

IN THE MATTER OF HSBC PRIVATE BANK (UK) LIMITED

and

IN THE MATTER OF HSBC UK BANK PLC

and

**IN THE MATTER OF PART VII OF
THE FINANCIAL SERVICES AND MARKETS ACT 2000**

BANKING BUSINESS TRANSFER SCHEME

ALLEN & OVERY

Allen & Overy LLP

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1. BACKGROUND

- 1.1 HSBC Private Bank (UK) Limited (the **Transferor**), a company incorporated in England and Wales, carries on in the United Kingdom (the **UK**) and elsewhere the business of banking (including the acceptance of deposits), the provision of financial services and other related activities.
- 1.2 HSBC UK Bank plc (the **Transferee**), a company incorporated in England and Wales, carries on in the UK the business of banking (including the acceptance of deposits), the provision of financial services and other related activities.
- 1.3 Both the Transferor and the Transferee are authorised persons in the UK, within the meaning of the Financial Services and Markets Act 2000 (the **Act**), and have permission to accept deposits pursuant to Part 4A of the Act.
- 1.4 The Transferor and the Transferee have agreed that the Transferor will transfer to the Transferee the Transferring Business, including the Transferring Business Assets and the Transferring Business Liabilities (as more particularly defined below so as to exclude certain matters), and that the Transferring Business will vest in the Transferee accordingly.
- 1.5 It is expedient that the transfer of the Transferring Business be effected economically and without interference or interruption to the services provided to any Customer.
- 1.6 The objects of this Scheme can most conveniently be attained with the sanction of the Court under section 111(1) of the Act.

2. INTERPRETATION

- 2.1 In this Scheme, unless the subject or context otherwise requires, the following words and phrases have the following meanings:

Acquired Rights has the meaning given to it in paragraph 5.23(b);

Act has the meaning given to it in paragraph 1.3;

Actual Tax Liability means a Liability to make a payment of Tax to a Tax Authority;

All Monies Rights means rights providing for a charge, debenture, Mortgage, standard security or any other rights in security given in relation to an agreement to secure, in addition, obligations arising under other agreements;

Asset means any asset or other right of every description (whether present or future, actual or contingent), including, without prejudice to the generality of the foregoing:

- (a) money (including cash in transit, cash at branches, cash held by agents, cash in ATM machines, high value paper and in-flight payments to the Transferring Business (including in payment scheme settlement accounts));
- (b) goods;
- (c) things in action;
- (d) real and heritable property;

- (e) Moveable Assets and personal property situated in the UK and elsewhere;
- (f) property held on trust or in a fiduciary capacity;
- (g) Security;
- (h) rights, benefits and powers of every description;
- (i) any interest as a proprietor, landlord, tenant, mortgagee, chargee, assignee or heritable creditor;
- (j) the benefit of the Claims (as far as the same can be lawfully assigned or transferred to the Transferee) outstanding as at the Relevant Date;
- (k) the Goodwill of the Transferor that is attributable to the Transferring Business;
- (l) Customer Property Policies in force at the Relevant Date;
- (m) Business Data;
- (n) Business Receivables;
- (o) Intellectual Property;
- (p) the benefit (subject to the burden) of any Contracts;
- (q) any physical manifestation of a product, including any cards or wearable devices;
- (r) any shares, and any interest in any of the foregoing;
- (s) rights (subject to any burden) associated with the historic businesses of the Transferor; and
- (t) the Intercompany Loans.

Bank Account Agreement means the terms and conditions applicable to a Deposit as varied by the Transferor from time to time, including the associated Customer Account;

Business Data means all Data which is separable and discrete and that is attributable exclusively to any part of the Transferring Business but excluding Data which the Transferor is prevented from transferring or is required to retain by Law and Regulations;

Business Receivables means all book and other debts or sums receivable by, payable to, or owed to the Transferor to the extent that such debts and sums arise in the course of the Transferring Business and are outstanding at the Relevant Date, whether or not yet immediately due or payable (including trade debts, deposits, pre-payments, retrospective rebates and overpayments), and interest thereon, but excluding debts owed to the Transferor by any relevant Tax Authority in respect of Tax relating to the Transferring Business attributable to periods ended on or before, or an event occurring (or deemed to occur) on or before, the Relevant Date (such debts in respect of Tax including, for the avoidance of doubt, any bond or other security issued by any Tax Authority or other governmental agency representing any such debts);

Business Records means all original records, consents and files containing information and records of the Transferor relating to the Transferring Business as at the Relevant Date, including:

- (a) accounting, financial, marketing, sales, management and technical information, correspondence and literature;
- (b) application forms and know-your-customer documentation in respect of Transferring Customers;
- (c) the credit files of each Transferring Customer;
- (d) customer statements and ledgers for each Transferring Customer for at least a six-year period prior to the Relevant Date; and
- (e) all records of correspondence and payments in respect of each Transferring Customer,

and a copy of all records which do not solely contain such information, or that relate to the Transferring Business but not exclusively or predominantly, excluding the Statutory Records and the VAT Records;

Business Transfer Agreement means the business transfer agreement between the Transferor and the Transferee in respect of the Scheme;

Claim means any claim or right to claim by way of legal or other proceedings or by way of application to any ombudsman or authority by or against the Transferor which is current or pending at the Relevant Date or any such future claim or right to claim, including any outstanding claim in relation to the Transferor's own insurance policies;

Commercial Contracts means any Contract entered into by the Transferor, but excluding:

- (a) Customer Contracts;
- (b) Security Agreements;
- (c) any Contract of Employment;
- (d) the IGLO;
- (e) any Contract relating to any HSBC Pension Plan; and
- (f) any Excluded Contracts;

Consenting Customer has the meaning given to it in paragraph 5.28;

Consolidation Rights means all rights providing for Security given in connection with any Transferor Agreement or any Existing Transferee Agreement not to be released, or discharged, until obligations have been satisfied in connection with any Transferor Agreement or Existing Transferee Agreement (in each case, as applicable);

Contract means any agreement, deed, scheme, transaction, obligation, arrangement, warranty or understanding (whether unilateral or bilateral, whether conditional or unconditional, whether in writing or otherwise and whether or not governed by English law) and includes:

- (a) Customer Contracts;
- (b) Security Agreements; and
- (c) Commercial Contracts,

but does not include any Contract of Employment;

Contract of Employment means any employment contract between any Employee and the Transferor;

Control means, in relation to a person, the direct or indirect ownership of more than 50 per cent of the voting capital or similar right of ownership of that person, or the legal power to direct or cause the direction of the general management and policies of that person, whether through the ownership of voting capital, by Contract or otherwise, and **Controls** and **Controlled** shall be interpreted accordingly;

Court means the High Court of England and Wales;

Cross Default Rights means any rights providing for, or which (if exercised) might result in, the acceleration or alteration of payment obligations or other obligations under a Contract as a result of a default under another Contract;

Customer means any existing or previous customer, client or counterparty of the Transferor at or before the Relevant Date;

Customer Accounts means all accounts in respect of Deposits that are attributable to the Transferring Business between the Transferor and the Transferring Customers, including closed accounts;

Customer Contracts means any Contract entered into by the Transferor (solely or with others) with Customers, including any Loan Agreements, facility agreements and other credit agreements, Bank Account Agreements, and safe custody services agreements, but excluding Security Agreements and the Excluded Contracts;

Customer Property Policies means, with respect to a property subject to Security forming part of the Transferring Business:

- (a) any Customer buildings insurance policies; or
- (b) in the case of leasehold or, in Scotland, leased property, any buildings insurance policies taken out by Customer landlords, superior landlords, management companies or Customers under such property's lease,

and in the case of paragraphs (a) and (b) above, any other insurance agreements in replacement, addition or substitution (including, as issued from time to time, endorsements or extensions thereto), but which excludes any buildings insurance policy and any contingency insurance policy maintained by, or on behalf of, the Transferor;

Data means data or information, whether in electronic or hard copy form;

Data Protection Laws means:

- (a) Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); and
- (b) all other applicable Law and Regulations concerning the processing of data relating to living persons, including the Privacy and Electronic Communications (EC Directive) Regulations 2003;

Data Subject has the meaning given in the Data Protection Laws;

Data Subject Request means a request made by a Customer to exercise their rights under Data Protection Laws in respect of Transferring Personal Data;

Deposits means the deposit Liabilities of the Transferor owing to depositors taken in or held in the books and records of the Transferor as part of the Transferring Business outstanding on the Relevant Date, including all uncollected items included in depositors' balances;

Document means anything in which information of any description is recorded (whether in physical, electronic or any other form);

