or was acting at the time of the relevant action or omission) or other person for whom the Participant acts as agent (or was acting as agent at the time of the relevant action or omission).

This indemnity shall not apply to the extent that:

- a) the Liabilities suffered or incurred by the ICS Operator arise from a breach of its undertakings to the Participant set out in any or all of clauses 4.1.1 and 4.1.2 (as read subject to clause 4.2) and clause

8.4; or

- b) the ICS Operator has acted outside the scope of the authorities, consents or permissions given by the Participant to or in favour of the ICS Operator under these Terms and Conditions or under any other contract forming part of the ICS Specifications applicable to the Participant; or
- c) the Liabilities suffered or incurred by the ICS Operator are recovered or are recoverable from the Participant under its indemnity set out in clause 7.7.

11.12 The total liability of the Participant for amounts claimed under any or all of the indemnities set out in these Terms and Conditions (each, an *indemnity clause*) shall not exceed the amount of the Indemnity Cap. However, nothing in this clause 11.12 shall:

11.12.1 prejudice the existence or limit the scope of the Participant's obligations to the ICS Operator, or limit or exempt the liability of the Participant to the ICS Operator in relation to any Liabilities arising:

- a) under, or in respect of a breach of, any term of these Terms and Conditions (which is not an indemnity clause) or (where the Participant is a settlement participant) any term of any Relevant Settlement Contract (whether such term is express or implied by statute, law or otherwise);
- b) in tort;
- c) for misrepresentation; or
- d) for breach of any other duty imposed by law, or

11.12.2 (without implying a right to double recovery in respect of the same loss or damage) restrict or otherwise affect the ICS Operator's right to recover damages, compensation or payment or remedy of any other nature (whether concurrently or otherwise with any right, claim or remedy under any indemnity clause) in respect of any liability of the Participant incurred in any of the ways contemplated by paragraphs a) to d) (inclusive) of clause 11.12.1 (including where part of the relevant damages, compensation, payment or remedy has been recovered or is recoverable under an indemnity clause).

11.13 The ICS Operator has entered into certain arrangements with the Supplier intended to

enable or facilitate the operation of the ICS Central System and the ICS services. In accordance with paragraph 1.10 of the Schedule, the ICS Operator accepts responsibility to the Participant for any act or omission on the part of the Supplier (when performing a task concerning the day to day operation of the ICS Central System or the ICS services which would otherwise have to be performed by the ICS Operator) as if such act or omission were an act or omission of the ICS Operator. Accordingly, the Participant agrees that it will not take any action against the Supplier (or any person for whom the Supplier is vicariously liable) to recover damages, compensation or payment or remedy of any other nature in respect of any acts, omissions or events which occur while such arrangements are in operation without the prior written consent of the ICS Operator (acting reasonably). Such consent may be made subject to such conditions as the ICS Operator may (acting reasonably) require or impose.

11.14 The ICS Operator (acting through the Board) may, from time to time, enter into certain arrangements with one or more of its Associates, such that any such Associate provides certain services to the ICS Operator. The Participant agrees that no such Associate owes any duty of care to the Participant in relation to the operation of such arrangements and, accordingly, agrees that it will not take any action against any such Associate (or any person for whom any such Associate is vicariously liable) to recover damages, compensation or payment or remedy of any other nature in respect of any acts, omissions or events which occur while such arrangements are in operation. The Participant further agrees that it will have no other rights against any such Associate in connection with the operation of such arrangements.

11.15 The Participant acknowledges that systems, procedures and other facilities which comprise all or part of the ICS Central System and the ICS services may also be used from time to time by the ICS Operator's Associates with the approval of the ICS Operator (acting through the Board). The Participant agrees that no such Associate owes any duty of care to the Participant in connection with any such use and, accordingly, agrees that it will not take any action against any such Associate (or any person for whom any such Associate is vicariously liable) to recover damages, compensation or payment or remedy in connection with any such use.

12. DATA PROTECTION

12.1 The parties acknowledge and agree that:

12.1.1 the Participant shall or may send or authorise the submitting of personal data in respect of which it is a data controller (including personal data relating to the Participant itself) to the ICS Central System and/or the ICS services, where it may be accessed by the ICS Operator and other ICS participants;

- 12.1.2** each other ICS participant shall or may send or authorise the sending of personal data in respect of which it is a data controller (including personal data relating to such other ICS participant itself) to the ICS Central System and/or the ICS services, where it may be accessed by the ICS Operator and the Participant;
- 12.1.3** the Participant, in accessing personal data from the ICS Central System and/or the ICS services which is owned or controlled by one of the other ICS participants, may do so as a data controller and/or as a data processor on behalf of such other ICS participant;
- 12.1.4** each of the other ICS participants, in accessing personal data from the ICS Central System and/or the ICS services which is owned or controlled by the Participant, may do so as a data controller and/or as a data processor on behalf of the Participant;
- 12.1.5** the ICS Operator shall be a data processor for the Participant in respect of personal data owned or controlled by the Participant; and
- 12.1.6** the subject matter, duration, nature and purpose of any and all processing which is carried out pursuant to these Terms and Conditions shall be that which is required for the performance of and adherence to the ICS Service Description and the type of personal data, categories of data subjects and obligations and rights of the respective controller shall be those which are required for the performance of and adherence to the ICS Service Description.

12.2 The ICS Operator:

- 12.2.1** shall process and deal with all personal data in respect of which the Participant is the data controller strictly and solely in accordance with these Terms and Conditions and for the purposes of the Participant or (ii) where required to do so by applicable law (provided that the ICS Operator has, prior to the relevant processing, informed the Participant of such requirement (unless the relevant law prohibits such notification)). Notwithstanding the foregoing, the ICS Operator shall immediately inform the Participant if, in its opinion, an instruction given by or on behalf of the Participant infringes the Data Protection Legislation;
- 12.2.2** shall adopt appropriate technical and organisational measures against the unauthorised or unlawful processing of such personal data and against the accidental loss or destruction of or damage to such personal data and to: (i) ensure a level of security appropriate to the risk to such personal data when it is processed by the ICS Operator and (ii) protect such personal data from

Security Breaches;

12.2.3 subject and without prejudice to clauses 12.2.4 and 12.7, shall not: (i) transfer such personal data to any country which is outside of: (a) the European Economic Area (as it is constituted and defined from time to time) or (b) in the event that the United Kingdom is no longer a part of the European Economic Area, the United Kingdom; or (ii) transfer such personal data to any other person (save for its Supplier, to whom it will transfer such personal data pursuant to appropriate contractual terms and, to the extent necessary, the appropriate set of European Commission approved "model clauses" (which the ICS Operator will enter into for and on behalf of the Participant and the Participant hereby grants authority in this regard) or another personal data transfer mechanism approved by the European Commission and/or any other relevant regulatory bodies or authorities which has the authority to give this approval from time to time);

