

# **FPS RULES**

## **RULES FOR THE FASTER PAYMENTS SERVICE**

**V11.1**

**Final: 13 July 2018**

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In the FPS Rules, the following terms have the meanings assigned to them as follows:

<b>Acceding DCS Participant</b>	A DCS Participant which joins FPS.
<b>Additional Volume Fees</b>	Has the meaning given to it in Schedule 1 Annex B (Proportion of Additional Volume Fee) being where the total number of Chargeable Transactions processed in a Year is greater than the Anticipated Annual Volume for that Year, additional Volume Fees are payable to the Supplier.
<b>Aggregator</b>	An entity which provides a combination of software, services and connectivity which taken together provide gateway capability for a Payment Service Provider (including a DCS Participant or DCNSP) to connect to the Central Infrastructure and enters into or accedes to a Participation Agreement with the Company as an Aggregator.
<b>Anticipated Annual Volumes</b>	The volume of transactions for which the Company has agreed to pay the Supplier the applicable volume related fees during each Year of the Initial Term.
<b>Appeal Panel</b>	The three individuals (acting as experts and not as arbitrators) nominated and appointed in accordance with Rules 11.4 to 11.6 (the Appeals Process).
<b>Appeals Process</b>	The procedure for establishing an Appeal Panel and conducting appeals against Relevant Decisions by a DCS Participant, Prospective DCS Participant, DCNSP, Prospective DCNSP or Prospective Direct Agency as set out in Rule 11.

<b>Appellant</b>	A DCS Participant or Prospective DCS Participant or DCNSP or Prospective DCNSP which invokes the Appeals Process.
<b>Appointer</b>	The Chartered Institute of Arbitrators or such other person as the Board may determine from time to time.
<b>Articles of Association</b>	The Articles of Association of the Company, as amended from time to time.
<b>Asynchronous Payment Request</b>	A Payment Request which is accepted by the Central Infrastructure on behalf of the DCS Participant, the DCNSP, Direct Agency or Third Party Beneficiary to which it is addressed, which is not a Synchronous Payment Request e.g. Standing Order, Forward Dated Payment or Corporate Bulk Payment.
<b>Authorisation Request</b>	A request from the Central Infrastructure to the Submitting DCS Participant to authorise a single Payment Request from a DCNSP, Direct Agency, FIM agency or a corporate or to authorise a FIM or DCA file.
<b>Authorisation Response</b>	A response from the Submitting DCS Participant to the Central Infrastructure in response to an Authorisation Request.
<b>Bacs</b>	Electronic payment system managed by Bacs Payment Schemes Limited and operated by the Supplier.
<b>Bank of England</b>	The central bank incorporated in England under Royal Charter number 42 with web address <a href="http://www.bankofengland.co.uk">www.bankofengland.co.uk</a> .
<b>Banking Act</b>	The Banking Act 2009.
<b>Bank PSP</b>	A Payment Service Provider and which otherwise satisfies the DCS Participation Criteria applicable to such a Participant.

<b>Base Proportion</b>	Has the meaning given to it in Schedule 1 Annex A (Proportion of Volume Fees).
<b>Board</b>	The board of directors of the Company.
<b>Central Infrastructure or CI</b>	The system relating to the automated clearing and settlement of payments between the DCS Participants, which is administered by the Company for the benefit of the Participants.
<b>CEO</b>	An official appointed by the Company to manage its day to day operations within the parameters and authorities delegated by the Board or such other person to whom such a role has been delegated by the Board. For the avoidance of doubt, this includes any such person to whom the same responsibilities are delegated in the event the original person appointed as the CEO by the Company is not available, and any subsequent title used if different from CEO to mean the same role.
<b>Changes</b>	A change to the Supplier Agreement, including to the scope or standard of Services.
<b>CHAPS</b>	means CHAPS Clearing Company Limited, a company incorporated in England with registered number 01962902 with its registered office at 8 Lothbury, London EC2R 7HH with web address <a href="http://www.chapsco.co.uk">www.chapsco.co.uk</a> .
<b>Charges</b>	Means the basis upon which the Supplier is to be paid for the provision of the services as outlined in the Supplier Agreement from time to time.
<b>Clearing</b>	The process of exchanging Payment Requests, the subject of the FPS Rules.
<b>Company</b>	Faster Payments Scheme Limited, a company incorporated in England with registered number 7751778, with its registered address at 2 Thomas More Square, London E1W 1YN.

<p><b>Collateralisation Accounts Agreement or CAA</b></p>	<p>The Collateralisation Accounts Agreement entered into between or adhered to by, inter alia, the Company, the DCS Participants and Bank of England, as amended from time to time.</p>
<p><b>Data Protection Change</b></p>	<p>Any change to the FPS Rules, or any other change, which relates to the processing of Personal Data (irrespective of whether such change has or is likely to have a material impact), including any changes to the purpose or the means for the processing of Personal Data, but does not include changes to any technical or organisational measures which the System Operator may apply to any Personal Data.</p>
<p><b>Data Protection Laws</b></p>	<p>Means (i) as at the date of this letter and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is applicable in the UK, the Data Protection Act 1998; (ii) as of the date the GDPR becomes directly applicable in the UK and unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws regulations and secondary legislation, as amended or updated from time to time in the UK; and (iii) any successor legislation to the GDPR or the Data Protection Act 1998.</p>
<p><b>DCNSP</b></p>	<p>Directly Connected Non-Settling participant is an organisation that:</p> <ul style="list-style-type: none"> <li>(a) is not a DCS Participant, Direct Agency or FIM-only agency;</li> <li>(b) satisfies the DCNSP Criteria;</li> <li>(c) is connected to the Central Infrastructure to send and receive payments via the Central Infrastructure; and</li> <li>(d) is sponsored by a DCS Participant in accordance with Rules 2.3 and 3.</li> </ul>

<b>DCNSP Criteria</b>	The criteria set out in Rule 2.2.
<b>DCS Participant</b>	An institution which is either a Bank PSP or a Non-Bank PSP that satisfies the DCS Participation Criteria applicable to a Bank PSP or a Non-Bank PSP, as the case may be.
<b>DCS Participation Agreement</b>	The participation agreement between or adhered to by the Company and the DCS Participants as amended from time to time.
<b>DCS Participation Criteria</b>	The relevant criteria applicable to DCS Participants set out in Rule 2.1 (Participation Criteria).
<b>Decision Makers</b>	Collectively, the CEO and one Independent Director of the Company. For the avoidance of doubt, the Decision Makers have authority to make certain decisions (as opposed to the Board) only in specified circumstances as set out in these Rules.
<b>Deed of Charge</b>	The deed of charge entered into or to be entered into or adhered to by the DCS Participants and the Bank of England as security trustee, pursuant to the Collateralisation Accounts Agreement, as amended from time to time.
<b>Default Event</b>	Has the meaning given to it in Rule 9.2.2.

<b>Direct Agency</b>	A Payment Service Provider that is not a DCS Participant, DCNSP, FIM-only agency or corporate, but is connected to the Central Infrastructure to send and receive payments via the Central Infrastructure and who is sponsored by a DCS Participant.
<b>Direct Payment Credit Request</b>	A request received by a Receiving DCS Participant that sponsors a DCNSP, Direct Agency or Third Party Beneficiary to inform it of the credit to the DCNSP, Direct Agency's or Third Party Beneficiary's account with that Receiving DCS Participant, where the DCNSP, Direct Agency or Third Party Beneficiary has received a Payment Request direct from the Central Infrastructure.
<b>Direct Payment Response</b>	The response sent to the CI from a Receiving DCS Participant in respect of a Direct Payment Credit Request.
<b>Direct Corporate Access or DCA</b>	A facility provided for corporates to send files of payments direct to the Central Infrastructure, rather than via a DCS Participant or a Direct Agency.
<b>Early Termination Fee</b>	Fees payable to the Supplier that are incurred as a result of the termination of the Supplier Agreement prior to the end date.
<b>Exclusion Time</b>	Has the meaning given to it in Rule 9.3.3.
<b>Exclusion Event</b>	Has the meaning given to it in Rule 9.3.1
<b>Exempt Information</b>	Has the meaning specified in section 84 of the Freedom of Information Act 2000, or in section 73 of the Freedom of Information (Scotland) Act 2002, as appropriate.
<b>Extended Industry Sort Code Directory (EISCD)</b>	The Extended Industry Sort Code Directory is a directory that contains information about all banks/building societies connected to any of the UK clearing systems: FPS, Bacs, CHAPS and Cheque and Credit Clearing.
<b>Faster Payments Identifier (FPID)</b>	A unique identifier for each Payment Request sent using FPS.



<b>Faster Payments Service or FPS</b>	The whole faster payments service that allows electronic payments to be made as described in the FPS Rules and the Reference Documents, comprising the Central Infrastructure; DCS Participant systems; the systems of DCNSP's, Direct Agencies, FIM-only agencies, corporates and Third Party Beneficiaries; and the Settlement Service Provider's settlement system.
<b>File Input Module or FIM</b>	A module in the Central Infrastructure that supports file inputs from DCS Participants, DCNSP's, Direct Agencies and FIM-only agencies.
<b>FIM-only agency</b>	A Payment Service Provider sponsored by a DCS Participant that submits files of payments using FIM, but is otherwise not directly connected to the CI. A FIM-only agency is not a Direct Agency or a DCNSP.
<b>Financial Institution</b>	An authorised credit institution as defined in Council Directive 2000/12/EC as amended by Council Directive 2000/28/EC.
<b>FPS Company Reserve</b>	Has the meaning given to it in Rule 13.5 (FPS Company Reserve).
<b>FPS Operating Costs</b>	Has the meaning given to it in Rule 13.1 (FPS Operating Costs).
<b>FPS Rules or Rules</b>	This document as amended from time to time.
<b>Group Company</b>	Group Company has the meaning given to it in the relevant Participation Agreement.
<b>Initial Term</b>	Has the meaning given to it in the Supplier Agreement.
<b>Independent Director</b>	Has the meaning given to it in the Articles of Association.

<b>Legal Documents</b>	The FPS Rules, DCS Participation Agreement, the other Participation Agreements, FPS Collateralisation Accounts Agreement, the Deed of Charge, the Articles of Association of the Company and any other document designated by the Board as a Legal Document from time to time.
<b>Losses</b>	All liabilities, costs, expenses, damages, losses, loss of profit, loss of reputation, ex gratia payments, and all interest, penalties and legal and other reasonable professional costs and expenses, all whether incurred directly or indirectly.
<b>Market Infrastructure Resiliency Service (MIRS)</b>	A contingency payment settlement service provided by SWIFT to CHAPS/Bank of England in respect of their real time gross settlement system (“RTGS”) that offers a market infrastructure operational resilience in the event of unavailability of its RTGS system. When activated, MIRS calculates accurate balances for all RTGS accounts and provides final settlement in central bank money for CHAPS payments and clearings and RTGS transfers.
<b>Monthly Fee</b>	A monthly fee charged for each DCS Participant, DCNSP, Aggregator, Third Party Beneficiary and Direct Agency and to enable them to connect to the Central Infrastructure directly. Where a DCS Participant, DCNSP, Direct Agency or Third Party Beneficiary uses an Aggregator, only the Aggregator is charged this fee.
<b>Non-Bank PSP</b>	An Authorised Electronic Money Institution (as defined in the Electronic Money Regulations 2011) or an Authorised Payment Institution (as defined in the PSRs 2017) which otherwise satisfies the DCS Participation Criteria applicable to such a Participant.
<b>Non-Responding Third Party Beneficiary</b>	A Third Party Beneficiary that receives third party payment notifications from the Central Infrastructure and does not respond to them.

<b>Participant</b>	A DCS Participant, a DCNSP, an Aggregator, a Direct Agency, a Third Party Beneficiary, or a FIM-only Agency
<b>Participation Agreements</b>	In the case of a DCS Participant, the DCS Participation Agreement and, in the case of any other Participant, any relevant participation agreement concerning the participation of that Participant in FPS between the Company and the relevant Participant as amended from time to time.
<b>Payment Request</b>	A message sent via the Central Infrastructure to make a payment through FPS.
<b>Payment Service Provider</b>	Has the same meaning given to it in the PSRs 2017
<b>Personal Data</b>	Has the meaning given to that term in the Data Protection Laws and includes Personal Data in respect of data subjects who are customers of the DCS Participants.
<b>PSR</b>	Has the meaning given to it in the PSRs 2017.
<b>Prospective DCNSP</b>	Any person wishing to become a DCNSP.
<b>Prospective Direct Agency</b>	Any person wishing to become a Direct Agency.
<b>Prospective DCS Participant</b>	Any person wishing to become a DCS Participant.

