

TERMS OF APPROVAL

- (1) **THE COMMISSIONERS OF HM REVENUE & CUSTOMS (“HMRC”)**
- (2) **ENVIRONMENTAL TRUST SCHEME REGULATORY BODY** a company limited by guarantee registered in England (number: 3221000) whose registered office is at:

First Floor Black Country House, Rounds Green Road, Oldbury, England, B69 2DG

BACKGROUND

- A. This document constitutes the Terms of Approval for the purposes of Regulation 35(1) of the Landfill Tax Regulations 1996 pursuant to which the Commissioners for HM Revenue & Customs may approve a regulatory body to carry out the functions prescribed by Regulation 34(1) of the Landfill Tax Regulations 1996 and may impose such conditions as they see fit.
- B. Entrust has been the approved regulatory body since 1 October 1996 and these Terms of Approval will revoke and replace any previous approval.

1. Definitions

- 1.1. In this document:

“Approval” means these Terms of Approval including any Annexes attached hereto and referred to in Conditions 5 and 9;

“audit-out period” refers to a period of time that begins on the day of the cessation of the Fund and ends 2 years after that day – and is further defined in Condition 16 of the Approval;

“cessation of the Fund” means the day upon which the landfill site operators’ entitlement to tax credits for qualifying contributions is withdrawn;

“Commercially Sensitive Information” means information:

- a which is provided by Entrust to HMRC in confidence; and/or
- b that constitutes a trade secret.

“Confidential Information” means all information whether obtained from HMRC or any other source:

- a however it is conveyed or on whatever media it is stored;
- b which comes (or has come) to the attention of or into the possession of the relevant party before, on or after execution of the Approval;

- c which has been designated as confidential in writing or which ought to be considered as confidential (whether or not it is marked at the time of provision to show that it is imparted in confidence);
- d including but not limited to information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how and all personal data and sensitive personal data within the meaning of the DPA and UK GDPR;
- e and which information is not:
- f in the public domain at the time of disclosure (otherwise than by breach of Annex II Condition 4); or
- g received from a third Party (who has lawfully acquired it) without restriction as to its disclosure; or
- h independently developed without access to HMRC Confidential Information.

“Contracting Authority” has the meaning as set out in Section 2 of the Procurement Act 2023;

“Controller” has the meaning as set out in Clause 2.1 of Annex II to the Approval;

“Corporate Plan” means the plan referred to at Condition 5 of the Approval;

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Government and the Welsh Government), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies;

“Deed” means the deed in the form set out at Annex IV to be entered into by the parties in accordance with Clause 2.3;

“Default” means any breach of the obligations of Entrust (including but not limited to fundamental breach or breach of a fundamental term) or any other Default, act, omission, negligence or negligent statement of Entrust or the Staff in connection with or in relation to the subject-matter of the Approval;

“documents” has the meaning within the Civil Evidence Act 1995 and covers anything in which information of any description is recorded;

“DPA” means the Data Protection Act 2018 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body in relation to such legislation;

“EBs” means Environmental Bodies approved in compliance with the requirements of the Regulations and the terms of this Approval;

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body in relation to such regulations;

“Entrust” means the Environmental Trust Scheme Regulatory Body, trading as Entrust;

“FOIA” means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body in relation to such legislation;

“the Fund” means the Landfill Communities Fund;

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably or ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

“HMRC Data” means:

- a data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
- b are supplied to Entrust by HMRC; or
- c Entrust is required to generate, process, store or transmit pursuant to this Approval; and/or
- d any Personal Data for which HMRC is the Controller.

“Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020, regulatory policy, guidance or industry code, judgment of a relevant court of Law, or directives or requirements of any regulatory body of which Entrust is bound to comply;

“the Levy” means a percentage of qualifying contributions received from a registered landfill site operator which each EB pays to Entrust (the percentage to be determined by reference to Clause 11.2);

“Personal Data” has the meaning as set out in Clause 2.1 of Annex II to the Approval;

“Premises” means the location where the Services are to be supplied by Entrust;

“Project” means the carrying out by an EB of specified activities, meeting objects in the Regulations, which have been notified to Entrust and approved, and are registered by Entrust at any time during an approved period;

“the Regulations” means the Landfill Tax Regulations 1996 (S.I. 1996/1527) as amended from time to time;

“Request for Information” shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply);

“Revocation” or **“Revoke”** means both the withdrawal of approval from a body or organisation to call itself an EB and removal of its enrolment as an EB, and the withdrawal of this approval by HMRC of Entrust as the regulatory body;

“Service” means the functions, tasks and activities of a regulatory body in accordance with Part VII of the Regulations;

“Staff” means all persons employed by Entrust to perform its obligations under the Approval together with Entrust’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Approval;

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

“UK GDPR” has the meaning as set out in Section 3(10) of the DPA, supplemented by Section 205(4) of the DPA, together with any associated guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body;

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

- 1.2. The interpretation and construction of this Approval shall be subject to the following provisions:
- 1.2.1. Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2. Words importing the masculine include the feminine and the neuter;
 - 1.2.3. Reference to a Condition is a reference to the whole of that Condition unless stated otherwise;
 - 1.2.4. Reference to a Clause is a reference to a paragraph within a Condition unless stated otherwise;
 - 1.2.5. References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.6. Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.7. The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

- 1.2.8. Headings to Conditions are included for ease of reference only and shall not affect their interpretation or construction of the Approval.
- 1.3. Once entered into pursuant to Clause 2.3, in the event HMRC gives notice of the Revocation of this Approval, whether or not that is followed by cessation of the Fund, the terms of the Deed shall prevail over the terms of this Approval to the extent of any conflict or inconsistency between them.

2. Approval

- 2.1. On the terms of this Approval HMRC hereby approve and appoint Entrust to act as the regulatory body as provided for under Regulation 35(1)(a) of the Regulations. The conditions contained within this Approval are imposed under Regulation 35(1)(aa).
- 2.2. With effect from the commencement of this Approval, HMRC revoke all previous Approvals and Conditions.
- 2.3. The parties shall enter into a deed in the form set out at Annex IV as soon as reasonably practicable following the date of this Approval.

