

eSlip Standards Terms & Conditions

1. Definitions

'Acceptance' means a document signed by the Client confirming satisfactory commencement of supply of the Deliverables (which shall not be unreasonably withheld or delayed) or commercial use (that is to say use for purposes other than testing or evaluation) of the Deliverables by the Client, whichever is the earlier. Where the Deliverables are described in more than one Service Description, each element of the Deliverables shall be capable of acceptance on a Service Description by Service Description basis.

'BACS' means Bankers Automated Clearing Services Limited.

'Charges' means all or any of the charges (as the context admits) set out in this Agreement, and as revised in accordance with this Agreement.

'Co-ordinator(s)' means member(s) of the Client's staff duly authorised by the Client to instruct eSlip on all matters relating to the performance of this Agreement.

'Client Data' means any data supplied by or on behalf of the Client or created as a result of processing such data.

'Deliverable(s)' means those services to be supplied to the Client pursuant to this Agreement, as described in the relevant Service Level Agreement(s), together with any optional additions expressly set out in this Agreement.

'Input Data' means the information provided by the Client for processing by eSlip pursuant to this Agreement.

'Intellectual Property Rights' means all intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) copyright, patents, trademarks, website marks, trade names, registered designs and any applications for the protection or registration of these rights.

'Minimum Term' means the period of 0 (zero) month(s) commencing on Acceptance of the Payroll Service.

'Output' means the information produced by processing all the Client's Input Data

'Service Level Agreement(s)' means the description(s) of the Deliverables set out in as this Agreement under 'Service Level Agreement' headings.

'Third Party Software' means Software expressly identified as software licensed by a third party rather than by eSlip.

'Third Party Licence Terms' means written terms by which a third party licenses the use of the Third Party Software to the Client.

'System' means all facilities from time to time (including without limitation computer facilities, applications and system software, communications and office facilities) which eSlip requires and selects for its own use in order to provide the Deliverables to the Client.

2. Facilities provided by the Client and eSlip

2.1. eSlip will provide, configure and maintain the System at its own cost and risk.

2.2. The Client will provide, configure and maintain at its own cost and risk all facilities (including without limitation computer facilities, applications and system software,

communications and office facilities) which it requires for its own use in order to make use of the Deliverables.

3. Intellectual Property

3.1. The Intellectual Property Rights comprised within any Deliverables are and shall remain the exclusive property of eSlip and/or a third party which has licensed eSlip to use such Intellectual Property Rights.

3.2. eSlip will indemnify the Client against any claim that the normal operation, possession or use of the Deliverables within the terms of this Agreement infringes the Intellectual Property Rights within the United Kingdom of any third party (an "Intellectual Property Infringement") provided that (i) eSlip is given immediate and complete control of such claim (at eSlip's cost); (ii) the Client does not prejudice eSlip's defence of such claim; (iii) the Client gives eSlip all reasonable assistance with such claim (at eSlip's cost); and (iv) the claim does not arise as a result of any breach of the Client's contractual obligations to eSlip.

3.3. Upon an Intellectual Property Infringement, eSlip may at its own expense and option either (i) procure the right for the Client to continue using the relevant Deliverables; (ii) modify them so that they become non-infringing or (iii) replace them with suitable and comparable non-infringing substitutes. Without prejudice to the Client's remedies in respect of any breach by eSlip, eSlip may terminate this Agreement on 14 days written notice to the Client if eSlip cannot reasonably exercise any of these options within 21 days of the date it received notice of the Intellectual Property Infringement.

4. Internal use by the Client

4.1. All Deliverables are sold to the Client on the strict condition that they are used for the Client's own internal business use and not for re-sale by the Client or for any kind of bureau use (that is to say use by the Client in the course of providing a service for third parties).

5. Commencement arrangements and timescales

5.1. eSlip will use all reasonable endeavours to supply the Deliverables ready for Acceptance by the date(s) set out in the SLA (or, in the absence of any dates, at a mutually convenient time).

5.2. Save for payroll processing dates expressly set out in this Agreement, all dates and times for performance of any obligations in this Agreement have been estimated in good faith and time shall not be of the essence in relation to such performance.