<b>PSRs 2017</b>	The Payment Services Regulations 2017 and as may be amended and/or updated from time to time.
<b>Public Authority DCS Participant</b>	A DCS Participant which is a Public Authority under the Freedom of Information Act 2000 (as defined therein) or a Scottish Public Authority under the Freedom of Information (Scotland) Act 2002 (as defined therein), as appropriate.
<b>Receiving Participant</b>	The DCS Participant responsible for settling, as payee, a Payment Request accepted by him including, if appropriate, accepted by one of his sponsored DCNSP's, Direct Agencies or Third Party Beneficiaries or by the Central Infrastructure on his behalf.
<b>Reference Documents</b>	Each of the documents listed in Schedule 2 and any other document designated by the Board as a Reference Document from time to time.
<b>Regulations</b>	The Financial Markets and Insolvency (Settlement Finality) Regulations 1999 as amended by the Financial Markets and Insolvency (Settlement Finality and Financial Collateral Arrangements) (Amendment) Regulations 2010 (SI 2010/2993) and as may be amended and/or updated from time to time.

<b>Relevant Access Condition</b>	<p>An additional condition imposed in relation to becoming a DCS Participant or a DCS Participant sponsoring a Relevant Third Party, specific to that DCS Participant or Relevant Third Party (as the case may be) or imposed in relation to becoming a DCNSP specific to that DCNSP. For the avoidance of doubt, the conditions set out as DCS Participation Criteria, DCNSP Criteria and Relevant Third Party Participation Criteria in Rule 2 shall not constitute a Relevant Access Condition. An additional condition imposed in order to ensure compliance with the DCS Participation Criteria, the DCNSP Criteria or Relevant Third Party Participation Criteria in Rule 2 may constitute a Relevant Access Condition. A Relevant Access Condition may be prescribed in connection with a DCS Participant or a DCNSP.</p>
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<p><b>Relevant Decision</b></p>	<p>A decision, or in the case of (b) below a provisional determination, of the Board, the CEO or the Decision Makers (as the case may be) relating to:</p> <ul style="list-style-type: none"> <li>a) the eligibility of a Prospective DCS Participant to become a DCS Participant in accordance with the DCS Participation Criteria or of a Prospective DCNSP to become a DCNSP in accordance with the DCNSP Criteria pursuant to Rule 3.1,</li> <li>b) the eligibility of an existing DCS Participant to remain a DCS Participant under the DCS Participation Criteria or of a DCNSP to remain a DCNSP under the DCNSP Criteria,</li> <li>c) the imposition of a Relevant Access Condition on a Prospective DCS Participant or a Prospective DCNSP pursuant to Rule 3.1,</li> <li>d) the imposition of a Relevant Subsequent Condition on a DCS Participant or a DCNSP pursuant to Rule 3.3,</li> <li>e) the suspension or exclusion of a DCS Participant or DCNSP due to a Default Event or the Exclusion of a DCS Participant or DCNSP due to an Exclusion Event pursuant to Rule 9,</li> <li>f) the eligibility of a Relevant Third Party to become a sponsored participant in accordance with the Relevant Third Party Participation Criteria pursuant to Rule 3.2,</li> <li>g) the imposition of a Relevant Access Condition in relation to the sponsorship of a Relevant Third Party pursuant to Rule 3.2,</li> <li>h) the imposition of a Relevant Subsequent Condition in relation to the sponsorship of a Relevant Third Party pursuant to Rule 3.3, or</li> <li>i) a determination to instruct a DCS Participant to suspend a Relevant Third Party from FPS pursuant to Rule 9.2.8.</li> </ul>
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<b>Relevant Third Party</b>	An existing or Prospective DCNSP, Direct Agency, Third Party Beneficiary or FIM-only agency, as the case may be, sponsored by a DCS Participant.
<b>Relevant Third Party Participation Criteria</b>	The conditions set out in the FPS Rules which must be satisfied in respect of a prospective sponsorship of a Relevant Third Party: namely, as regards a DCNSP (Rule 2.3); Direct Agency (Rule 2.4); Third Party Beneficiary (Rule 2.5); or FIM-only agency (Rule 2.7), respectively.
<b>Relevant Subsequent Condition</b>	An additional condition specific to that DCS Participant, DCNSP or Relevant Third Party, but excluding a Relevant Access Condition. For the avoidance of doubt, the conditions set out as DCS Participation Criteria, DCNSP Criteria and Relevant Third Party Participation Criteria in Rule 2 shall not constitute a Relevant Subsequent Condition.
<b>Relief Event</b>	A failure or delay by the Company to perform one or more obligations under the Supplier Agreement, an act or omission by a DCS Participant or the Bank of England, the Supplier acting in compliance with specific instructions issued by an authorised officer of the Company or a dependency that is not a Supplier obligation not being fulfilled.
<b>Reserves Collateralisation Account</b>	Has the meaning given to it in the Deed of Charge.
<b>Responding Third Party Beneficiary</b>	A Third Party Beneficiary that receives third party payment requests from the CI and responds to them in near real time.
<b>Settlement Account</b>	An account (denominated in sterling) maintained at the Bank of England and used, inter alia, to settle all FPS payment obligations.

<b>Settlement Collateralisation Account</b>	Has the meaning given to it in the Deed of Charge.
<b>Settlement Cut-Off</b>	The time at which a Settlement Cycle ends, when the Single Amount is fixed for settlement purposes.
<b>Settlement Cycle</b>	The period between the cut off times for payments being settled for one settlement and the next settlement. Over weekends and bank holidays a Settlement Cycle therefore includes several calendar days.
<b>Settlement Service Provider</b>	The financial institution contracted to be the settlement agent for FPS; this is the Bank of England.
<b>Single Amount</b>	The amount determined for a DCS Participant in accordance with Rule 7.1.1 (Single Amount).
<b>Single Claim</b>	Has the meaning given to it in Rule 7.3.2(b) (Settlement Date).
<b>Single Undertaking</b>	Has the meaning given to it in Rule 7.3.2(a) (Settlement Due).
<b>Special Resolution Regime</b>	“SRR” means the Special Resolution Regime in Part 1 of the Banking Act 2009, as amended from time to time.
<b>Submitting Participant</b>	The DCS Participant responsible for settling a Payment Request submitted to the Central Infrastructure by it or submitted by a DCNSP, Direct Agency, FIM-only agency or corporate which a DCS Participant sponsors.
<b>Supplier</b>	The supplier of the Central Infrastructure from time to time, being, as at the date of adoption of these Rules, VocaLink Limited
<b>Supplier Agreement</b>	The agreement relating to the provision of managed services from time to time in respect of the provision of the Faster Payments Service.



<b>Synchronous Payment Request</b>	A Payment Request sent via the CI and accepted (or rejected) in near real time by the DCS Participant, DCNSP, Direct Agency or Responding Third Party Beneficiary to which it is addressed e.g. a single immediate payment.
<b>System</b>	The system relating to the clearing and settlement of FPS payment obligations between DCS Participants.
<b>Third Party Beneficiary</b>	An organisation (such as a credit card company or utility) that: <ul style="list-style-type: none"> <li>(a) is sponsored by one or more DCS Participants which is a Bank PSP;</li> <li>(b) has an account with each DCS Participant which is a Bank PSP which sponsors it;</li> <li>(c) is directly connected to the Central Infrastructure to receive Payment Requests; and</li> <li>(d) is identified by one or more unique sort codes.</li> </ul>
<b>Volume Fee</b>	The Volume related fees payable by the Company to the Supplier during each Year of the Initial Term.
<b>Withdrawal Time</b>	Has the meaning given to it in Rule 9.1.3.
<b>Working Day</b>	Any day except a Saturday, Sunday, or a bank or public holiday in England.
<b>Year</b>	1 January to 31 December (inclusive) of any calendar year.

## 1.2 Interpretation

- 1.2.1 In the FPS Rules any reference to the FPS Rules or to any other agreement or document (including without limitation, any of the Reference Documents) shall be construed as a reference to the FPS Rules or such other agreement or document as the same may from time to time be amended, varied, supplemented, novated or replaced.
- 1.2.2 Subject to Rule 1.2.3, any capitalised or defined terms referred to in any of the Reference Documents which are used in the FPS Rules but not defined in this Rule 1, shall (save as the context otherwise requires) have the meanings respectively given to them in the relevant Reference Documents.
- 1.2.3 References to or capitalised or defined terms used in the FPS Rules but defined in the Supplier Agreement have the meanings given to them in the Supplier Agreement.
- 1.2.4 Any reference in the FPS Rules to any statute or statutory provision shall (save as the context otherwise requires) be construed as a reference to such statute or statutory provision as the same may be subsequently amended, re-enacted or consolidated.
- 1.2.5 Words importing one gender shall (where appropriate) include any other gender and words importing the singular shall (where appropriate) include the plural and *vice versa*.
- 1.2.6 The headings in the FPS Rules are for ease of reference only and shall not affect their interpretation.
- 1.2.7 If there is a conflict between any provisions of the FPS Rules and any provision of any of the Reference Documents then the relevant provision of the FPS Rules shall apply.
- 1.2.8 The FPS Rules and the Reference Documents shall be deemed to apply to all of the Participants save that those provisions in the Reference Documents which expressly relate to specific Participants shall apply only to those Participants or those Participants as determined by the Company in accordance with Rule 1.2.9.
- 1.2.9 Subject as otherwise expressly provided in the FPS Rules, if there is any doubt or dispute about the application of any provision of the Reference Documents including as to whether any such provision applies to a Participant then the Company shall determine such doubt or dispute and its decision shall (in the absence of manifest error) be final and binding on the relevant Participant.

## 2. CONDITIONS OF PARTICIPATION

2.1 It is a condition of becoming and remaining a DCS Participant that a person must:

- (a) hold a sterling Settlement Account at the Bank of England, or use a sterling Settlement Account held by a Group Company of the DCS Participant at the Bank of England, in each case which the Bank of England has agreed may be used for the purpose of settling FPS payment obligations;
- (b) in the case of a Bank PSP, be a Payment Service Provider and, in the case of a Non-Bank PSP, be an Authorised Electronic Money Institution (as defined in the Electronic Money Regulations 2011) or an Authorised Payment Institution (as defined in the PSRs 2017);
- (c) have at least one unique reachable sort code in the EISCD;
- (d) have the ability itself and/or through a third party including an Aggregator to comply on a continuous basis with the technical and operational requirements of the System as set out in the Reference Documents from time to time and to procure that any Relevant Third Party which it sponsors has the ability itself and/or through a third party including an Aggregator to comply on a continuous basis with the technical and operational requirements of the System as set out in the relevant Reference Documents;
- (e) validly execute and remain party to the DCS Participation Agreement, the Collateralisation Accounts Agreement and the Deed of Charge, and abide by the FPS Rules and, in the case of a Bank PSP, hold a sterling Reserves Collateralisation Account with the Bank of England and, in the case of a Non-Bank PSP, hold a sterling Settlement Collateralisation Account with the Bank of England;
- (f) if required by the Company and at the Company's sole discretion, provide an external legal opinion confirming that:
  - (i) each Legal Document to which that DCS Participant is (or will become) a party constitutes (or will constitute) a legal, valid and binding obligation on that DCS Participant and an obligation which is capable of being enforced against such DCS Participant; and
  - (ii) that, following any exclusion of a DCS Participant under Rule 9, that the DCS Participant shall remain liable for each Single Amount it is calculated as owing in accordance with these Rules, any fees owing to the Supplier, any

fees owing to the Company and any other fees payable pursuant to Rule 9 notwithstanding such exclusion under Rule 9;

- (g) pay, when first becoming a DCS Participant, an amount determined by the CEO and approved by the Board. Such an amount shall be a fair and reasonable estimate of the cost of a new DCS Participant joining FPS (including but not being limited to technical implementation and Supplier costs) and shall be calculated using non-discriminatory and objectively justifiable criteria; and
- (h) pay the ongoing FPS Operating Costs and Supplier costs as described in and to the extent required by Rule 13.