3. Duration

- 3.1. This Approval shall have effect from 1 August 2026 and unless Revoked early in accordance with its terms shall continue until 31 July 2031, when it shall automatically be Revoked without notice. If the audit-out period begins and there are fewer than 24 months until the end of the current approval period, this Approval shall automatically be extended until the last day of the audit-out period.
- 3.2. Entrust's functions and responsibilities as the regulatory body shall cease on the day that revocation of this Approval takes effect, save that the obligations of Entrust under the Deed shall continue in accordance with the terms of the Deed.

4. Organisation

- 4.1. For the duration of this Approval, Entrust:
- 4.1.1. will remain constituted as a Company limited by guarantee;
 - 4.1.2. will retain such number and range of Non-Executive Directors (NEDs) as is necessary, at its discretion, to ensure a good balance of skills and depth of resource. The NEDs appointed shall together possess broad experience and knowledge of the public, private or voluntary sectors and where possible reflect the UK wide coverage of the Fund. The number of NEDs appointed for their knowledge and experience of one area of the private, public or voluntary sector shall not be such as to give the perception of undue influence;
 - 4.1.3. will admit a representative of HMRC to be an observer at its Board, statutory and other formal meetings relating to its regulatory role;
 - 4.1.4. will comply with all applicable statutory obligations and regulations, and in particular those scheduled at Annex I to this Approval; and
 - 4.1.5. will comply with the Security and Protection of Information conditions contained in Annex II to this Approval.

5. Corporate Plan

- 5.1. Entrust shall submit to HMRC prior to 16 December of each year a draft Corporate Plan relating to the regulation of the Fund (including their best estimate of the income and outgoings of Entrust and, by reference to that, the funding required by Entrust for the regulation of the Fund for the relevant period) for the period of 1 year from the next 1 April for discussion, review and approval by HMRC, such approval not to be delayed or unreasonably withheld.
- 5.2. The Corporate Plan will include a range of performance indicators and the methods of measurement approved by HMRC. The Corporate Plan must include a reporting schedule for the year which as a minimum must cover the following:
- 5.2.1. Monthly management information reports and supporting statistical information;
 - 5.2.2. Annual analysis of data reported by EBs as required by the Regulations, annual analysis of projects and their value for money, annual analysis of changes implemented and suggestions for change; and
 - 5.2.3. Ad hoc reports as required by HMRC.
- 5.3. If the draft Corporate Plan is not approved by HMRC by 1 April, provided HMRC is not in breach of Clause 5.1, the previously agreed Corporate Plan will continue (revised as reasonably required), until the new Corporate Plan is approved and can take effect. Any dispute under this Clause may come under the provisions of Condition 32.
- 5.4. HMRC will monitor Entrust's performance against the Approved (or provided) Corporate Plan and the targets, performance indicators and reports submitted in accordance with the reporting schedule contained within it. If Entrust becomes aware during the relevant period that it is unlikely to meet the targets/performance indicators/reporting schedule, it shall bring this to the attention of HMRC. Where Entrust believes that those targets, performance indicators or reporting schedule will not be met due to a shortfall in the funding of Entrust specified in the Corporate Plan or a significant change to its functions as the result of a variation of the Conditions of this Approval, Entrust may propose amendments to its targets/performance indicators for approval by HMRC. HMRC will not unreasonably withhold or delay such approval.

6. Audit & Provision of Information

- 6.1. Entrust shall prepare annual accounts in accordance with its obligations under the Companies Act 2006, such accounts to be independently audited and a copy submitted to HMRC not more than 10 months after the end of Entrust's financial year (currently March 31) accompanied by a statement that indicates, with respect to the reserves held by Entrust that are attributable to the Fund revenue (see Clause 6.2), the proportion of those reserves allocated to Entrust's functions and responsibilities as regulatory body during a potential audit-out period.
- 6.2. The annual accounts shall state the revenue received by Entrust that relates to the Fund activity separately from the revenue received from any other activity. The Fund revenue is:
- 6.2.1. the Levy; and

- 6.2.2. the application fees from prospective EBs on enrolment.
- 6.3. The annual accounts shall state clearly:
 - 6.3.1. all expenses directly attributable to the Fund activity; and
 - 6.3.2. other general expenses and overheads and the proportion of those attributable to the Fund.
- 6.4. Entrust shall submit to HMRC by the 30 June an Annual Report and a statement by the Chair that Entrust has complied with this Approval in respect of the preceding financial year. The Annual Report and statement shall include:
 - 6.4.1. A statement of the purpose, priorities and organisation of Entrust;
 - 6.4.2. A review of performance against priorities established at the start of the year;
 - 6.4.3. Statistical information relating to approvals and Revocations of EBs;
 - 6.4.4. Statistical information enabling a full understanding of the contributions received and spent by EBs (both in the year and since 1 October 1996); and
 - 6.4.5. Statistical information enabling a full understanding of the contributions spent on each approved object (both in the year and since 1 October 1996).
- 6.5. Entrust shall also provide to HMRC the information detailed in the reporting schedule in the Corporate Plan. Where this includes ad hoc requests, all data will be sent to HMRC within ten working days of the receipt of the written request, or to an agreed deadline.
- 6.6. Entrust shall advise HMRC of any practices, or projects discovered during the performance of its duties that, while strictly compliant with the requirements of the Regulations, in its opinion could bring the Fund into disrepute. Entrust shall take such action as HMRC considers appropriate to deal with the practices or projects discovered. If Entrust believes that the taking of such action would lead to its targets or performance indicators not being met it may propose variations to those targets, and indicators to take account of that action. HMRC will not unreasonably withhold or delay approval of such variations.
- 6.7. Where such action is carried out by Entrust, HMRC will take into account reasonable additional expenses, incurred by Entrust in carrying out the action, that remain after deduction of savings made by varying the targets and indicators. HMRC will take those expenses into account when considering the funding sought by Entrust as part of its Corporate Plan for the following year.
- 6.8. Entrust shall grant HMRC unrestricted access to all documents relating to EBs, those refused enrolment and those whose approval has been withdrawn and at reasonable notice (to be given in writing), shall release to HMRC any documents it might reasonably require, and to give any oral or written explanations that HMRC might request.