5.3. Notwithstanding Clause 5.2, time will be of the essence in relation to eSlip's obligations to ensure that the Clients' employees are paid on the correct date after Acceptance of the Service subject to the following:

5.3.1. the Client providing Input Data on time; and

5.3.2. Client will not be entitled to exercise its right to terminate this Agreement by reason of a failure by eSlip to pay Client's employees on the correct date unless and until eSlip fails to pay a substantial number of the Client's employees on the correct date on at least 3 occasions

in any 12 month period or unless and until eSlip fails on a single occasion to pay a substantial number of the Client's employees on the correct date and the delay exceeds 5 working days.

6. Supply of the Deliverables

6.1. eSlip will provide the Deliverables as described in the relevant SLA(s).

6.2. The Client will comply with its obligations set out in the SLA(s) and will provide all reasonable co-operation to eSlip in the performance of this Agreement.

6.3. The Client will procure that users of the Deliverables comply with all the reasonable instructions issued by eSlip relating to the Deliverables' use and security, and security of the Client Data.

7. Charges and Payment

7.1. eSlip shall invoice the Client and the Client shall pay to eSlip the Charges set out in this Agreement, at the times set out in this Agreement.

7.2. In the absence of express dates for invoicing and payment, eSlip may raise invoices for Charges monthly in arrears or upon completion of the associated work (whichever is the earlier) and such invoices shall be paid by the Client within 14 days.

7.3. Invoices will be paid by standing order.

7.4. All Charges are stated exclusive of VAT which is payable in addition to the Charges at the rate prescribed by law, subject to eSlip raising a valid VAT invoice.

7.5. If the Client fails to comply with any of the terms of payment for more than 7 days after receipt of a written demand for payment, eSlip may suspend performance of all or any part of work being undertaken for the Client without incurring any liability to the Client, and the Client shall remain liable to eSlip for all existing and continuing Charges due under this Agreement. The Client may incur additional Charges if eSlip reinstates any service after a suspension.

7.6. The Client shall not exercise any right of set-off against any Charges.

8. Variation of the Charges

8.1. The following provisions apply to recurring Charges (that is Charges for ongoing provision of Deliverables, and excluding once-only Charges):

8.1.1. the Charges are subject to variation according to transaction volumes as set out in this Agreement;

8.1.2. the Charges are subject to payment of the minimum Charges (if any) set out in this Agreement; and

8.1.3. the Charges are payable for at least the Minimum Term.

9. Warranties

9.1. eSlip warrants that:

9.1.1. it will use all reasonable skill and care in the course of performing this Agreement;

9.1.2. it is lawfully entitled to supply the Deliverables;

9.1.3. it will comply with all applicable laws and regulations relating to the provision of the Deliverables in the United Kingdom; and

9.1.4. the Deliverables and Output will comply with all relevant laws, regulations, tax and audit requirements prevailing in the United Kingdom.

9.1.5. Except for the express warranties set out in this Agreement, eSlip gives no other warranties or representations with regard to the Deliverables. Any further warranties or conditions, express or implied, statutory or otherwise are excluded to the extent permitted by law. Without limiting the foregoing, eSlip does not warrant that the deliverables will be entirely error free or will run uninterrupted.

10. BACS and other third parties

Some Deliverables include transmission of payment instructions to BACS or other third parties. In all such cases, the scope of the Deliverables does not include the processing of those instructions by BACS or the relevant third party. Accordingly, eSlip does not accept responsibility for the execution of such instructions by BACS or the performance of any other third party in connection with but outside the scope of this Agreement (including without limitation the transmission of data through third party service providers). eSlip shall not be responsible for the consequences if

BACS or other third parties are unable to receive, transmit or execute data, howsoever arising. For the avoidance of doubt, this Clause shall not be construed as excusing failures caused by eSlip's negligence or failures of eSlip's sub-contractors.

11. TUPE

11.1. eSlip and the Client do not envisage that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 ('TUPE') will apply as a result of entering into this Agreement.

11.2. The Client will keep eSlip indemnified in full against any costs, claims, awards, orders, obligations and liabilities whatsoever (including legal and other professional fees and expenses) whenever arising which eSlip may incur in connection with the employment and/or termination of employment of any persons arising out of the application of TUPE in connection with this Agreement. The indemnity in this Clause 11.2 is not subject to the provisions of Clause 14.

12. Client Data and the Data Protection Act 1998

12.1. Client Data shall remain the Client's exclusive property. Upon request, a copy of the Client Data will be delivered to the Client (in a machine readable format if it exists in such form) upon expiration or termination of this Agreement.

12.2. The Client, as Data Controller, will comply with the Data Protection Act 1998 ("the Act") and any future legislation enacted in replacement of the Act.