Effective Date means 1 January 2020 or such other date (or, in respect of different parts of the Transferring Business, dates) as is agreed between the Transferor and the Transferee in writing and which falls within the period beginning on 2 January 2020 and ending on 1 July 2020;

Eligible Deposit has the meaning given to it in the Depositor Protection Instrument 2015 (as amended from time to time);

Employees means any individuals employed by the Transferor in the Transferring Business and **Employee** means any one of those individuals;

Encumbrance means any Security, Claim, equitable right, power of sale, retention of title, or other third party right or security interest of any kind, or an agreement, arrangement or obligation to create any of the foregoing;

Entire Agreement Clause means a clause contained in a Customer Contract, Existing Transferee Agreement or New Transferee Agreement which provides that the agreement represents the entire agreement between the parties in relation to all or some of the accounts or services of the type that are the subject matter of the agreement or that are referred to in the agreement, or otherwise states that the relevant customer Contract, Existing Transferee Agreement or New Transferee Agreement (as applicable) will apply to all accounts or services provided by the Transferor or Transferee as appropriate;

Excess Deposit means such part of a Transferee Deposit which is an Eligible Deposit, together with any accrued interest and other benefits, as exceeds the coverage level pursuant to section 4.2 of the Depositor Protection Instrument 2015 (as amended from time to time) on the Relevant Date;

Excluded Assets means Assets which are not to be transferred to the Transferee pursuant to this Scheme (being those identified in Part 1 of Schedule 1);

Excluded Contracts means Contracts that are not to be transferred to the Transferee pursuant to this Scheme (being those identified in Part 2 of Schedule 1);

Excluded Liabilities means Liabilities that are not to be transferred to the Transferee pursuant to this Scheme, being those identified in Part 3 of Schedule 1;

Excluded Matters means:

- (a) the Excluded Assets;
- (b) the Excluded Contracts;
- (c) the Excluded Liabilities; and

- (d) any other Asset, Contract, Liability or Customer that the Transferor and the Transferee agree in writing shall be an Excluded Matter for the purposes of this Scheme prior to the Relevant Date;

Existing Transferee Agreement means any agreement between the Transferee and a customer of the Transferee to the extent in force immediately prior to the Relevant Date excluding any agreements transferred to the Transferee pursuant to this Scheme prior to the Relevant Date;

FCA means the UK Financial Conduct Authority or any successor authority of the FCA;

Freezing Order means any order of any court of any jurisdiction imposing any restrictions or conditions (including on the use of, payment from, disposition of, dealing with, or diminution of) on Deposits or Customer's Assets comprised in the Transferring Business, including freezing orders or Mareva injunctions, and orders pursuant to the Proceeds of Crime Act 2002 or its predecessors;

Frozen Account means any Deposits and any Assets held for Customers which form part of the Transferring Business which are affected by a Freezing Order;

Future Business means the potential business that may arise from any application made to the Transferor prior to, on or after the Relevant Date, whether or not accepted by the Transferor, and any offer or invitation by the Transferor prior to the Relevant Date, in each case in connection with the Transferring Business which in the ordinary course absent the Scheme would result in the execution of a Customer Contract by the Transferor and any checks made (or information obtained) by or on behalf of the Transferor pursuant to, or as a result of, any such application, offer or invitation;

Goodwill means the goodwill of the Transferor in relation to any part of the Transferring Business at the Effective Date;

Guarantee means a guarantee, indemnity, undertaking or commitment given to the Transferor to secure the obligations of a borrower under a Loan Agreement or a Customer under a Customer Contract;

HSBC Group means HSBC Holdings plc and its subsidiaries;

HSBC Pension Plan means any occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004) in which the employees of the Transferor participate;

IGLO means the intra-group licence to occupy properties dated 26 November 2018 and made between the Transferor and the Transferee;

Intellectual Property means: (a) all right, title and interest in inventions (whether patentable or not), patents, design rights, database rights, copyright, trade and service marks, logos, get up and trade names and the goodwill attaching to them, and know-how; and (b) any other intellectual property rights and equivalent forms of protection to any of them which subsist anywhere in the world, owned by the Transferor;

Intercompany Debts means all debts or sums receivable by, payable to or owed to a member of the HSBC Group by the Transferor, in each case pursuant to an intercompany loan, and that are outstanding at the Relevant Date, whether or not yet immediately due or payable;

Intercompany Loans means all debts or sums receivable by, payable to or owed to the Transferor by a member of the HSBC Group, in each case pursuant to an Intercompany Loan, and that are outstanding at the Relevant Date, whether or not yet immediately due or payable;

Law and Regulations means any applicable law, regulation or ordinance or any direction, instruction, pronouncement, requirement, decision of or contractual obligation owed to an applicable regulatory authority (including any relevant antitrust laws);

Liabilities or **Liability** means any duty or an obligation of any description, whether present or future, actual, contingent or prospective, and includes deposits;

Loan Agreement means any agreement creating a Loan between the Transferor and any Customer;

Loans means each loan made by the Transferor and/or owed to it as part of the Transferring Business on or before the Relevant Date and comprising the aggregate of all principal sums, interest, costs, charges, expenses and other monies (including all future advances) due or owing with respect to that loan by a borrower or, as the context may require, the borrower's obligations in respect of the same;

Marketing Preference means a consent for the purposes of Data Protection Laws given by a Data Subject (as defined in the Data Protection Laws) to the Transferor for use of that Data Subject's Personal Data to market directly to that Data Subject by any means, or an indication (by act or omission as appropriate) by the Data Subject that such consent is withheld;

Mortgage means a first or subsequent fixed charge by way of a legal mortgage or, in relation to property in Scotland, by way of a standard security;

Moveable Assets means, in the case of the Transferring Business, all moveable assets (including furniture and stationery, but excluding information technology software or hardware) owned by the Transferor immediately prior to the Relevant Date and either held or used exclusively for the purposes of the Transferring Business at the Relevant Date;

New Transferee Agreement means any Contract to the extent entered into between the Transferee and any of its customers (including a Customer) on or after the Effective Date or the Subsequent Transfer Date (as the case may be);

Order means an order of the Court under section 111(1) of the Act sanctioning the transfer of the Transferring Business to the Transferee and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of the Act;

Overseas Business means any activities of the Transferor outside of the UK;

Personal Data has the meaning given in the Data Protection Laws;

PRA means the UK Prudential Regulation Authority or any successor authority of the PRA;

PwC Engagement Letter means the engagement letter between the Transferor and PricewaterhouseCoopers LLP for the provision of auditing services dated 31 July 2014;

Relevant Date means, in respect of:

- (a) a Transferring Asset or a Transferring Liability, the Effective Date; and
- (b) a Residual Asset or a Residual Liability, the applicable Subsequent Transfer Date;

Residual Asset means any present or future Asset of the Transferor to be transferred pursuant to this Scheme, but whose transfer to and vesting in the Transferee does not take place on the Effective Date, including any Asset;

- (a) that is governed by the laws of any country or territory outside the UK, and where certain steps for securing its effective transfer or waiving any default arising on the transfer under this Scheme need to be taken after the Effective Date;
- (b) to which paragraph 5.9 applies and the relevant Security granted to the Transferor in relation to that Asset does not transfer on the Effective Date;
- (c) in relation to which the Transferee and the Transferor mutually agree that the Asset should not be transferred on the Effective Date; or
- (d) in relation to which there has been a delay in the transfer for any other reason;

Residual Liability means any present or future Liability of the Transferor to be transferred pursuant to this Scheme, but whose transfer to the Transferee does not take place on the Effective Date, including any Liability:

- (a) that is governed by the laws of any country or territory outside the UK, and where certain steps for securing its effective transfer need to be taken after the Effective Date;
- (b) in respect of a Frozen Account to which paragraph 3.4 applies;
- (c) to which paragraph 5.10 applies and the relevant Security granted to the Transferor in relation to that Liability does not transfer on the Effective Date;
- (d) in relation to which the Transferee and Transferor mutually agree that the Liability should not be transferred on the Effective Date; or
- (e) in relation to which there has been a delay in the transfer for any reason;

Sanctioned Accounts means those accounts of Customers that it would be unlawful under Sanctions to transfer to the Transferee pursuant to this Scheme;

Sanctions means the economic, financial and trade embargoes and sanctions laws, regulations, rules and/or restrictive measures administered, enacted or enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the United States Department of State, any other U.S. government entity, the United Nations Security Council, any United Nations Security Council Sanctions Committee, the European Union, any Member State of the European Union, the United Kingdom and/or any other government, public or regulatory authority or body (including HM Treasury);

Scheme means this Scheme in its original form or with or subject to any modification, addition or condition which may be approved by the Court in accordance with paragraph 7;

Security includes:

- (a) any Mortgage or charge (whether legal or equitable, fixed or floating), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignment or assignation by way of security, indemnity, power of attorney, letter of credit, letter of comfort, letter of support, insurance, warranty, representation or other assurance, right of set-off or any other means of securing the payment or discharge of a debt or Liability or any interest therein;

- (b) any intercreditor agreement, subordination agreement, postponement agreement or other ranking agreement in relation to the rights and/or obligations of any person or any security interest;
- (c) any equalisation agreement, standstill agreement or similar agreement or arrangement;
- (d) any third party right or interest (whether legal or equitable), including in any real or personal property; and
- (e) any option, restriction, right of first refusal, right of pre-emption or any other type of preferential arrangement (including title transfer and retention agreements) having a similar effect,

in each case: (i) whether present or future, actual, contingent or prospective; (ii) whether over an Asset in England and Wales, Scotland, Northern Ireland or in any other jurisdiction; and (iii) whether created, executed or given by any Customer or by any other person;

Security Agreement means an agreement creating any Security in favour of the Transferor (solely or with others) in respect of any Liability of any Transferring Customer comprised in the Transferring Business;

ServCo Claim means any Claim of the Transferor under a Services Agreement to the extent that it relates to the Transferring Business;

ServCo Group means HSBC Global Services Limited and any entity over which from time to time HSBC Global Services Limited either directly or indirectly exercises Control;

Services Agreement means each services agreement entered into between the Transferor and a member of the ServCo Group, pursuant to which a member of the ServCo Group has agreed to provide, or procure the provision of, services to the Transferor, and for which the Transferor has agreed to make payment, as more particularly specified in the relevant services agreement;

Statutory Records means all books, files, Documents, correspondence, papers and other records as are required, by any applicable legal or regulatory requirement or corporate governance requirement (whether or not having the force of law), to be kept by the Transferor and retained in their possession, but excluding the VAT Records;

Subsequent Transfer Date means, in relation to any Residual Asset or Residual Liability, the date after the Effective Date on which such Residual Asset or Residual Liability is transferred to the Transferee being:

- (a) in respect of any Residual Asset or Residual Liability that is not transferred on the Effective Date because of the operation of paragraph 3.4, 3.9, 3.10, 5.9 or 5.10, the date on which all relevant transfer and transfer perfection steps have been concluded, unless otherwise determined by the Transferor and the Transferee; and
- (b) in all other cases, the date determined by the Transferor and the Transferee;

Tax means any form of taxation, levy, duty, charge, withholding, contribution or impost of whatever nature (including any related fine, penalty, surcharge or interest) imposed, collected or assessed by, or payable to, any Tax Authority;

Tax Authority means any taxing or other authority (in any jurisdiction) competent to impose, administer or collect any Tax;

Transferee has the meaning given to it in paragraph 1.2;

Transferee Deposit means such deposit Liabilities of the Transferee owing to depositors who have been transferred by the Transferor to the Transferee pursuant to this Scheme;

Transferee Entity has the meaning given to it in paragraph 5.15(a);

Transferee's Group means the Transferee and its subsidiaries from time to time;

Transferor has the meaning given to it in paragraph 1.1;

Transferor Agreement means a Customer Contract to be transferred to the Transferee under the Scheme or an agreement between the Transferor and a person (including a Customer) who has, before the Relevant Date, provided an Encumbrance in respect of a Customer;

Transferor Entity has the meaning given to it in paragraph 5.15(a);

Transferring Assets means the Transferring Business Assets other than the Residual Assets (unless and until they transfer on a Subsequent Transfer Date);

Transferring Business means all business conducted by the Transferor, including its private banking and wealth management activities, and associated Assets, Liabilities and Contracts, including associated Assets, Liabilities and Contracts which are attributable to:

- (a) the Transferring Business Assets, the Transferring Business Contracts and the Transferring Business Liabilities;
- (b) any other business carried on by the Transferor and any other existing property, assets and liabilities of the Transferor of whatsoever nature as recorded in or created by any of the books and records of the Transferor; and
- (c) the benefit, burden and conduct of any Claim and any regulatory proceeding in respect of the items referred to in paragraphs (a) to (b) above and any ServCo Claim,

but excludes the Excluded Matters;

Transferring Business Assets means the Assets in respect of the items (other than the Transferring Business Assets) listed in the definition of the Transferring Business including the Intercompany Loans, but excluding the Excluded Matters;

Transferring Business Contracts means the Contracts in respect of the items (other than the Transferring Business Contracts) listed in the definition of the Transferring Business, but excluding the Excluded Matters;

Transferring Business Liabilities means the Liabilities in respect of the items (other than the Transferring Business Liabilities) listed in the definition of the Transferring Business (including (a) any bank deposit or similar arrangement, (b) the Intercompany Debts and (c) any Liability associated with the historic businesses of the Transferor), excluding the Excluded Matters;

Transferring Customer means each Customer of the Transferring Business;

Transferring Liabilities means the Transferring Business Liabilities other than the Residual Liabilities (unless and until they transfer on a Subsequent Transfer Date);

Transferring Personal Data means Personal Data which is comprised in the Transferring Business in respect of which the Transferor was the data controller immediately before the Relevant Date;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

UK has the meaning given to it in paragraph 1.1;

VAT Records means all records that are referred to in section 49(1)(b) VATA and which at the Effective Date are kept by the Transferor in relation to the Transferring Business; and

VATA means the Value Added Tax Act 1994.

2.2 Any reference in this Scheme to the Contracts, Assets or Liabilities of the Transferor is a reference to Contracts, Assets or Liabilities to which the Transferor is entitled or subject (whether legally, beneficially (including as beneficiary under a trust) or in any fiduciary capacity):

- (a) wherever they are situated or arise;
- (b) whether or not they are capable of being transferred or assigned by the Transferor;
- (c) whether or not they are expressed to be binding on the successors or assignees of the Transferor; and
- (d) whether the Transferor is entitled or subject to them under the law of any part of the UK or under the law of any other country or territory.

2.3 Where any activity, Asset, Liability or Contract may be taken to fall within one or more than one of the items of business included within the definition of Transferring Business and/or one or more of the matters excluded as an Excluded Matter, it shall be regarded as falling within that item with which it is most closely connected, and therefore transferred or excluded accordingly.

2.4 In this Scheme:

- (a) a person includes any individual firm, company, corporation, body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, partnership or unincorporated association (whether or not having separate legal personality);
- (b) for the purposes of determining whether a customer is a Customer, the signatories to a joint-named account shall be treated as a single customer that is separate and distinct from the status of any of those joint signatories as a customer:
 - (i) in his/her capacity as a sole signatory in relation to a sole named account; or
 - (ii) in his/her capacity as a joint signatory to any joint-named account with other customers;
- (c) a company includes any company, corporation or any body corporate whenever and however incorporated or established;
- (d) the words "holding company", "subsidiary" and "subsidiary undertaking" shall have the same meanings in this Scheme as their respective definitions in the Companies Act 2006; and

(e) reference to beneficial title includes an interest as beneficiary under a trust.

- 2.5 References to a Customer shall be to that Customer in its capacity as a Customer and not in any other capacity.
- 2.6 References to any agreement, instrument or deed shall be to such agreement, instrument or deed as amended, varied, modified, supplemented, extended, novated, renewed or replaced from time to time.
- 2.7 References to liabilities, rights, assets and property of the Transferor in respect of a Customer shall include liabilities, rights, assets and property whether or not governed by the law of England and Wales, Northern Ireland or Scotland and whether or not situated in England and Wales, Northern Ireland or Scotland.
- 2.8 References to one gender include all genders and references to the singular include the plural and vice versa.
- 2.9 Any reference to this Scheme shall include any Schedule to it and references to paragraphs and Schedules are to paragraphs of, and Schedules to, this Scheme.
- 2.10 All references to time in this Scheme are to London time.
- 2.11 References to any English, Northern Irish or Scottish legal term shall, in respect of any jurisdiction other than England, Northern Ireland or Scotland (as applicable), be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction.
- 2.12 The words "including", "include", "in particular" and words of similar effect shall not be deemed to limit the general effect of the words that precede them.
- 2.13 All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Scheme.

3. TRANSFER OF THE TRANSFERRING BUSINESS, TRANSFERRING BUSINESS ASSETS AND TRANSFERRING BUSINESS LIABILITIES

3.1 Transfer of the Transferring Business

On the Relevant Date, that part of the undertaking of the Transferor comprised within the Transferring Business shall by the Order, and, subject to paragraph 3.11, without any further act or instrument, be transferred to and shall vest in or (as the case may be) shall become Liabilities of the Transferee with the intent that the Transferee shall succeed to the Transferring Business as if in all respects the Transferee were the same person in law as the Transferor.