12.2.4 may transfer such personal data to a Regulatory Authority or other regulatory or law enforcement body if it (or its Supplier) is required to do so by law;

12.2.5 may transfer such personal data to a Regulatory Authority or other regulatory or law enforcement body if it either:

- a) is requested to do so by that Regulatory Authority or other regulatory or law enforcement body; or
- b) decides to make such transfer,

provided in either such case the ICS Operator first determines (acting in good faith) that such transfer is necessary or appropriate to enable or facilitate the ICS Operator's compliance with any direction or other requirement properly made, issued or otherwise imposed by the Regulatory Authority or the other regulatory or law enforcement body concerned or its satisfaction of any requirement which is a condition to the designation of the ICS as a system under the SFRs; and

12.2.6 may transfer such personal data to its Supplier and other third party suppliers of services, and the ICS Operator shall: (i) inform the Participant of any appointment of any new third party supplier of services in advance of such appointment thereby giving the Participant the opportunity to object to such appointment (and any such objections the ICS Operator hereby agrees to consider in good faith and escalate to risk committee level or its equivalent depending on the constitution of the ICS Operator from time to

time); and (ii) ensure that the Supplier or such other third party agrees to abide by contractual provisions equivalent to those set out in clause 12.2, save that the reference to “its Supplier” in clause 12.2.3 should be read in the equivalent contractual provisions as being a reference to “its sub-contractor, with whom it has in place equivalent data protection provisions to those governing the relationship between the ICS Operator and the Supplier (or other third party), as relevant”,

for the avoidance of doubt, nothing in clause 12.2.6 shall affect any separate contractual terms agreed between the Supplier (or such other third party supplier) and the Participant. In particular, if the Supplier (or such other third party supplier) acquires personal data from the Participant pursuant to separate contractual terms, nothing in clause 12.2.6 will affect such terms or will require the ICS Operator to ensure or require that the Supplier (or such other third party supplier) deals with such personal data other than pursuant to and in accordance with those terms;

12.2.7 as soon as reasonably practicable following the termination of the Participant's participation (for the purposes of this clause, the "**Termination**"), shall irrevocably delete or put beyond use (subject to appropriate safeguards) all personal data which it has received, accessed or otherwise obtained from the Participant during and in the course of the Participant's participation, save where and to the extent that:

- a) the ICS Operator is required to keep the data for record-keeping or regulatory compliance purposes and/or
- b) where the ICS Operator has another lawful reason under the Data Protection Legislation to retain such personal data, including where the personal data is also used and controlled by another ICS participant whose participation has not terminated,

and where and to the extent that the ICS Operator is keeping such data solely for the purpose of (a), the parties acknowledge that ICS Operator shall be a data controller of such retained Personal Data as is in its possession from the date of Termination;

12.2.8 shall notify the Participant promptly and in any event within 48 hours of becoming aware in the event that it becomes aware that a Security Breach has occurred which affects such personal data which is or has been transferred to or from the ICS Central System or the ICS services;

12.2.9 shall, taking into account the nature of the processing by the ICS Operator, assist the Participant: (i) in the fulfilment of its obligations to ensure the security of the processing of such personal data; (ii) to notify the relevant supervisory authority if required and make all other required notifications;

(iii) to communicate Security Breaches to data subjects; (iv) to carry out privacy impact assessments; (v) to engage in prior consultation with data protection authorities (in each case to the extent required under the GDPR); and (vi) to respond to requests from data subjects exercising their rights under the Data Protection Legislation;

12.2.10 shall take reasonable steps to ensure that access to such personal data is limited to those personnel who require access to it for the purpose of complying with the ICS Operator's obligations under these Terms and Conditions and that such personnel are bound by enforceable obligations of confidentiality; and

12.2.11 subject to the Participant and/or its representatives signing suitable undertakings of confidentiality, allow the Participant and/or its representatives, on reasonable notice to the ICS Operator, to conduct audits (including inspections) during normal business hours of all data processing facilities, procedures, documentation and other matters required to demonstrate compliance with the Data Protection Legislation and this clause 12.2. Without prejudice to the foregoing, the ICS Operator shall behave reasonably in permitting and facilitating such audits and shall provide all information reasonably necessary to demonstrate compliance with the Data Protection Legislation and this clause 12.2.

12.3 In its role as data processor for and on behalf of other ICS participants, the Participant shall:

12.3.1 only process and deal with all personal data in respect of which another ICS participant is the data controller strictly and solely: (i) in accordance with these Terms and Conditions and for the purposes of such other ICS participant or (ii) where required to do so by applicable law (provided that the Participant has, prior to the relevant processing, informed the other ICS participant of such requirement (unless the relevant law prohibits such notification)). Notwithstanding the foregoing, the Participant shall immediately inform the other ICS participant if, in its opinion, an instruction given by or on behalf of the other ICS participant infringes the Data Protection Legislation;

12.3.2 adopt appropriate technical and organisational measures against the unauthorised or unlawful processing of such personal data and against the accidental loss or destruction of or damage to such personal data and to: (i) ensure a level of security appropriate to the risk to such personal data when it is processed by the Participant and (ii) protect such personal data from Security Breaches;

12.3.3 subject and without prejudice to clause 12.7, not: (i) transfer such personal

data to any country which is outside of: (a) the European Economic Area (as it is constituted and defined from time to time) or (b) in the event that the United Kingdom is no longer a part of the European Economic Area, the United Kingdom; or (ii) transfer such personal data to any other person (save that it may transfer such personal data, where necessary, to its PPS subject to the Participant: a) procuring that such PPS complies with the provisions of this clause 12 as if it were a party to these Terms and Conditions; and b) being responsible and liable at all times for such compliance);

- 12.3.4** as soon as reasonably practicable after the point in time where such personal data is no longer needed by the Participant, irrevocably delete from its own systems or put beyond use in its own systems (subject to appropriate safeguards) all personal data which it has received, accessed or otherwise obtained from any other ICS participant under or pursuant to these Terms and Conditions, save where and to the extent that the Participant is required to retain such personal data for record-keeping or regulatory compliance purposes and where and to the extent that the Participant is keeping such data solely for the purpose of record-keeping or its own regulatory compliance, the parties acknowledge that the Participant shall be a data controller of such retained Personal Data as is in its possession;
- 12.3.5** notify the ICS Operator (and any other ICS participant whose personal data may have been affected) promptly and in any event within 48 hours of becoming aware in the event that it becomes aware that a Security Breach has occurred which affects such personal data which is or has been transferred to or from the ICS Central System or the ICS services;
- 12.3.6** taking into account the nature of the processing by the Participant, assist the other ICS participant: (i) in the fulfilment of its obligations to ensure the security of the processing; (ii) to notify the relevant supervisory authority if required and make all other required notifications; (iii) to communicate Security Breaches to data subjects; (iv) to carry out privacy impact assessments; (v) to engage in prior consultation with data protection authorities (in each case to the extent required under the GDPR); and (vi) to respond to requests from data subjects exercising their rights under the Data Protection Legislation;
- 12.3.7** take reasonable steps to ensure that access to such personal data is limited to those personnel who require access to it for the purpose of complying with its obligations under these Terms and Conditions and that such personnel are bound by enforceable obligations of confidentiality; and
- 12.3.8** transfer such personal data to those of its third party suppliers that reasonably need such personal data in order to perform their services to the

