

Supplier Terms and Conditions for the provision of a Managed Payment Service

BACKGROUND

1. The Supplier has joined the Crown Commercial Services administrated G-Cloud 9 Framework Agreement (RM1557ix) (the “**Framework Agreement**”) which entitles in-scope public authorities to enter into customisable order form with associated call-off contract terms and conditions (a “**Call-off Agreement**”) with the Supplier under the terms of the Framework Agreement, the Call-off Agreement and these Supplier Terms and Conditions.
2. The Buyer is an in-scope public authority in accordance with the Framework Agreement and is entitled to contract with the Supplier under the terms of the Call-off Agreement and any Supplier Terms and Conditions that may be applicable.
3. The Buyer agrees to purchase services as described by the Call-off Agreement (including the Order Form) and these Supplier Terms and Conditions (together the “**Agreement**”).
4. The Supplier agrees to provide services as described by the Agreement.
5. The Services to be provided under this Contract are designed to:
 - a. enable the Buyer to make payments to customers in near real time using Supported Payment Systems;
 - b. provide contingency functionality which can submit late Bacs payments identified by the Buyer and which are suitable for processing by Faster Payments into the Faster Payments system enabling the majority of payments to still be made on the correct due date, amongst other services

OPERATIVE CLAUSES

1. Interpretation

1.1 In these Supplier Terms and Conditions:

- (a) Terms defined in the Call-Off Agreement or the Framework Agreement shall have the same meaning in these Supplier Terms and Conditions;
- (b) The following additional definitions shall apply to these Supplier Terms and Conditions:

Anti-Bribery Policy means the Supplier document(s) that describes its Anti-Bribery process and policies, as issued and updated by Supplier from time to time in accordance with condition 11;

Applicable Laws means, insofar as they are applicable to Supplier’s provision of the Service:

- (a) all laws, enactments, orders, regulations; and
- (b) all regulatory policies, guidelines, and industry codes, which are in each case of a binding nature or would otherwise generally be complied with by an accredited member of a Supported Payment System acting in accordance with Good Industry Practice;

Charges means the charges payable by the Buyer to the Supplier for the provision of the Services set out in Schedule 3;

Customer Change Support Process means the mechanism for managing service requests for support as described in the Service Documentation;

Daywork means work carried out on a time charge basis;

Go Live	means the date the Service is first used for a live transaction over a Supported Payment System;
Good Industry Practice	means the exercise of reasonable skill, care and prudence which would be expected from a reasonably and suitably skilled, trained and experienced person providing the Service;
Intellectual Property Rights	<p>means any current and future intellectual property rights, including:</p> <ul style="list-style-type: none"> (a) copyright, trademarks, service marks, trade names, domain names, rights in logos and get-up, inventions, confidential information, trade secrets and know-how, design rights, patents, utility models, semi-conductor topographies, all rights in computer software and data, rights in databases; (b) all intangible rights and privileges of a nature similar, analogous or allied to any of the above; (c) all granted registrations and all applications for registration; (d) all renewals, reversions or extensions; (e) the right to sue for damages for past infringement; and (f) all forms of protection of a similar nature which may subsist anywhere in the world; <p>in every case in any part of the world and whether or not registered, including in relation to the above;</p>
Material	means any record, procedure, manual, test, plan, database, software, material or other work associated with the Services;
Scheme Company	means the entity responsible for the administration of the Supported Payment System for the provision of electronic payments and clearing services for the benefit of the users of that Supported Payment System, for example Faster Payments Scheme Limited in relation to Faster Payments as at the date of this Agreement;
Scheme Rules	means the Scheme Company mandatory requirements for connection to the Supported Payment System infrastructure;
Service Credit	means the service credits (if any) given against an SLA;
Service Documentation	means the Supplier document(s) that describes the service function and interface for the Services described in a Statement of Work, as issued and updated by Supplier from time to time in accordance with condition 9;
Service Levels or SLA	means the service levels to be set out in Schedule 2;
Services	means the services to be set out in Schedule 1;
Supported Payment Systems	means Bacs, Faster Payments, Link, CHAPS, SEPA, Current Account Switching Service, Cash ISA Transfer, Paym and any other payment systems designated by Supplier as accessible from the Services; and
Variation	means a variation to the Agreement in compliance with condition 9.