3.2 Transfer of the Transferring Assets and the Transferring Liabilities

On, and with effect from, the Effective Date, in accordance with the terms of this Scheme:

- (a) the Transferring Assets shall, by this Scheme and, subject to paragraph 3.11, without any further act or instrument, be transferred to, and the legal and beneficial title in respect of such Transferring Assets (to the extent such title is held by the Transferor) shall vest in, the Transferee; and

- (b) the Transferring Liabilities shall, by this Scheme and, subject to paragraph 3.11, without any further act or instrument, be transferred to, and shall become Liabilities of, the Transferee and shall cease to be Liabilities of the Transferor.

3.3 Transfer of Residual Assets and Residual Liabilities

On, and with effect from, each Subsequent Transfer Date, in accordance with the terms of this Scheme:

- (a) each Residual Asset to which such Subsequent Transfer Date applies shall, by this Scheme and, subject to paragraph 3.11, without any further act or instrument, be transferred to, and the legal and beneficial title (where such beneficial title has not previously transferred pursuant to the creation of the trust described in paragraph 4 or pursuant to any other agreement or arrangement between the Transferor and the Transferee) in respect of such Residual Asset (to the extent such title is held by the Transferor) shall vest in, the Transferee; and
- (b) each Residual Liability to which such Subsequent Transfer Date applies shall, by this Scheme and, subject to paragraph 3.11, without any further act or instrument, be transferred to, and shall become a Liability of, the Transferee and shall cease to be a Liability of the Transferor.

3.4 Transfer of Foreign Contracts, Assets and Liabilities

Where any Contract, Asset or Liability forming part of the Transferring Business is governed by the law of any country or territory outside the UK, or where any Deposit or Asset forms part of a Frozen Account by virtue of an order of any court outside the UK:

- (a) the Transferor shall, if the Transferee so requires, use reasonable endeavours to take all necessary steps for securing the effective transfer thereof to the Transferee; and
- (b) pending such transfer, the Transferor shall hold any such Contract or Asset on trust for the Transferee, in accordance with the provisions of this Scheme relating to Residual Assets.

3.5 Excluded Matters

The Scheme shall not operate to transfer or have the effect of transferring, or be construed to operate to transfer or have the effect of transferring, to the Transferee any of the Excluded Matters.

3.6 Transfer subject to Security

- (a) Each Transferring Asset, Transferring Liability, Residual Asset and Residual Liability (as applicable) shall be transferred to, and vested in, the Transferee subject to all Security (if any) that affects it.
- (b) Every Transferring Customer shall, at and with effect from the Relevant Date, become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under his relevant Customer Contract and/or Security Agreement in relation to the Transferring Business, to the same rights against the Transferee as were available to him against the Transferor under such Customer Contract or Security Agreement in relation to the Transferring Business.

3.7 Transfer of Customer Accounts and overdrafts

- (a) All:

- (i) Customer Accounts and the related Deposits and Bank Account Agreements (except for Frozen Accounts and Sanctioned Accounts), and overdrafts with effect on the Effective Date;
- (ii) Frozen Accounts with effect on the relevant Subsequent Transfer Date; and
- (iii) Sanctioned Accounts with effect on the date determined in accordance with paragraph 3.10,

shall transfer to and become accounts and overdrafts between the Transferee and the Customer subject to the same conditions and incidents as applied thereto immediately prior to the Relevant Date and each such account and overdraft shall be deemed for all purposes to be a single continuing account and overdraft in respect of the period prior to and after the Relevant Date, provided that nothing herein shall affect any right of the Transferee or the Customer after the Relevant Date to vary the conditions or incidents subject to which any such account or overdraft is kept.

- (b) Where a Customer Account or overdraft transfers to the Transferee on the Relevant Date but, due to the operation of paragraph 3.4, 5.9 or 5.10, a Transferring Business Asset, a Transferring Business Liability or Security that relates to that Customer Account or overdraft remains with the Transferor, until the Subsequent Transfer Date in respect of that Transferring Business Asset, Transferring Business Liability or Security, the Transferee (with the assistance of the Transferor, if necessary) shall have the same rights (including the right of set-off) and powers as it would have had if that Transferring Business Asset, Transferring Business Liability or Security had fully transferred to the Transferee on the same date as the Customer Account or overdraft.

3.8 Capacity of Transferor

The transfer of the Transferring Business to the Transferee shall have effect whether or not the Transferor would, apart from the terms of this Scheme, have capacity to effect the same and notwithstanding any provision to the contrary in any contract, court order, trust or other arrangement with any person or comply with any contractual pre-condition to such transfer and such transfer shall be deemed to take effect on the basis that there is no requirement to obtain the consent of any person and there is no contravention, Liability or interference with any interest, right or requirement, and on the basis that it does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified.

3.9 Frozen Accounts

In accordance with paragraph 5.31, in relation to any Frozen Account transferred to, and vested in, the Transferee by virtue of the Order or Scheme, the Transferee shall, on and from the Relevant Date, be entitled to the same rights and priorities and be subject to the same obligations and incidents pursuant to the Freezing Order to which the Transferor would itself have been entitled and subject if it had continued to hold the relevant Frozen Account.

3.10 Sanctioned Accounts

Each Sanctioned Account, and any other associated Assets or Liabilities subject to Sanctions that relate to a Customer who holds a Sanctioned Account, shall not transfer to the Transferee unless and until the Transferor or the Transferee (as applicable) has been granted any relevant licences or consents required to make such transfer in accordance with applicable law, or the relevant restrictions preventing such transfer cease to apply, and the trust and indemnity provisions set out in paragraph 4 and the other provisions of this Scheme that relate to the Transferring Business shall not apply to any such Sanctioned Account or Assets and Liabilities pending that transfer as if those Sanctioned Accounts and Assets and Liabilities were Excluded Matters. Upon the grant of any such relevant licence or consent, or the relevant restrictions preventing such transfer ceasing to apply,

unless the Transferor and the Transferee otherwise agree, such Sanctioned Account or Assets and Liabilities shall transfer to the Transferee in accordance with paragraph 3.7.

3.11 Instrument of transfer for securities

To the extent that any shares or other stock or marketable securities which are not otherwise exempt from stamp duty are transferred to the Transferee, the Transferor and the Transferee agree that separate stock transfer forms or other appropriate instruments of transfer will be executed in respect of such transfers and that such stock transfer forms or other instruments of transfer shall be an instrument of transfer for such shares, stock or marketable securities.

4. TRANSFEROR AS TRUSTEE FOR THE TRANSFEREE

- 4.1 The Transferor shall, from the Effective Date, hold any Residual Asset (and, from the Relevant Date, any other Transferring Business Asset that is not transferred to, and vested in, the Transferee) together with any proceeds of sale or income or other right accrued or return arising in respect thereof, on trust for the Transferee absolutely.
- 4.2 The interests and entitlements of the Transferee under the trust created under paragraph 4.1 shall be vested and indefeasible, such that the Transferee is absolutely entitled to the Assets comprised in the trust and to the income thereon as it arises.
- 4.3 The Transferor shall be subject to exclusive directions from the Transferee in respect of any Residual Asset from the Effective Date until it is transferred to or otherwise vested in the Transferee or is disposed of (whereupon the Transferor shall account to the Transferee for the proceeds of the sale thereof), and the Transferee shall have the authority to act as the attorney of the Transferor in respect of such Residual Asset for all such purposes.
- 4.4 In the event of any payment being made to, property being received by, or right being conferred upon, the Transferor on or after the Effective Date in respect of the Transferring Business, the Transferor shall, as soon as is reasonably practicable after its receipt, pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such property or right to, or in accordance with the directions of, the Transferee, and the Transferee shall indemnify the Transferor on demand against any costs or Liability reasonably incurred in making any such payment or transfer.
- 4.5 From the Effective Date until the relevant Subsequent Transfer Date, the Transferee shall discharge on the Transferor's behalf or, failing that, shall indemnify the Transferor against each Residual Liability and in respect of any reasonable costs, Claims, charges and other Liabilities incurred by the Transferor in connection therewith.
- 4.6 In respect of each Residual Liability, to the extent that after the Subsequent Transfer Date the Transferor recovers under a policy of indemnity insurance or recovers pursuant to a Claim or right of recovery against a third party, a sum which compensates the Transferor (in whole or in part), the Transferor shall (a) promptly notify the Transferee of the fact and (b) pay to the Transferee, as soon as reasonably practicable after receipt, an amount equal to the amount recovered from the third party, providing always that the Transferee shall indemnify the Transferor in respect of any reasonable costs, Claims, charges and other Liabilities incurred by the Transferor in recovering the same.