2.2 It is a condition of becoming and remaining a DCNSP that:

- (a) the DCNSP must have, or is eligible to have, at least one unique reachable sort code in the EISCD as a sponsored institution of the relevant sponsoring DCS Participant which is a Bank PSP;
- (b) the DCNSP must be able to settle obligations using the sponsoring DCS Participant's settlement account at the Bank of England being the settlement account of a Bank PSP;
- (c) the DCNSP must have the ability itself and/or through a third party including an Aggregator to comply on a continuous basis with the technical and operational requirements of the System for a DCNSP, as set out in the Reference Documents;
- (d) the DCNSP and the sponsorship relationship between the DCS Participant which is a Bank PSP and the DCNSP are compliant with all applicable laws, statutes, by-laws, regulations, orders and regulatory policies including the regulatory oversight obligations on the Company as a recognised interbank payment system under Part 5 of the Banking Act and as a designated payment system pursuant to the Regulations;
- (e) the DCNSP must validly execute and remain party to a Participation Agreement and abide by the FPS Rules;
- (f) if required by the Company and at the Company's sole discretion, the DCNSP must provide an external legal opinion confirming that each Legal Document to which that DCNSP is (or will become) a party constitutes (or will constitute) a legal, valid and

binding obligation on it and an obligation which is capable of being enforced against it;

- (g) the DCNSP must pay, when first becoming a DCNSP, an amount determined by the CEO and approved by the Board. Such an amount shall be a fair and reasonable estimate of the cost of a new DCNSP joining FPS (including but not being limited to technical implementation and Supplier costs) and shall be calculated using non-discriminatory and objectively justifiable criteria; and
- (h) the DCNSP must pay the Monthly Fee as described in and to the extent required by Rule 13.

2.3 It is a condition of a DCS Participant which is a Bank PSP sponsoring, and continuing to sponsor a DCNSP that:

- (a) the DCNSP is able to settle obligations using such sponsoring DCS Participant's settlement account at the Bank of England;
- (b) the DCNSP and the sponsorship relationship between such DCS Participant and the DCNSP are compliant with all applicable laws, statutes, bye-laws, regulations, orders and regulatory policies including with the regulatory oversight obligation on the Company as a recognised interbank payment system under Part 5 of the Banking Act and as a designated payment system pursuant to the Regulations; and
- (c) such DCS Participant ensures that the DCNSP and the sponsorship relationship with the DCNSP are, and continue to be, in compliance with (a) to (b) above.

2.4 It is a condition of a DCS Participant which is a Bank PSP sponsoring, and continuing to sponsor a Direct Agency that:

- (a) The Direct Agency is a Payment Service Provider as laid down in the PSRs 2017;
- (b) The Direct Agency has, or is eligible to have, at least one unique reachable sort code in the EISCD as a sponsored institution of such DCS Participant;
- (c) The Direct Agency is able to settle obligations using such sponsoring DCS Participant's settlement account at the Bank of England;
- (d) The Direct Agency has the ability itself and/or through a third party including an Aggregator to comply on a continuous basis with the technical and operational

requirements of the System for a Direct Agency, as set out in the Reference Documents;

- (e) The Direct Agency and the sponsorship relationship between such DCS Participant and the Direct Agency are compliant with all applicable laws, statutes, bye-laws, regulations, orders and regulatory policies including with the regulatory oversight obligations on the Company as a recognised interbank payment system under Part 5 of the Banking Act and as a designated payment system pursuant to the Regulations; and
- (f) Such DCS Participant ensures that the Direct Agency and the sponsorship relationship with the Direct Agency are, and continue to be, in compliance with (a) to (e) above.

2.5 It is a condition of a DCS Participant which is a Bank PSP sponsoring, and continuing to sponsor, a Third Party Beneficiary that:

- (a) The Third Party Beneficiary has, or is eligible to have, at least one unique reachable sort code in the EISCD as a sponsored institution of such DCS Participant.
- (b) The Third Party Beneficiary is a customer of such sponsoring DCS Participant with their own account.
- (c) The Third Party Beneficiary is able to settle obligations using such sponsoring DCS Participant's settlement account at the Bank of England.
- (d) The Third Party Beneficiary has the ability itself and/or through a third party including an Aggregator to comply on a continuous basis with the technical and operational requirements of the System for a Third Party Beneficiary, as set out in the Reference Documents.
- (e) Such DCS Participant ensures that the Third Party Beneficiary and the sponsorship relationship with the Third Party Beneficiary are, and continue to be, in compliance with (a) to (d) above.

2.6 Financial institutions that are not eligible for Direct Agency or Third Party Beneficiary status, can be granted access to the Scheme using DCA.

2.7 It is a condition of a DCS Participant which is a Bank PSP sponsoring, and continuing to sponsor, a FIM-only agency that:

- (a) The FIM-only agency is a Payment Service Provider as laid down in the PSRs 2017.
- (b) The FIM-only agency is a customer of such sponsoring DCS Participant with their own account.
- (c) The FIM-only agency has the ability itself and/or through a third party including an Aggregator to comply on a continuous basis with the technical and operational requirements of the System for a FIM-only agency, as set out in Schedule 2.
- (d) The FIM-only agency and the sponsorship relationship between such DCS Participant and the FIM-only agency are compliant with all applicable laws, statutes, bye-laws, regulations, orders and regulatory policies including with the regulatory oversight obligations on the Company as a recognised interbank payment system under Part 5 of the Banking Act and as a designated payment system pursuant to the Regulations.
- (e) Such DCS Participant ensures that the FIM-only agency and the sponsorship relationship with the FIM-only agency are, and continue to be, in compliance with (a) to (d) above.

### **3. DECISIONS IN RESPECT OF PARTICIPATION**

#### **3.1 Admissions Process**

- (a) A Prospective DCS Participant may submit an application in writing to the CEO providing that it agrees to comply with the appeals process under Rule 11 and providing that in doing so it agrees to comply with Rule 13. Any application must set out sufficient detail for the Company to satisfy itself of the Prospective DCS Participant's compliance, and its ability to continue to comply, with the DCS Participation Criteria.
- (b) The Decision Makers shall consider and determine whether the Prospective DCS Participant can comply, and can be expected to continue to comply, with the DCS Participation Criteria, and if so satisfied they shall accept the application (on the basis of Relevant Access Condition(s) if considered necessary by the Decision Makers) and notify the Board of such acceptance.
- (c) The Decision Makers will notify the Prospective DCS Participant and the Board in writing of the decision (and any Relevant Access Condition(s) or reasons if applicable) within 3 months after receiving the application described in Rule 3.1(a) or such longer period as agreed between the Company and the Prospective DCS Participant. Such a decision shall be a Relevant Decision. The CEO will notify the Board of the Relevant Decision within the same timescale, except in the event that the Prospective DCS Participant has stated in writing that they do not wish the Board to be informed of a refusal and the application is refused.
- (d) If a Prospective DCS Participant is refused DCS Participation or disagrees with any Relevant Access Condition(s) imposed on it, it shall be entitled to appeal against that Relevant Decision by using the appeal process described in Rule 11 but, for the avoidance of doubt, such a Prospective DCS Participant shall not be admitted to participation in the System until such an appeal has been resolved.
- (e) A Prospective DCNSP may submit an application in writing to the CEO providing that it agrees to comply with the appeals process under Rule 11 and providing that in doing so it agrees to comply with the relevant provisions of Rule 13. Any application must set out sufficient detail for the Company to satisfy itself of the Prospective DCNSP's compliance, and its ability to continue to comply, with the DCNSP Criteria.
- (f) The Decision Makers shall consider and determine whether the Prospective DCNSP can comply, and can be expected to continue to comply, with the DCNSP Criteria, and if so satisfied they shall accept the application (on the basis of Relevant Access Condition(s) if



considered necessary by the Decision Makers) and notify the Board of such acceptance.

- (g) The Decision Makers will notify the Prospective DCNSP and the Board in writing of the decision (and any Relevant Access Condition(s) or reasons if applicable) within 3 months after receiving the application described in Rule 3.1(e) or such longer period as agreed between the Company and the Prospective DCNSP. Such a decision shall be a Relevant Decision. The CEO will notify the Board of the Relevant Decision within the same timescale, except in the event that the Prospective DCNSP has stated in writing that they do not wish the Board to be informed of a refusal and the application is refused.
- (h) If a Prospective DCNSP is refused participation in the System or disagrees with any Relevant Access Condition(s) imposed on it, it shall be entitled to appeal against that Relevant Decision by using the appeal process described in Rule 11 but, for the avoidance of doubt, such a Prospective DCNSP shall not be so admitted until such an appeal has been resolved and shall only be admitted if the Prospective DCNSP is accepted by the Company for sponsorship by a DCS Participant in accordance with Rule 3.2.

### **3.2 Admissions Process for DCS Participants which are Bank PSPs to Sponsor a Relevant Third Party**

- (a) A DCS Participant which is a Bank PSP may submit an application to sponsor a prospective Relevant Third Party in writing to the CEO. Any application must set out sufficient detail for the Company to satisfy itself of the sponsoring DCS Participant and its prospective Relevant Third Party's compliance, and their ability to continue to comply, with the Relevant Third Party Participation Criteria. In this paragraph any reference to a DCS Participant is to a DCS Participant which is a Bank PSP.
- (b) The Decision Makers shall consider and determine whether the sponsoring DCS Participant and their prospective Relevant Third Party can comply, and can be expected to continue to comply, with the Relevant Third Party Participation Criteria, and if so satisfied they shall accept the sponsoring DCS Participant's application (on the basis of Relevant Access Condition(s) if considered necessary by the Decision Makers) and notify the Board of such acceptance. The sponsoring DCS Participant of the Relevant Third Party is wholly responsible for the actions of its sponsored Relevant Third Party under Rule 5.
- (c) The Decision Makers will notify the sponsoring DCS Participant and the Board in writing of the decision (and any Relevant Access Condition(s) or reasons for refusal of sponsorship if applicable) within 3 months after receiving the application described in Rule

3.2(a) or such longer period as agreed between the Company and the sponsoring DCS Participant. Such a decision shall be a Relevant Decision. The CEO will notify the Board of the Relevant Decision within the same timescale, except in the event that the sponsoring DCS Participant and the Relevant Third Party have stated in writing that they do not wish the Board to be informed of a refusal and the application is refused.

- (d) If a DCS Participant is refused permission to sponsor a Relevant Third Party or disagrees with any Relevant Access Condition(s) imposed on it, it shall be entitled to appeal against that Relevant Decision by using the Appeal Process described in Rule 11 but, for the avoidance of doubt, such a prospective Relevant Third Party shall not become a participant of the System until such an appeal has been resolved. The Company expects a DCS Participant to, and the DCS Participant shall, invoke the Appeals Process described in Rule 11 in the circumstances and according to the requirements set out in Rule 11.11 and Rule 11.12.
- (e) Each DCS Participant shall take all necessary steps as designated by the Company to allow the prospective Relevant Third Party to become a sponsored Relevant Third Party, provided any Appeals Process initiated in respect of its admission has been completed.

### 3.3 **Imposition of Relevant Subsequent Condition**

- (a) The Decision Makers may, from time to time, consider and determine whether a Relevant Subsequent Condition is required in relation to a particular DCS Participant, a particular DCNSP or sponsored Relevant Third Party arrangement and if so satisfied, acting reasonably and in good faith, the Decision Makers shall impose a Relevant Subsequent Condition on such a DCS Participant, DCNSP or in relation to such a sponsorship of a Relevant Third Party (as the case may be).
- (b) The Decision Makers will notify the DCS Participant, DCNSP and the Board in writing of the decision to impose a Relevant Subsequent Condition within 7 calendar days after the decision is taken. Such a decision shall be a Relevant Decision.

#### 4. RIGHTS AND DUTIES OF PARTICIPANTS

- 4.1 Each Participant accepts responsibilities and liabilities applicable to them under the FPS Rules as principal and not as agent for any other party.
- 4.2 Each Participant must comply with the relevant obligations and functions of that Participant as set out in the Reference Documents in Schedule 2.
- 4.3 Each Participant agrees and acknowledges that, for the purposes of administering FPS, the Company may co-operate or discuss the performance and operation by a Participant in respect of its participation in FPS with:
- (a) regulatory bodies from time to time and/or as may be required by laws, statutes, by-laws, regulations, orders, regulatory policies (including any requirement or notice of any regulatory body) from time to time in force; and
  - (b) in the case of any DCS Participant, those Relevant Third Parties sponsored by that DCS Participant and any Aggregator providing services to such DCS Participant;
  - (c) in the case of any other Participant, the relevant sponsoring DCS Participant and any Aggregator providing services to such Participant; and
  - (d) in the case of any Aggregator, the Participants to which it provides the services of an Aggregator.

