

Open Banking Terms and Conditions for API Providers (“Terms”)

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Version: 2.0

Classification: PUBLIC

1. General

- 1.1 These Terms are to be read in conjunction with the rest of the Participation Conditions, but in particular the Guidelines for Open Data Participants, the Complaints and Dispute Resolution Procedure, the Service Levels and the Standards. In the event of any conflict these Terms will take precedence over the other parts of the Participation Conditions.
- 1.2 These Terms are to be read separately from the Open Banking Terms and Conditions and Conditions for ASPSPs.
- 1.3 In these Terms, capitalised terms have the meanings given to them in the Definitions in Schedule 1.

2. Scope of the Terms

- 2.1 These Terms set out the respective roles and responsibilities of Open Banking and Mandatory API Providers in compliance with the CMA Order together with those of Voluntary API Providers participating in the Open Banking Services and govern the contractual relationship between Open Banking and all API Providers.

3. API Provider Obligations

- 3.1 Each API Provider will carry out the processes associated with its role in the Open Banking Services as set out in the Participation Conditions. Each API Provider will be bound by and will be responsible for its obligations under these Terms until such time as the Terms are rescinded or replaced. Open Banking will not be responsible for the performance of any obligation or duty owed by any API Provider under the Participation Conditions.
- 3.2 Each API Provider (which includes a Third Party Provider acting on its behalf) will ensure that:
 - (a) all Product Data, Reference Data, SQI Data (or any other data agreed between the Parties from time to time) which it makes available through the Open Banking APIs is created and made available in accordance with the Standards and shall be as accurate, comprehensive and up to date as reasonably practicable when made available. To the extent that any Product Data, Reference Data, SQI Data (or any other data agreed between the Parties from time to time) made available by an API Provider through the Open Banking APIs is not accurate or up to date due to formatting requirements of the Standards, the API Provider shall notify Open Banking in accordance with the Services Levels and/or as appropriate the change management process in the Guidelines for Open Data Participants. The

Parties shall use best endeavours to agree an appropriate solution to address the issue to the formatting requirements, failing which, any Complaint arising under this Clause 3.2(a) shall be resolved in accordance with the Complaints and Dispute Resolution Procedure;

- (b) notwithstanding the requirements in Clause 3.3.(b)(i), there are no corruptions or failures in the content or structure of Open Data made available on the Open Banking APIs;
- (c) the Open Banking APIs are developed and maintained in accordance with the Standards;
- (d) all appropriate testing is carried out on the Open Banking APIs to ensure that the Open Banking APIs meet the Standards. The API Providers will, on request, provide evidence and the outputs of such testing to Open Banking in such format as reasonably requested by Open Banking. Open Banking hereby excludes any and all liability arising from reliance on the evidence and outputs provided under this Clause 3.2(d).

3.3 API Provider Responsibilities

- (a) Each API Provider is responsible for ensuring that it has all it needs to make available Open Data in accordance with the Service Levels and to perform its obligations under the Participation Conditions.
- (b) Each API Provider is responsible for the operation and security of its Participant System and will:
 - (i) take reasonable steps to prevent the introduction by its agents or personnel of any computer viruses (including worms, trojan horses or other contaminants, and any code which can be used to access, modify, delete or damage any data, files or other computer programs) into any Open Data made available through the Open Banking APIs; and
 - (ii) take any and all action reasonably required and which is within its power to exclude any API User engaging in DOS or DDOS attacks or similar on the Open Banking APIs from access to the Open Banking APIs. Where such attacks are detected by an API Provider, that API Provider will also provide relevant details to Open Banking with the understanding that Open Banking may use this detail to help other API Providers.

3.4 Each API Provider:

- (a) agrees and acknowledges that they may be required to co-operate with Regulators from time to time, or as required by law, as part of their participation in the Open Banking Services;

- (b) must provide details of their API and API connectivity process, to any API User who requests it using the correct format and through the correct channels, within the defined Service Level of the initial request. Where the API Provider fails to comply with this deadline, the requesting API User may make a formal complaint to Open Banking;-

subject to both Participants being entered on the Directory;

- (c) is, subject to the Service Levels, required to make Product Data, Reference Data, SQI Data (or any other data agreed between the Parties from time to time) available via the Open Banking APIs on a 24/7 basis;
- (d) that has a concern about the operation or conduct on an API User, must raise it immediately with Open Banking, who may invoke an investigation and deliver a decision on the issue. Where Open Banking is unable to make a decision, the matter will be dealt with in accordance with the Complaints and Dispute Resolution Procedure; and
- (e) must adhere to the Security Standards.

4. Open Banking Obligations

- 4.1 Open Banking will provide the services set out in Clause 4.2 below and perform all of its other obligations under the Participation Conditions and CMA Order with reasonable skill and care and in accordance with Applicable Law and best industry practice (including appropriate business continuity arrangements).
- 4.2 Open Banking shall ensure that it carries out the following obligations prior to, and where applicable, implemented by, 31 March 2017 and thereafter maintain:
 - (a) agreeing, implementing, maintaining, operating and making widely available, without charge, open and common banking standards for the 'Read-only Data Standard';
 - (b) creating, operating and maintaining the Directory;
 - (c) creating and maintaining the Guidelines for Open Data Participants;
 - (d) providing and operating the rules for the Complaints and Dispute Resolution Procedure, change and incident management; and
 - (e) publishing the Open Banking APIs as URLs on the Open Banking Website.