5. SUPPLEMENTARY PROVISIONS

- 5.1 Without prejudice to the generality of the provisions of paragraph 3 of this Scheme, the provisions of this paragraph 5 shall have effect in relation to the transfer of the Transferring Business hereby contemplated.

5.2 Evidence of transfer

The production of a copy of the Order shall, for all purposes, be evidence of the transfer to, and vesting in the Transferee of, the Transferring Business in accordance with the Order and the provisions of this Scheme.

5.3 Contracts

Every existing Transferring Business Contract shall be construed and have effect on and from the Relevant Date:

- (a) as if the Transferee had always been a party thereto instead of the Transferor (such that the Contract shall continue in force as between the Transferee and the other party thereto on the terms which applied to that Contract prior to the Relevant Date, but without prejudice to any right which the Transferee may have subsequently to vary or terminate such Contract, whether under the terms thereof or at law);
- (b) so that each of the Transferee, the relevant Customer who is the counterparty, or a third party with rights, in respect of a Contract, shall become entitled to the same rights under, or pursuant to, that Contract as were available to, or against, the Transferor, the Customer or such third party under that Contract immediately prior to the Relevant Date, and accordingly such rights that were available to the Transferor, the Customer or such third party against each other shall be extinguished;
- (c) as if for any reference (however worded and whether express or implied) to the Transferor there were substituted a reference to the Transferee; and
- (d) as if any reference (however worded and whether express or implied) to any one or more of the directors, officers or representatives of the Transferor were a reference:
 - (i) in relation to anything done prior to the Relevant Date, to the directors, officers or representatives of the Transferor; or
 - (ii) in relation to anything to be done on or after the Relevant Date, to the directors, officers or representatives of the Transferee.

5.4 Offers prior to the Relevant Date

An offer or invitation to treat made to or by the Transferor prior to the Relevant Date in relation to or affecting the Transferring Business that has not resulted in a Contract being formed prior to the Relevant Date shall be construed and have effect on and after the Relevant Date as an offer or invitation to treat made to or by the Transferee.

5.5 Terms and conditions determined by the Transferor

For the purpose of construing and giving effect to any Contract which forms a part of the Transferring Business (and to the extent that it relates to the Transferring Business) and which:

- (a) has effect or continues to have effect on, or on and after, the Relevant Date; and
- (b) makes reference to a rate, charge, tariff or scale of fees or to terms or conditions published, determined or ascertained from time to time by the Transferor,

the Transferee shall (on and after the Relevant Date (but subject to paragraph 5.31(e)) and without affecting the application of those provisions prior to that date) have the same rights under that Contract as the Transferor had to publish, determine, ascertain, vary or amend rates, charges, tariffs, scales of fees, terms or conditions, and any such rates, charges, tariffs, scales of fees, terms or conditions published, determined, ascertained, varied or amended by the Transferee after the Relevant Date shall apply in place of those which could have been published, determined, ascertained, varied or amended by the Transferor.

5.6 Contracts or Assets held by the Transferor

Any Contract or Asset (including (a) any legal or beneficial title arising pursuant to any trust and (b) any rights or Liabilities pursuant to any custody arrangements) transferred to and vested in the Transferee by virtue of the Order and which was held by the Transferor (whether alone or jointly with others) as a trustee, custodian or similar fiduciary capacity immediately before the Relevant Date shall, on and with effect from the Relevant Date, be held by the Transferee (alone or jointly, as the case may be and in the capacity of a trustee, custodian or similar fiduciary capacity, as the case may be) and subject to the rights, powers and duties previously applicable to the relevant trust custodian or other fiduciary arrangement in question.

5.7 Legal title to Assets, Contracts and Security

Legal title to any Asset, Contract, Security or property held by the Transferor as trustee and as part of the Transferring Business shall, with effect from the Relevant Date, be vested in the Transferee upon and subject to the same trusts.

5.8 Transfer of Security

- (a) Subject to paragraphs 5.15 and 5.17, any Security or other contingent obligation executed by any person in favour of the Transferor and comprised within the Transferring Business shall vest in and become enforceable by the Transferee, both with respect to (i) any indebtedness incurred by any person to the Transferor prior to the Relevant Date and (ii) any indebtedness incurred by any person to the Transferee on or after the Relevant Date.
- (b) Where Security continues to be held by the Transferor pursuant to paragraph 4, that Security shall in addition secure monies and Liabilities owed to the Transferee in respect of the relevant Transferring Customer to the same extent as if the Security had transferred to and vested in the Transferee on the Effective Date.

5.9 Concurrent transfer of Transferring Business Assets and Security

- (a) Subject to paragraph 3.7 and unless decided otherwise by the Transferee in its sole discretion, any Transferring Business Asset (including any Asset arising under a Contract and any associated loan, lease, letter of credit, bond, note, derivative, Guarantee, indemnity or other right or benefit) in respect of which Security has been granted by or in favour of the Transferor shall only transfer to the Transferee if the relevant Security transfers at the same time, and any Security granted by or in favour of the Transferor in relation to any Asset shall only transfer to the Transferee if the relevant asset transfers at the same time.
- (b) The provisions of this paragraph 5.9 shall not apply to any Customer Accounts, overdrafts or any "Security over Cash Deposit Agreements" entered into between the Transferor and any Customer which shall transfer to the Transferee with effect from the Effective Date in accordance with the provisions of this Scheme.

5.10 Concurrent transfer of Transferring Business Liabilities and Security

- (a) Subject to paragraph 3.7 and unless decided otherwise by the Transferee in its sole discretion, any Transferring Business Liability (including any Liability arising under a Contract and any associated loan, lease, letter of credit, bond, note, derivative, Guarantee, indemnity or other Liability) in respect of which Security has been granted by or in favour of the Transferor shall only transfer to the Transferee if the relevant Security transfers at the same time, and any Security granted by or in favour of the Transferor in respect of any Liability shall only transfer to the Transferee if the relevant Liability transfers at the same time.
- (b) The provisions of this paragraph 5.10 shall not apply to any Customer Accounts, overdrafts or any “Security over Cash Deposit Agreements” entered into between the Transferor and any Customer which shall transfer to the Transferee with effect from the Effective Date in accordance with the provisions of this Scheme.

5.11 Payment of sums attributable to the Transferring Business

All sums attributable to the Transferring Business shall, on and after the Relevant Date, be payable to, and by, the Transferee in the same capacity as such sums would have been payable to, and by, the Transferor (in the absence of the Scheme).

5.12 Transfer of Security or other Assets held for the payment or discharge of any Liability

- (a) Any Security or other Asset held by the Transferor (or by a nominee or agent of or trustee for the Transferor) immediately before the Relevant Date relating to any part of the Transferring Business, as Security for the payment or discharge of any Liability shall, on and from the Relevant Date:
 - (i) be held by the Transferee or, as the case may require, by that nominee, agent or trustee for the Transferee; and
 - (ii) be available to the Transferee (whether for its own benefit or, as the case may be, for the benefit of any other person) by way of Security for the payment or discharge of that Liability,

but in each case without prejudice to any right of redemption available to the person who provided the Security.

- (b) In relation to any Security or other Asset transferred to, and vested in, the Transferee by virtue of the Order and any Liabilities thereby guaranteed or secured, the Transferee shall, on and from the Relevant Date, be entitled to the same rights and priorities and be subject to the same obligations and incidents to which the Transferor would itself have been entitled and subject if it had continued to hold the relevant Security or Asset.

5.13 Security over future advances or Liabilities

Subject to and in accordance with the provisions of paragraphs 5.9 and 5.17, any Security referred to in paragraphs 5.12(a) or 5.12(b) which extends to future advances or Liabilities shall, on and from the Relevant Date, be available to the Transferee (whether for its own benefit or, as the case may be, for the benefit of any other person) by way of Security for the payment or discharge of future advances and future Liabilities to the same extent and in the same manner in all respects as it extended immediately before the Relevant Date to future advances or Liabilities.

5.14 Ascertaining, perfecting or enforcing Contracts, Assets or Liabilities

Subject to the other provisions of this Scheme, where by virtue of the Order any Contract, Asset or Liability of the Transferor becomes a Contract, Asset or Liability of the Transferee, the Transferee and all other persons shall, on and from the Relevant Date, have the same rights, powers and remedies (and in particular the benefit of notices served and the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that Contract, Asset or Liability as if it had at all times been a Contract, Asset or Liability of the Transferee.