This would include co- operating with the Bank of England should a DCS Participant or DCNSP be subject to the Special Resolution Regime.

- 4.4 Each Participant must promptly inform the Company as follows:
- (a) in the case of any DCS Participant, those Relevant Third Parties sponsored by that DCS Participant and any Aggregator providing services to such DCS Participant;
  - (b) in the case of any other Participant, the relevant sponsoring DCS Participant and any Aggregator providing services to such Participant; and
  - (c) in the case of any Aggregator, the Participants to which it provides the services of an Aggregator.

- 4.5 For the purposes of the Regulations, each DCS Participant must (except if such request is frivolous or vexatious) provide to any interested person who requests it within 14 days of such request and upon payment by such person of a reasonable charge:
- (a) details of the systems which are designated for the purposes of the Settlement Finality Directive in which such DCS Participant participates; and
  - (b) information about the main rules governing the functioning of such systems.
- 4.6 For the purposes of the Regulations, each DCS Participant must upon:
- (a) the passing of a creditor's voluntary winding up resolution (or analogous procedure in the jurisdiction of incorporation of such DCS Participant) in respect of that DCS Participant; or
  - (b) a trust deed granted by it becoming a protected trust deed,
- notify the Company and the Bank of England that such a resolution (or analogous procedure) has been passed, or, as the case may be, that such a trust deed has become a protected trust deed.
- 4.7 Each DCS Participant agrees to contribute in the manners and proportions decided by the Company from time to time to the liabilities reasonably incurred by the Company in respect of FPS. Notwithstanding the provisions of this Rule 4.6, no DCS Participant shall be obliged to contribute:
- (a) to the FPS Operating Costs other than in the manner and proportion set out in Rule 13.1; and
  - (b) to the liabilities incurred by the Company as described in Schedule 1, other than in the manner and proportion set out in Rule 13.2 and Schedule 1.
- 4.8 Each Participant agrees to cooperate in a timely fashion with the Company in respect of any reasonable request made by the Company and the other Participants concerning the processing, operations or services of FPS and including in respect of any reasonable request made by the Company concerning the development or enhancement of the System, any project commenced by the Company to effect such development or enhancement and, where necessary, to ensure that its personnel with appropriate skills, competence and seniority as may reasonably be required in relation thereto are assigned

to such requests and/or projects.

- 4.9 Each Participant shall take all necessary steps as designated by the Company to allow a Prospective DCS Participant to become a DCS Participant or a Prospective DCNSP to become a DCNSP, provided any appeals process initiated in respect of its admission has been completed.
- 4.10 Each DCS Participant agrees to ensure that all 'Bacs addressable' sort codes for credits assigned to that DCS Participant are able to receive payments via the Faster Payments Scheme, except where it can be demonstrated there is no business requirement to make or receive payments via the Faster Payments Scheme and the DCS Participant has actively stated the reasons why the sort code should not be made FPS addressable.

## **5. RESPONSIBILITY FOR RELEVANT THIRD PARTIES**

- 5.1 Each DCS Participant shall be wholly responsible for the actions and omissions of any Relevant Third Party or other person which it sponsors in relation to FPS, which, if carried out by the DCS Participant itself, would cause or have caused the DCS Participant to be in breach of any of its obligations under the FPS DCS Participation Agreement or the FPS Rules, including its obligations in respect of the Reference Documents. A DCS Participant's responsibility for those acts and omissions shall be the same as if it had carried out the act or omission itself.
- 5.2 DCS Participants are required to work with any entity that they sponsor in relation to FPS to ensure that all Bacs addressable sort codes for credits assigned to those entities are able to receive payments processed by the Faster Payments Service, except where it can be demonstrated that that entity has no business requirement to make or receive payments via the Faster Payments Service and has actively stated the reasons why their sort codes should not be made FPS addressable.
- 5.3 Each DCS Participant shall provide to the Company at any time on and as soon as practicable after a request by the Company and otherwise within one month after the period of each six months after 1 January and 1 July in each Year full, complete and accurate details of the total number of FPS payments submitted in such six month periods by that DCS Participant any Relevant Third Party sponsored by the DCS Participant and of any of its systemically important customers.
- 5.4 Each Aggregator shall provide to the Company at any time on and as soon as practicable after a request by the Company and otherwise within one month after the period of each six months after 1 January and 1 July in each Year full, complete and accurate details of the total number of FPS payments submitted in such six month periods by any Participant for which they may provide the services of an Aggregator.

## **6. PAYMENTS**

### **6.1 Eligible Payment Requests**

In order for a Payment Request to be eligible for Clearing it must:

- (a) comply with the specification of a Payment Request as set out in the Reference Documents;
- (b) not be subject to conditions imposed on the Receiving DCS Participant, DCNSP or Direct Agency with respect to the payment; and
- (c) be submitted by DCS Participants, DCNSPs or Direct Agencies directly or via FIM (or FIM-only agencies via FIM or by corporates submitting via DCA) to DCS Participants, DCNSPs, Direct Agencies or Third Party Beneficiaries identified as such in the Extended Industry Sort Code Directory.

### **6.2 Revocability of Payments**

6.2.1 A Payment Request cannot be revoked once the following point is reached:

- (a) for a Payment Request submitted individually by the DCS Participant: the point when the Payment Request leaves the DCS Participant's system for transmission to the Central Infrastructure;
- (b) for a Payment Request submitted individually by a DCNSP or Direct Agency sponsored by the DCS Participant: the point when the Authorisation Response authorising the payment leaves the relevant DCS Participant's system for transmission to the Central Infrastructure;
- (c) for a Payment Request in a FIM file submitted by the DCS Participant: the point when the DCS Participant's acceptance of the FIM Authorisation Request for that file leaves the relevant DCS Participant's system for transmission to the Central Infrastructure;
- (d) for a Payment Request in a FIM file submitted by a DCNSP, Direct Agency or a FIM-only agency sponsored by the DCS Participant: the point when the Authorisation Response authorising the file of payments leaves the relevant DCS Participant's system for transmission to the Central Infrastructure;
- (e) for a Payment Request in a file submitted via DCA, sponsored by the DCS

Participant: the point when the Authorisation Response authorising the file of payments leaves the relevant DCS Participant's system for transmission to the Central Infrastructure; or

- (f) for a Payment Request in a file submitted via DCA sponsored by a DCNSP or Direct Agency which itself is sponsored by the DCS Participant: the point when the Authorisation Response authorising the file of payments leaves the relevant DCS Participant's system for transmission to the Central Infrastructure.

Each point specified in this Rule 6.2 is the point (for the relevant type of Payment Request) at which the Payment Request takes effect as having been entered into the System for the purposes of the Regulations.

6.2.2 A Synchronous Payment Request (Single Immediate Payment) is irrevocable (for the purposes of settlement and of the Regulations) when the Receiving Participant's acceptance of the Payment Request, or the Direct Payment Response indicating acceptance, leaves the Receiving Participant's system for transmission to the Central Infrastructure;

6.2.3 An Asynchronous Payment (SOP, FDP or DCA) Request is irrevocable (for the purposes of settlement and of the Regulations) when the Central Infrastructure sends the payment acceptance to the Submitting Participant or, in the case of a DCS Participant, its DCNSP, Direct Agency, or to the FIM module or the DCA module as appropriate.



## **7. SETTLEMENT ARRANGEMENTS**

### **7.1 Single Amount**

- 7.1.1 In respect of a particular Settlement Cycle there will be only one single amount payable to or by each DCS Participant (the “**Single Amount**”) which will be determined by the Central Infrastructure, on behalf of the Company which acts as principal and not as agent of any DCS Participant, at the relevant Settlement Cut-Off as being the net sum of the amounts set out in all the Payment Requests accepted in that Settlement Cycle in accordance with the FPS Rules in which the DCS Participant is expressed to be a Submitting and/or Receiving Participant.
- 7.1.2 The Central Infrastructure, on behalf of the Company, will notify each DCS Participant of its Single Amount in accordance with the Functional Specification and other Reference Documents.
- 7.1.3 Settlement of the Single Amount represents the point of settlement finality. Settlement finality occurs at the time of settlement of the Single Amount stored by SWIFT, except when the Market Infrastructure Resiliency Service (MIRS) is in use as the active RTGS system, when settlement finality occurs at the time of settlement of the Single Amount applied to the SWIFT MIRS database.

### **7.2 No Bilateral Obligation or Set-off**

- 7.2.1 Neither the transmission nor the processing of any Payment Request nor any payment made to a third party by the Receiving Participant as directed by, or otherwise in connection with, such Payment Request shall by itself create any bilateral debt (or other similar claim whatsoever) between the DCS Participants or between a DCS Participant and the Company. The DCS Participants waive any such bilateral obligations, bilateral liabilities or other similar claims between the DCS Participants or between a Member and the Company which might otherwise arise by implication or operation of law but for the FPS Rules as a result of the actions specified in the previous sentence.
- 7.2.2 The determination by the Central Infrastructure on behalf of the Company of the Single Amount does not constitute or result in any form of set-off, novation, or other aggregation of bilateral gross claims.

### **7.3 Settlement Due**

7.3.1 The Single Amount in respect of each DCS Participant and a Settlement Cycle is due for settlement on the earlier of:

- (a) either (i) the relevant time on the Working Day on which that Settlement Cycle is due to be settled, as specified in the FPS Procedures; or
- (ii) if a DCS Participant does not make funds available (either by way of its Settlement Account or the account as set up pursuant to the CAA) to the Settlement Service Provider equal to its Single Undertaking (as defined below) at the time specified in sub-paragraph (i) above and the Company has contacted that DCS Participant and the Settlement Service Provider to enquire whether funds will be made available within a reasonable time after settlement as per sub-paragraph (i) above has failed, the time specified by the Company (in its absolute discretion);

whichever is the later of (i) or (ii) above; or

- (b) the moment when the Company excludes a DCS Participant under Rule 9.3.

7.3.2 (a) If a DCS Participant's Single Amount in respect of a Settlement Cycle is a negative number such DCS Participant will have an obligation towards all other DCS Participants (as joint but not several creditors and each such DCS Participant acting as principal and not as agent of any other person) to make funds available in full with the Settlement Service Provider for settlement purposes in respect of the same Settlement Cycle equal to such Single Amount (a "**Single Undertaking**").

- (b) If, at any time, a DCS Participant's Single Amount in respect of a Settlement Cycle is a positive number, such DCS Participant (as principal and not as agent of any other person) will have a claim against all other DCS Participants (as joint but not several obligors) to cause the Company to use its best endeavours to procure that such Single Amount is settled by the Settlement Service Provider out of the funds made available to it (a "**Single Claim**") in respect of the same Settlement Cycle.

7.3.3 Each DCS Participant must pay any Single Undertaking determined in respect of it, even if it has challenged the validity of the corresponding Single Amount, pending the outcome of that challenge.

## **8. OPERATING UNDERTAKINGS**

8.1 Each DCS Participant will either:

- (a) implement processes to check for duplicate Faster Payments Identifiers (FPIDs) on receipt, and require that DCNSP's, Direct Agencies and Responding Third Party Beneficiaries which a DCS Participant sponsors will do so also; or
- (b) acknowledge and accept that Losses would not have been incurred by that DCS Participant, DCNSP, Direct Agency or Responding Third Party Beneficiary had that DCS Participant, DCNSP, Direct Agency or Responding Third Party Beneficiary adopted such processes as set out in Rule 8.1(a) above, and that such Losses will not be recoverable.

8.2 Each Participant will notify the Company and the Supplier of any material planned changes to that Participant's processing arrangements, and technical specifications, in that Participant's system to the extent that such changes may adversely affect the Supplier's provision of the services.

8.3 Each Participant will ensure that its relevant technical and other personnel responds within a reasonable time to, and complies with, all reasonable requests from the Company and the Supplier in relation to the maintenance and operation of service components owned and/or managed in connection with FPS.

8.4 Each DCS Participant will impose obligations on Direct Agencies and Third Party Beneficiaries which it sponsors that are substantially similar to those obligations set out above in Rules 8.2 to 8.3 in relation to the manner in which those Direct Agencies and Third Party Beneficiaries use the FPS.