5. Service Levels

- 5.1 Each API Provider will perform its obligations under the Participation Conditions in accordance with the Service Levels. Open Banking shall have the right to publish details of compliance or non-compliance with the Service Levels in accordance with Clauses 3.4(b), 5.2(b) and 13.
- 5.2 Each API Provider will:
- (a) ensure that its Participant System is capable of measuring and recording its performance of the obligations under these Terms against the Service Levels; and
 - (b) retain a record of its performance against the Service Levels and will make that record available to Open Banking on reasonable request. Open Banking shall have to right to publish and disclose that record to any third party that it deems necessary.

6. Status of Open Data

- 6.1 Each API Provider (which includes a Third Party Provider acting on its behalf) agrees that Open Data and any other information provided pursuant to the Participation Conditions will be admissible evidence in the Complaints and Dispute Resolution Procedure and before any court or Regulator.
- 6.2 Audit Trail
- (a) Each API Provider must retain its Audit Trail: (a) in respect of all Product Data, for a minimum period of six years, and (b) in respect of all Reference Data, for a minimum period of twelve months; in each case from the date on which the Open Data made available is called through the Open Banking APIs. The obligation in this Clause 6.2(a) will survive the cessation of the API Provider's participation in the Open Banking Services.
 - (b) Each API Provider may produce and rely on any part of its Audit Trail and any Open Data in its possession or control to facilitate the resolution of a Complaint which arises out of, or in connection with, the Participation Conditions.
 - (c) Any API Provider may be required to produce its Audit Trail in the Complaints and Dispute Resolution Procedure.

7. Directory

- 7.1 All API Providers are required to enrol with Open Banking in order to participate in the Open Banking Services.
- 7.2 Pursuant to the Open Banking Services, Open Banking will create and maintain the Directory in respect of each API Provider and shall have the right to collect such information as it reasonably deems necessary on each API Provider as part of the enrolment process and from time to time thereafter.
- 7.3 API Providers will use best endeavours to notify Open Banking of any changes to any of their details provided pursuant to Clause 7.2 promptly and in any event within five Business Days following the date of the relevant change, and Open Banking will update the Directory to reflect such updated details promptly and in any event within two Business Days following receipt of the relevant API Provider's notification.
- 7.4 Open Banking shall act reasonably and objectively in deciding whether to accept an application for entry in the Directory from a prospective Voluntary API Provider.

7.5 Resignation by a Voluntary API Provider

- (a) Any Voluntary API Provider may end its participation in the Open Banking Services (the "Resigning API Provider") by giving Open Banking at least 20 Business Days written notice.
- (b) On or after the date when Open Banking receives notice from a Resigning API Provider, Open Banking will have the right to publish a written notice stating that the Resigning API Provider will cease to be an API Provider of the Open Banking Services because it has resigned together with the time and date when such cessation will take effect, and will update the Directory accordingly.

8. Intellectual Property Rights

8.1 No transfer of Intellectual Property Rights

Except as expressly provided in the Participation Conditions, neither Party will acquire any proprietary rights, title or interest in or to any Intellectual Property Rights of the other Party or any other Participant pursuant to the Participation Conditions.

8.2 Licence of Brands

- (a) Open Banking grants a revocable, non-exclusive, non-transferable royalty-free licence to each Participant to use and reproduce the Open Banking Brand for the purposes of fulfilling the Participants' obligations, exercising its

rights as part of the Open Banking Services and publicising its participation in the Open Banking Services.

- (b) Each API Provider grants or procures the grant of a revocable, non-exclusive, non sub-licensable (subject to Clause 8.2) non-transferable royalty-free licence to Open Banking to use and reproduce their respective API Provider Brand for the purposes of publicising the API Providers participation in the Open Banking Services on the Open Banking Website.

8.3 Ownership and use of Audit Trail, Open Data and other Information

- (a) Each of the Parties acknowledges and agrees that all Intellectual Property Rights in any Audit Trail, Open Data or other information will at all times remain with the Party or Participant from which such Audit Trail, Open Data or other information originated (or its licensors), whether the Audit Trail, Open Data or other information is in human or machine readable form.
- (b) Each API Provider ("Licensor") hereby grants to Open Banking ("Licensee") a perpetual, non-exclusive, non-transferable, royalty-free licence in respect of all Audit Trails, Open Data and/or information which is owned by (or licensed to) the Licensor and provided to the Licensee (such Audit Trails, Open Data and information being "Licensed Data") to access, use, reproduce (in whole or in part), store, electronically distribute, and display the Licensed Data (in paper, electronic or any other form) solely for the purposes of carrying out the Licensee's obligations, or exercising the Licensee's rights, under the Participation Conditions.