12.3. eSlip, acting as Data Processor (as defined in the Act), will comply with the 7th principle of the Act and any future legislation enacted in replacement of the Act. Consistent with the requirements of the 7th principle eSlip shall:-

12.3.1. act only on instructions from the Client in respect of any Personal Data (as defined in the Act) processed by eSlip;

12.3.2. have technical and organisational measures in place against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data held or processed by it, appropriate to the harm that might result from such unauthorised or unlawful processing or loss, destruction or damage to Personal Data and the nature of the Personal Data;

12.3.3. take all reasonable steps to ensure the reliability of any of its staff who have access to Personal Data processed in connection with this Agreement;

12.3.4. not transmit the Personal Data provided by the Client to a country or territory outside of the European Economic Area without ensuring the Personal data is afforded adequate protection within the meaning of the Act; and

12.3.5. allow the Client from time to time to audit, in accordance with the Act, the technical and organisation measures that eSlip has in place to ensure it complies fully with the Act.

13. Termination

13.1. eSlip shall provide the Deliverables for the Minimum Term and afterwards until termination of this Agreement as set out below.

13.2. Either party may terminate this Agreement by written notice to the other party:

13.2.1. forthwith if the other party commits any material breach of the terms of the Agreement and, in the case of a breach capable of being remedied, such breach is not remedied within 30 days of a written request to do so (such written request expressly referring to the threat of termination pursuant to this Clause);

13.2.2. forthwith if the other party (i) has a receiver or administrative receiver appointed over its assets; (ii) passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction); (iii) a court of competent jurisdiction makes an order to that effect; (iv) becomes subject to an administration order; (v) enters into any voluntary arrangement with its creditors; or (vi) ceases or threatens to cease to carry on business; or

13.2.3. at any time provided that the written notice of termination is not less than 3 months and expires after the Minimum Term.

13.3. If this Agreement is terminated before the end of the Minimum Term or on less than 3 months' notice other than by reason of eSlip's default, eSlip may, without prejudice to any

other rights and remedies, invoice the Client for early termination Charges. Such termination Charges will include:

13.3.1. all Charges due and/or owing at the date of termination;

13.3.2. a charge equal to the Charges which would have been payable for the remainder of the Minimum Term (or, in the case of termination on less than 3 months' notice, the remainder of the notice period), assuming no change in transaction volumes or other variables, but less a discount for accelerated receipt and costs saved, which the parties agree will be equal to 20%;

and eSlip may require payment of all or part of such early termination Charges prior to completing work for the Client and may suspend performance of such work and/or exercise a lien on Client Data pending due payment of the Charges.

13.4. Termination of this Agreement will not affect any accrued rights or liabilities of either party or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.

14. Limitation of Liability

14.1. If either party fails to comply with its obligations in this Agreement it will be entitled, without prejudice to the other party's rights or remedies in relation to such failure, to a reasonable opportunity to correct any errors and perform its obligations.

14.2. Notwithstanding any other provisions of this Agreement, nothing shall exclude or limit either party's liability for the following:

14.2.1. death or personal injury resulting from that party's negligence;

14.2.2. that party's fraud or statements made fraudulently by that party; or

14.2.3. any other acts or omissions for which the governing law prohibits the exclusion or limitation of liability.

14.3. eSlip shall not be liable for any loss of profit, loss of business, loss of goodwill, loss of savings, claims by third parties, loss of anticipated savings, whether direct or indirect, or for any indirect loss or consequential loss whatsoever and howsoever caused (even if caused by eSlip's negligence and/or breach of contract and even if eSlip was advised that such loss would probably result).

14.4. eSlip's total liability for any claims, losses, damages or expenses whatsoever and howsoever caused (even if caused by eSlip's negligence and/or breach of contract) shall be limited for each event or series of linked events as follows:

14.4.1. in relation to direct physical damage to the Client's tangible property caused solely by negligence of eSlip, its employees, agents or subcontractors to a maximum sum of

£1,000,000;

14.4.2. in relation to liability outside the scope of Clause 14.4.1, to a maximum sum equal to the total Charges (excluding VAT) actually paid by the Client to eSlip under this Agreement during the 12 month period immediately preceding the date of determination of such liability; or (if the Agreement terminated prior to the date of determination of such liability) the total Charges (excluding VAT) actually paid by the Client to eSlip under this Agreement during the 12 month period immediately preceding the date of termination of this Agreement.