8.5 Each DCS Participant will ensure that its agreements with Direct Agencies and Third Party Beneficiaries which it sponsors enable the DCS Participant to comply with Rule 9.2.8.

8.6 No Participant will bring any claims or proceedings against the Supplier in relation to any breach or alleged breach of the Supplier Agreement (including in negligence) by the Supplier, and require that only the Company brings any such claims on behalf of the relevant Participants under the Supplier Agreement. The Supplier has the benefit of this Rule 8.6 under the Contracts (Rights of Third Parties) Act 1999.

- 8.7 Each DCS Participant will state in its contracts with Direct Agencies that it sponsors that any claims or proceedings in relation to the Faster Payments Service should be brought, in the first instance, against the DCS Participant rather than against the Company or the Supplier.
- 8.8 Each DCS Participant and each DCNSP will act in a manner that seeks to avoid the Supplier suffering from a Relief Event.
- 8.9 Each Participant agrees the Company may:
- (a) suspend FPS where the Board, or the CEO having been delegated this power by the Board, decides it is necessary to protect the security and integrity of the FPS;
  - (b) cooperate with the Supplier and its authorised sub-contractors as is reasonably required to enable the Supplier to perform the services in accordance with the Supplier Agreement; and
  - (c) provide the Supplier (in reasonable detail) with all information relating to the Company and DCS Participants that is reasonably required to enable the Supplier to provide the services in accordance with the Supplier Agreement.
- 8.10 Each Participant will:
- (a) cooperate with the Supplier and its authorised sub-contractors as is reasonably required to enable the Supplier to perform the services in accordance with the Supplier Agreement;
  - (b) provide the Supplier (in reasonable detail) with all information relating to themselves that is reasonably required to enable the Supplier to provide the services in accordance with the Supplier Agreement; and
  - (c) otherwise comply in all material respects with the requirements and activities set out in the Supplier Agreement that are specified to be carried out by Participants generally, or a Participant individually.

## 9. WITHDRAWAL, SUSPENSION AND EXCLUSION

### 9.1 Withdrawal of a DCS Participant

- 9.1.1 Any DCS Participant shall be entitled to withdraw from FPS by giving written notice to the CEO, and subject to Rule 9.1.3, a proposed time and date of withdrawal.
- 9.1.2 On receiving a notice of withdrawal, the Company shall acknowledge receipt of the notice to the DCS Participant who has given it as soon as reasonably practicable.
- 9.1.3 The time and date on which a withdrawal by a DCS Participant shall be deemed to be effective (the "**Withdrawal Time**") shall be determined as follows:
- (a) in the event that the withdrawing DCS Participant gives 130 or more Working Days' notice of withdrawal (excluding the day on which such notice is received), the time and date specified in the notice of withdrawal;
  - (b) in the event that the withdrawing DCS Participant gives less than 130 Working Days' notice of withdrawal (excluding the day on which such notice is received (and the CEO must notify the DCS Participant of the date of receipt)) the earliest Working Day and time on which the CEO determines (having consulted with the Bank of England) that withdrawal of the withdrawing DCS Participant can be accommodated by the Company and all the other Participants from a technical perspective without thereby prejudicing the integrity of the System, and shall in any case not be more than 130 Working Days after receipt of the DCS Participant's notice; or
  - (c) in the event that the withdrawing DCS Participant fails to give an effective and/or complete withdrawal notice (specifying time and date), a time set by the Company on the Working Day following the expiry of 130 Working Days (excluding the day on which such notice is received) after the date of receipt of the notice by the CEO (and the CEO must notify the DCS Participant of the date of receipt and of such a Withdrawal Time set by the Company).

Provided always that in the case of (a), (b) or (c) above the CEO in his reasonable discretion shall always have the right to notify the DCS Participant of an alternative Withdrawal Time if it is necessary to preserve the integrity of the System, and such date shall not be less than 20 nor more than 130 Working Days from the date the notice is given by the CEO.

- 9.1.4 Once a notice of withdrawal has been received by the Company, the withdrawing DCS Participant shall only be entitled to revoke such notice with the prior written approval of the CEO, which is not to be unreasonably withheld or delayed.
- 9.1.5 The CEO shall notify the Bank of England and each other Participant in writing without delay after it receives a withdrawal notice (or a revocation/ retraction of such withdrawal notice), and shall include in that notice (or as soon afterwards as it is determined) the Withdrawal Time in respect of the withdrawing DCS Participant.
- 9.1.6 Notwithstanding any withdrawal, a withdrawing DCS Participant shall be fully liable for:
- (a) the due performance of all its obligations, as determined by the Company, under the FPS Rules incurred prior to the Withdrawal Time;
  - (b) its Single Undertaking(s) determined by the System on the Withdrawal Time; and
  - (c) any additional direct costs arising from the withdrawal incurred by the Company, and/or any other Participant in accommodating the withdrawal of the withdrawing DCS Participant provided such costs are non-discriminatory and objectively justifiable.

## 9.2 **Suspension of a DCS Participant**

- 9.2.1 The Board or, in a case of urgency (as determined by the CEO, acting reasonably and in good faith) where it is not reasonably practicable for a quorate Board to be convened, the CEO, may suspend a DCS Participant's participation in the System with immediate effect (or with effect from such time and date as the CEO or the Board as appropriate may specify) in the following circumstances, each of which constitutes a "**Suspension Event**":
- (a) where, in the reasonable and good faith opinion of the Board or, in a case of urgency, the CEO, the DCS Participant is in material breach of any provision of the FPS Rules or ceases to satisfy the DCS Participation Criteria applicable to it;
  - (b) the DCS Participant has failed to pay its Single Undertaking (whether this be by way of a DCS Participant's Settlement Account or the account set up pursuant to the CAA) when due;

- (c) if, in the reasonable and good faith opinion of the Board or, in a case of urgency, the CEO circumstances have arisen in relation to the DCS Participant which could be materially prejudicial to the System or could represent a threat to the security, integrity or reputation of the System;
- (d) a Default Event occurs in respect of that DCS Participant; or
- (e) at the written request of the DCS Participant concerned.

9.2.2 Each DCS Participant undertakes to the Company to notify the CEO immediately upon becoming aware of the occurrence of any of the following events, each of which constitutes a "**Default Event**" subject to paragraph 9.2.3 below:

- (a) the presentation of any petition for the liquidation or winding-up of the DCS Participant or for the appointment of a liquidator or an administrator in relation to the DCS Participant unless, in the case of a petition which would be considered, on reasonable grounds, to be frivolous or vexatious, the petition is withdrawn within 21 days;
- (b) the appointment or purported appointment of a liquidator, administrator, receiver, administrative receiver, manager, trustee or similar person in respect of the DCS Participant or any substantial part of the property or assets of the DCS Participant;
- (c) the dissolution of the DCS Participant or the publication in the Gazette of a notice of prospective striking off pursuant to Sections 1000 and 1001 of the Companies Act 2006 or the making of an application by the DCS Participant for its striking off pursuant to Section 1003 of the Companies Act 2006);
- (d) the occurrence under the laws of any applicable jurisdiction of anything analogous to or having a substantially similar effect to any of the events described in Rules 9.2.2(a) to 9.2.2(c) inclusive in relation to the DCS Participant;
- (e) the suspension of the DCS Participant under Rule 9.2 and the relevant Suspension Event has remained unremedied (other than under Rule 9.2.1(e)) for a continuous period of 50 Working Days;
- (f) the DCS Participant ceasing to satisfy the DCS Participation Criteria applicable to it; and

- (g) the DCS Participant which is a Bank PSP having any authorisation as a Payment Service Provider (as defined in the PSRs 2017) suspended or withdrawn, and not immediately issued or replaced or the DCS Participant which is a Non-Bank PSP having any authorisation as an Authorised Electronic Money Institution (as defined in the Electronic Money Regulations 2011) or an Authorised Payment Institution (as defined in the PSRs 2017) suspended or withdrawn, and not immediately issued or replaced.

9.2.3 Notwithstanding any other provision of these Rules, a Default Event shall be deemed NOT to have occurred in respect of a DCS Participant where such DCS Participant (or any entity in its group) is subject to any crisis management measures, crisis prevention measures or recognised third-country resolution actions under Part 1 of the Banking Act 2009 provided the substantive obligations of the DCS Participant under the Rules (including payment and delivery obligations and the provision of collateral) continue to be performed.

9.2.4 The CEO shall notify the Company's Chairman (or, if he is unavailable, the Company's Deputy Chairman, or, in the absence of both the Chairman and the Deputy Chairman, any other director of the Company), Participants and the Bank of England of any suspension made pursuant to Rule 9.2.1 as soon as possible. Any suspension pursuant to Rule 9.2.1 which is still in force at 16:00 on the first Working Day on which such suspension has been invoked shall be reviewed by the Board as soon as practicable but in any event within two Working Days. The Board shall then take such further action as is considered appropriate.

9.2.5 Where a DCS Participant is suspended by the Company from FPS pursuant to Rule 9.2.1 such suspended DCS Participant shall remain fully liable for the due performance of all its obligations (including any Single Undertaking determined after the effective time and date of its suspension) under the FPS Rules incurred prior to the effective time and date of its suspension from FPS, being the time and date determined by the CEO in his absolute discretion having regard to the need to preserve the integrity of the System (the "**Suspension Time**").

9.2.6 A suspended DCS Participant will, as determined by, and at the discretion of, the Company, pay to the Company any direct costs incurred by the Company and/or any other DCS Participant arising from the suspended DCS Participant's



suspension, other than (in respect of other DCS Participants' direct costs only) where suspended pursuant to Rule 9.2.1(c) due to no fault of the DCS Participant.

- 9.2.7 Without limiting the generality of Rule 9.2.6, a suspended DCS Participant shall make payment of any other costs, fees and expenses payable by the suspended DCS Participant as may be determined by the Appeal Panel pursuant to Rule 11.8.
- 9.2.8 The Board or, in a case of urgency (as determined by the CEO, acting reasonably and in good faith) where it is not reasonably practicable for a quorate Board to be convened, the CEO, may require a DCS Participant to, and the DCS Participant shall, temporarily or indefinitely suspend, as appropriate, from FPS particular Relevant Third Parties which that DCS Participant sponsors where in the reasonable and good faith opinion of the Board, or in the case of urgency, the CEO: (i) the Relevant Third Party no longer satisfies the Relevant Third Party Participation Criteria or (ii) circumstances have arisen in relation to the Relevant Third Party which could be materially prejudicial to the System or represent a threat to the security, integrity or reputation of the System.
- 9.2.9 Any suspension pursuant to Rule 9.2.8 which is still in force at 16:00 on the first Working Day on which such suspension has been invoked shall be reviewed by the Board as soon as practicable but in any event within two Working Days. The Board shall then take such further action as is considered appropriate.

### 9.3 **Exclusion of a DCS Participant**

- 9.3.1 The Board may exclude a DCS Participant with immediate effect (or with effect from such time and date as the Board as appropriate may specify) in respect of the System in the following circumstances, each of which constitutes an **"Exclusion Event"**:
- (a) where, in the reasonable opinion of the Board acting in good faith, the DCS Participant is in material breach of any provision of the FPS Rules or ceases to satisfy the DCS Participation Criteria applicable to it;
  - (b) if, in the reasonable opinion of the Board acting in good faith, circumstances have arisen in relation to the DCS Participant which could be materially prejudicial to the System or represent a threat to the security, integrity or reputation of the System; or

- (c) if a Default Event occurs in respect of that DCS Participant.
- 9.3.2 The CEO shall notify the remaining Participants, the Bank of England and the Company without delay of any exclusion made pursuant to Rule 9.3.1.
- 9.3.3 Where a DCS Participant is excluded by the Company from FPS pursuant to the FPS Rules, such excluded DCS Participant shall remain fully liable for the due performance of all its obligations (including any Single Undertaking determined after the effective time and date of its exclusion) under the FPS Rules incurred prior to the effective time and date of its exclusion from FPS, being the time and date determined by the CEO in his absolute discretion having regard to the need to preserve the integrity of the System (the "**Exclusion Time**").
- 9.3.4 An excluded DCS Participant will, as determined by, and at the discretion of, the Company, pay to the Company any direct costs incurred by the Company and/or any other Participant arising from its exclusion, provided such costs are non-discriminatory and objectively justifiable.
- 9.3.5 Without limiting the generality of Rule 9.3.4 above, an excluded DCS Participant shall make payment of any other costs, fees and expenses payable by the excluded DCS Participant as may be determined by the Appeal Panel pursuant to Rule 11.8.