- 6.9. Entrust shall provide access to any documents HMRC might reasonably require to examine as evidence of compliance with this Approval and give any oral or written explanations that HMRC may request.
- 6.10. Entrust shall keep and maintain for such period as HMRC may require, full and accurate records of the Approval, all moneys received by Entrust and all moneys spent by Entrust. Entrust shall on request afford HMRC, or HMRC's representatives, such access to those records as may be required by HMRC in connection with the Approval.
- 6.11. All accounting records relating to Entrust's activities as the regulatory body must be maintained separately from records relating to any other activity.
- 6.12. In the event of Entrust engaging with a third party, a methodology for allocating overhead costs to the different activities, namely to the regulation of the Fund and to Entrust's engagement with a third party, will be required. Entrust will submit a proposal for apportioning overheads to HMRC for approval and HMRC's decision on whether this is acceptable will be final. Entrust's proposal is to be submitted within 4 weeks of entering into any agreement with a third party.
- 6.13. Entrust (and any person acting on Entrust's behalf) shall permit the Comptroller and Auditor General of the National Audit Office or appointed representatives free access at all reasonable times to all such documents and other information owned, held or otherwise within the control of Entrust as the Comptroller and Auditor General may reasonably require for the purposes of the Comptroller and Auditor General's financial audit of HMRC and for carrying out examinations into the economy, efficiency and effectiveness with which HMRC has used its resources. Entrust shall furnish such explanations as are reasonably required for these purposes. This Clause does not constitute a requirement, or agreement for the examination, certification or inspection of the accounts of Entrust by the Comptroller and Auditor General under Section 6(3)(d) of the National Audit Act 1983.
- 6.14. If HMRC is advised by Entrust that it is considering winding-up the Company, or if HMRC notify Entrust that it is considering whether to Revoke the Approval, or within a reasonable period prior to the end of the Approval, Entrust shall on request by HMRC provide access to all such documents as would be reasonably required to enable the transfer of the functions of the regulatory body to HMRC or another body who will take on the functions of the regulatory body. Entrust shall permit HMRC to make copies of the documents.

7. Approving the enrolment of EBs and approving and registering projects

- 7.1. Entrust:
- 7.1.1. shall approve all EBs that meet the legal requirement, and enrol them, within 10 working days of sufficient information becoming available and the requisite application fee being paid in accordance with Regulation 33(1)(h) of the Regulations. An enrolment number shall be allocated to each EB;
 - 7.1.2. shall within 5 working days notify applicants in writing of approval or refusal to register their application and the review process if the applicant wishes Entrust to independently review this decision in line with its appeals procedure;
 - 7.1.3. shall maintain systems for checking applications for enrolment against criteria laid down in Regulation 33 of the Regulations.

- 7.1.4. shall publish at least annually:
 - a a register of EBs;
 - b the total Fund contributions received by EBs; and
 - c the total Fund contributions spent by EBs to approved objects.
- 7.1.5. shall approve and register projects that meet the objects laid down in the Regulations.
- 7.1.6. shall maintain systems for checking applications to register a project against the object criteria laid down in the Regulations.
- 7.1.7. shall maintain a record of all projects approved and registered.

8. Assurance

8.1. Entrust:

- 8.1.1. shall carry out sufficient checks on the accounts and records of EBs and the sites of approved schemes to satisfy itself that the contributions have been spent on approved purposes and that EBs continue to be entitled to approval;
- 8.1.2. shall maintain systems for monitoring spending of contributions by EBs against criteria laid down in Regulation 30(2) of the Regulations.
- 8.1.3. shall, to the extent that it is able by law to do so, ensure that contributions made by individual landfill site operators and other sensitive commercial information obtained as a result of its responsibilities, are protected from unauthorised disclosure;
- 8.1.4. shall maintain records of the contributing third parties notified to it; and
- 8.1.5. shall reasonably satisfy itself that landfill site operators who contribute to the Fund are aware of their obligations in contributing to the Fund.

9. Non-compliance

- 9.1. If Entrust becomes aware at any time that an EB may be failing to meet or maintain the legal requirements as laid down in Regulation 33A of the Regulations, it shall take the appropriate compliance and breach management action in accordance with its internal procedures, approved by HMRC.
- 9.2. Cases of alleged non-compliance must be referred to HMRC in accordance with the Non-Compliance Evidence and Reporting Standards provided by HMRC. HMRC will consider, on the basis of the evidence provided by Entrust, whether the conduct of the EBs justifies Revocation of its approval.
- 9.3. HMRC, alone, is responsible for making a decision whether to Revoke an approval.

10. Notification of transfers

- 10.1. When notified of the transfer of contributions to an EB, Entrust shall notify in writing quarterly the details to the contributing landfill site operators and, if relevant, the contributing third parties when requested to do so.

11. Payments by EBs to Entrust

- 11.1. Entrust shall be entitled to charge each prospective EB an application fee on receipt of an application for enrolment.
- 11.2. In addition to the application fee, the Levy is to be paid to Entrust. The amount payable shall be based on the date of receipt of the qualifying contribution by an EB. The percentage for each reporting year, to run from 1 April to 31 March, shall be set in advance of the commencement of the reporting year and announced by Entrust. The provision shall be reviewed and agreed annually by Entrust and HMRC as part of the agreement of the Corporate Plan.
- 11.3. Any surplus from the Levy or application fees paid to Entrust shall be carried forward and used solely for Entrust's activities as the approved regulatory body under Part VII of the Regulations.
- 11.4. If HMRC Revokes the Approval and approves a replacement regulatory body, the Levy that Entrust receives in error after the day that revocation of this Approval takes effect shall be transferred by Entrust to the replacement regulatory body as soon as reasonably practicable. The funding methodology for Entrust has been agreed and is contained in a document headed "AGREED ENTRUST FUNDING METHODOLOGY" which is attached at Annex III. If Entrust does not follow the agreed funding methodology and, as a consequence, fails to perform or delays in performing its obligations under this Approval or the Regulations due to a shortfall of funding, HMRC may take action under Clause 13.2.

12. General

- 12.1. Entrust:
- 12.1.1. Shall not impose any conditions on EBs using the powers contained within Regulation 34(1)(aa) of the Regulations without the prior approval of HMRC;
 - 12.1.2. May publish guidance on the operation of the scheme and answer enquiries relating to the scheme;
 - 12.1.3. May take advice on the operation of the scheme from representatives of approved bodies;
 - 12.1.4. Shall maintain an approved mechanism to permit the review of decisions to:
 - a Refuse to approve an application to become an EB;
 - b Refuse to register a project; and
 - c Refuse to accredit or Revoke, as the case may be, the accreditation of an EB; and
 - 12.1.5. Shall allow HMRC to undertake relevant benchmarking reviews of the performance by Entrust of its functions under this Approval, and where

appropriate and reasonable to do so, Entrust shall be advised and consulted.