14.5. This Agreement is enforceable by eSlip and by the Client and their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

15. Changes and change control

15.1. At any time during the term of this Agreement, the Client may request a change (referred to below as a 'Change') to the Deliverables using the following procedure:

15.1.1. the Client shall request the Change in writing and eSlip will notify the Client of any time required to investigate the effect upon this Agreement of implementing the Change. eSlip may charge the Client a reasonable fee for investigating the effect of implementing the Change where such work is significant and after consulting with the Client.

15.1.2. eSlip shall then reply in writing to the Client stating whether the Change is possible and, if it is, the increase (if any) which will be required to the Charges and the changes (if any) which will be required to this Agreement.

15.1.3. The Change shall not take effect unless and until the Client elects in writing to proceed with the Change, in which case this Agreement shall be deemed amended as set out in eSlip's response.

15.2. The Client acknowledges and agrees that eSlip may make changes to the Deliverables (including, but not limited to, changes necessary to improve such Deliverables and/or to reflect legislative changes). However, eSlip shall not make changes to Deliverables which unreasonably detract from their functionality.

16. Force Majeure

Neither party will be liable for any delay or failure in performing its obligations under this Agreement if the delay or failure is caused by circumstances beyond its reasonable control (including but not limited to failure or delay by any subcontractor to perform its obligations due to circumstances beyond the reasonable control of the subcontractor). Provided the party in default notifies the other party promptly in writing of the reasons for and likely duration of the failure or delay, then the performance of the parties' obligations shall be suspended during the period that the circumstances persist. This Clause shall not apply to any failure or delay by the Client in paying the Charges.

17. Confidentiality

Each party undertakes to keep and treat as confidential all non-public domain information concerning the business and affairs of the other which it receives as a result of or in connection with this Agreement, nor make use of such information for any purpose whatsoever, except for the purposes of this Agreement.

18. Waiver

No delay or indulgence by either party in enforcing this Agreement shall prejudice or restrict the rights of that party. A waiver of its rights shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right,

power or remedy available to that party and the rights, powers and remedies shall be cumulative.

19. Assignment/Subcontracting

19.1. Neither party shall assign or transfer this Agreement or any of the rights and obligations under it, whether in whole or in part, without the prior written consent of the other party (not to be unreasonably withheld or delayed). eSlip shall be entitled to charge a fee in respect of the work required to facilitate an assignment by the Client and consent may be conditional upon the assignee committing to providing adequate training to relevant employees of the assignee.

19.2. eSlip will be free to sub-contract its rights and obligations under this Agreement but eSlip will remain contractually responsible for any obligations which are subcontracted.

20. Variations

No addition to, or modification of, any provision in this Agreement will be binding unless made in writing and signed by duly authorised representatives of the parties.

21. Entire Agreement

This Agreement shall supersede all prior agreements, arrangements and understandings between the parties and constitute the entire agreement between the parties relating to its subject matter. The Client warrants to eSlip that the Client has not been induced to enter into this Agreement by any prior representations whether oral or in writing, except as specifically contained in the Agreement. This Agreement shall apply to the exclusion of, and shall prevail over, any terms and conditions contained in or referred to in any documentation submitted by the Client or in any correspondence or otherwise.

22. Invalidity and Severability

If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, then the invalidity or unenforceability shall not affect the other provisions of this Agreement and all provisions not affected shall remain in full force and effect. Both parties will attempt to substitute the unenforceable clause with a valid and enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

23. Relationship of Parties

The performance by eSlip of its duties and obligations under this Agreement shall be that of an independent contractor and nothing contained in this Agreement shall create or imply an agency relationship between eSlip and the Customer, nor shall this Agreement be deemed to constitute a joint venture or partnership between eSlip and the Client.

24. PR

eSlip may include the Client's name with a simple description of the services provided under this Agreement in eSlip's marketing materials and credentials. However, eSlip will not undertake any further PR relating to the Client without the Client's prior consent.

25. Headings

Headings in this Agreement are for ease of reference only and will not affect its interpretation.

26. Dispute Resolution

If a dispute arises out of or in connection with this Agreement (a 'Dispute'): 26.1. the Dispute may be referred by either party in writing for final settlement in accordance with the escalation path set out in the relevant SLA(s); 26.2. failing which, the parties will attempt to settle it by

mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure; and 26.3. nothing in this Clause 26 will restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or to protect any Intellectual Property Rights or trade secrets whether by way of injunctive relief or otherwise.

27. Law & Jurisdiction

This Agreement will be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.