#### **9.4 Rights and Obligations of a DCS Participant in relation to Single Amount**

- 9.4.1 Any decision of the Board shall be without prejudice to the rights and obligations of each DCS Participant with respect to each Single Amount existing at the moment a DCS Participant is suspended or excluded in accordance with this Rule 9 or determined at any time thereafter.

#### **9.5 Consequences of Rule 9 for Participants**

- 9.5.1 If any DCS Participant shall withdraw, be suspended or excluded in accordance with this Rule 9 or any relevant Participation Agreement and any Relevant Third Party sponsored by that DCS Participant is no longer able to settle obligations using that sponsoring DCS Participant's settlement account at the Bank of England the Relevant Third Party sponsored by that DCS Participant shall be required to withdraw or shall be suspended or excluded from FPS as a Relevant Third Party until such time as that

Relevant Third Party is able to settle obligations using a settlement account at the Bank of England of another sponsoring DCS Participant.

- 9.5.2 The basis on which any Participant may withdraw or be suspended or excluded by the Company from FPS shall be governed by the FPS Rules and the terms of a relevant Participation Agreement which shall be applied by the Decision Makers on behalf of the Company in accordance with the FPS Rules and the terms of a relevant Participation Agreement as the case may be.
- 9.5.3 The Board or, in a case of urgency (as determined by the CEO, acting reasonably and in good faith) where it is not reasonably practicable for a quorate Board to be convened, the CEO, may temporarily or indefinitely suspend a DCNSP from FPS where in the reasonable and good faith opinion of the Board, or in the case of urgency, the CEO: (i) the DCNSP no longer satisfies the DCNSP Criteria or (ii) circumstances have arisen in relation to the DCNSP which could be materially prejudicial to the System or represent a threat to the security, integrity or reputation of the System. The CEO shall notify the Company's Chairman (or, if he is unavailable, the Company's Deputy Chairman, or, in the absence of both the Chairman and the Deputy Chairman, any other director of the Company), other Participants and the Bank of England of any suspension made pursuant to this Rule 9.5.3. A suspended DCNSP will, as determined by, and at the discretion of, the Company, pay to the Company any direct costs incurred by the Company and/or any other Participant arising from the suspended DCNSP's suspension provided such costs are non-discriminatory and objectively justifiable.
- 9.5.4 The Board or, in a case of urgency (as determined by the CEO, acting reasonably and in good faith) where it is not reasonably practicable for a quorate Board to be convened, the CEO, may suspend any Participant's (apart from a DCS Participant or DCNSP as this is otherwise accommodated in the FPS Rules) participation in the System with immediate effect (or with effect from such time and date as the CEO or the Board as appropriate may specify) in the following circumstances
- (a) where, in the reasonable and good faith opinion of the Board or, in a case of urgency, the CEO, the Participant is in material breach of any provision of the FPS Rules;
  - (b) if, in the reasonable and good faith opinion of the Board or, in a case of urgency, the CEO circumstances have arisen in relation to that Participant which could be materially prejudicial to the System or could represent a threat to the security, integrity or reputation of the System;

- (c) a Default Event occurs in respect of that Participant; or
- (d) at the written request of the Participant concerned.

9.5.5 The CEO shall notify the Company's Chairman (or, if he is unavailable, the Company's Deputy Chairman, or, in the absence of both the Chairman and the Deputy Chairman, any other director of the Company), other Participants and the Bank of England of any suspension or exclusion of a Participant made pursuant to the FPS Rules or Participation Agreement.

9.5.6 A suspended or excluded Participant (other than a DCS Participant or DCNSP) will, as determined by, and at the discretion of, the Company, pay to the Company any direct costs incurred by the Company and/or any other Participant arising from the suspended Participant's suspension provided such costs are non-discriminatory and objectively justifiable.

9.5.7 Each Participant undertakes to the Company to notify the CEO immediately upon becoming aware of the occurrence of any event which comprises a Default Event in respect of that Participant.

9.5.8 If a Participant is suspended or excluded in accordance with this Rule 9 or pursuant to a relevant Participation Agreement the Company shall not be liable (whether in contract, tort (including negligence) or otherwise for any liability, damage, loss, cost, claim or expense of any kind suffered or incurred by that Participant or by any other Participant as a result of such suspension or exclusion. This rule does not affect the Company's liability for fraud or for death or personal injury arising from its negligence or that of its employees, agents or sub-contractors.

## **10. AMENDMENTS TO THE FPS RULES**

- 10.1 Any Participant, the Company or the CEO may propose changes to the FPS Rules by submitting proposals in writing to the Company who will present the proposed changes to the Rules and Governance Committee.
- 10.2 After consulting all relevant Participant affected by any proposed changes to the FPS Rules and appropriate FPS committees, the Chairman of the Company's Rules and Governance Committee shall forward the recommendations to the Board, where appropriate.
- 10.3 Proposed changes to Rule 13.2.1 or to Schedule 1 must be approved unanimously by all DCS Participants who would be affected by them.
- 10.4 Proposed Data Protection Changes must be approved and implemented in accordance with the process set out in Rule 10.6 below.
- 10.5 Subject to Rules 10.3 and 10.6, the Board shall then decide in its absolute discretion if the recommendations are acceptable, and if they are acceptable, the appropriate length of notice to be given before the consequent changes are implemented.
- 10.6 Data Protection Changes

(a) If the Company, a Participant or the CEO proposes a Data Protection Change, it shall submit its proposal in writing to the Rules and Governance Committee or the Board, or any other relevant committee as may be directed by the Board from time to time (the "Data Protection Committee").

(b) For the purposes of a Data Protection Change, the Data Protection Committee shall comprise DCS Participants sitting as DCS Participants and one representative from each DCS Participant shall be invited to attend the Data Protection Committee for this purpose.

(c) The Company shall present the proposed Data Protection Change to the Data Protection Committee. After considering the proposed Data Protection Change and its likely impact on all relevant Participants, the Data Protection Committee shall vote upon whether the Data Protection Change should be implemented. For the purposes of a Data Protection Change, only the DCS Participants sitting on the

Data Protection Committee may vote and shall be entitled to one vote for each DCS Participant in attendance.

(d) Proposed Data Protection Changes must be approved by a simple majority of the DCS Participants. Any Data Protection Change which has been approved by a simple majority of the DCS Participants shall be binding on all Participants, irrespective of whether the DCS Participant's representative voted in favour of adopting the Data Protection Change in question.

(e) If a Data Protection Change is approved by the DCS Participants pursuant to this Clause 10.6, the Company and the Participants shall henceforth be bound by the terms of the Data Protection Change, and the minutes of the meeting of the Data Protection Committee shall be a documented binding instruction for the processing of Personal Data that the Company is required to follow.

10.7 Notwithstanding the provisions of Rule 10.6, the Company may implement Data Protection Changes on as much notice as reasonably practicable where, in the Company's reasonable opinion, the Data Protection Change is required to be implemented by law or regulation to which the Company is subject, including, for the avoidance of doubt, any law or regulation relating to the Company's role as data processor under Data Protection Laws.

## **11. APPEALS PROCESS**

- 11.1 The Board, the CEO, or the Decision Makers (as the case may be) shall provide within 14 calendar days of the date of a Relevant Decision to each DCS Participant, Prospective DCS Participant, DCNSP, Prospective DCNSP or Prospective Direct Agency concerned written reasons for such Relevant Decision.
- 11.2 Each such DCS Participant, Prospective DCS Participant, DCNSP, Prospective DCNSP or Prospective Direct Agency shall be entitled to invoke the Appeals Process in respect of a Relevant Decision by giving written notice to the CEO of its wish to appeal against the Relevant Decision within 30 calendar days after the Board, the CEO, or the Decision Makers (as the case may be) has provided the DCS Participant, Prospective DCS Participant, DCNSP, Prospective DCNSP or Prospective Direct Agency with written reasons for its decision under Rule 11.1.
- 11.3 Should the DCS Participant, Prospective DCS Participant, DCNSP, Prospective DCNSP or Prospective Direct Agency invoke the Appeals Process in respect of a Relevant Decision the Board, the CEO or the Decision Makers (as the case may be) shall co-operate in a timely fashion with the Appeal Panel in relation to such Relevant Decision.
- 11.4 Within 7 Working Days following the receipt of the notice referred to in Rule 11.2, the CEO shall by written notice to the Appointer request the Appointer to nominate the Appeal Panel to hear and determine the appeal.
- 11.5 The Appeal Panel shall consist of three individuals who in the opinion of the Appointer are members of/or professional advisers to the banking and/or financial services community to which the DCS Participants collectively belong, of appropriate qualification and experience, and independent of the Appellant, any DCS Participant and the Company. The Appointer may, but shall not be obliged to consult the Appellant and the Company before making his / her nominations.
- 11.6 Within 14 calendar days following their nomination and confirmation of their willingness to serve, the members of the Appeal Panel shall appoint one of their number to preside over the appeal.
- 11.7 The appeal shall be a re-hearing of the original determination of the Board, the CEO or the Decision Makers (as the case may be, and shall be conducted in accordance with such process as the person appointed under Rule 11.6 shall consider appropriate. The Appellant and the Company shall have the right to

make representations to the Appeal Panel.

- 11.8 The Appeal Panel shall arrive at its decision by a majority vote. The Appeal Panel's decision shall be final and binding on the Appellant and the Company and shall include a ruling as to how the costs of the appeal (including the remuneration of members of the Appeal Panel) shall be borne as between the Appellant and the Company.
- 11.9 Any decision by the Appeal Panel shall be without prejudice to the rights and obligations of each DCS Participant with respect to each Single Amount existing at the moment a DCS Participant is suspended or excluded in accordance with Rule 9 or determined at any time thereafter.
- 11.10 Pending an Appeal Panel decision, the Relevant Decision concerned continues to stand.
- 11.11 The Company expects a DCS Participant to, and the DCS Participant shall:
- (a) invoke the Appeals Process under this Rule 11 if a Relevant Third Party sponsored by that DCS Participant wishes the DCS Participant to do so in respect of a Relevant Decision and is prepared to fund its and the DCS Participant's costs associated with the Appeals Process, and inform any of its Relevant Third Parties affected by a Relevant Decision of the DCS Participant's obligation to invoke the Appeals Process in such circumstances; and
  - (b) have due regard and give due weight to the interests and concerns of the Relevant Third Party in its representations to the Appeal Panel in relation to the Appeals Process invoked under Rule 11.11(a) above and when determining the conduct of any appeal including, for the avoidance of doubt, bringing to the attention of the Appeal Panel any conflict between the views of the Relevant Third Party and the views of the DCS Participant.
- 11.12 The DCS Participant shall have no further obligation under Rule 11.11 at any time after the DCS Participant terminates its contractual relationship, or does not otherwise have such relationship, with the Relevant Third Party in respect of the Faster Payments Service.
- 11.13 Without prejudice to Rule 10, the Company may from time to time revise the Appeals Process upon giving the DCS Participants not less than 28 calendar days' prior



notice of such revisions. Such revisions shall have no effect on any appeals proceedings which have already been commenced at the time such revisions are published, unless the parties involved in the proceedings otherwise agree. Subject to any such agreement, any such procedures shall continue to be conducted pursuant to the Appeals Process in force at the time those proceedings were commenced.