Participant and to the extent that such existing suppliers are performing a sub-processor role for the Participant, the Participant shall be entitled to rely on a general written authorisation which is given by each other ICS participant by virtue of such ICS participant entering into these Terms and Conditions and the Participant hereby gives the same general written authorisation in respect of all other ICS participants and further the Participant shall also inform all of the other ICS participants of any appointment of new sub-processors of such personal data in advance of such appointment by publishing a list of such new sub-processors on its website and thereby giving the other ICS participants the opportunity to object to such appointment (and any such objections the Participant hereby agrees to consider in good faith and escalate to the appropriate level of seniority within the Participant's business);

12.3.9 subject to the other ICS participant and/or its representatives signing suitable undertakings of confidentiality, allow the other ICS participant and/or its representatives, on reasonable notice to the Participant, to conduct audits (including inspections) during normal business hours of all data processing facilities, procedures, documentation and other matters required to demonstrate compliance with the Data Protection Legislation and this clause 12.3. Without prejudice to the foregoing, the Participant shall behave reasonably in permitting and facilitating such audits and shall provide all information reasonably necessary to demonstrate compliance with the Data Protection Legislation and this clause 12.3 and if the Participant undertakes an audit of another ICS participant in reliance on this clause and the Multilateral ICS Specification mechanic set out in section 1.11 of the Schedule to these Terms and Conditions and following such audit the Participant brings a claim against the other ICS participant for breach of this clause 12, the cost of the audit shall be considered to be a recoverable loss in relation to such claim.

12.4 The Participant warrants to the ICS Operator and each other ICS participant that: (i) it has obtained all necessary consents from data subjects (or is otherwise permitted) to enable it (or its PPS) to submit personal data relating to that data subject into the ICS Central System and the ICS services for the purposes of these Terms and Conditions (including where the data subject is the customer of an Indirect Participant for whom the Participant is acting) and (ii) without prejudice to clause 12.8 below, it shall be responsible to the data subjects who are the subjects of any personal data which it transmits or causes to be transmitted into the ICS Switch in terms of compliance with the Data Protection Legislation and in particular in relation to the provision of information in accordance with Articles 13 and 14 of the GDPR and that it shall be the contact point for all such data subjects.

12.5 The Participant hereby indemnifies and holds harmless the ICS Operator from and

against any and all Liabilities suffered or incurred by the ICS Operator arising as a consequence of the submitting of personal data by or on behalf of the Participant into the ICS Central System and/or the ICS services and/or the processing of such personal data (to the extent that such processing is carried out in accordance with this clause 12) by the ICS Operator or its Supplier (including Liabilities arising as a consequence of a breach by the Participant of clause 12.4), save to the extent that any such Liabilities suffered or incurred by the ICS Operator arise from a breach of its undertakings to the Participant set out in any or all of clauses 4.1.1 and 4.1.2 (as read subject to clause 4.2) and clause 8.4.

12.6 For the avoidance of doubt, the ICS Operator shall have no liability or responsibility for personal data whilst it is in the possession of the Participant or any of the other ICS participants or while it is in transit to or from the ICS Central System or the ICS services.

12.7 In the event that the Participant (or an Indirect Participant for whom the Participant is acting) has branches, offices or other functions located outside of: (a) the European Economic Area (as it is constituted and defined from time to time) or (b) in the event that the United Kingdom is no longer a part of the European Economic Area, the United Kingdom; such that such Participant (or Indirect Participant) will or may access or transmit personal data, which is owned or controlled by other ICS participants, outside of: (a) the European Economic Area or (b) in the event that the United Kingdom is no longer a part of the European Economic Area, the United Kingdom; such Participant hereby warrants that any such transfer of the personal data will not contravene the other ICS participants' obligations under the Data Protection Legislation in respect of their obligations relating to the transfer of personal data outside of the EEA and, to the extent necessary, the Participant hereby agrees that it:

12.7.1 will be deemed to have; and

12.7.2 will ensure that its Indirect Participants and any other third parties to whom it transfers personal data have,

entered into and signed the appropriate set of European Commission approved "model clauses" (as set out in Chapter V of the ICS Manual) with each of the other ICS participants in respect of the personal data which is sent to the ICS Central System or the ICS services by each such other ICS participant and/or complied with such other personal data transfer mechanism as is from time to time approved by the European Commission or any other relevant regulatory bodies or authorities which has the authority to give this approval from time to time. Without prejudice to the foregoing, the Participant hereby warrants that its processing of data in relation to accessing and using the ICS Central System and the ICS services shall not constitute a contravention by any person of the data protection, privacy or cybersecurity laws of any jurisdiction or territory outside of: (a) the European Economic Area (as it is constituted and defined from time to time) or (b) in the event that the United Kingdom is no longer a part of the European Economic

Area, the United Kingdom; to the extent that any such laws are implemented and in force from time to time.

12.8 The Participant acknowledges that it does not consider itself to be a joint controller of personal data with any other ICS participant and it will compensate each of the other ICS participants in accordance with Article 82 of the GDPR in respect of any Liabilities which that ICS participant suffers as a direct result of any exercise of rights by a data subject against that other ICS participant where the data subject is alleging a breach of the Data Protection Legislation for which the Participant was responsible or, where the responsibility for the breach is shared between the Participant and the other ICS participant, for a pro rated proportion of the Liability.

12.9 As between the parties, the Participant shall be responsible for the acts and omissions of its PPSs and all Indirect Participants for whom it is acting in respect of all personal data which is owned or controlled by one of the other ICS participants and which is or may be accessed from the ICS Central System and/or the ICS services, and the Participant:

12.9.1 confirms that it is authorised by all Indirect Participants for whom it is acting to send or authorise the sending of personal data in respect of which the Indirect Participant is the data controller to the ICS Central System and/or the ICS services; and

12.9.2 shall procure that all its PPSs and its Indirect Participants shall comply with clauses 12.1, 12.3, 12.4 and 12.7 as if such PPS or Indirect Participant were a party to these Terms and Conditions.