5.15 Security

On, and with effect from, the Relevant Date and subject to the other provisions of this Scheme:

- (a) any Security attributable to a Transferring Business Asset or Transferring Business Liability held by, or vested in, the Transferor or a nominee of or trustee for the Transferor (each a **Transferor Entity**) (whether for the Transferor alone or for the Transferor and other persons), or to which a Transferor Entity is subject, immediately prior to the applicable Relevant Date, shall be held by, vested in, or enforceable against, the Transferee or, as applicable, that nominee, agent or trustee for the Transferee (each a **Transferee Entity**) as if the Transferee Entity had always held, or had the benefit of, such Security;
- (b) any Security referred to in paragraph 5.15(a) above shall be available to, and enforceable by, or against, as the case may be, the Transferee Entity, with respect to any Liabilities (including any principal, interest, fees, charges or other sums) to which the Security relates and which (i) have been incurred or which have arisen prior to the applicable Relevant Date, and (ii) are incurred or which arise on or after the applicable Relevant Date; and
- (c) in relation to any Security referred to in paragraph 5.15(a) above and any Liabilities thereby secured, the Transferee Entity shall, on, and from, the Relevant Date, be entitled to the same rights, ranking and priorities and be subject to the same obligations and incidents as those to which the Transferor Entity was entitled and to which it was subject immediately prior to the applicable Relevant Date and, without prejudice to the generality of the foregoing, all waivers, amendments, conditions, consents, affidavits, declarations, renunciations, deeds of substitution, deeds of release, ranking agreements and priority agreements attributable to any such Security shall be enforceable by and binding upon the Transferee Entity on and after the Relevant Date, to the same extent to which the same would have been enforceable by and binding upon the Transferor Entity prior to the applicable Relevant Date.

5.16 Set-off

- (a) The Transferee shall not be entitled on, and with effect from, the Effective Date to apply any rights of set-off, which might otherwise be exercisable by the Transferee by virtue of this Scheme, to reduce or discharge any liability arising from time to time:
 - (i) under any Transferor Agreement using credit balances held pursuant to an Existing Transferee Agreement; or
 - (ii) under any Existing Transferee Agreement using credit balances held pursuant to any Transferor Agreement.
- (b) The restrictions set out in paragraph (a) shall cease to apply in relation to credit balances held pursuant to any Existing Transferee Agreement or Transferor Agreement as follows:

- (i) where the credit balance is at the Relevant Date held for a fixed term, the date that falls three months after the expiry of that term;
- (ii) where the credit balance is at the Relevant Date held on terms that a promotional rate of interest will be lost if the deposit is withdrawn before the end of a certain period, on the date that falls three months after the expiry of that period; and
- (iii) in all other cases, on the date that falls three months after the Relevant Date.

5.17 All monies rights

The Transferee shall not be entitled on, and with effect from, the Effective Date to apply any All Monies Rights, which might otherwise be exercisable by the Transferee by virtue of this Scheme:

- (a) under any Existing Transferee Agreement to secure any liability arising from time to time under any Transferor Agreement; or
- (b) under any Transferor Agreement to secure any liability arising from time to time under:
 - (i) any Existing Transferee Agreement; or
 - (ii) any New Transferee Agreement, unless expressly stated to the contrary in the New Transferee Agreement.

5.18 Cross default rights

The Transferee shall not be entitled on, and with effect from, the Effective Date to apply any Cross Default Rights, which might otherwise be exercisable by the Transferee by virtue of this Scheme, to accelerate or alter any rights or obligations:

- (a) under any Existing Transferee Agreement as a result of the breach of any Transferor Agreement, unless the Transferor would have been entitled to accelerate or alter any rights or obligations under any such agreement as a result of a breach of any Transferor Agreement prior to the Relevant Date; or
- (b) under any Transferor Agreement as a result of the breach of any Existing Transferee Agreement, unless the Transferor would have been entitled to accelerate or alter any rights or obligations under any such agreement as a result of the breach of any Existing Transferee Agreement prior to the Relevant Date.

5.19 Consolidation rights

The Transferee shall not be entitled on, and with effect from, the Effective Date to apply any Consolidation Rights, which might otherwise be exercisable by the Transferee by virtue of this Scheme, to prevent the release of Security given in connection with:

- (a) any Existing Transferee Agreement until any obligations have been satisfied under any Transferor Agreement; or
- (b) any Transferor Agreement until any obligations have been satisfied under:
 - (i) any Existing Transferee Agreement; or

- (ii) any New Transferee Agreement, unless expressly stated to the contrary in the New Transferee Agreement.

5.20 Other rights of the Transferor

The Transferee shall not be entitled on, and with effect from, the Effective Date to apply any other right, benefit, interest, discretion, authority or power which might otherwise be exercisable by the Transferee by virtue of this Scheme under or in relation to any:

- (a) Existing Transferee Agreement to terminate, reduce, suspend, delay, alter, discharge, or otherwise secure any liability arising from time to time under any Transferor Agreement; or
- (b) Transferor Agreement to terminate, reduce, suspend, alter, discharge or otherwise secure any liability arising from time to time under any Existing Transferee Agreement.

5.21 Entire Agreement Clauses

- (a) Where a Transferor Agreement contains an Entire Agreement Clause, on and with effect from the Effective Date, the relevant clause shall be read and construed as if it referred only to the products or services comprised in the Transferring Business and shall not apply to, and the Transferor Agreement shall not supersede, any Existing Transferee Agreement.
- (b) Where an Existing Transferee Agreement contains an Entire Agreement Clause, on and with effect from the Effective Date, the relevant clause shall be read and construed as if it referred only to products or services of the Transferee not comprised in the Transferring Business and shall not apply to, and the Existing Transferee Agreement shall not supersede, any Transferor Agreements.
- (c) Where a New Transferee Agreement contains an Entire Agreement Clause, the relevant clause shall, unless expressly stated to the contrary, be read and construed as if it referred only to products or services of the Transferee that are not comprised in the Transferring Business and shall not apply to, and the New Transferee Agreement shall not supersede, any Transferor Agreements.

5.22 Financial Services Compensation Scheme

- (a) Any Customer with any Excess Deposits (an **Affected Customer**) may request the withdrawal of all, or part, of any Excess Deposit at any time from the Relevant Date until the date that is three months after the Relevant Date, that withdrawal to take effect as soon as reasonably practicable.
- (b) Such withdrawal request may be made on any Business Day and without the Affected Customer complying with any requirement to give notice, to which the Affected Customer would otherwise be subject.
- (c) Such a withdrawal shall be without loss of any accrued interest and without the Affected Customer incurring any charge that would otherwise apply in consequence of such a withdrawal.
- (d) The Transferee shall not be obliged to permit an Affected Customer to withdraw any Excess Deposit in accordance with this paragraph 5.22, where the Excess Deposit relates to a Sanctioned Account.

5.23 Savings to rights

- (a) The provisions of paragraphs 5.16 to 5.21 (inclusive) shall not diminish any right, benefit, interest, discretion, authority or power which:

- (i) immediately prior to the Relevant Date, the Transferee or its counterparty has in respect of agreements entered into by the Transferor, including any rights of the Transferee to use credit balances on accounts held with the Transferee to pay debts owed to the Transferor, any rights of the Transferor to use credit balances on accounts held with the transferor to pay debts owed to the Transferee or any Cross-Default Rights;
 - (ii) immediately prior to the Relevant Date, the Transferor or its counterparty has in respect of Existing Transferee Agreements, including any Cross-Default Rights; or
 - (iii) the Transferee, Transferor or a Customer may acquire other than as a result of the Scheme, including as a result of the variation on or after the Relevant Date of a Transferor Agreement, Existing Transferee Agreement or New Transferee Agreement, provided that such variation without the express consent of the relevant Customer is not used to limit or adversely affect the mitigations referred to in paragraphs 5.16 to 5.21 (inclusive).
- (b) If, on or after the Relevant Date, the Transferor acquired any rights to exercise any of the rights, benefits, interests, discretions, authorities or powers referred to in paragraphs 5.16 to 5.21 (inclusive) in relation to agreements entered into with other HSBC Group companies (**Acquired Rights**) either:
- (i) as a result of any contractual variation; or
 - (ii) through other means, other than as a result of the Scheme,

paragraphs 5.16 to 5.21 (inclusive) shall not apply to restrict the Transferee's rights to exercise the Acquired Rights, provided that such variation without the express consent of the relevant Customer is not used to limit or adversely affect the mitigations referred to in paragraphs 5.16 to 5.21 (inclusive).