8.4 Licence of the Documentation

- (a) Open Banking hereby grants to each API Provider a limited, revocable, non-exclusive, non-transferable, non sub-licensable (subject to Clause 15.2) royalty-free licence, for the duration of such API Provider's participation in the Open Banking Services, to use, distribute and copy the Documentation solely to the extent necessary to carry out the API Provider's obligations under the Participation Conditions.
- (b) Each API Provider shall only use, distribute or copy the Documentation as expressly provided in this Clause 8.4.
- (c) No API Provider shall delete, remove or in any way obscure any proprietary notice of Open Banking on any copy of the Documentation or part thereof.

9. Confidential Information

- 9.1 In relation to any Confidential Information accessed by or disclosed to any Party ("**Recipient**") by or on behalf of another Party ("**Disclosing Party**"), the Recipient undertakes to the Disclosing Party:

- (a) to keep all such Confidential Information confidential;
- (b) not to use any such Confidential Information for any purpose other than the purpose for which it is supplied under the Participation Conditions;
- (c) not to disclose any such Confidential Information except to its employees, agents or sub-contractors if and to the extent they need to know such Confidential Information to perform the Recipient's obligations under the Participation Conditions or in connection with the proper operation of the Open Banking Services in accordance with the Participation Conditions and provided always that they will not use any such Confidential Information for any purpose other than the purpose for which it is supplied under the Participation Conditions;
- (d) to use its best endeavours to prevent the disclosure of any such Confidential Information to, or access to any such Confidential Information by, any third party without the prior written consent of the Disclosing Party; and
- (e) to use a reasonable degree of care to protect all such Confidential Information and in any event not less than the degree of care which the Recipient uses to protect its own Confidential Information.

9.2 The obligations of confidentiality in this Clause 9 will not apply to any Confidential Information to the extent that the information:

- (a) concerns the API Provider's participation in the Open Banking Services. Each API Provider hereby consents to the publication of the fact that it is a API Provider of the Open Banking Services and to the publication by Open Banking of any notice pursuant to Clause 13.5;
- (b) is in, or comes into, the public domain other than as a result of a breach of this Clause 9 or any other duty of confidentiality relating to such information;
- (c) was, is or becomes available to the Recipient on a non-confidential basis from a person who is not bound by any obligation of confidence in respect of, or otherwise prohibited from disclosing, such information to the Recipient;
- (d) was known to the Recipient before its disclosure by the Disclosing Party; or
- (e) is developed by or for the Recipient independently of the information disclosed by the Disclosing Party.

9.3 Each Party will be permitted to disclose any Confidential Information to the extent it is required to do so:

- (a) to enable the Recipient to perform its obligations, or exercise its rights, under the Participation Conditions;
- (b) by any Applicable Law or by any court, arbitral or administrative tribunal in the course of proceedings before it, any government agency or regulatory

body lawfully requesting the same or by the regulations of any stock exchange provided that (to the extent not prohibited by law or order of court, arbitral or administrative tribunal, government agency or regulatory body, or stock exchange regulation) the Recipient promptly notifies and consults with the Disclosing Party in advance in relation to the timing and content of such disclosure; or

(c) in order to give proper instructions to any professional adviser of the Recipient who has an obligation to keep such Confidential Information confidential.

9.4 The Recipient will comply promptly with any and all reasonable instructions given by the Disclosing Party, from time to time, in connection with the use of all or any of the Confidential Information of or relating to the Disclosing Party; and/or

9.5 The Recipient will not acquire any right in, or title to, any Confidential Information belonging or relating to the Disclosing Party.

9.6 The obligations in this Clause 9 will survive the cessation of the Disclosing Party's and/or the Recipient's participation in the Open Banking Services.

10. Warranties

10.1 The API Provider warrants, represents and undertakes to Open Banking that:

(a) it has the necessary rights to perform its obligations under the Participation Conditions;

(b) it has full legal authority to enter into the Participation Conditions;

(c) all information provided by or on behalf of such API Provider to Open Banking is accurate and complete; and

(d) each representative of its operational team, and each representative of its senior management to whom Complaints are to be referred pursuant to the Complaints and Dispute Resolution Procedure has full authority to bind such API Provider in relation to any Complaint referred to such representative.

10.2 Open Banking warrants, represents and undertakes to the API Provider that:

(a) it has the necessary rights to perform its obligations under the Participation Conditions; and

(b) it has full legal authority to enter into the Participation Conditions.

10.3 To the fullest extent permitted by law, and unless expressly set out to the contrary in the Participation Conditions, all warranties and terms which would otherwise be implied by law, custom or usage are excluded from the Participation Conditions.

11. Compliance with Laws and Regulations

- 11.1 Each API Provider is responsible for ensuring that it, its subcontractors, agents, nominees and anyone carrying out its obligations under these Terms on its behalf, comply with any Applicable Law governing the provision of Open Data.
- 11.2 Nothing in the Participation Conditions will require an API Provider to perform any obligation or to take or omit taking any action that would place it in breach of any Applicable Law.
- 11.3 Each API Provider will promptly provide, at its own cost and expense, all information within its possession or control that is reasonably requested by Open Banking to enable Open Banking to comply with Applicable Law or to comply with an information request from a Regulator. All information disclosed by an API Provider under this Clause 11.3 will be treated as Confidential Information as set out in Clause 9.