13. Default

- 13.1. HMRC's power under Regulation 35(1)(c) of the Regulations to Revoke the Approval may be exercised by written notice to Entrust with immediate effect if Entrust is in default of any obligation under the Approval and
- 13.1.1. Entrust has not remedied the default to the satisfaction of HMRC (acting reasonably) within 25 working days, or such other period as may be specified by HMRC, after written notice to Entrust specifying in reasonable detail the default and requesting it to be remedied; or
 - 13.1.2. the default is not, in the opinion of HMRC acting reasonably, capable of remedy, or
 - 13.1.3. the default is a material breach of the Approval.
- 13.2. HMRC may Revoke the Approval under this Condition where Entrust fails to perform, or delays in performing, its obligations under this Approval, or the Regulations where such failure or delay is due to a significant shortfall of funding from that specified in the Corporate Plan referred to in Condition 5. HMRC shall not Revoke the Approval where the obligations of Entrust under this Approval, or the Regulations are substantially varied and there is no change in the funding to properly and fairly reflect the nature and extent of the variation in such obligations.
- 13.3. In the event that through any Default of Entrust, data transmitted or processed in connection with the Services is either lost or sufficiently degraded as to be unusable, Entrust shall be liable for the cost of reconstitution of that data and shall reimburse HMRC in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

14. Change of control or insolvency

- 14.1. HMRC may Revoke the Approval with immediate effect by notice in writing where in respect of Entrust:
- 14.1.1. it is or becomes insolvent; or
 - 14.1.2. a petition is presented (which is not dismissed within 14 days of its service), a notice is given, an order is made, or a resolution is passed for or in connection with its winding up (other than voluntarily for the purpose of solvent amalgamation or reconstruction); or
 - 14.1.3. an administrator or administrative receiver is appointed in respect of the whole or any part of its business or assets; or
 - 14.1.4. it makes any composition with its creditors; or
 - 14.1.5. a moratorium is put in place in respect of the whole or any part of its business or assets; or
 - 14.1.6. it takes or suffers any similar or analogous event or action listed in 14.1.1-14.1.5 as a result of debt in any other jurisdiction.

15. Entrust and HMRC right to Revoke

- 15.1. Either party shall have the right to revoke this Approval at any time by giving 24 months written notice to the other.
- 15.2. During the notice period, all the provisions of this Approval shall continue in accordance with its terms and Entrust shall continue to act as regulator of the Fund.

16. Cessation of the Fund

- 16.1. Upon the cessation of the Fund Entrust shall continue to audit the Fund for a period of 24 months.
- 16.2. The obligations of Entrust to be performed during the period of 24 months after cessation of the Fund will be determined either by transitional legislative provisions, or by a project plan to be mutually agreed between HMRC and Entrust prior to or promptly following the cessation of the Fund. Such project plan shall set out the scope and timeline of Entrust's activities during the audit-out period.
- 16.3. The obligations of Entrust during the audit-out period shall not exceed the scope of Entrust's compliance activities and regulatory obligations as undertaken pursuant to the Approval and the Regulations immediately prior to the cessation of the Fund.
- 16.4. Entrust warrants that, at the date of this Approval, it holds and will maintain a sufficient level of reserves to allow it to fund its existing activities for a period of 24 months after cessation of the Fund.
- 16.5. The parties agree that, to the extent that those reserves are attributable to funding provided by HMRC under the terms of this Approval, those reserves are to be used solely for the purpose of funding Entrust's obligations under the Approval during the period of 24 months following the cessation of the Fund, failure by Entrust to use those reserves for that purpose will be considered a breach of the terms of this Approval.
- 16.6. If Entrust anticipates, during the currency of this Approval, that it will no longer be able to fund its activities for a period of 24 months after cessation of the Fund, it must inform HMRC of the position and discuss the matter with HMRC. Failure by Entrust to maintain, without reasonable explanation, sufficient reserves to fund its activities for a period of 24 months following cessation of the Fund will be considered a breach of the terms of this Approval, it being acknowledged that as the 24 month period progresses, Entrust's reserves will decrease as they are used in compliance with this Condition.
- 16.7. Entrust shall retain all its documents referred to in Condition 4 of the Deed provided by each EB (including an EB whose approval has been Revoked) for 24 months after cessation of the Fund.

17. Disruption

- 17.1. Entrust shall take reasonable care to ensure that in the performance of its obligations under the Regulations and this Approval it does not disrupt the operations of HMRC, its employees, or any other contractor employed by HMRC.
- 17.2. Entrust shall immediately inform HMRC of any actual, or potential industrial action, whether such action be by its own employees or others, which affects or might affect

its ability at any time to perform its obligations under the Regulations and this Approval.

- 17.3. If Entrust is temporarily unable to fulfil the requirements of the Approval owing to disruption of normal business by direction of HMRC, Entrust may request a reasonable allowance of time for approval by HMRC. In addition, HMRC will reimburse any additional expense reasonably incurred by Entrust in fulfilling the provisions of the Approval as a direct result of such disruption.

18. Force Majeure

- 18.1. Neither party shall be liable to the other party for any delay in or failure to perform its obligations under the Approval (other than a payment of money) if such delay or failure results from circumstances beyond the party's reasonable control known as Force Majeure.
- 18.2. For the purpose of this Condition, "Force Majeure" means any event or occurrence which is outside the reasonable control of the party concerned, and which is not attributable to any act or failure to take preventive action by the party concerned. It does not include any industrial action occurring within Entrust's organisation or within any sub-contractor's organisation.

19. Business Continuity Plan

- 19.1. Entrust shall notify HMRC of any changes from time to time to its Business Continuity Plan identifying the risks to the carrying out of its functions and the measures to meet those risks, such Business Continuity Plan at the date of this Approval having been provided to HMRC.

20. Notices

- 20.1. Any notice which is to be given by either party to the other, shall be given by letter, (sent by hand or post or by registered post or by the recorded delivery service) or transmitted by email to an address agreed between the parties. Such notices shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

21. Mistakes in information

- 21.1. Where appropriate Entrust shall be responsible for the accuracy of documentation and information supplied to HMRC.
- 21.2. Where information is provided to Entrust by an EB, or a third party and Entrust become aware that it is inaccurate, it shall take steps to correct the error.