5.24 Mandates

- (a) Any existing instruction, order, direction, mandate, power of attorney, authority or consent given to or by the Transferor relating to any part of the Transferring Business shall have effect on and from the Relevant Date as if given to, or, as the case may be, by the Transferee provided that each such instruction, order, direction, mandate, power of attorney, authority or consent shall also continue and remain in force and existence for the benefit of the Transferor to the extent necessary in order to allow it to fulfil any outstanding obligations and exercise any outstanding rights in respect of any other business, relationship, arrangement or Contract with such Customer.
- (b) Any negotiable instrument, cheque, warrant, draft, letter of credit or order for payment of money, relating to any part of the Transferring Business, drawn on or by, or given to, or accepted or endorsed by, the Transferor, or payable at any place of business of the Transferor, whether so drawn, given, accepted, endorsed or payable before, on or after the Relevant Date, shall have the same effect on and from that date:
 - (i) as if it had been drawn on or by, or given to, or accepted or endorsed by, the Transferee; and
 - (ii) if relevant, as if the place of business at which it is payable were a place of business of the Transferee.
- (c) Any direct debit mandate, standing order or other instruction or authority in force on the Relevant Date (including any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment of any sum under or in respect of any of the Customer Contracts or Security Agreements to or by the Transferor shall, from and after the Relevant Date, take effect as if it had provided for and authorised such payment to or by the Transferee, provided

that each such mandate, standing order or other instruction or authority shall also continue and remain in force and existence for the benefit of the Transferor to the extent necessary in order to allow it to fulfil any outstanding obligations and exercise any outstanding rights in respect of any other business, relationship, arrangement or Contract with such Customer.

5.25 Books and records

- (a) The custody of any Document or Business Records, goods or other thing held by the Transferor relating to any part of the Transferring Business, as bailee or custodian or under any similar arrangement shall pass to the Transferee on the Relevant Date, and the rights and obligations of that Transferor under any Contract of bailment, custody or similar arrangement relating to any such Document or Business Record, goods or thing shall on that day become rights and obligations of the Transferee as bailee, custodian or otherwise pursuant to the relevant arrangements in question.
- (b) All books and other documents which would, before the Relevant Date, have been evidence in respect of any matter for or against the Transferor at the Relevant Date and which relate to the Transferring Business shall be admissible in evidence in respect of the same matter for or against the Transferee after the Relevant Date.
- (c) On, and with effect from, the Relevant Date, the Bankers' Books Evidence Act 1879 shall apply to any books of the Transferor transferred to, and vested in, the Transferee by virtue of this Scheme, and to entries made in those books before the Relevant Date, as if such books were the books of the Transferee.
- (d) For the purposes of section 4 of the Bankers' Books Evidence Act 1879, books so transferred to, and vested in, the Transferee shall be deemed to have been the ordinary books of the Transferee at the time of the making of any entry therein which purports to have been made before the Relevant Date, and any such entry shall be deemed to have been made in the usual and ordinary course of business.
- (e) In paragraphs 5.25(b) to 5.25(d) "books" shall be construed in accordance with section 9(2) of the Bankers' Books Evidence Act 1879 and "documents" has the same meaning as in section 13 of the Civil Evidence Act 1995.

5.26 Continuity of proceedings and claims

- (a) Any regulatory (to the extent lawful), judicial, quasi-judicial or arbitral right of action (including any right of action under any other dispute resolution proceeding), and any such remedy (including, to the extent lawful, regulatory enforcement action and/or the range of penalties or measures that may be available to the applicable regulator) available in consequence thereof:
 - (i) which (and to the extent to which it) accrues, arises or becomes enforceable or available before the Relevant Date by or against the Transferor and which relates to any part of the Transferring Business; or
 - (ii) which (and to the extent to which it) would, in the absence of a transfer pursuant to the Order, accrue, arise or become enforceable or available by or against the Transferor, on or after the Relevant Date and which relates to any part of the Transferring Business,

shall be enforced or availed of by or against the Transferee on or after the Relevant Date.

- (b) Any: (i) regulatory (to the extent lawful), judicial, quasi-judicial or arbitration proceedings; or (ii) complaint to any ombudsman; or (iii) other proceedings for the resolution of a dispute or Claim (in each case whether current, pending or future), by or against the Transferor as at the Relevant Date concerning the Transferring Business shall be brought or continued by or against the Transferee

without the need for further order and the Transferee shall be entitled to all defences, counterclaims and rights of set-off that would have been available to the Transferor in relation to those proceedings or complaints, and the Transferor shall have no Liability under those proceedings or complaints. For the avoidance of doubt, the Transferee may determine to discontinue after the Relevant Date any such proceedings brought by the Transferor.

- (c) Any: (i) regulatory (to the extent lawful), judicial, quasi-judicial or arbitration proceedings; or (ii) any complaint to any ombudsman; or (iii) other proceedings for the resolution of a dispute or Claim (in each case whether current, pending or future), commenced by or against the Transferor after the Relevant Date concerning the Transferring Business shall by virtue of this Scheme be commenced by or against the Transferee. Any such proceedings or complaints after the Relevant Date commenced in error against the Transferor shall be deemed to have been commenced and shall be continued against the Transferee without the need for further order, whether for substitution of parties or otherwise. In any event, the Transferee shall be entitled to all defences, counterclaims and rights of set-off that would have been available to the Transferor in relation to those proceedings or complaints and the Transferor shall have no Liability under those proceedings or complaints.
- (d) Any judgment, order or award obtained by or against the Transferor (including, to the extent lawful, any regulatory order, award or penalty imposed on or made against the Transferor) which relates to any part of the Transferring Business and which is not fully satisfied before the Relevant Date shall, on the Relevant Date, become enforceable by or against the Transferee.

5.27 Confidentiality and data protection

- (a) On, and with effect from, the Relevant Date the Transferee shall owe to any Transferring Customer and to any person who had previously been a Customer of the Transferring Business the same duties of confidentiality and privacy (whether pursuant to statute, Contract or common law) as those which the Transferor owed immediately prior to the Relevant Date.
- (b) On, and with effect from, the Relevant Date, and as between the Transferor and the Transferee in respect of the Transferring Personal Data:
 - (i) the Transferee shall succeed to all rights, Liabilities and obligations of the Transferor;
 - (ii) the Transferee shall become the data controller in place of the Transferor and shall be deemed to have been the data controller of all such Transferring Personal Data at all times when Transferring Personal Data was processed;
 - (iii) any information made available to, or consent obtained or request or other notice received from, a data subject by or on behalf of the Transferor shall be deemed to have been made available to, obtained by or received by the Transferee; and
 - (iv) any reference to the Transferor in any such information, consent, request or other notice shall be deemed to include a reference to the Transferee (or to any member of the Transferee's Group, as the case may be).
- (c) Where a Customer has made a Data Subject Request to the Transferor before the Relevant Date and the Transferor has not responded in accordance with the Data Protection Laws before the Relevant Date, the Transferee may respond to the request, in accordance with the Data Protection Laws, including by providing copies of the Transferring Personal Data held by the Transferor immediately before the Relevant Date.

- (d) Nothing in paragraphs 5.27(a) to 5.27(c) (inclusive) shall be deemed to transfer any right to process Transferring Personal Data or to send any direct marketing communication to the extent it would be unlawful under, or inconsistent with, the Data Protection Laws.

5.28 Consent to sharing Data

To the extent that a Transferring Customer is, following the Effective Date, still a Customer of the Transferor (each such Customer being a **Consenting Customer**), each Consenting Customer shall be deemed to have consented to the Transferee and the Transferor sharing Data in respect of that Consenting Customer with each other, provided, however, that nothing in this paragraph shall be deemed to permit the sharing of Data other than where it is reasonably necessary to effect the transfer and continuation of the Transferring Business or to the extent it is unlawful under, or inconsistent with, Data Protection Laws.

5.29 Marketing preferences

On, and with effect from, the Effective Date, the Transferee shall have the benefit of the Marketing Preferences of Transferring Customers (other than to the extent unlawful under, or inconsistent with, Data Protection Laws).

5.30 Employees and pensions

- (a) All Contracts of Employment, and all rights, powers, duties, Liabilities and Claims in connection with such Contracts of Employment, were transferred from the Transferor to the Transferee under and in accordance with the provisions of TUPE prior to the Effective Date.
- (b) No right, Liability or Contract relating to any HSBC Pension Plan shall transfer under this Scheme and, accordingly, the Transferee shall not, as a result of the Scheme, succeed to any obligation of the Transferor in connection with any HSBC Pension Plan.