12. Terms Governing the Liability of Each Party

- 12.1 Nothing in the Participation Conditions will exclude or limit a Party's liability under or in connection with the Participation Conditions:
 - (a) for death or personal injury resulting from the negligence of that Party or its officers, agents, employees or sub-contractors;
 - (b) for fraud or fraudulent misrepresentation;
 - (c) to any Regulator; or
 - (d) for any other matter in respect of which liability cannot by Applicable Law be excluded or limited.
- 12.2 Except as set out in Clause 12.1, no Party will be liable to another Party (for negligence, breach of contract or otherwise) for any Loss.
- 12.3 To the extent permitted by Applicable Law, Open Banking hereby excludes all liability that it may incur under the Participation Conditions.
- 12.4 Each Party will use its reasonable endeavours to minimise and mitigate any Loss for which it is entitled to bring a claim against another Party pursuant to Clause 12.1.
- 12.5 Nothing in these Terms shall prevent any Regulator from imposing financial or administrative penalties on API Providers notwithstanding the provision of the Participation Conditions.

13. Suspension and Exclusion from the Directory

13.1 Once accepted by Open Banking, each API Provider is entitled to participate in the Open Banking Services unless and until its participation is excluded or suspended by Open Banking in accordance with Clauses 13.2 or 13.3 or it resigns pursuant to Clause 7.5.

13.2 Suspension by Open Banking

- (a) Open Banking may, at all times acting reasonably, suspend any API Provider (the "Suspended API Provider") from the Open Banking Services with immediate effect with notice on reasonable grounds which may include (without limitation):
 - (i) if Open Banking would be entitled to exclude such API Provider from participation in the Open Banking Services pursuant to Clause 13.3;
 - (ii) if Open Banking has given such API Provider notice to exclude it from participation in the Open Banking Services pursuant to Clause 13.3, in respect of all or any part of the period until such exclusion notice takes effect; or
 - (iii) if Open Banking has reasonable grounds to suspect that the API Provider's continued participation in the Open Banking Services poses a serious and imminent threat to other Participants and / or the Open Banking APIs.
- (b) Any suspension may take effect on issuance of the suspension notice or the exclusion notice referred to in Clause 13.2(a)(ii)(or such later date as is specified in the suspension notice) and will continue for the period specified in the suspension notice or, if applicable, until the exclusion notice takes effect.
- (c) At the end of any period of suspension the Suspended API Provider will be reinstated to full participation in the Open Banking Services unless such API Provider is excluded from participating in accordance with Clause 13.3 or Clause 14.6(b) or such API Provider resigns in accordance with Clause 7.5 or Clause 14.6(c).
- (d) Any suspension will be without prejudice to Open Banking's right to exclude such API Provider's participation in the Open Banking Services on the same or other grounds pursuant to Clause 13.3.

13.3 Exclusion by Open Banking

Other than in respect of a Mandatory API Provider, Open Banking may exclude any API Provider from participating in the Open Banking Services by giving such API Provider (the "Excluded API Provider") reasonable written notice:

- (a) if such API Provider has committed a material breach of the Participation Conditions and, if such breach is capable of remedy, has failed to remedy the same within five Business Days of receipt of notice of the breach;

- (b) if such API Provider has committed a serious and persistent breach of the Participation Conditions;
- (c) if such API Provider:
 - (i) stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay its debts as they fall due.
 - (ii) has a moratorium declared in respect of any of its indebtedness.
 - (iii) other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies, a solvent reconstruction or pursuant to any action as a result of Applicable Law including (without limitation) any resolution legislation applicable which the aim of safely and effectively resolving a financial institution or its group in financial difficulties, has any action, proceedings, procedure or step taken against it for:
 - (1) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise); or
 - (2) the composition, compromise, assignment or arrangement with any creditor; or
 - (3) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of it or any of its assets; or
 - (4) the enforcement of any Security over any of its assets.
 - (iv) commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its Indebtedness (because of actual or anticipated financial difficulties).
 - (v) has any event occur in relation to it similar to those in Clause 13.3(c)(i) to (iv) under the laws of any applicable jurisdiction.

For the avoidance of doubt, if an API Provider is engaged in the resolution of a Complaint through the Complaints and Dispute Resolution Procedure, Open Banking shall only exercise its right to exclude such API Provider pursuant to this Clause 13.3 once the Complaints and Dispute Resolution Procedure has been concluded.