22. Indemnity and Insurance

- 22.1. Entrust shall indemnify HMRC and keep HMRC indemnified against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of or in consequence of the supply, or the late or purported supply, of the Services, or the performance or non-performance by Entrust of its obligations under the Regulations or this Approval, or the presence of Entrust or any Staff on the Premises, including in respect of any death or personal injury, or loss of or damage to property, financial loss arising from any advice given or omitted to be given by Entrust, or any other loss which is caused directly or indirectly by any negligent act or omission of Entrust. This Condition shall not apply to the extent that Entrust is able to

demonstrate that such death or personal injury, or loss or damage, was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-contractors, or by any circumstances.

- 22.2. Entrust shall not be responsible for any injury, loss, damage, cost, or expense if and to the extent that it is solely caused by the negligence or wilful misconduct of HMRC.
- 22.3. Entrust shall effect and maintain with a reputable insurance company a policy, or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by Entrust, arising out of Entrust's performance of the Approval, including in respect of death or personal injury, loss of, or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by Entrust and shall be maintained for the period of the Approval.
- 22.4. Entrust shall hold employer's liability insurance to a minimum of £5,000,000 in respect of Staff in accordance with any legal requirement for the time being in force.
- 22.5. Entrust shall produce to HMRC's representative, on request, copies of all insurance policies referred to in this Condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 22.6. The provisions of any insurance or the amount of cover shall not relieve Entrust of any liabilities under the Approval. It shall be the responsibility of Entrust to determine the amount of insurance cover that will be adequate to enable Entrust to satisfy any liability referred to in this Condition.

23. Manner of carrying out the Services

- 23.1. Entrust shall perform its obligations under the Approval in accordance with the Law and Good Industry Practice.
- 23.2. Entrust shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

24. Complaints handling

- 24.1. Where HMRC receives a complaint from a third party about the standard of service or about the way any Services have been delivered by Entrust in carrying out this Approval, then HMRC shall discuss and review the matter with Entrust and take all reasonable steps to determine whether the complaint is valid. If it so decides, it may uphold the complaint or take further action in accordance with the provisions of Conditions 13 and 15 of this Approval.

25. Key Personnel

- 25.1. Where personnel are essential to the proper provision of specific Services, any replacements to those key personnel shall be of at least equal status or of equivalent experience and skills to the key personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

26. Conflict of Interest

- 26.1. Entrust shall take appropriate steps to ensure that neither Entrust nor any of its Staff are placed in a position where, in the reasonable opinion of HMRC, there is or may be an actual conflict, or a potential conflict, between the interests of Entrust and the duties owed to HMRC under the provisions of the Approval.
- 26.2. Notwithstanding Clause 26.1, should a conflict exist or be anticipated to exist including but not limited to such conflicts arising through Entrust's engagement of a third party, Entrust must disclose to HMRC full particulars of such conflict and seek approval from HMRC to proceed with the material arrangement or relationship, the same not to be unreasonably withheld or delayed.
- 26.3. In the absence of approval being provided by HMRC pursuant to Clause 26.2, Entrust and its Staff must not engage in any relationship with a third party which gives rise to an actual or potential conflict of interest between the interests of Entrust and the duties owed to HMRC under the provisions of the Approval.
- 26.4. HMRC reserves the right to Revoke the Approval immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of HMRC, there is or may be an actual conflict, or a potential conflict, between the interests of Entrust and the duties owed to HMRC under the provisions of the Approval and the same conflict has not been notified to or approved by HMRC. The actions of HMRC pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to HMRC.

27. Professional Indemnity

- 27.1. Entrust shall effect and maintain appropriate professional indemnity insurance cover during the Approval and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this Clause and as a minimum, Entrust shall ensure professional indemnity insurance held by Entrust and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than £2,000,000 for each individual claim, or such higher limit as HMRC may reasonably require (and as required by Law) from time to time.
- 27.2. Any excess, or deductibles under the insurance referred to in Clause 27.1 shall be the sole and exclusive responsibility of Entrust, or Entrust's agents, professional consultants or sub-contractors, as applicable.
- 27.3. The terms of any insurance or the amount of insurance cover shall not relieve Entrust of any liabilities arising under the Approval.
- 27.4. Entrust shall, on request, provide HMRC with copies of all insurance policies referred to in Clause 27.1, or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

28. TUPE

- 28.1. Following notice of the Revocation of the Approval by either HMRC or Entrust, in the event of another body being approved, Entrust shall fully comply with all of its statutory obligations relating to the protection of employees where there is a transfer of an undertaking, and shall accurately disclose to HMRC all relevant information relating to its employees engaged in providing services under the Approval.

- 28.2. At intervals to be stipulated by HMRC (which shall not be more frequent than every three months and which shall not be earlier than 12 months prior to the end of the Approval) and immediately prior to the end of the Approval, Entrust shall deliver to HMRC a complete update of all information disclosed pursuant to this condition.
- 28.3. At the time of providing the information disclosed pursuant to this condition, Entrust shall warrant the completeness and accuracy of all such information and HMRC may assign the benefit of this warranty to any replacement regulatory body.
- 28.4. HMRC may use the information it receives from Entrust pursuant to this condition to comply with its statutory obligations and/or any re-approval process in order to ensure an effective handover of all work in progress at the end of this Approval. Entrust shall provide HMRC and/or replacement regulatory body approved by HMRC with such assistance as it shall reasonably request and shall allow HMRC and/or replacement regulatory body approved by HMRC to communicate and meet with the Staff and/or their representatives.
- 28.5. If Entrust becomes aware that any information it has provided pursuant to this condition has become untrue, inaccurate or misleading, it shall notify HMRC immediately and provide HMRC with up-to-date information as soon as reasonably practicable.
- 28.6. In the 12 Months prior to the end of the Approval, in respect of that part of the Services which will cease to be provided by Entrust on the date they are transferred, Entrust undertakes to HMRC that Entrust and any sub-contractor within Entrust's control, shall not, without the prior consent of HMRC (such consent not to be unreasonably withheld or delayed):
- 28.6.1. amend or vary the terms and condition or employment of any member of staff except in the normal course of business and where such change is not related to the transfer of the Services;
 - 28.6.2. terminate or give notice to terminate the employment of any member of staff, except for reasons or misconduct or lack of capability;
 - 28.6.3. transfer away, remove, reduce, or vary the duties of any member of staff other than where such change:
 - 28.6.4. was planned as part of the member of staff's career development;
 - 28.6.5. takes place in the normal course of business, and
 - 28.6.6. will not have any adverse impact upon the delivery of the Services by Entrust; and
 - 28.6.7. recruit or employ any new or additional members of staff to provide the Services.