13. FEES AND CHARGES

13.1 The Participant undertakes to the ICS Operator that it will pay to the ICS Operator, or at the direction of the ICS Operator, in accordance with the ICS Manual such fees and charges as are in force from time to time and are applicable to it.

13.2 Any amount payable by the Participant pursuant to these Terms and Conditions shall be exclusive of value added tax (if any).

14. AMENDMENTS TO THESE TERMS AND CONDITIONS AND OTHER DOCUMENTS

14.1 The Participant acknowledges, agrees and accepts that the provisions of the ICS Manual, the ICS User Documents and these Terms and Conditions may be changed from time to time by the ICS Operator and, by entering into the ICS Admission Agreement, the Participant agrees to comply with such provisions as so altered from time to time. Such changes will be made in the manner described, and subject, where relevant, to the applicable prior consultation procedures set out in the ICS Manual. The ICS Operator confirms that the introduction of material new functionality, the use of which will not be

optional on the part of the Participant, and material changes to existing functionality will be subject to prior consultation.

14.2 The ICS Operator confirms that changes to these Terms and Conditions which restrict or exclude liability on the part of the ICS Operator or which impose additional obligations or liabilities on the Participant (other than changes which only relate to new services or new optional functionality) will be subject to prior consultation. No change will affect the ability of the Participant to terminate its participation in whole, or in part in relation to any particular participant category.

14.3 No change to these Terms and Conditions shall take effect until the earlier of:

14.3.1 40 days after service of notice on the Participant; or

14.3.2 the date on which, in the case of functionality or a service the use of which is optional on the part of the Participant, the Participant first uses the new or enhanced functionality or additional service,

at which time the Participant shall be deemed to have accepted the change.

15. GENERAL

15.1 No failure or delay by any party or time or indulgence given by any party in or before exercising any remedy or right under or in relation to these Terms and Conditions shall operate as a waiver or variation of the same nor shall any single or partial exercise of any remedy or right preclude any further exercise of the same or the exercise of any other right or remedy; and no act or course of conduct on the part of any party shall preclude that party from exercising any such right or constitute a suspension or variation of any such right.

15.2 No waiver by any party of any requirement of these Terms and Conditions or of any right or remedy under these Terms and Conditions shall have effect unless given by notice in writing signed by such party. No waiver of any particular breach of the provisions of these Terms and Conditions shall operate as a waiver of any repetition of such breach.

15.3 The provisions of these Terms and Conditions, so far as relevant, shall continue to apply during any suspension of participation. Without prejudice to clause 10.8, the Participant agrees that the provisions of clauses 1, 2.1.5, 3, 4.3.1, 5.1.3, 6.5, 7.6, 7.7, 8.6, 10.8, 10.9, 11, 12, 15, 16, 17, 18, 19 and 20 and the Schedule shall survive any termination of its participation.

15.4 If any provision (or part of any provision) of these Terms and Conditions is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable

in any respect, that provision or part-provision shall, to the extent required, be deemed not to form part of these Terms and Conditions, and the validity and enforceability of the other provisions of these Terms and Conditions shall not be affected. The ICS Operator shall endeavour in good faith promptly to adopt an amendment (in accordance with clause 14) to these Terms and Conditions to replace the invalid, illegal or unenforceable provision or part-provision with a valid, legal and enforceable provision or part-provision having, to the extent legally possible, the same economic and legal effect as the invalid, illegal or unenforceable provision or part-provision. Until such amendment comes into effect in accordance with clause 14, the ICS Operator shall apply temporary measures adopted in its sole discretion to be able to continue to perform the ICS Regulatory Functions and also, to the extent reasonably practicable, to safeguard the interests of all ICS participants in the continued operation of the ICS Central System and ICS services.

15.5 If a provision (or part of any provision) of these Terms and Conditions is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability in other jurisdictions of that provision or part-provision or any other provision of these Terms and Conditions.

15.6 The rights of the Participant under these Terms and Conditions are not assignable, either at law or in equity, nor are they capable of having any security interest or trust created over them without, in each case, the prior written consent of the ICS Operator. The Participant may not assign or otherwise transfer any of its rights, benefits or obligations under or pursuant to these Terms and Conditions without the prior written consent of the ICS Operator. These Terms and Conditions shall be binding on, and shall enure for the benefit of, any successor in title to the Participant and the ICS Operator.

15.7 The Participant irrevocably acknowledges and agrees that, provided the Transfer Conditions are satisfied:

- a) the ICS Operator may (without obtaining further consent or agreement from the Participant) novate (i.e. transfer) the whole, subject to clause 15.7.4(v) below, of its rights and obligations under these Terms and Conditions; and
- b) it shall do all such things and execute all such documents and agreements as are reasonably necessary to perfect, record or give effect to such novation.

For the purpose of this clause 15.7, the ***Transfer Conditions*** are:

15.7.1 the novation shall effect a transfer to and be for the benefit of the person which is the successor to or replacement of Cheque and Credit Clearing Company Limited in its capacity as ICS Operator (such transferee being, the ***ICS Transferee***);

- 15.7.2** the ICS Transferee shall agree to take over and perform all of the functions and services which, immediately before such novation takes effect, were agreed to be performed by the ICS Operator for the benefit of the Participant;
- 15.7.3** the novation shall not cause the ICS (or, if the ICS comes to form part of another system, that other system) to cease to be designated as a designated system under the SFRs or as a regulated payment system under Part 5 of the 2013 Act;
- 15.7.4** the ICS Operator shall give effect to the novation by providing to the ICS Transferee by registered or recorded delivery or by hand a written transfer notice (the **Transfer Notice**) which:
- (i) identifies the ICS Transferee by its full name and primary business address;
 - (ii) specifies the date on which the novation is to take effect (the **Transfer Date**);
 - (iii) confirms that (subject to (v) below) the ICS Operator and the Participant shall immediately on and from the Transfer Date each be released from further obligations to one another under these Terms and Conditions and that their respective rights against one another shall be cancelled and discharged;
 - (iv) confirms that (subject to (v) below) each of the ICS Transferee and the Participant shall immediately on and from the Transfer Date assume obligations and acquire rights in respect of one another which are identical to those cancelled and discharged by, respectively, the ICS Operator and the Participant; and
 - (v) specifies which of the ICS Operator or the ICS Transferee is to accept responsibility to the Participant, and is to have the rights against the Participant, in respect of Outstanding Obligations (provided that, to the extent that any Outstanding Obligations are not specifically transferred to either the ICS Operator or the ICS Transferee pursuant to this clause 15.7.4(v), such Outstanding Obligations shall be automatically deemed to be novated in full to the ICS Transferee) and the Participant shall have corresponding rights against such specified party or, in the absence of any such

specification, the ICS Transferee in respect of such Outstanding Obligations; and

15.7.5 the ICS Operator shall place on its website a copy of the Transfer Notice as soon as reasonably practicable after providing it to the ICS Transferee.