13.4 Process for suspension or exclusion by Open Banking

- (a) On or after the date on which a suspension or exclusion notice served on an API Provider takes effect:
 - (i) Open Banking will give the API Provider to which such suspension or exclusion notice relates:

- (1) a summary of the reasons why such API Provider's participation in the Open Banking Services has been (or is proposed to be) suspended or excluded; and
 - (2) the date of the meeting at which such suspension or exclusion will be considered (the "Sanction Meeting"); the Sanction Meeting will be held within ten Business Days following the date on which the suspension or exclusion notice is received by the relevant API Provider;
- (ii) the API Provider to which any suspension or exclusion notice relates will be entitled to:
- (1) submit written representations and supporting evidence to Open Banking, and any such representations and supporting evidence will be considered by Open Banking at the Sanction Meeting at which its suspension or exclusion will be considered; and
 - (2) attend (with or without a professional adviser) and speak (itself or through its professional adviser) at such Sanction Meeting in relation to its suspension or exclusion; and
- (iii) Open Banking will notify such API Provider in writing after the date of the Sanction Meeting whether its suspension (or proposed suspension, as appropriate) or exclusion is confirmed (and the period of such suspension or exclusion and the reasons for it) or lifted and, if registered, will update the Directory accordingly.

13.5 Notice of suspension or exclusion

- (a) On or any time after the Business Day that Open Banking suspends or excludes any API Provider pursuant to Clause 13.2 or 13.3, Open Banking will have the right to publish a written notice stating:
- (i) that the API Provider in question has been suspended or excluded from participation in the Open Banking Services;
 - (ii) the reason for such suspension or exclusion;
 - (iii) the time and date when such suspension will take effect and the period of such suspension or exclusion,

and will update the Directory accordingly.

13.6 Consequences of suspension or exclusion

- (a) For so long as any API Provider is suspended or excluded from the Open Banking Services:
- (i) such Suspended API Provider will not be entitled to exercise any of its rights under the Participation Conditions; and
 - (ii) any other Participant who deals or communicates with the

Suspended API Provider does so at its own risk without the benefit of such Suspended API Provider's participation in the Open Banking Services.

- (b) Termination or suspension of the Participation Conditions in respect of any Party or any Participant for any reason will not affect any rights and/or obligations of any Participant which have accrued before such exclusion or suspension, or any provision of the Participation Conditions which expressly or by implication is intended to come into effect or to continue in effect on or after such exclusion or suspension.

14. Relief Events and Force Majeure

- 14.1 A Party will not be responsible for any delay in performing or failure to perform any of its obligations under, or deemed to be in breach of the Participation Conditions if and to the extent that the delay or failure directly results from a failure of another Party to perform its obligations in accordance with the Participation Conditions.
- 14.2 **"Event of Force Majeure"** means an event which falls within one or more of the following categories:
 - (a) riot, civil unrest, military action or terrorism;
 - (b) damage to or destruction of premises or equipment;
 - (c) fire, flood, storm, earthquake or other natural disaster;
 - (d) industrial action, strikes or lock-outs by employees of third parties (excluding suppliers, agents or sub-contractors of the affected Party except where no substitute is reasonably available);
 - (e) DOS or DDOS attacks on Participant Systems or the Open Banking APIs which results in the API Provider being forced to suspend its Participant System; or
 - (f) exercise of emergency powers by any governmental authority whether national, regional or local, and which in each case was beyond the affected Party's reasonable power to control.
- 14.3 Subject to Clauses 14.4 and 14.5, to the extent that any Party is prevented from performing any of its obligations under the Participation Conditions by an Event of Force Majeure, then that Party's obligation to perform such obligations under the Participation Conditions will during the continuation of the relevant Event of Force Majeure be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances of the Event of Force Majeure.
- 14.4 Any API Provider claiming to be affected by an Event of Force Majeure shall on becoming aware of any Event of Force Majeure which gives rise, or which is likely to give rise, to any failure or delay in the performance of any of its obligations under the Participation Conditions, Open Banking as soon as reasonably practicable, giving details of the Event of Force Majeure, the obligations on its part which are affected

and its reasonable estimate of the period for which such failure or delay will continue.

- 14.5 Any API Provider claiming to be affected by an Event of Force Majeure will not be entitled to invoke the provisions of Clause 14.3 unless it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Event of Force Majeure.
- 14.6 If a Voluntary API Provider is prevented from, or delayed in, performing any of its obligations under the Participation Conditions by an Event of Force Majeure which continues for more than six months, then:
- (a) any other Participant may propose to Open Banking that the affected API Provider be excluded from participation in the Open Banking Services;
 - (b) Open Banking may exclude the affected API Provider from participating in the Open Banking Services by giving not less than two Business Days' written notice of such exclusion to the affected API Provider; or
 - (c) the affected API Provider may end its own participation in the Open Banking Services by giving not less than two Business Days' written notice of such to Open Banking.
- 14.7 Open Banking will not be entitled to invoke the provisions of Clause 14.3 unless Open Banking:
- (a) on becoming aware of any Event of Force Majeure which gives rise, or which is likely to give rise, to any failure or delay in the performance of any of its obligations under the Participation Conditions, promptly notifies each Participant who is (or is likely to be) impacted by such failure or delay, giving details of the Event of Force Majeure, the obligations on its part which are affected and its reasonable estimate of the period for which such failure or delay will continue, and posts the same information on the secure Participants-only area of the Open Banking Website; and
 - (b) takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Event of Force Majeure.
- 14.8 No Party will be entitled to terminate Open Banking's participation in the Open Banking Services because Open Banking is affected by any Event of Force Majeure.