- 1.2 The interpretation and construction of these Supplier Terms and Conditions shall be subject to the following provisions:
- (a) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
 - (b) a reference to conditions and Schedules are references to clauses or Schedules of these Supplier Terms and Conditions as applicable;
 - (c) a reference to Clauses are references to clauses in the Call-off Contract as applicable;
 - (d) the headings to conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions; and
 - (e) where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa.

2. Service Provision

- 2.1 Supplier shall provide Services in accordance with the Service Documentation and the terms of this Agreement.
- 2.2 Supplier shall:
- (a) provide the Service from the United Kingdom or such other location as Supplier may reasonably determine;
 - (b) provide the Service in accordance with Good Industry Practice; and
 - (c) provide the Service in accordance with all Applicable Laws that relate to its provision.

3. Service Levels

- 3.1 Supplier shall report its performance against SLAs each Measurement Period.
- 3.2 During the first six months following the Go Live (the "**Bedding in Period**"), Supplier will measure and report on the Service Levels; however, during the Bedding in Period Supplier will not be deemed to be in breach of this Agreement solely as a result of failing to achieve the Service Levels, and without limitation to the foregoing, no Service Credits shall be payable during the Bedding in Period.

4. Relief Events

- 4.1 Supplier shall not be in breach of this Agreement to the extent that its failure to perform, or delay in performing, an obligation under this Agreement results from a "**Relief Event**", a Relief Event being:
- (a) a failure by Customer to perform, or delay in performing, one or more obligations as set out in the Scheme Rules, under this Agreement or as identified in an SLA;
 - (b) a failure by Customer to make appropriate changes to its systems in accordance with condition 9.6;
 - (c) any other improper or incorrect act or omission by Customer or third Party supplier of Customer;
 - (d) compliance with instructions issued by the Customer;
 - (e) an assumption identified in or pursuant to this Agreement not being correct;
 - (f) any Dependencies not being met in part or at all, or at the relevant time; and
 - (g) a material change to Customer's operating environment that impacts the Service and that was not agreed in accordance with the Change Control Procedures.
- 4.2 If Supplier become aware of a Relief Event before the Customer, it will inform the Customer of such event as soon as is reasonably practical

4.3 Supplier shall be entitled to recover from Customer any and all additional costs reasonably incurred by Supplier as a result of a Relief Event provided that Supplier shall not be entitled to recover a greater amount under this condition 4.3 than it would have been able to do if it had brought a claim against the Customer for breach of contract arising from the event giving rise to such Relief Event.

5. Intellectual Property Rights

5.1 Customer and Supplier agree that, as between themselves, unless otherwise agreed in writing:

- (a) Customer and Supplier will each own any and all Intellectual Property Rights:
 - (i) that they respectively own and make available to the other for the purposes of this Agreement; and
 - (ii) that are created by that Party or arise as a result of work that they each respectively undertake in relation to this Agreement; and
- (b) in relation to any Material created or undertaken pursuant to this Agreement that has not been created solely by Customer, in the absence of any agreement to the contrary, the Material will be owned by Supplier.

5.2 Supplier hereby grants to Customer, or shall procure the grant to Customer of, a non-exclusive, sub-licensable, royalty free licence during:

- (a) the term to use the Materials delivered or otherwise made available to Customer, by or on behalf of Supplier to the extent reasonably necessary to enable the Customer to receive and make use of the Service; and
- (b) following the termination or expiry of this Agreement to use the Materials delivered or otherwise made available to the Customer, by or on behalf of Supplier, which have been incorporated into the Customer's documentation, processes or systems, or are otherwise required for the provision of any replacement services by a Successor Supplier, to the extent reasonably necessary for the purpose of the continued operation of the Customer's business.