For the purpose of clause 15.7.4(v) above, **Outstanding Obligations** are obligations or liabilities of any party which are incurred or otherwise arise prior to the Transfer Date, but which remain unperformed as at the Transfer Date or which do not crystallise or fall due for performance until the Transfer Date or thereafter.

If the Transfer Conditions are satisfied, the effective date of the novation shall be the date specified as the Transfer Date in the Transfer Notice.

15.8 All warranties, conditions or representations implied by statute or law are (save where specifically contained in these Terms and Conditions and the documents referred to in them) excluded to the fullest extent permitted by law.

15.9 Each of the parties acknowledges that, in agreeing to enter into these Terms and Conditions, it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in these Terms and Conditions and the documents referred to in them) made by or on behalf of the other party before the Participant's participation in the ICS was enabled by the ICS Operator. These Terms and Conditions (and the documents referred to in them including, for the avoidance of doubt, the ICS Specifications) contain the whole agreement between the parties relating to the subject-matter addressed by these Terms and Conditions.

15.10 Each of the parties waives all rights and remedies which, but for clause 15.9, might otherwise be available to it in respect of any representation, warranty, collateral contract or other assurance, provided that nothing in this clause will exclude any liability for fraud.

16. RELEVANT PARTNERSHIP TERMS

16.1 This clause 16 applies in relation to each partner (a **Partner**) of the Participant where the Participant is a relevant partnership.

16.2 All obligations, undertakings, agreements and liabilities arising under or pursuant to these Terms and Conditions on the part of the Participant shall constitute joint and several obligations of each Partner.

16.3 The obligations, undertakings and agreements on the part of the ICS Operator contained in these Terms and Conditions are given to the Partners taken together and not

separately to each of the Partners.

- 16.4** References in clauses 8.5, 8.6, 9 and 10 to events occurring in relation to or in respect of the Participant or an Associate of the Participant shall be construed as references to the event or events concerned occurring in relation to or in respect of any Partner or any Associate of any Partner.
- 16.5** If any person who was a Partner dies or (if that person is a body corporate) is dissolved or (in either case) otherwise ceases to be a Partner of the partnership, the ICS Operator shall be entitled to treat any continuing Partners as having full authority, power and capacity to carry on the Participant's business and its participation in the ICS as if there had been no change in the partnership. This clause 16.5 shall apply unless the ICS Operator receives written notice to the contrary from any of the continuing Partners, or from executors, personal representatives or trustees of any deceased person who was a Partner.
- 16.6** If any sum is due from the Participant to the ICS Participant under or pursuant to these Terms and Conditions and:
- 16.6.1** a person who was a Partner dies, the deceased person's estate shall remain responsible for paying the sum due and the ICS Operator shall be entitled to require payment from the deceased person's assets; or
- 16.6.2** a person who was a Partner leaves the partnership, the person leaving and each continuing Partner shall remain jointly and severally responsible for payment of the sum due.
- 16.7** The Participant shall notify the ICS Operator immediately if there are any changes in the partnership. The obligations, undertakings, agreements and liabilities of each Partner under these Terms and Conditions shall not be affected by:
- 16.7.1** any change in the name of the Participant or in its constitution;
- 16.7.2** any change in the Partners as a result of death, incapacity, bankruptcy, winding-up or dissolution;
- 16.7.3** any retirement or expulsion of a person as a Partner; or
- 16.7.4** any new person joining as a Partner.
- 16.8** For the purposes of this clause 16, a **relevant partnership** is a partnership in which each partner, under the law under which the partnership is constituted or formed, is personally liable jointly or jointly and severally with each of the other partners for all

debts and obligations of the partnership incurred while s/he or it is a partner of the firm (for example, an English partnership governed by the Partnership Act 1890). Accordingly, the following types of partnership are not, for example, relevant partnerships for the purposes of this clause 16:

16.8.1 a limited liability partnership constituted or formed under English law; or

16.8.2 a limited partnership constituted or formed under English law.

17. TRANSFER OF EMPLOYEES

17.1 It is the understanding of the parties that TUPE shall not apply to the provision of any services (whether in whole or in part) provided by the ICS Operator under or pursuant to these Terms and Conditions.

17.2 The Participant shall indemnify and hold harmless the ICS Operator (and all of its Associates and the Supplier and any of its or their representatives or subcontractors) (each an *Indemnified Party* and together the *Indemnified Parties*) from and against any Indemnified Claims arising out of or in connection with any claim by or in respect of any employee or former employee of:

17.2.1 the Participant;

17.2.2 any Indirect Participant for whom the Participant is acting;

17.2.3 any of the Participant's PPSs; or

17.2.4 any of its representatives or subcontractors,

in connection with TUPE or otherwise.

17.3 If any contract of employment of any person (whether employed by the Participant, its Indirect Participant, its PPS or any of the Participant's representatives or subcontractors) has effect as if originally made between any Indemnified Party and that person as a result of the application of TUPE to these Terms and Conditions, the relevant Indemnified Party may, on becoming aware of that effect, terminate the contract and the Participant shall indemnify and keep indemnified the Indemnified Party from and against any Indemnified Claims arising out of or in connection with such termination or Indemnified Claims arising out of or in connection with such contract to the date of termination.

18. NOTICES

18.1 Any notice required to be served by the Participant under any of clauses 2.1.1, 2.1.2,

2.1.3, 2.2.3, 8.5, 9.2 and 16.7 shall be given in accordance with the ICS Manual.

18.2 Any notice, consent, authority, request, decision or agreement (other than a notice contemplated by clause 18.1) under or in connection with these Terms and Conditions (each, a **Notice**) shall be in writing and signed by or behalf of the party giving it. For this purpose, electronic mail or data communication shall be treated as being signed by or on behalf of the Participant or (as the case may be) the ICS Operator if it includes the email address or any other information that identifies an individual, office, team or other function that is authorised (or whom, in accordance with clause 7.4, the ICS Operator is entitled to treat as authorised) to send the electronic mail or data communication on behalf of the Participant or (as the case may be) the ICS Operator. A Notice shall be sent or delivered to the party to be served at its address for notices as determined in accordance with clause 18.4.

18.3 Any Notice shall be treated as served as follows:

18.3.1 if delivered in person, at the time of delivery;

18.3.2 if by facsimile, at the time that facsimile is received by the intended recipient;

18.3.3 if by electronic mail or data communication, when received by the intended recipient;

18.3.4 if by post or by airmail, on the second day (in each case excluding non-business days) after the day of posting. In proving service, it shall be sufficient to prove that the envelope containing the Notice was correctly addressed, postage paid and posted.