15. Assignment and Sub-Contracting

- 15.1 The Participation Conditions are personal to each of the Parties. Open Banking may assign, novate or transfer in any way, or charge the benefit of, any of its rights, liabilities or obligations under the Participation Conditions on a temporary or permanent basis to any third party on written notice to the API Providers through the Open Banking Website. Each API Provider may assign, novate or transfer in any way, or charge the benefit of, any of its rights, liabilities or obligations under the Participation Conditions on a temporary or permanent basis only to another member of the group of companies to which it belongs as part of a solvent restructuring of the API Provider or any part of the group of companies to which it belongs. Each API Provider may assign, novate or transfer in any way any of its rights and obligations

under the Participation Conditions pursuant to any action as a result of Applicable Law including (without limitation) any resolution legislation applicable which has the aim of safely and effectively resolving a financial institution or its group in financial difficulties.

- 15.2 Any API Provider may sub-contract the performance of any of its obligations and/or the exercise of any of its rights under the Participation Conditions to any third party, and may sub-licence the Open Banking Brand and the Documentation to such third party to the extent required to enable such third party to fulfil such Party's obligations, and exercise such Party's rights, in relation to the Open Banking Services. Each Party will be responsible for all acts and omissions of its sub-contractors (including any sub-sub-contractors) as if they were its own.

16. Relationship of the Parties

- 16.1 Nothing in the Participation Conditions is intended to create, or will be construed as constituting or evidencing, a partnership or joint venture or relationship of employer and employee between any of the Parties or to authorise, or will be construed as authorising, a Party to act as agent for any other Party. Except where expressly so stated in the Participation Conditions, no Party has authority to make any representation for, act in the name or on behalf of or otherwise to bind any other Party.

17. Waiver

- 17.1 Any failure to exercise or any delay in exercising a right or remedy provided by the Participation Conditions or at law or in equity (and/or the continued performance of the Participation Conditions) will not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. If a Party waives a breach of any term of the Participation Conditions committed by the other Party (the "Defaulting Party") such waiver will not constitute:

- (a) a waiver of any other breach (of the same term or any other term) committed by the Defaulting Party; or
- (b) a waiver of the same or any other breach by any Party other than the Defaulting Party;

and will not affect the other terms of the Participation Conditions.

- 17.2 The rights and remedies provided by the Participation Conditions are cumulative and (except as otherwise provided in the Participation Conditions) are not exclusive of any rights or remedies provided at law or in equity. To the extent that any right or remedy provided by the Participation Conditions or in law or equity can be exercised more than once and/or in combination with other rights and/or remedies provided by the Participation Conditions or in law or equity, no single or partial exercise of such right or remedy prevents the further exercise of that right or remedy or the exercise of any other right or remedy.

18. Severability

- 18.1 If at any time a provision of the Participation Conditions is held by any court or administrative body of competent jurisdiction to be (in whole or in part) invalid or unenforceable, such invalidity or unenforceability will not prejudice the other provisions of the Participation Conditions (or the other parts of any provision which is found to be partially invalid or unenforceable) which will remain in full force and effect.
- 18.2 If any provision of the Participation Conditions is found to be invalid or unenforceable in accordance with Clause 18.1 but would be valid and enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it valid and enforceable.

19. Further Assurance, Conflict and Variation

- 19.1 Each Party will at the request of the other Party at its own cost do (or procure others to do) everything necessary to give the other Party the full benefit of the Participation Conditions.
- 19.2 If there is an inconsistency between any of the provisions of these Terms and those of the Guidelines for Open Data Participants, the Complaints and Dispute Resolution Procedure, the Service Levels, the Standards or any other document forming part of the Participation Conditions from time to time, the provisions of these Terms shall prevail.
- 19.3 Any amendments or variations to these Terms shall be made by Open Banking in consultation with the API Providers and no change or variation of these Terms shall be effective unless it is notified to the API Providers through the Open Banking Website.

20. Rights of Third Parties

- 20.1 An Unsuccessful Applicant may enforce the provisions of Clause 9 in relation to any Confidential Information relating to such Unsuccessful Applicant, subject to and in accordance with the relevant provisions of the Participation Conditions and the Contracts (Rights of Third Parties) Act 1999.
- 20.2 Except as provided in Clause 20.1, nothing in the Participation Conditions confers any benefit on, or is enforceable by, any person who is not a Party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 20.3 Notwithstanding Clause 20.1, it is expressly agreed that the Parties may rescind or vary the Participation Conditions or any of its terms (including Clause 9) in accordance with Clause 13 without the consent of any Unsuccessful Applicant, even if that rescission or variation may extinguish or alter that person's rights pursuant to Clause 20.1.

21. Entire Agreement

- 21.1 Notwithstanding any entire agreement provisions in any (current or future) agreement between any two or more of the Parties, the Participation Conditions constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties or any of them relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 21.2 Each of the Parties represents and agrees that in entering into the Participation Conditions it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a Party or not) except as expressly set out in the Participation Conditions. The only remedy available to any Party for breach of the warranties will be for breach of contract under the terms of the Participation Conditions. No Party will be entitled to rescind the Participation Conditions (except for fraudulent misrepresentation).