29. Sub-Contracting

- 29.1. Entrust shall not for the purposes of performing any obligation under this Approval, sub-contract the performance of any of those obligations without the prior written consent of HMRC. Sub-contracting any part of the Approval shall not relieve Entrust of any of its obligations, or duties under the Approval or these Conditions.

- 29.2. Entrust shall be responsible for the acts and omissions of its sub-contractors as though they were its own.
- 29.3. Where HMRC has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by Entrust to HMRC as soon as reasonably practicable.

30. Monitoring of Performance

- 30.1. HMRC will monitor Entrust's performance against the Approval. Such arrangements may include (without limitation):
- 30.1.1. monthly operational review meetings;
 - 30.1.2. attendance at Board meetings;
 - 30.1.3. arrangements concerning the security (and availability for inspection) of all relevant documentation;
 - 30.1.4. the delivery of written management reports as may reasonably be required; and
 - 30.1.5. specification of additional requirements in relation to the Corporate Plan and benchmarking.

31. Recovery of Sums Due

- 31.1. Wherever any sum of money is recoverable from or payable by Entrust to the Crown, that sum may be deducted from any sum then due, or which at any later time may become due, to Entrust under any other agreement or contract with HMRC or with any department, agency, or authority of the Crown.

32. Dispute resolution

- 32.1. If any dispute arises in connection with this Approval or either party considers that the other party is not performing its obligations as required under this Approval, a Director acting on behalf of Entrust's Board and HMRC's Director for Indirect Tax (or other Director of equivalent status as appropriate at the relevant time) will, within 20 working days of a written request from one party to the other, meet in good faith to resolve the dispute.

STATUTORY OBLIGATIONS AND REGULATIONS**1. Prevention of Corruption**

- 1.1. Entrust shall not offer or give, or agree to give, to HMRC or any other Crown body or any person employed by or on behalf of HMRC or any other Crown body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Approval or any other agreement with HMRC or any other Crown body, or for showing or refraining from showing favour or disfavour to any person in relation to this Approval or any such agreement.
- 1.2. If Entrust or its Staff or anyone acting on Entrust's behalf, engages in conduct prohibited by this Condition, HMRC may:
 - 1.2.1. Revoke the Approval by written notice to Entrust with immediate effect and recover from Entrust the amount of any loss suffered by HMRC resulting from the Revocation, including the cost reasonably incurred by HMRC of making other arrangements for the supply of the Services; and
 - 1.2.2. recover in full from Entrust any other loss sustained by HMRC in consequence of any breach of this Condition.
- 1.3. In exercising its rights or remedies under this Condition, HMRC shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the prohibited act and the level of responsibility that an individual performing it holds and the capacity that they are operating at within the Company.

2. Prevention of fraud

- 2.1. Entrust shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by Staff and Entrust (including its shareholders, members, directors) in connection with the receipt of monies in the performance of its obligations under the Regulations and the Approval.
- 2.2. Entrust shall notify HMRC immediately if it has reason to suspect that any fraud as referred to in Clause 2.1 has occurred or is occurring or is likely to occur.
- 2.3. If Entrust or its Staff commits fraud in relation to this Approval or a contract with the Crown (including HMRC) HMRC may
 - 2.3.1. Revoke the Approval by written notice to Entrust with immediate effect and recover from Entrust the amount of any loss suffered by HMRC resulting from the Revocation, including the cost reasonably incurred by HMRC of making other arrangements for the supply of the Services; and
 - 2.3.2. recover in full from Entrust any other loss sustained by HMRC in consequence of any breach of this Condition.
- 2.4. In exercising its rights or remedies under this Condition, HMRC shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the fraud committed and the level that an individual committing it holds and the capacity that they are operating at within the Company.

3. Discrimination

- 3.1. Entrust shall not unlawfully discriminate either directly or indirectly because of race, colour, ethnic or national origin, disability, sex, sexual orientation, gender reassignment, religion or belief, or age and without prejudice to the generality of the foregoing, Entrust shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998, or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 3.2. Entrust shall take all reasonable steps to secure the observance of these provisions by all Staff.

4. Environmental Requirements

- 4.1. Entrust shall commit to responsible environmental practices to reduce its environmental impact, including waste minimisation and energy and resource efficiency.

5. Health and Safety

- 5.1. Entrust shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Approval.
- 5.2. Entrust shall promptly notify HMRC of any health and safety hazards which may arise in connection with the performance of the Approval. HMRC shall promptly notify Entrust of any health and safety hazards which may exist or arise at HMRC's premises and which may affect Entrust in the performance of the Approval.
- 5.3. While on HMRC's premises, Entrust shall comply with any health and safety measures implemented by HMRC in respect of personnel and other persons working on those premises.
- 5.4. Entrust shall notify HMRC immediately in the event of any incident occurring in the performance of the Approval on HMRC's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

6. Compliance with Value Added Tax and Other Tax Requirements

- 6.1. Entrust shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

7. Arrears of Value Added Tax

- 7.1. Where an amount, including any assessed amount, is due from Entrust as Value Added Tax by or under the Value Added Tax Act 1994 as amended an equivalent amount may be deducted by HMRC (after giving notice in accordance with Clause 7.2) from the amount of any sum due to Entrust under the Approval.
- 7.2. At least 14 days before exercising the right of deduction provided by this Condition HMRC shall give notice in writing to Entrust that it is intended to exercise the right of deduction and the notice:-
- 7.2.1. shall specify the amount to be deducted; and

- 7.2.2. shall contain a description of the Value Added Tax due from Entrust in respect of which the deduction is made, for example by reference to an assessed amount or by reference to supplies made during an accounting period.