**12. ASSURANCE PROCESS TO FACILITATE THE COMPANY'S ROLE AS SYSTEMIC RISK MANAGER**

- 12.1 Each Participant shall keep at its principal place of business detailed records of all activities carried out in connection with its participation in FPS including but not limited to any such records as may be expressly requested by the Company to be kept by the Participant for the purposes of the Reference Documents. Such records as described shall be kept for at least 6 years on a rolling basis and as may be necessary in accordance with applicable laws and regulations or good practice concerning the destruction of documents and for at least 6 years after the termination of the relevant Participation Agreement.
- 12.2 Each Participant shall respond, without delay, and provide appropriate answers to any annual or other self-certification or other questionnaire and/or other documents provided to it by the Company for response for the purposes of the Company's risk assessment and review process concerning:
- (a) the participation of that Participant in FPS;
  - (b) that Participant's security arrangements in connection with FPS;
  - (c) any matter concerning that Participant which may be materially prejudicial to FPS or represent a threat to the security, integrity or reputation of FPS; and
  - (d) compliance by that Participant with the terms of the relevant Participation Agreement, the Reference Documents and the FPS Rules.
- 12.3 Each Participant shall be required to confirm, represent and warrant to the Company that all answers and responses provided to the Company for these purposes will be true and accurate in all material respects and not misleading in any material respect including as to assurance with respect to its existing and continuing compliance with the relevant Participation Agreement, the Reference Documents and the FPS Rules.
- 12.4 Each Participant shall grant to the Company in its capacity as systemic risk manager and to any internal auditors, assurance and risk assessors appointed by the Company, and its authorised agents the right of access to any of its premises, its appropriate personnel and (and, if necessary, the right to copy) service records as the Company may reasonably require in order to:
- (a) conduct a risk assessment and review of the systems and processes of that Participant in relation to its participation in FPS including as regards any matter which

may be materially prejudicial to FPS or represent a threat to the security, integrity or reputation of FPS;

- (b) verify that that Participant is complying with the terms of the relevant Participation Agreement, the FPS Rules and the other Reference Documents;
- (c) verify that that Participant is complying with all applicable laws, statutes, bye-laws, regulations, orders, regulatory policies (including any requirement or notice of any regulatory body) applicable to its participation in FPS;
- (d) verify that that Participant is complying with the technical and operational requirements of FPS as set out in the FPS Rules and the Reference Documents;
- (e) identify suspected fraud or material accounting mistakes;
- (f) fulfil any request by a regulator in the course of carrying out its regulatory functions;
- (g) conduct internal and statutory audits including preparing any other reports required by any internal auditor or external auditor or regulator;
- (h) inspect any assets in that Participant's possession or control; and
- (i) inspect the integrity, confidentiality and security of systems and operations of that Participant applied for the purposes in relation to its participation in FPS.

12.5 The Company in its capacity as systemic risk manager and any internal auditors or other authorised agents of the Company may discuss any matter with any personnel of a Participant as the Company may reasonably require, and the Company will be under no obligation to inform that Participant of the objective of its investigations or such discussions.

12.6 The Company may provide to and discuss with a Participant the results of and details relating to its investigations, questionnaires, audits, verification exercises and other inspections conducted by or on behalf of the Company in respect of:

- (a) in the case of any DCS Participant, those Relevant Third Parties sponsored by that DCS Participant and any Aggregator providing services to such DCS Participant;
- (b) in the case of any other Participant, the relevant sponsoring DCS Participant and any Aggregator providing services to such Participant; and
- (c) in the case of any Aggregator, the Participants to which it provides the services of an

Aggregator,

and inform them of any risks, non-compliance or other concerns in respect of such Participant as the Company may have identified.

12.7 If any audit or other inspection by or on behalf of the Company demonstrates any non-compliance by a Participant of its obligations pursuant to the relevant Participation Agreement, the FPS Rules or the Reference Documents that Participant shall, without prejudice to any other rights and remedies the Company may have:

- (a) remedy the cause of such non-compliance as soon as reasonably practicable; and
- (b) in the circumstances of a material non-compliance, refund the Company all costs and expenses relating to such audit or inspection (including those of its advisers).

## 13. FINANCIAL OBLIGATIONS

### 13.1 FPS Operating Costs

13.1.1 The Company costs for operating FPS other than payments to the Supplier under the Supplier Agreement ("**FPS Operating Costs**") shall be determined by the Board. The FPS Operating Costs shall be payable by DCS Participants in the following proportions:

The proportion of the FPS Operating Costs payable by each DCS Participant shall be the total number of FPS payments which it submitted plus received as a proportion of the total number of all FPS payments submitted plus received by all DCS Participants in the period referred to below.

A DCS Participant will pay its share of the FPS Operating Costs half-yearly in advance. The period for the calculation of the FPS Operating Costs shall be the six months prior to the half-yearly call.

In the event a DCS Participant withdraws or is suspended or excluded from the FPS, the DCS Participant will not be entitled to a refund of its contribution to the FPS Operating Costs.

All payments in respect of invoices issued by the Company to Participants for direct participation will be collected by Direct Debit and accordingly all Participants shall provide the Company with all relevant details to enable payments to be made in this manner.

#### **Regulator Fees/Fines**

Any fees or fines levied on the Company by a regulator shall be payable by the DCS Participants. In the absence of the PSR or other relevant regulator determining in what proportions its fees/fines are to be paid by the DCS Participants, its fees/fines shall be paid by the DCS Participants in the proportions shown in Rule 13.1.1 unless agreed otherwise.

13.1.2 DCS Participants shall pay the Company for any Board approved costs to the Supplier not covered under Rule 13.2. Approved costs shall be payable by DCS Participants in the proportions shown in Rule 13.1.1 unless agreed otherwise.

## 13.2 **Supplier Costs**

13.2.1 DCS Participants and, in respect of the Monthly Fee the relevant DCS Participant, DCNSP, Aggregator, Third Party Beneficiary or Direct Agency, will pay the Supplier costs incurred by the Company as set out in Schedule 1. The Company has appointed the Supplier as its agent in respect of the invoicing of those costs, and the DCS Participants will pay those costs to the Supplier or any other invoicing agent that the Company may appoint for that purpose. Such payment to the Supplier or such other invoicing agent shall satisfy the obligation of the DCS Participants to pay the Company for those costs.

13.2.2 Each DCS Participant's obligation under Rule 13.2.1 extends for the period of time for which they are a DCS Participant and, in respect of the Monthly Fee, for the period of time the Monthly Fee is incurred by such DCS Participant, DCNSP, Aggregator, Third Party Beneficiary or Direct Agency.

13.2.3 Each DCS Participant shall indemnify the Company on demand against any Losses which the Company may suffer, incur or sustain as a result of that DCS Participant's failure to pay the costs in accordance with Rule 13.2.1.

## 13.3 **Share of Costs for Acceding DCS Participants**

### **An Acceding DCS Participant's contribution to FPS Operating Costs**

13.3.1 An Acceding DCS Participant will pay its share of the FPS Operating Costs from the date of the first half-yearly Company call in respect of the same following its accession. Such Acceding DCS shall pay its share of the FPS Operating Costs until the end of the six month period in which it withdraws, or is suspended or excluded from the FPS. An Acceding DCS Participant's contribution, from when it first falls due, shall be calculated in accordance with Rule 13.1 above.

### **An Acceding DCS Participant's contribution to Supplier Costs**

13.3.2 An Acceding DCS Participant will pay its share of the Supplier costs set out in Schedule 1 from the date of its accession and for the period of time for which they are a DCS Participant and/or, in respect of the Monthly Fee, for the period of time the Monthly Fee is incurred by such Acceding DCS Participant.

## 13.4 **– deleted due to new costs period calculation method**

## 13.5 **FPS Company Reserve**

13.5.1 The Company shall maintain a FPS Company Reserve equivalent to the costs of operating the Company for a period of eight months. The value remaining in the FPS Company Reserve shall be reviewed against FPS Operating Costs on at least an annual basis; this will normally form part of the annual budget review process.

From 1 January 2014 costs required to maintain or increase the FPS Company Reserve shall be payable by DCS Participants.

The proportion of the FPS Company Reserve payable by each DCS Participant shall be the total number of FPS payments which it submitted plus received in the preceding 12 months to the FPS Company Reserve call, expressed as a proportion of the total number of all FPS payments submitted plus received by all DCS Participants in that period.

13.5.2 An Acceding DCS Participant will pay its share of any increase to the FPS Company Reserve from the first call in respect of the same following the date of its accession. An Acceding DCS Participant's share of any increase to the FPS Company Reserve shall be the number of FPS payments which it submitted plus received in the preceding 12 months to the FPS Company Reserve call (or such less amount of time as it was a DCS Participant) expressed as a proportion of the total number of all FPS payments submitted plus received by all DCS Participants for the relevant 12 month period. .

13.5.3 A DCS Participant that withdraws from FPS (a Withdrawing DCS Participant) under Rule 9.1 shall not be entitled to any share of the Company Reserve.

13.5.4 If the value in the FPS Company Reserve is considered excessive any repayment to existing DCS Participants is at the Board's discretion.

### 13.6 **Direct Debit**

13.6.1 For as long as there is such a requirement on the Company, each Participant shall set up a direct debit in favour of the Company and/or the Supplier in respect of payments duly invoiced in accordance with the Supplier Agreement and the FPS Rules.

#### 14. GOVERNING LAW AND JURISDICTION

- 14.1 The FPS Rules shall be governed by and construed in accordance with the laws of England.
- 14.2 Any disputes in connection with the FPS Rules other than disputes to be resolved by the Appeals Process ("**Disputes**") shall be resolved in accordance with Rules 14.3 to 14.5.
- 14.3 This Rule 14.3 is for the benefit of each Participant and the Company. Subject as provided in Rule 14.4 below, each Participant and the Company agree that the courts of England have exclusive jurisdiction to settle any Disputes, submit to the exclusive jurisdiction of the courts of England in connection with the FPS Rules, and waive any objection to the English courts on grounds that they are an inconvenient or inappropriate forum to settle any such Dispute.
- 14.4 Nothing in the FPS Rules will limit the right of any DCS Participant or the Company to bring proceedings in connection with any Disputes against any Participant which is not incorporated in the United Kingdom (a) in the courts of any other Relevant Jurisdiction or (b) concurrently in the courts of England and/or in the courts of one or more Relevant Jurisdictions. For the purposes of this Rule 14.4, "**Relevant Jurisdiction**" means the country or territory where such DCS Participant or other Participant is incorporated or in any other country or territory where the court has jurisdiction.
- 14.5 Each Participant agrees not to bring or join the Company in any proceedings in any court other than the courts of England, or if the Company is incorporated in any other country or territory, in the courts of that country or territory.



## **15. MISCELLANEOUS**

### **15.1 Contracts (Rights of Third Parties) Act 1999**

15.1.1 Except to the extent otherwise expressly provided for in Rule 8 and Schedule 1 paragraph 5 of the FPS Rules, no person other than a DCS Participant, a DCNSP or the Company shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term (express or implied) of the FPS Rules but this is without prejudice to any right or remedy of the third party which may exist or be available apart from that Act.

### **15.2 Confidentiality**

15.2.1 Each Participant agrees to treat as confidential any information which comes into its possession as a result of its participation in FPS (including, for the avoidance of doubt, any information which comes into its possession as a result of its shareholding in the Company) where such information is by its nature confidential or where the Participant knows or should reasonably know it to be confidential. This Rule 15.2.1 does not apply to information which:

- (a) is already in the public domain when received; or
- (b) is subsequently brought into the public domain otherwise than by such Participant;  
or
- (c) was already known to the Participant at the time of receipt and was not acquired by the Participant under any obligation of confidence; or
- (d) was independently developed by the Participant without any use of confidential information provided by the Company.

A Participant may disclose such confidential information to its accountants, auditors, legal or other professional advisers, A Participant may disclose such confidential information if and to the extent required by applicable law or regulation in any jurisdiction. A Participant may disclose such confidential information if and to the extent required or requested by any court, competent regulatory or governmental authority, tax authority or securities exchange in any jurisdiction whether or not the requirement or request has the force of law and any other persons to whom a Participant is required by court order or by statutory or regulatory rule to disclose such information, and to other persons approved by the Company for disclosure of the type of confidential information concerned, provided that it takes

reasonable steps to procure that any such person maintains the confidentiality of that information.

15.2.2 The Company agrees to treat as confidential any information which comes into its possession as a result of its operation of FPS where such information is by its nature confidential or where the Company knows or should reasonably know it to be confidential. This Rule 15.2.2 does not apply to information which:

- (a) is already in the public domain when received; or
- (b) is subsequently brought into the public domain otherwise than by the Company; or
- (c) was already known to the Company at the time of receipt and was not acquired by the Company under any obligation of confidence; or
- (d) was independently developed by the Company without any use of confidential information provided by a Participant.