For the purpose of clause 18.3.4, a **non-business day** refers to a Saturday, Sunday and any day which is a bank holiday or public holiday in the place in which the receiving party's address for notices is located.

18.4 The Participant's address for notices shall be that set out in the ICS Admission Agreement (as most recently altered, if relevant, by Notice from the Participant to the ICS Operator in writing in accordance with this clause 18). The ICS Operator's address for notices is as stated on page one of the ICS Admission Agreement and its other details are as follows:

Email: CompanySecretary@chequeandcredit.co.uk, marked for the attention of the Chief Executive Officer

Fax: 0207 488 3397, marked for the attention of the Chief Executive Officer,

or such other address or details as the ICS Operator may notify to the Participant by not less than five (5) days' notice in writing.

18.5 The Participant shall promptly give Notice to the ICS Operator of any changes to its name, registered address or any of the other details relating to the Participant set out in its ICS Admission Agreement.

18.6 This clause 18 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19. JURISDICTION

19.1 The parties agree that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with these Terms and Conditions (including, without limitation, any non-contractual obligations) and the parties accordingly submit to the exclusive jurisdiction of the English courts.

19.2 The parties:

19.2.1 waive objection to the English courts on grounds of inconvenient forum or otherwise as regards proceedings arising out of or in connection with these Terms and Conditions (including, without limitation, any non-contractual obligations); and

19.2.2 agree that a judgment or order of an English court in connection with these Terms and Conditions (including, without limitation, any non-contractual obligations) is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

20. GOVERNING LAW

These Terms and Conditions and all rights and obligations (including, without limitation, any non-contractual obligations) arising under or in connection with these Terms and Conditions shall be governed by English law.

SCHEDULE

1.1 In these Terms and Conditions the following expressions have the meanings set under them below:

<i>Associate</i>	has the meaning given to it in the ICS Glossary;
<i>Back Office Modules</i>	has the meaning given to it in the ICS Glossary;
<i>Board</i>	the board of directors of the ICS Operator;
<i>Chief Executive Officer</i>	an official appointed by the ICS Operator to manage the day-to-day operations of the ICS within the parameters and authorities delegated by the Board or such other person to whom such a role has been delegated by the Board;
<i>data controller</i>	has the meaning given to it in the Data Protection Legislation;
<i>data processor</i>	has the meaning given to it in the Data Protection Legislation;
<i>Data Protection Legislation</i>	means: (i) prior to 25 May 2018, the UK Data Protection Act 1998 and the Data Protection Directive (95/46/EC) and (ii) on and after 25 May 2018, the GDPR and/or any equivalent or similar legislation implemented in the United Kingdom (including in anticipation of or following the United Kingdom's withdrawal from the European Union);
<i>data subject</i>	has the meaning given to it in the Data Protection Legislation;
<i>DTS</i>	has the meaning given to it in the ICS Glossary;
<i>Eligible Paper</i>	has the meaning given to it in the ICS Glossary;
<i>Exclusion Event</i>	has the meaning given to it in the ICS Glossary;
<i>Force Majeure Event</i>	has the meaning given to it in the ICS Glossary;
<i>GDPR</i>	means the General Data Protection Regulation (EU Regulation 2016/679);
<i>ICS</i>	has the meaning given to it in the ICS Glossary;

<i>ICS Central System</i>	has the meaning given to it in the ICS Glossary;
<i>ICS Glossary</i>	that part of the ICS Manual which is entitled, the <i>ICS Glossary</i> ;
<i>ICS Manual</i>	the document entitled the <i>ICS Manual</i> issued by the ICS Operator;
<i>ICS Operator Functions</i>	<p>the functions (including the ICS Regulatory Functions) to be performed by the ICS Operator:</p> <ul style="list-style-type: none"> a) as described or otherwise set out from time to time in the ICS Manual; b) in discharge or satisfaction of any obligation or other requirement to which it is subject under any relevant legislation; or c) in discharge or satisfaction of any rule, requirement or direction of any Regulatory Authority to whose jurisdiction (whether formal or informal) the ICS Operator or any part of the ICS is subject;
<i>ICS Operational Timetable</i>	the daily timetable for processing events in the ICS as set out in the ICS Service Description;
<i>ICS participant</i>	a person who is admitted by the ICS Operator to participation in the ICS under one or more participant categories;
<i>ICS Participant Database</i>	<p>the database maintained by or for the ICS Operator under the ICS services and made available for enquiry by an ICS participant in accordance with the ICS Service Description which:</p> <ul style="list-style-type: none"> a) contains the details of the name and Participant ID of the ICS participant; b) specifies the participant category or participant categories for which that ICS participant is enabled for the time being under that Participant ID; and c) contains such other supplemental and

incidental information in relation to that ICS participant as is specified from time to time in the ICS Service Description;

ICS Portal

has the meaning given to it in the ICS Glossary;

ICS Regulatory Functions

has the meaning given to it in the ICS Glossary;

ICS Service Description

that part of the ICS Manual which is entitled, the ***ICS Service Description***;

ICS services

the services provided by the ICS Operator which are referred to in the ICS Service Description but which do not form part of the ICS Central System;

ICS Specifications

all requirements of the ICS Operator for the time being applicable to an ICS participant and includes, without limiting the generality of the foregoing, all the obligations, conditions and operating procedures for the time being applicable to the ICS participant under or by virtue of:

- a) (to the extent the ICS participant is a settlement participant):
 - (i) the ICS Settlement Framework Agreement;
 - (ii) the ICS Interbank Settlement Agreement;
 - (iii) the ICS Rules; and
- b) (to the extent the ICS participant is a settlement participant, in addition to those ICS Specifications listed in paragraph a) above or to the extent the ICS participant is a switch participant):
 - (i) these Terms and Conditions;
 - (ii) the ICS Manual (excluding the ICS Rules);
 - (iii) the User Documents; and
 - (iv) any directions for the time being in force given by or for the ICS Operator