SECURITY AND PROTECTION OF INFORMATION**1. HMRC Data**

- 1.1. Entrust shall not delete or remove any proprietary notices contained within or relating to HMRC Data.
- 1.2. Entrust shall not store, copy, disclose, or use HMRC Data except as necessary for the performance by Entrust of its obligations under the Regulations and the Approval, or as otherwise expressly authorised in writing by HMRC.
- 1.3. To the extent that HMRC Data is held and/or processed by Entrust, Entrust shall supply that HMRC Data to HMRC as may be requested by HMRC and in the format specified by HMRC.
- 1.4. Entrust shall take responsibility for preserving the integrity of HMRC Data and shall take all necessary steps to prevent the corruption or loss of HMRC Data.
- 1.5. Entrust shall perform secure back-ups of all HMRC Data and shall ensure that up-to-date back-ups are stored in secure facilities off-site. Media shall be protected in accordance with the following guidelines as appropriate:
 - 1.5.1. correct labelling and dating;
 - 1.5.2. “write-protecting”;
 - 1.5.3. managing the risk of theft and damage during transit;
 - 1.5.4. have in place appropriate system controls and physical security arrangements that minimise to an acceptable level the risk of access to back-up media by unauthorised Staff, maintenance engineers and other third-party staff; and
 - 1.5.5. encrypting back-ups to provide additional protection for protectively marked information once it is off-site and have in place good encryption key management to enable it to recover data at any point in the future.
- 1.6. Entrust shall ensure that backed up HMRC data is provided to HMRC upon request.
- 1.7. Entrust shall ensure that any system on which Entrust holds HMRC Data, including back-up data, is a secure system that complies with confidentiality and disclosure procedures to ensure only authorised users are provided access. If any HMRC Data is corrupted, lost or sufficiently degraded as a result of Entrust's Default so as to be unusable, HMRC may:
 - 1.7.1. require Entrust (at Entrust's expense) to restore or procure the restoration of the HMRC Data to the extent required by HMRC and in accordance with HMRC's requirements, and Entrust shall do so as soon as practicable but not later than any agreed timescale; and/or
 - 1.7.2. itself restore or procure the restoration of the HMRC Data, and shall be reimbursed by Entrust any reasonable expenses incurred in doing so to the extent required by HMRC and in accordance with HMRC's requirements.

- 1.8. If at any time Entrust suspects or has reason to believe that HMRC Data has, or may become corrupted, lost or sufficiently degraded in any way for any reason, then Entrust shall notify HMRC immediately and inform HMRC of the remedial action Entrust proposes to take.
- 1.9. On the day of Revocation (except Revocation under Clause 2.2 of the Approval), or in the event of the cessation of the Fund and at the end of the audit out period, Entrust shall supply HMRC with:
 - 1.9.1. An up to date copy of the roll of EBs it has approved under Regulation 34(1)(f) of the Regulations; and
 - 1.9.2. All records held on Entrust online, and all other records held concerning EBs and the Fund and all records relating to Entrust's operations and activities in respect the Fund, such records to be handed over in electronic format, and if applicable Entrust will also transfer or dispose of any paper records held in a secure manner in accordance with the principles of the DPA and UK GDPR, or as directed by HMRC.

2. DPA and UK GDPR

- 2.1. For the purposes of this Condition, the terms "Controller", "Processor", "Data Subject", "Personal Data" and "Processing" shall have the meaning they are given in the UK GDPR, and "Process" shall be construed in accordance with the term "Processing".
- 2.2. Entrust shall (and shall ensure that all Staff) comply with any notification requirements under the DPA and UK GDPR and will duly observe all their obligations under the DPA and UK GDPR which arise in connection with this Approval.
- 2.3. Notwithstanding the general obligation in Clause 1.2, where Entrust is processing Personal Data as a Processor for HMRC Entrust shall:
 - 2.3.1. Process the Personal Data only in accordance with instructions from HMRC (which may be specific instructions or instructions of a general nature as set out in this Approval or as otherwise notified by HMRC to Entrust);
 - 2.3.2. Comply with all applicable Laws;
 - 2.3.3. Process the Personal Data only to the extent and in such manner as is necessary for the provision of Entrust's obligations under this Approval, or as is required by law or any regulatory body;
 - 2.3.4. Implement appropriate technical and organised measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 2.3.5. Take reasonable steps to ensure the reliability of Staff and agents who may have access to the Personal Data;
 - 2.3.6. Obtain prior written consent from HMRC in order to transfer the Personal Data to any sub-contractor for the provision of the Services;

- 2.3.7. Not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of HMRC, and in any event only in accordance with the provisions of the UK GDPR;
- 2.3.8. Ensure that all Staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition;
- 2.3.9. Ensure that none of the Staff and agents publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by HMRC; and
- 2.3.10. Not disclose Personal Data to any third parties in any circumstances other than with the written consent of HMRC, or in compliance with a legal obligation imposed upon HMRC.
- 2.3.11. Notify HMRC within 5 Working Days if it receives:
 - a A request from a Data Subject to have access to that person's Personal Data; or
 - b A complaint or request relating to HMRC's obligations under the DPA or UK GDPR.
- 2.4. Provide HMRC with reasonable cooperation and assistance in relation to any such complaint or request made, including by:
 - 2.4.1. Providing HMRC with full details of the complaint or request;
 - 2.4.2. Assisting HMRC to comply with any such request in accordance with HMRC's reasonable instructions; and
 - 2.4.3. Providing HMRC with any Personal Data it holds in relation to a Data Subject (within the timescales reasonably required by HMRC).
- 2.5. Clause 2.4.1 shall only apply where the Personal Data requested by the Data Subject is being processed by Entrust as a Processor for HMRC.
- 2.6. Each party shall designate its own data protection officer if required by any relevant legislation and notify details of its data protection officer to the other party.

3. Official Secrets Acts and related Legislation

- 3.1. Entrust shall comply with, and shall ensure that its Staff comply with, the provisions of:
 - 3.1.1. the Official Secrets Acts 1911 to 1989;
 - 3.1.2. Section 182 of the Finance Act 1989; and
 - 3.1.3. Section 18 and Section 19 of the Commissioners for Revenue and Customs Act 2005; and
 - 3.1.4. UK GDPR.

- 3.2. In the event that Entrust, or its Staff fail to comply with this Condition, HMRC reserves the right to terminate the Approval with immediate effect.