5.31 References

- (a) Any Document, Claim, notice or demand addressed on or before or after the Relevant Date to or by the Transferor in respect of the Transferring Business shall, on and from the Relevant Date, be deemed to have been addressed to or by the Transferee as relevant.
- (b) Subject to paragraph 5.31(e), on, and with effect from, the Relevant Date, any references in respect of the Transferring Business or any part of it, whether in an agreement to which the Transferor is a party or not or elsewhere (including references in any document which creates rights or obligations of any sort), to:
 - (i) the Transferor or 'Bank' shall be construed as, and take effect as, a reference to the Transferee;
 - (ii) directors, officers, representatives or employees or to any director, officer, representative or employee of the Transferor shall be construed as and take effect as a reference to the directors, officers, representatives or employees of the Transferee or to such director, officer, representative or employee of the Transferee as the Transferee may nominate for that purpose;
 - (iii) a rate, charge, tariff or scale of fees or to terms or conditions published, determined, ascertained, varied or amended from time to time by the Transferor shall afford to the Transferee the same right under such Contract, other Document or instrument as the

Transferor had to publish, determine, ascertain, vary or amend such rates, charges, tariffs, scales of fees, terms or conditions published, determined or ascertained; and

- (iv) the sort code and account numbers allocated by the Transferor to each of the Customer Accounts shall be construed as and take effect as references to the sort code and account numbers allocated by the Transferee for each of the Customer Accounts following the Relevant Date.
- (c) Without prejudice to the generality of paragraph 5.31(b), on, and with effect from, a Relevant Date:
- (i) any offer or invitation to treat or pre-contractual information relating to a Customer made or given to or by the Transferor in respect of the Future Business shall be construed and have effect as an offer or invitation to treat made or given to or by the Transferee or pre-contractual information in respect of the Transferee;
 - (ii) if a person executes an agreement, undertaking, mortgage instrument, Security or Guarantee or other document as a result of any offer or invitation to treat referred to in paragraph 5.31(c)(i) which would, when completed, on its face be an agreement with or undertaking, mortgage instrument, Security or Guarantee or document in favour of the Transferor, such agreement, undertaking, mortgage instrument, Security or Guarantee or other document shall operate as if it were with or in favour of the Transferee;
 - (iii) paragraph 5.31(b) shall apply in respect of any references to directors, officers, representatives or employees or to any director, officer, representative or employee of the Transferor in or relating to such offer, invitation to treat, agreement, undertaking, mortgage instrument, Security or Guarantee or other document and any further document relating thereto (including in insurance policies); and
 - (iv) in respect of the Future Business, any Contract entered into between the Transferee and a third party shall not be found to be unenforceable as a result of any pre-contractual information and/or other Documents having been issued in the name of the Transferor.
- (d) Where there is a reference in a Contract, Contract of Employment or Document, whether or not it is a Transferring Business Contract or a Contract with the Transferor, to a subsidiary, subsidiary undertaking, affiliate, affiliate undertaking, group, holding company or similar in respect of the HSBC Group or any member of the HSBC Group and such reference would, but for this paragraph, be prohibited or unlawful, that Contract, Contract of Employment or Document shall be amended to the formulation that most closely reflects the current wording while achieving compliance with the relevant law.
- (e) With effect from the Effective Date and notwithstanding that the relevant Contract might be held by the Transferor pursuant to paragraph 4 pending transfer, any references in respect of the Transferring Business or any part of it to any rate, charge, tariff or scale of fees or terms or conditions published by the Transferor from time to time, shall be construed as and take effect as a reference to the corresponding rate, charge, tariff or scale of fees or to terms or conditions published by the Transferee from time to time.

6. CONSEQUENCES OF VESTING

- 6.1 The transfer and vesting of any Contract, Assets or Liability by virtue of the Order or the Scheme shall not:
- (a) cause any Contract, Security or other thing, or any term of any of them, to be invalid, non-binding, unenforceable, discharged or cancellable; or

- (b) subject to paragraph 3.11, require further registration or amendment of existing registration in respect of any Security or other instrument registered in the UK; or
- (c) constitute a breach of, or default under, or require compliance with any notice or consent provision or require any obligation to be performed sooner or later than would have otherwise been the case under, any Contract or instrument to which the Transferee or the Transferor is a party or is bound; or
- (d) allow any person to terminate, default or cross-default any Contract, whether an agreement to which the Transferor or Transferee is a party or not, when that party would not otherwise have been able to terminate, default or cross-default it, or to treat any interest or right under that Contract as terminated, defaulted, cross-defaulted or modified; or
- (e) entitle any party to any Contract to which the Transferee or the Transferor is a party to vary the terms of that Contract when that party would not otherwise have been able to vary those terms or confer a right or benefit on that party which that party would not otherwise have had; or
- (f) entitle the Transferor or the Transferee to terminate, default, cross-default, reduce, suspend, delay, alter, discharge or otherwise secure any Contract or Liability where the Transferor or Transferee would not otherwise have been able to do so; or
- (g) affect the enforceability, priority or ranking of any Security; or
- (h) require or deem any representation or warranty to be made or repeated; or
- (i) enable any person to bring a Claim, whether in contract, tort, equity or otherwise; or
- (j) cause the imposition of any greater or lesser obligation on any party to any Contract to which the Transferor or the Transferee is a party when that greater or lesser obligation would not otherwise have been imposed; or
- (k) constitute a breach of, or default under, any court order by any court of any jurisdiction, including so as to render the Transferor in contempt of court; or
- (l) constitute a breach of, or default under, a Customer Contract or Security Agreement or other agreement by the relevant Customer, whether because the Customer would, but for this paragraph, be required to only enter into or maintain a hedging transaction with a lender of record, or the transfer would, but for this paragraph, contravene a negative pledge, or otherwise.

6.2 Residual Assets and Residual Liabilities shall, as from their respective Subsequent Transfer Dates, be respectively vested in and owed by the Transferee in all respects on the same terms as if the relevant Assets or Liabilities had been transferred by virtue of the Order on the Effective Date.

6.3 If and to the extent that any provision of paragraph 6.1 is not recognised by law in the relevant jurisdiction, the Transferor and the Transferee shall waive any right to terminate any Contract or Liability triggered by the transfer of such Contract to which they are a party or in respect of any Liability owed to them, under this Scheme.

7. MODIFICATIONS OR ADDITIONS

7.1 The Transferor and the Transferee may consent jointly to make any modification of or addition to this Scheme which, prior to its sanction of this Scheme, the Court may approve.

7.2 In relation to any modification or addition to this Scheme which may be proposed to be made after its sanction by the Court, the Transferor and the Transferee shall respectively be at liberty to apply to the Court for consent to amend its terms, provided that in any case the PRA and the FCA have been given at least 21 days' notice of, and has the right to be heard at, any hearing of the Court at which such application is considered.

8. EFFECTIVE TIME

The Scheme shall become effective at 00:01 on the Effective Date.

9. GOVERNING LAW

This Scheme shall be governed by and construed in accordance with English law.

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SCHEDULE 1

EXCLUDED MATTERS

PART 1

THE EXCLUDED ASSETS

1. All Assets in respect of the Excluded Matters;
2. regulatory licences, permissions or waivers; and
3. the nostro accounts established or to be established between the Transferor and the Transferee on or after 1 June 2019.

PART 2

THE EXCLUDED CONTRACTS

1. All contracts of employment in respect of any employee or past employee of the Transferor, including all Contracts of Employment, any rights and entitlements thereunder (including pension rights) and any Claims arising thereunder;
2. all appointment letters between the Transferor and any non-executive directors, including any rights and entitlements thereunder and any Claims arising thereunder;
3. any Contract that relates to the Excluded Matters;
4. the Business Transfer Agreement;
5. the IGLO;
6. the PwC Engagement Letter;
7. any Contract relating to any HSBC Pension Plan, any rights and Liabilities thereunder, and any claims arising thereunder;
8. the domestic liquidity sub group agreement between the Transferor, the Transferee, Marks and Spencer Financial Services plc and HSBC Trust Company (UK) Limited dated 28 March 2018;
9. the core UK group agreement between, among others, the Transferor and the Transferee dated 21 June 2018; and
10. all powers of attorney at any time granted by the Transferor in favour of Adam James Brookes, Andrew Cartmell, Chris Warner, James Derek Stewart-Evans, Leslie Howman, Jonathan Mark Hall, Stephen Alan Rogers, Warren B Galler and Natasha L. Vermenitch or any other person(s) for the purpose of authorising the execution or signature of documents necessary to take, grant, vary, release or discharge any security of any kind (whether or not in conjunction with other powers and however expressed).

PART 3

THE EXCLUDED LIABILITIES

1. All Liabilities of the Transferor under the Business Transfer Agreement and the IGLO;
2. any Actual Tax Liability of the Transferor relating to the Transferring Business which:
 - (a) is attributable to periods ending on or before the Effective Date;
 - (b) arises in respect of any profits earned on or before the Effective Date; or
 - (c) arises as a result of any event or events occurring (or deemed to occur) on or before the Effective Date (other than an Actual Tax Liability arising in respect of profits earned after the Effective Date as a result of such event or events); and
3. all Liabilities in respect of the Excluded Matters.