5.3 Customer hereby licenses Supplier, or shall procure the grant to Supplier of, a non-exclusive, royalty free, licence for Supplier and its sub-contractors, to copy and use all Intellectual Property Rights owned by Customer in Materials made available by Customer to Supplier to the extent reasonably necessary to enable Supplier to provide the Service.

6. General Obligations of both Parties

6.1 In addition to their other obligations under this Agreement, each Party shall:

- (a) at all times act in good faith in their dealings with the other Party;
- (b) act in such a way that the name and good reputation of the Supplier or the Buyer is not brought into disrepute or otherwise becomes adversely affected, provided that this sub-condition 6.1(b) shall not make the Service Levels set out under this Agreement any more stringent, nor increase the Supplier's liability in respect thereof;
- (c) provide to the other Party such co-operation, information, advice and assistance in connection with the Services and the implementation thereof as the other Party may reasonably require; and
- (d) not do or permit or suffer to be done anything which might be or become a danger to any persons or cause damage to any tangible property of the other Party in connection with this Agreement.

7. Co-ordination

7.1 The Supplier shall co-ordinate its activities in the provision of the Services with those of Personnel and other Suppliers engaged by the Buyer in the provision of the services.

7.2 The Buyer shall be responsible for notifying the Supplier if any co-operation is required in accordance with condition 7.1 and for providing reasonable direction in such co-operation from time to time. The Supplier shall not be liable for breach of this Agreement if it is precluded or hindered from performing its obligations hereunder by the requirement set out in condition 7.1.

7.3 Any co-ordination or co-operation required in accordance with condition 7.1 shall be chargeable as Daywork and shall be agreed and documented in advance as a Variation.

8. Manner of Providing the Services

8.1 The Supplier shall perform the Services with all due care, skill and diligence, and in accordance with Good Industry Practice.

9. Variations

9.1 Any variation to this Agreement shall be valid only if in writing and signed by a duly authorised representative of each of the Parties. An exchange of emails shall not be capable of constituting an agreement to vary Agreement.

9.2 Any variation to the Services will be submitted through Supplier's standard Customer Change Support Process.

9.3 Any variation to the Service Documentation may be made:

(a) without requirement of Customer consent provided that such changes will not worsen the functionality, scope or quality of service provided to the Customer, or such changes are Scheme Company or Regulatory Authority requirement changes; or

(b) with Customer consent (not to be unreasonably withheld or refused) where such changes reduce the functionality, scope or quality of service provided to the Customer.

9.4 If Customer needs support or assistance to perform maintenance on its own infrastructure, or where such maintenance may impact the Service, Customer shall raise a change using the Customer Change Support Process.

9.5 Changes to the Services requested by either Party will be dealt with as Variations. For clarity: (i) where Customer requires a Change to the Services, then the cost of such Change (including both the cost of its implementation and any cost of delivering the Services on a day-to-day basis) shall be borne by Customer; and (ii) where Supplier requires that Customer accept a Change to the Services, for example because of Regulatory Authority or Scheme Company requirements, then the parties will agree a fair apportionment of such costs. Where the parties are unable to agree an apportionment of such costs, Customer shall accept the Change and each Party shall bear their own costs pending resolution of the apportionment under the disputes procedure.

9.6 Where any change to the Services requires a change to the interface between Supplier and the Customer:

(a) the Customer agrees to make the necessary changes to its own systems within the timeframes agreed with Supplier pursuant to the Variation (and provided that both parties shall act reasonably in reaching such agreement); and

(b) each Party shall bear its own costs incurred in relation to changing its own systems and infrastructure, including the provision of testing.

9.7 Subject to condition 9.3, no variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each Party.

10. Liability

10.1 Nothing in this Agreement is intended, and nor shall it be construed to be, an attempt by any Party to exclude or limit its liability for any liability which cannot be excluded or limited under applicable law,

including liability for death or personal injury caused by negligence nor liability for fraudulent misrepresentation or fraud.