22. Notices

- 22.1 All notices to be given under the Participation Conditions must be in writing and may be given personally, by prepaid first class post or in electronic mail unless otherwise specified in these Terms. Unless impracticable for technological reasons or otherwise required by Applicable Law, all notices given under the Participation Conditions will be given by email or in the case of Open Banking, through the Open Banking Website, but this will not affect the validity of any notice given in accordance with this Clause 22 by any other means. Notices given to API Providers must be sent to the address, or email address of each API Provider as specified from time to time in the Directory; notices to any API Provider must be marked for the attention of the recipient API Provider's Key Contact from time to time. Notices given to Open Banking must be sent to its registered office from time to time or to the or email address expressly stated on the Open Banking Website from time to time to be the or email address for receipt of notices from API Providers; notices to Open Banking must be marked for the attention of the 'Open Banking Limited Administrator'.
- 22.2 Any notice will be deemed to have been received:
- (a) if sent by e-mail, at the time the e-mail enters the intended recipient's information system (being the recipient's system for generating, sending, receiving, storing or otherwise processing electronic communications) provided that:
 - (i) no error message indicating failure to deliver has been received by the sender; and
 - (ii) an email will not be deemed to have been received if the recipient notifies the sender that it has not been opened because it contains, or is accompanied by a warning or caution that it could contain or be subject to, a virus or other computer programme which could alter, damage or interfere with any computer software or email;

- (b) if delivered personally, at the time of delivery; and
- (c) if sent by prepaid first class post, on the expiry of 48 hours after posting if sent from and to an address in the United Kingdom,

in each case provided that if deemed receipt occurs before 9 am on a Business Day, the notice will be deemed to have been received at 9 am on that Business Day, and if deemed receipt occurs after 5.30 pm on a Business Day or on a day which is not a Business Day, the notice will be deemed to have been received at 9 am on the next following Business Day.

23. Terms Coming Into Effect

- 23.1 These Terms will be effective in respect of API Providers, to the extent applicable and relevant, at the point at which the application to participate in the Open Banking Services is received from an API Provider by Open Banking.
- 23.2 In participating in the Open Banking Services, no API Provider may specify any additional provisions, conditions or limitations to its participation and any additional provisions, conditions and/or limitations which are specified by any API Provider will be void and of no effect.

24. Governing Law and Jurisdiction

Each Party agrees that the Participation Conditions and the relationship between the Parties will be exclusively governed by and interpreted in accordance with English law and that all disputes arising out of or in connection with the Participation Conditions and/or the Open Banking Services, and/or with the negotiation, validity or enforceability of any provision of the Participation Conditions, and/or the relationship between the Parties in relation to the subject matter of the Participation Conditions and/or the Open Banking Services, (in each case whether or not regarded as contractual claims) will be exclusively governed by and determined in accordance with English law and (subject to the Complaints and Dispute Resolution Procedure) each Party expressly and irrevocably submits to the exclusive jurisdiction of the English Courts in relation to all such disputes and any other claim or matter arising under or in connection with the Participation Conditions.

Schedule 1

Definitions

API	means Application Programming Interface.
API Provider	means each of the Mandatory API Providers and Voluntary API Providers.
API Provider Brand	means any registered or unregistered trade mark or other Intellectual Property Right licensed by an API Provider to Open Banking from time to time to use for the purposes of the Open Banking Services, in accordance with the Participation Conditions.
API User	means individuals or organisations that choose to access the Open Banking APIs.
Applicable Law	means all applicable laws, rules, regulations, orders, regulatory policies, guidelines, regulatory permits and licences, and any mandatory instructions or requests by a Regulator, in each case which are in force from time to time.
Audit Trail	means a full and unaltered transactional record of all Open Data
Best industry practice	means the use of the standards, practices and methods, and exercising the care, diligence and judgment, that would reasonably be expected from an undertaking under similar circumstances.
Business Day	means any day on which banks are open for business in all parts of the United Kingdom.
Complaint	means any question, dispute or difference which may arise concerning the creation, construction, meaning, validity or effect of any part of the Participation Conditions or breach of them, or any other matter arising out of or in connection with the Participation Conditions, the proper operation of the Open Banking Services or the implementation of the CMA Order.
Confidential Information	means, in relation to any Party, all information (written or oral) which is used in or otherwise relates to that Party's business, customers or financial or other affairs, including Audit Trails and other information provided for the purposes of investigation, mitigation, defence and/or settlement under the Complaints and Dispute Resolution Procedure, and any information otherwise disclosed in relation to the conduct of any Dispute, in each case whether or not marked "Confidential", and any and all other information clearly designated as "Confidential" by the disclosing person, in each case existing in any form.
Complaints and Dispute Resolution Procedure	means the procedure for resolving Complaints that forms part of the Participation Conditions, as may be updated, amended or modified from time to time.