The Company may disclose such confidential information to the Company's accountants, auditors, legal or other professional advisers. The Company may disclose such confidential information if and to the extent required by applicable law or regulation in any jurisdiction. The Company may disclose such confidential information if and to the extent required or requested by any court, competent regulatory or governmental authority, tax authority or securities exchange in any jurisdiction whether or not the requirement or request has the force of law and any other persons to whom the Company is required by court order or statutory or regulatory rule to disclose or is permitted by the FPS Rules to disclose such information, and (in relation to a Participant) to other persons approved by that Participant or permitted by the FPS Rules for disclosure of the type of confidential information concerned, provided that the Company takes reasonable steps to procure that any such person maintains the confidentiality of that information.

### 15.3 **Freedom of Information Act 2000 ("FOIA") or Freedom of Information (Scotland) Act 2002 ("FOI(S)A")**

15.3.1 Where information is requested from a Public Authority DCS Participant under FOIA or FOI(S)A which:

- (a) was obtained by that Public Authority DCS Participant by virtue of its being a DCS Participant; and
- (b) may include information held by that Public Authority DCS Participant which:
  - (i) is subject to the confidentiality obligation in Rule 15.2.1;

- (ii) comprises Personal Data (as defined in the Data Protection Act 1998) of officials of the Company or employees or customers of other DCS Participants; or
- (iii) is information whose disclosure would be prejudicial to the commercial interests of the Company or another DCS Participant,

(such information being '**Information**'), and the Public Authority DCS Participant shall use all reasonable endeavours to seek the views of the Company, regarding whether the Information is Exempt Information, prior to disclosure of it.

15.3.2 The Company shall use all reasonable endeavours to consult with any affected DCS Participant(s) and respond to any such consultation within the time specified by the Public Authority DCS Participant. The Company's response shall not affect the right of any affected DCS Participant to make its own representations to the Public Authority DCS Participant. The Public Authority DCS Participant shall give proper consideration to whether the Information is Exempt Information. The Public Authority DCS Participant shall notify the Company and any affected DCS Participant which has made representations before disclosing any Information as a result of a FOIA or FOI(S)A request. For the avoidance of doubt, DCS Participants fully accept that the final decision as to whether to make a disclosure will be the Public Authority DCS Participant's alone.

#### 15.4 **Notices**

15.4.1 Where formal communication is required in the FPS Rules, the notices procedures in the DCS Participation Agreement or other Participation Agreement shall apply.

## SCHEDULE 1

### DCS PARTICIPANT COMMITMENT TO THE SUPPLIER AGREEMENT

**This is an extract from the Agreement between the Company and VocaLink. In this Schedule 1 (including Annex A and Annex B) the term ‘Scheme Operator’ should be taken to mean the Company (and for the purposes of the FPS Rules all rights and obligations on the part of the Scheme Operator set out in this Schedule 1 (including Annex A and Annex B) shall be deemed to be rights and obligations of the Company), the term ‘VocaLink’ should be taken to mean the Supplier, the term ‘Agency’ should be taken to mean Direct Agency (and for the purposes of the FPS Rules all rights and obligations on the part of an Agency set out in this Schedule 1 (including Annex A and Annex B) shall be deemed to be rights and obligations of a Direct Agency) and the term ‘Member’ should be taken to mean DCS Participant and for the purposes of the FPS Rules all rights and obligations on the part of a Member or the Members set out in this Schedule 1 (including Annex A and Annex B) shall be deemed to be rights and obligations of a DCS Participant and the DCS Participants respectively.**

1. Under the terms of the VocaLink Agreement the System Operator has undertaken various legally binding commitments for the Initial Term. In particular:
  - (a) the System Operator has undertaken to pay (or procure payment of) the Charges to VocaLink (set out in Schedule 3 of the VocaLink Agreement) for provision of the Managed Services, including:
    - (i) the relevant fee for on-boarding services for each New Member or New Participant;
    - (ii) a Monthly Fee for each Member, Third Party Beneficiary and Direct Agency that connects directly to the Central Infrastructure<sup>1</sup>;
    - (iii) Volume Fees to cover the Anticipated Annual Volume;
    - (iv) any Additional Volume Fees; and
    - (v) additional costs in relation to use of the DCA or FIM facility;
  - (b) VocaLink may recover costs that it reasonably and properly incurs as a result of any Relief Events;
  - (c) VocaLink is entitled to require payment of the Early Termination Fee if the System Operator chooses to terminate the VocaLink Agreement early for convenience during the Initial Term; and

- (d) the System Operator has appointed VocaLink as its invoicing agent which will invoice each Member directly for its proportion of the relevant Charges that are properly due under the VocaLink Agreement.
2. Each Member<sup>1</sup> shall irrevocably pay the System Operator in full (without set-off, deduction or withholding) the following Charges and other sums that are properly due and payable in accordance with the provisions of the VocaLink Agreement (except to the extent that, in good faith, the Member has notified the System Operator and VocaLink that it disputes any of those Charges or other sums):
- (a) the relevant fee for on boarding services as set out in Schedule 3 of the VocaLink Agreement for each New Member or New Participant;
  - (b) the Monthly Fees applicable to the Member, as set out in, Schedule 3 of the VocaLink Agreement for the Member, each Responding Third Party Beneficiary each Agency and each Non-Responding Third Party Beneficiary that connects directly to the Central Infrastructure whom the Member sponsors;
  - (c) the proportion of the applicable Volume Fee for each Year of the Term, asset out in Annex A of this Schedule, which shall be payable by the Member irrespective of the number of Chargeable Transactions that the Member actually makes (or does not make) during each Year;
  - (d) to the extent that the Anticipated Annual Volumes are, in aggregate, exceeded by the Members in each Year, any Additional Volume Fees attributable to the Member (which shall not (subject to any inflationary increases referred to in paragraph 2(b) above) exceed the maximum amount per Chargeable Transaction in Schedule 3 of the VocaLink Agreement) in relation to Chargeable Transactions submitted in that Year by the Member, or by Agencies, FIM-only agencies or corporates whom the Member sponsors, and the amount of the Additional Volume Fees attributable to the Member shall be calculated using the formula set out in Annex B of this Schedule;
  - (e) in addition to the Volume Fees and any Additional Volume Fees applicable to the Member, any Charges in relation to submissions made through DCA or FIM facilities by FIM-only agencies or corporates whom the Member sponsors as set out in Schedule 3 of the VocaLink Agreement;
  - (f) the proportion of any Early Termination Fee or of any other payment made on termination or expiry, including as a result of a Force Majeure Event or Exit Migration

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<sup>1</sup> Note: any reference to a Member in Schedule 1 means a DCS Participant for the purposes of the FPS Rules

(as defined in the VocaLink Agreement), that is the same as the proportion of Monthly Fees and Volume Fees that was paid and/or payable by the Member<sup>2</sup> for the Year preceding the Year in which notice of early termination of the VocaLink Agreement is served (where the VocaLink Agreement expires, the relevant reference Year in this regard shall be the final Year of the Initial Term);

- (g) interest paid on any late payment of sums due from the Member under the VocaLink Agreement (including incorrectly disputed Charges);
- (h) an amount equivalent to all costs properly incurred by the System Operator under and in accordance with the VocaLink Agreement as a result of a Relief Event to the extent that the Relief Event arises as a result of the Member's acts or omissions;
- (i) the proportion of all other costs properly incurred by the System Operator under and in accordance with the VocaLink Agreement, that is the same as the proportion of Monthly Fees and Volume Fees paid and/or payable by the Member in the Year prior to the Year that such costs were incurred by the System Operator, or as otherwise agreed in good faith between Members and the System Operator, including as a result of Changes agreed between the System Operator and VocaLink; and
- (j) an amount equivalent to any VAT that is or becomes properly chargeable on the sums referred to in the sub-paragraphs 2(a) to 2(i) above.

3. Unless otherwise agreed in writing with the System Operator, this Schedule 1 does not guarantee payment by the Member of, and no Member shall be liable for, payment of any amounts due to the System Operator by any other Member, and the Member's share of liability to the System Operator under this Schedule 1 will not increase if any other Member defaults on its payment obligations to the System Operator in relation to this Schedule 1 or the VocaLink Agreement. Each Member's maximum liability to the System Operator under this Schedule 1 shall not exceed the sum of the amounts referred to in paragraph 2 above in respect of that Member.

4. The System Operator shall promptly pay or return to the Member the relevant share of any overpayment of Charges, damages or other sums that the System Operator obtains or recovers from VocaLink under the VocaLink Agreement and which may be due to Members from time to time in relation to the Faster Payments Service.

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<sup>2</sup> Where an Aggregator directly connects to the CI, the Aggregator will be charged the Monthly Fee

5. This Schedule 1 does not confer any rights on any third parties under the Contracts (Rights of Third Parties) Act 1999, except that VocaLink shall have the benefit of the System Operator's rights under:
- (a) paragraph 2 of this Schedule 1, solely to procure payment to the System Operator of all undisputed Charges that have not been paid by a Member to the System Operator (or to VocaLink on the System Operator's behalf). However, VocaLink may not bring any action to enforce this paragraph 6 unless:
    - (i) undisputed Charges that are due and payable by that Member remain outstanding for more than 60 days from the date on which payment was due and payable;
    - (ii) VocaLink has served written notice on that Member (copied to the System Operator) of non-payment of Charges explaining that undisputed Charges due and payable by that Member remain outstanding and that VocaLink intends to seek recovery of the payment of those Charges (on behalf of the System Operator) unless that Member makes full payment of those Charges to the System Operator within 10 days of that Member's receipt of the notice of non-payment; and
    - (iii) that Member has not made payment of those undisputed and unpaid Charges within 10 days of receiving such notice of non-payment.



## Annex A Proportion Of

### Volume Fees

The total Volume Fees are set out in Schedule 3 of the VocaLink Agreement.

This Annex A sets out the method of calculating the Volume Fees payable by each Member<sup>3</sup> in respect of Chargeable Transactions made by that Member in a Year, where the aggregate Chargeable Transactions processed in that Year are equal to or less than the Anticipated Annual Volume for that Year.

If the aggregate number of Chargeable Transactions processed in a Year is greater than the Anticipated Annual Volume for that Year, each Member shall pay its Volume Fees together with any Additional Volume Fees (as set out in Annex B).

A Member's Volume Fees for any Year are calculated as being the total Volume Fees for the relevant Year multiplied by the Member's Base Proportion;

Where:

A Member's **Base Proportion** is the number of Faster Payments which that Member sent and received through Faster Payments in the preceding year ending 31 May expressed as a percentage of the total number of Faster Payments transactions sent and received by all Members in the preceding year ending 31 May;

**Chargeable Transaction** has the meaning given to it in the VocaLink Agreement

## Annex B

### Proportion of Additional Volume Fee

Where the total number of Chargeable Transactions processed in a Year is greater than the Anticipated Annual Volume for that Year, additional Volume Fees are payable to VocaLink (**Additional Volume Fees**).

The proportion of the Additional Volume Fees (if any) payable by each Member<sup>4</sup> shall be calculated in accordance with the following formula:

$$\frac{X}{Y} \text{ multiplied by } \text{£Z}$$

Where:

**X** is the number of Chargeable Transactions sent by a Member in a Year in excess of the figure reached by multiplying that Member's Base Proportion by the Anticipated Annual Volume in that Year;

**Y** is the aggregate number of Chargeable Transactions sent by all Members in that Year in excess of the Anticipated Annual Volume; and

**£Z** is the Additional Volume Fees for that Year.

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<sup>4</sup> Note: any reference to a Member in Annex B means a DCS Participant for the purposes of the FPS Rules

## SCHEDULE 2

### REFERENCE DOCUMENTS

These FPS Rules, together with:

Aggregator Admission Criteria

Bank Reference Data for FPS Functional Specification (PN7723)

Bank Reference Data - Member's Guide (PN5005)

Data Protection Audit Procedure

Deed of Charge

External Interface Specification

Faster Payments Member, Agency and Scheme Guide (IPL00115)

FPS Customer Reference Data Functional Specification (IPL00471)

FPS EISCD Technical Specification (PN7677)

FPS Participant Risk Assurance Policy

FPS Procedures

FPS Reference data manual - Member and scheme agency guide (IPL00114)

FPS Security Policy

Functional Specification

Industry Sorting Code Directory Procedures Manual

Collateralisation Accounts Agreement DCS

Participation Agreement

Security Code of Conduct

Settlement Service Provider Agreement

Validating account numbers UK modulus checking (PN6111)

The Company may require a prospective Participant to sign a Non-Disclosure Agreement (NDA) with the Company before being provided with the documents above in this Schedule. This is required to protect the security and intellectual property of the Faster Payments Scheme.