	in accordance with the ICS Manual;
<i>ICS Switch</i>	has the meaning given to it in the ICS Glossary;
<i>ICS Transferee</i>	has the meaning given to it in clause 15.7.1;
<i>ICS User Document</i>	has the meaning given to it in the ICS Glossary;
<i>Indemnified Claim</i>	any actions, proceedings, costs (including any costs relating to settlement), expenses (including legal costs and expenses), claims, demands, liabilities, losses, damages or awards (including sums paid in settlement of the same);
<i>Indemnity Cap</i>	shall be £50,000,000 (fifty million pounds);
<i>Indirect Participant</i>	has the meaning given to it in the ICS Glossary;
<i>Liabilities</i>	any liability, damage, loss, cost, claim or expense of any kind or nature, whether direct, indirect, special, consequential or otherwise;
<i>Liability Cap</i>	shall be £2,000,000 (two million pounds);
<i>Multilateral ICS Specifications</i>	those ICS Specifications that are described as being <i>Multilateral ICS Specifications</i> in that part of the ICS Manual or ICS User Documents in which they appear and which, in accordance with these Terms and Conditions, operate for the benefit of each other ICS participant for whose benefit the relevant ICS Specification is expressed to apply and are enforceable by each such other ICS participant accordingly;
<i>Network</i>	any network and associated equipment and services which enable electronic images, instructions and other information to be sent to and received from the ICS Central System or the ICS services in the manner described in the ICS Service Description;
<i>Network Services</i>	the supply of a Network;
<i>Participant Information</i>	has the meaning given to it in clause 3.3;
<i>personal data</i>	has the meaning given to it in the Data Protection Legislation;

PPS

any person who is appointed by the Participant to supply equipment, systems and/or services (for use in connection with the Participant's participation in the ICS) which must comply with the requirements specified from time to time by the ICS Operator in the ICS Manual and/or the User Documents in relation, amongst other things, to their functionality, security and performance;

Relevant ICS Regulatory Action

any or all of the following:

- a) the publication pursuant to clause 3.10 of information relating to any material or persistent failure by the Participant to comply with any of the ICS Specifications applicable to it;
- b) the suspension pursuant to clause 10.1 of the Participant's participation in whole or in part in relation to any particular function or participant category;
- c) the termination pursuant to clause 10.3 or clause 10.6 of the Participant's participation in whole or in part in relation to any particular function or participant category;
- d) any change to the provisions of the ICS Manual and/or these Terms and Conditions following prior consultation pursuant to clause 14.1; and
- e) the novation of the ICS Operator's rights and obligations under any or all of these Terms and Conditions and the Relevant Settlement Contracts in accordance with clause 15.7 (and/or, as the case may be, the corresponding provision contained in either or both of the Relevant Settlement Contracts);

Relevant Individual

an individual through whom the Participant interacts with either or both of the ICS Operator and the ICS;

Relevant Settlement Contracts	either or both of: a) the ICS Settlement Framework Agreement; and b) the ICS Interbank Settlement Agreement;
Security Breach	means any breach of security leading to, or reasonably likely to lead to, the accidental or unlawful destruction, loss, alteration, damage, unauthorised disclosure of or access to personal data;
SFRs	the Financial Markets and Insolvency (Settlement Finality) Regulations 1999;
SSP Link	has the meaning given to it in the ICS Glossary;
SSP Services	has the meaning given to it in the ICS Glossary;
Supplier	has the meaning given to it in the ICS Glossary;
SWIFT Bureau	has the meaning given to it in the ICS Glossary;
THIR	the Transaction History and Image Repository as defined in the ICS Glossary;
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
User Document	has the meaning given to it in the ICS Glossary.

1.2 In these Terms and Conditions, any reference to:

1.2.1 a **person** shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

1.2.2 **these Terms and Conditions** shall be construed as a reference to the ICS Admission Agreement incorporating the Terms and Conditions (including any Schedules) concerning participation in the ICS issued by the ICS Operator as the same may from time to time be amended, varied, supplemented, novated or replaced and shall include any document which is supplemental to, or is expressed to be collateral to, or is entered into pursuant to or in accordance with the terms of, the Terms and Conditions issued by the ICS Operator;

- 1.2.3 **the ICS Manual** (or any part of the ICS Manual) or any other agreement or document shall be construed as a reference to the ICS Manual (or such part of the ICS Manual) or such other agreement or document as the same may from time to time be amended, varied, supplemented, novated or replaced and shall include any document which is supplemental to, or is expressed to be collateral to, or is entered into pursuant to or in accordance with the ICS Manual (or such part of the ICS Manual) or, as the case may be, such other agreement or document;
- 1.2.4 an **instruction** includes any instruction, request, election, permission, decision, acceptance, authority, consent, enquiry or any other message of any kind;
- 1.2.5 a **month** shall mean a calendar month;
- 1.2.6 **participation** shall be construed as a reference to participation in the ICS under one or more participant categories;
- 1.2.7 **other ICS participants** shall be construed as a reference to any and all ICS participants other than the Participant;
- 1.2.8 any communication, instruction or information being **in writing** (or similar reference) includes any such communication, instruction or information which is sent or received as or by electronic mail or other data communication;
- 1.2.9 an image not being **genuine** (or similar reference) shall be construed as including (but not being limited to) an image:
- a) of a document that purports to be, but is not, a cheque or other bill of exchange, or a promissory note or other negotiable instrument;
 - b) that purports to be, but is not, an image of a physical instrument or other document; and
- 1.2.10 a **purported image** shall be construed as a reference to an image:
- a) that is not genuine;
 - b) that was not sent with the authority of the person on whose behalf it was expressed or otherwise purported to be sent;

- c) the sending of which was not initiated by the person entitled to send it;
 - d) the sending of which was not initiated through the systems and equipment (as the case may be) operated by the person entitled to send it.
- 1.3 Terms relating to the ICS Central System or the ICS services which are used in these Terms and Conditions, but not defined in this Schedule, have the meanings given to them in the ICS Glossary.
- 1.4 The clause and paragraph headings in these Terms and Conditions are for ease of reference only and shall not affect their interpretation. In the event of any conflict between the terms to which the Participant is subject in connection with its participation in the ICS, it is agreed that the following order of priority shall apply to resolve such conflict (with the intention that a term in a contract or other ICS Specification appearing earlier in the list shall prevail over a term in a contract or other ICS Specification appearing later in the list):
 - 1.4.1 first, the ICS Settlement Framework Agreement (if the Participant is a settlement participant);
 - 1.4.2 second, the ICS Rules (if the Participant is a settlement participant);
 - 1.4.3 third, the ICS Interbank Settlement Agreement (if the Participant is a settlement participant);
 - 1.4.4 fourth, these Terms and Conditions; and
 - 1.4.5 fifth, any other ICS Specifications.
- 1.5 References in these Terms and Conditions to numbered clauses, paragraphs or the Schedule are to clauses of, paragraphs of or the Schedule to these Terms and Conditions.
- 1.6 Any reference in these Terms and Conditions to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision (including all instruments, orders or regulations made thereunder or deriving validity therefrom) as in force at the date of these Terms and Conditions and as subsequently amended, modified, re-enacted or consolidated.
- 1.7 In construing these Terms and Conditions, general words whether or not 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 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.