CMA	means the Competition and Markets Authority.
CMA Order	means the Retail Banking Market Investigation Order 2017 (as amended).
CMA 9	means Royal Bank of Scotland Group plc, Lloyds Banking Group plc, Barclays Bank plc, HSBC Group, Nationwide Building Society, Santander UK plc in Great Britain and Northern Ireland and Northern Bank Limited, trading as Danske Bank, Bank of Ireland (UK) plc and AIB Group (UK) plc trading as First Trust Bank.
CMA SQI Data	means the data referred to in Article 13 of the CMA Order.
Data Standard	means the data standards issued by Open Banking as may be updated, amended or modified from time to time in compliance with the CMA Order
Directory	means the register of API Providers and API Users to be created and maintained by Open Banking pursuant to these Terms.
DOS / DDOS	means Denial of Service / Distributed Denial of Service.
Documentation	means the Standards and the Guidelines for Open Data Participants as any or each of them may be updated, amended or modified from time to time.
FCA	means the Financial Conduct Authority.
FCA SQM Data	means the comparative PCA and BCA information and metrics made available via the Open Data APIs as required by FCA Policy Statement PS17/26.
Guidelines for Open Data Participants	means the guidelines produced and maintained by Open Banking applicable to Participants, including any annexes or documentation referred to therein.
Intellectual Property Rights	means: (a) patents, trade marks, service marks, registered designs, trade and business names, domain names, unregistered trade marks and service marks, copyrights (including future copyrights), semiconductor or circuit layout rights, know-how, trade secrets, database rights, rights in designs and inventions, in each case (except in relation to future copyright) from the time such rights come into existence; and (b) applications for any of those rights (where such applications can be made); and (c) rights of the same or similar effect or nature as or to those in (a) or (b) or which would in any way prevent or hinder the use or exploitation of the matters to which they relate, in each case in any jurisdiction.
Key Contact	means the contact person nominated by each API Provider in the Directory.

Licences	means the Documentation Licence under Clause 8.4 of these Terms and the Open Licence between API Providers and API Users.
Loss	means a loss, damage, account of profits, cost (including reasonable legal and other professional costs and expenses), expense, award, charge, fine and/or other liability (as the case may be), and " Losses " will be interpreted accordingly.
Mandatory API Provider	means the CMA 9 mandated under the CMA Order that will provide Open Data.
Open Banking	means Open Banking Limited (company number 10440081).
Open Banking Brand	means the unregistered trade mark "Open Banking", and the associated logo and any other (registered or unregistered) trade mark licensed by Open Banking to any Participant from time to time to use for the purposes of the Open Banking Services, in accordance with the Participation Conditions.
Open Banking Services	means the open banking services to be provided pursuant to the CMA Order as further described in the Participation Conditions.
Open Banking Website	means the Open Banking website located at URL www.openbanking.org.uk or such other URL as notified from time to time to Participants.
Open Data	means all Reference Data, and Product Data and SQI Data referred to in the CMA Order that is made available through the Open Banking APIs in accordance with the Standards in each case whether as images, text or otherwise.
Open Banking APIs	means the public APIs mandated under the CMA Order that provide a means of accessing data based on standards which are developed and maintained collaboratively and transparently by Open Banking, and can be accessed without charge.
Open Licence	means the licence between API Providers and API Users in respect of the Open Data.
Participant	means an API Provider or an API User (as the case may be) that participates in the Open Banking Services.
Participant System	means the system (including any hardware, software and other infrastructure) and processes operated by or on behalf of a Participant that is used to make Open Data available through the Open Banking APIs.
Participation Conditions	means the agreement governing the Participants roles and responsibilities in the Open Banking Services comprising: <ul style="list-style-type: none"> (a) these Terms; (b) the Standards; (c) the Licences;

	(d) the Guidelines for Open Data Participants; (e) the Complaints and Dispute Resolution Procedure.
Party	means an API Provider and Open Banking as parties to the Participation Conditions.
Product Data	means the data referred to in Article 12.1.2 of the CMA Order.
Read-only Data Standard	means the standard for read only access to data set out in Articles 12 and 13 of the CMA Order as issued by Open Banking.
Reference Data	means the data referred to in Article 12.1.1 of the CMA Order.
Regulator	means any governmental body or regulatory or supervisory authority having responsibility for the regulation or supervision of all or any part of the subject matter of the Open Banking Services or the business of a Party, including the Bank of England, the CMA, FCA, PRA, PSR, FOS, Pensions Ombudsman, Her Majesty's Revenue and Customs, the Information Commissioner and the Pensions Regulator (and in each case includes any successor or replacement body from time to time) and, in respect of a Member established in any country in the EEA other than the United Kingdom, any analogous body or authority having responsibility for regulation or supervision of the business of the Member in that country.
Sandbox	means the technology based test area for registered Participants created and maintained by Open Banking.
Security Standard	means the security standards issued by Open Banking from time to time in compliance with the CMA Order.
Service Levels	means the service levels as set out in the Open Data Service Levels Agreement for API Providers.
SQI Data	means the CMA SQI Data and the FCA SQM Data
Standards	means the Data Standards and Security Standards in accordance with which API Providers will be required to make Open Data available through the Open Banking APIs.