10.2 Subject to condition 10.1:

10.2.1 Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

- (a) the principal sum of any payment transaction transmitted or received through the Services; or
- (b) good faith processing in accordance with Service Documentation; or
- (c) loss of profits; or
- (d) loss of business; or
- (e) depletion of goodwill or similar losses; or
- (f) loss of anticipated savings; or
- (g) loss of goods; or
- (h) loss of contract; or
- (i) loss of use; or
- (j) loss or corruption of data or information; or
- (k) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

10.2.2 Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement (including ex gratia payments or settlements and any Service Credits) in respect of any particular Service shall be limited to an amount equal to (in aggregate):

- (a) in respect of Supplier's acts and omissions that occur between the Start Date and Go Live, the implementation Charge (or any other equivalent initial charge to mobilise the relevant Services); and
- (b) in respect of Supplier's acts and omissions that occur on or after Go Live, 100% of the annual service fees for the Service that were received, or due, in that year.

10.3 Customer shall have the right to receive, and Supplier shall pay to Customer, Service Credits where applicable in respect of the Services, and payment of such Service Credits shall, subject to condition 10.1, be Customer's remedy in respect of the relevant breach by Supplier of its obligations under this Agreement in relation to the relevant SLA.

10.4 The parties acknowledge that the exclusions and limitations of liability in this Agreement, as well as the Service Credits are reasonable in the circumstances.

10.5 Each Party excludes to the fullest extent permitted by law, all express, implied, statutory and customary conditions and warranties.

10.6 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate any loss or damage suffered by a Party even where such Party is relying upon an indemnity.

10.7 Each of Supplier's employees, agents and Sub-Contractors may rely on and enforce the exclusion and restrictions of liability in this condition 10 in that person's own name and for that person's own benefit and on the basis that the aggregate liability set out in condition 10.2 is the maximum liability of Supplier, its employees, agents and Sub-Contractors total and not an aggregate liability for each of them.

11. Compliance and Regulation

11.1 Anti-Bribery

11.1.1 Supplier shall comply with its Anti-Bribery Policy as amended from time to time, which shall be provided to Customer by Supplier on request.

11.1.2 Neither Party shall offer or give, or agree to give, to any employee, agent, servant or representative of the other or any other person employed by or on behalf of the other any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Agreement or an Statement of Work (including its award, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement, a Statement of Work, or any other contract.

11.1.3 If either Party, its staff or any person acting on that Party's behalf, engages in conduct prohibited by condition 11.1.2 or commits any offence under the Bribery Act 2010 the other Party may:

- (a) terminate this Agreement with immediate effect by giving notice in writing to the other Party and recover from the other Party the amount of any loss suffered by the terminating Party resulting from the termination; or
- (b) recover in full from the other Party any other loss sustained by the terminating Party in consequence of any breach of this condition 11.1.3 whether or not the Agreement has been terminated.

11.2 Anti-slavery & human trafficking

11.2.1 Each Party represents and warrants to the other Party that at the date of this agreement neither that Party or any of its officers, employees or other persons associated with it:

- (a) has been convicted of any offence involving slavery and human trafficking; and
- (b) has to the best of its knowledge, been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

11.2.2 Each Party shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

11.2.3 Each Party shall notify the other Party as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.

11.2.4 Each Party shall prepare and deliver to the other Party no later than 30th October each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

11.2.5 In the event that a Party is in breach of the provisions of this condition 11.2, this shall constitute a material breach of this Agreement.

SCHEDULE 1

SERVICE DESCRIPTION

Subject to contract and confirmation of Buyer's requirements under the Order Form.

SCHEDULE 2

SERVICE LEVEL AGREEMENT

Subject to contract and confirmation of Buyer's requirements under the Order Form.

SCHEDULE 3

CHARGES

Subject to contract and confirmation of Buyer's requirements under the Order Form.