1.8 Words importing one gender shall (where appropriate) include any other gender and words importing the singular shall (where appropriate) include the plural and vice versa.

1.9 In these Terms and Conditions any provision to the effect that ***the ICS Operator shall not be liable*** in respect of a particular matter (including, without limitation, as a result of any waiver of rights or remedies by the Participant) shall be construed to mean that the ICS Operator shall not have any liability which the ICS Operator might, in the absence of such a provision, incur, whether the ICS Operator could incur such a liability:

1.9.1 under the terms of these Terms and Conditions or (where the Participant is a settlement participant) of any Relevant Settlement Contract (whether such terms are express or implied by statute, law or otherwise);

1.9.2 in tort;

1.9.3 for misrepresentation;

1.9.4 for breach of any other duty imposed by law; or

1.9.5 in any other way,

provided that nothing in these Terms and Conditions shall be construed as a) excluding or limiting liability on the part of the ICS Operator for death or personal injury resulting from its negligence or as b) excluding liability for fraud or as c) limiting any liability of the ICS Operator below the amount of any benefit the ICS Operator has itself received by reason of the act, omission or event giving rise to such liability or as d) excluding or limiting any rights under the Human Rights Act 1998.

1.10 In these Terms and Conditions any reference to ***the ICS Operator's negligence, wilful default or fraud*** shall be construed to include the negligence, wilful default or fraud of any person for which the ICS Operator is vicariously liable. For this purpose any act or omission on the part of the Supplier when performing a task concerning the day to day operation of the ICS Central System or the ICS services (being part of its role under the arrangements referred to in clause 11.13) which would otherwise have to be performed by the ICS Operator shall be treated as if it were an act or omission of the ICS Operator.

1.11 The Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms and Conditions and accordingly nothing in them shall be directly or indirectly enforceable by any third party, nor are they intended to confer a benefit on any third party, save that:

- 1.11.1 to the extent that clause 5.1 obliges the Participant to comply with and abide by any or all of the Multilateral ICS Specifications, that clause shall operate for the benefit of each other ICS participant for whose benefit the relevant Multilateral ICS Specification is expressed to apply and be enforceable by it accordingly;
- 1.11.2 clause 11.13 shall operate for the benefit of the Supplier and be enforceable by it accordingly;
- 1.11.3 clause 11.14 shall operate for the benefit of each relevant Associate and be enforceable by it accordingly;
- 1.11.4 clause 11.15 shall operate for the benefit of each relevant Associate and be enforceable by it accordingly;
- 1.11.5 clause 12 shall operate for the benefit of each other ICS participant and be enforceable by it accordingly;
- 1.11.6 clause 15.7 shall operate for the benefit of the ICS Transferee and be enforceable by it accordingly; and
- 1.11.7 clause 17.2 shall operate for the benefit of each Indemnified Party (as defined in clause 17.2) and be enforceable by it accordingly;

provided always that these Terms and Conditions may be varied or rescinded without the consent of each such other ICS participant, the Supplier, each such Associate, the ICS Transferee or each such Indemnified Party.

1.12 For the purpose of determining whether under clause 7.5 or 8.4 the ICS Operator has **actual notice** of a fact, matter or thing the ICS Operator shall not under any circumstances be taken to be concerned to establish whether or not it exists or has occurred.

1.13 For the avoidance of doubt, the Participant shall not be considered to be **acting for** another person as **an Indirect Participant** in respect of any service, function and/or facility to which that other person has access otherwise than under or by virtue of a contractual arrangement with the Participant, even if the Participant is acting for that other person as its Indirect Participant in respect of another service, function and/or facility. Accordingly:

- 1.13.1 where any provision in these Terms and Conditions that relates to a Participant's access to or other use of a particular service, function or facility

(or set of services, functions or facilities) also refers to an Indirect Participant for whom the Participant is acting (or similar phrase), that provision shall only be taken to include another person as the Participant's Indirect Participant when or to the extent that other person is given (or is purportedly given) indirect access to that service, function or facility (or set of services, functions or facilities) that is provided or otherwise made available to that person under or by virtue of its contractual arrangement with the Participant; and

- 1.13.2 the Participant shall only have a liability to indemnify the ICS Operator under clause 7.7 or 11.11 in respect of any actions and/or omissions (or purported actions and/or omissions) of a person (who is or was the Participant's Indirect Participant) in connection with that person's access to or use of (or purported access to or use of) those services, functions or facilities that are provided or otherwise made available to that person under or by virtue of its contractual arrangement with the Participant.
- 1.14 For the purposes of these Terms and Conditions, an electronic image or electronic instruction received by or through the ICS Central System or the ICS services is treated as being **sent** by the ICS participant whose Participant ID is specified (or is treated as being specified in accordance with the ICS Service Description) as the sender of the image or instruction.
- 1.15 In these Terms and Conditions, the obligation of the ICS Operator to perform the ICS Regulatory Functions **in good faith** shall be interpreted so as to require the ICS Operator in exercising any discretion reserved to it in discharging any or all of those functions:
 - 1.15.1 to act rationally, fairly and proportionately;
 - 1.15.2 to have regard to relevant considerations; and
 - 1.15.3 to disregard irrelevant considerations.

Accordingly, for the purposes of clauses 11.4 and 11.8, anything done or omitted in exercise of any discretion reserved to the ICS Operator in discharging any or all of the ICS Regulatory Functions shall be in **bad faith** only if it can be shown to have been done or omitted arbitrarily, capriciously, irrationally, perversely or inconsistently with the purpose for which the discretion is conferred.

- 1.16 In the event of any material ambiguity, these Terms and Conditions shall be interpreted in the manner most conducive to the establishment, promotion and maintenance of:
 - 1.16.1 the ICS as an orderly payment system; and

1.16.2 high standards of integrity and fair dealing in accordance with best practice.

1.17 For the purposes of:

1.17.1 clauses 2.1.1, 2.1.2, 2.2.3 and 2.2.4, the Participant shall only be taken to have "become aware" of any inaccuracy, problem or issue if a Relevant Individual is aware:

- a) of the primary facts or circumstances that constitute the inaccuracy, problem or issue; and
- b) that those facts or circumstances (by reference to his or her own general knowledge of the ICS or any specific knowledge that s/he has) amount to the relevant inaccuracy, problem or issue and, in the case of clause 2.1.2, such awareness leads the Relevant Individual to form the relevant opinion;

1.17.2 clause 2.1.3, the Participant shall only be taken to "believe" that it will become unable to comply with any or all of the ICS Specifications applicable to it if a Relevant Individual forms the relevant belief; and

1.17.3 clause 2.1.4, the Participant shall only be taken to "expect" that changes will occur to the information supplied to the ICS Operator if a Relevant Individual forms the relevant expectation.