4. Security of Confidential Information

- 4.1. In order to ensure that no unauthorised person gains access to any confidential information or any data obtained in the performance of the Approval, Entrust undertakes to maintain proper and adequate security systems.
- 4.2. Entrust will immediately notify HMRC of any breach of security in relation to confidential information and all data obtained in the performance of the Approval and will keep a record of such breaches. Notification must be provided within 48 hours of knowledge of the breach of security. Entrust will use their best endeavours to recover such confidential information or data however it may be recorded. Entrust will co-operate with HMRC in any investigation where it is jointly agreed necessary to undertake as a result of any breach of security in relation to confidential information or data.
- 4.3. HMRC may require Entrust to review their security systems in relation to this Approval at any time during the Approval period. Entrust will be liable for its own costs that it incurs in making alterations to its security systems.
- 4.4. Except to the extent set out in this Condition or where disclosure is expressly permitted elsewhere in this Approval, Entrust shall:
- 4.4.1. treat HMRC's Confidential Information as confidential and safeguard it accordingly; and
 - 4.4.2. not disclose HMRC's Confidential Information to any other person without HMRC's prior written consent.
- 4.5. Clause 4.4 shall not apply to the extent that:
- 4.5.1. such disclosure is a requirement of Law placed upon Entrust;
 - 4.5.2. such Information was in Entrust's possession without obligation of confidentiality prior to its disclosure by HMRC;
 - 4.5.3. such Information was obtained from a third Party without obligation of confidentiality;
 - 4.5.4. such Information was already in the public domain at the time of disclosure otherwise than by a breach of this Approval; or
 - 4.5.5. it is independently developed without access to HMRC's Confidential Information.
- 4.6. Entrust may only disclose HMRC's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the Information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 4.7. Entrust shall not, and shall procure that the Staff do not, use any of HMRC's Confidential Information received otherwise than for the purposes of the Approval.

- 4.8. Where deemed appropriate by HMRC, and at the written request of HMRC, Entrust shall procure that its Staff sign a confidentiality undertaking prior to commencing any work in accordance with the Approval.
- 4.9. Nothing in this Approval shall prevent HMRC from disclosing Entrust's Confidential Information:
- 4.9.1. to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the Information is confidential and is not to be disclosed to a third Party which is not part of any Crown Body or any Contracting Authority;
 - 4.9.2. to any consultant, Contractor or other person engaged by HMRC;
 - 4.9.3. for the purpose of the examination and certification of HMRC's accounts; or
 - 4.9.4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HMRC has used its resources.
- 4.10. HMRC shall use all reasonable endeavours to ensure that any Crown body, Contracting Authority, employee, third Party or sub-contractor to whom Entrust's Confidential Information is disclosed pursuant to this Condition is made aware of HMRC's obligations of confidentiality.
- 4.11. Nothing in this Condition shall prevent Entrust from using any techniques, ideas or know-how gained during the performance of the Approval in the course of its normal business to the extent that this use does not result in disclosure of HMRC's Confidential Information or an infringement of its Intellectual Property Rights.
- 4.12. HMRC is required by law to safeguard the information it holds. These obligations fall under legislation including DPA, FOIA, Human Rights Act 1998, Environmental Information Regulations, Section 18 of the Commissioners for Revenue and Customs Act 2005, and Public Records Act 1958.

5. FOIA

- 5.1. Entrust acknowledges that HMRC is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with HMRC to enable HMRC to comply with its information disclosure obligations.
- 5.2. In respect of requests for information received by HMRC, Entrust shall:
- 5.2.1. provide HMRC with a copy of all Information in its possession or power in the form that HMRC requires within 5 Working Days (or such other period as HMRC may reasonably specify) of HMRC's request; and
 - 5.2.2. provide all necessary assistance as reasonably requested by HMRC to enable HMRC to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 5.3. HMRC shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Approval, or any other agreement whether

the Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- 5.4. In no event shall Entrust respond directly to a Request for Information served on it unless expressly authorised to do so by HMRC.
- 5.5. If HMRC receives a Request for Information relating to information previously considered by the Parties to be Commercially Sensitive Information that is exempt under the FOIA HMRC shall:
 - 5.5.1. consider whether the information is, in fact, exempt and;
 - 5.5.2. consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information (unless the Information benefits from an absolute exemption) and;
 - 5.5.3. consult with Entrust prior to disclosure of the information whenever reasonably practicable.
- 5.6. Without prejudice to Clause 5.5 HMRC shall consult with Entrust before disclosing any Confidential Information of Entrust unless HMRC is obliged under the FOIA to disclose such information without consulting Entrust.
- 5.7. HMRC shall not be liable for any loss or damage suffered by Entrust, whether in contract, tort or any other way, as a result of HMRC disclosing information legitimately in response to a request made under the FOIA.
- 5.8. Entrust shall ensure that all information is retained for disclosure in accordance with, as the case may be, any applicable legislation, this agreement, or guidelines from time to time in place and shall permit HMRC to inspect such records as requested from time to time.

6. Security Requirements

- 6.1. Entrust shall provide appropriate security for all its people and assets to ensure continuity of its business. Entrust shall protect its assets - including its people, information, Premises, property, information systems, networks and other services - against attack, theft, disclosure, corruption or non-availability.
- 6.2. Entrust shall procure the compliance of its Staff with its Security Policy.
- 6.3. Entrust shall notify HMRC of any changes or proposed changes from time to time to its Security Policy, such Security Policy at the date of this Approval having been provided to HMRC.
- 6.4. Entrust shall use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete malicious software from the ICT environment.

7. Publicity, Media and Official Enquiries

- 7.1. Entrust shall not make any press announcement, or publicise the Approval, or any part thereof in any way, except with the written consent of HMRC, which shall not be unreasonably withheld or delayed. Entrust may publish the Approval on its website.

- 7.2. Entrust shall take all reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with this Condition.
- 7.3. Entrust shall not use HMRC's name or brand in any promotion or marketing, or announcement without the prior written consent of HMRC.
- 7.4. Entrust shall acknowledge that nothing in this Approval either expressly, or by implication constitutes an endorsement of any product or services and agrees not to conduct itself in such a way as to imply or express any such endorsement.

8. Intellectual Property Rights

- 8.1. All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials") furnished to or made available to Entrust by HMRC shall remain the Property of HMRC. Entrust shall not, and shall ensure that its Staff shall not (except when necessary for the performance of the Approval) without prior approval, use or disclose any Intellectual Property Rights in the IP Materials.
- 8.2. Entrust shall not infringe any Intellectual Property Rights of any third Party in supplying the Services. Entrust shall, during and after the Approval, indemnify and keep indemnified and hold HMRC and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which HMRC or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:
 - 8.2.1. items or materials based upon designs supplied by HMRC; or
 - 8.2.2. the use of data supplied by HMRC which is not required to be verified by Entrust under any provision of the Approval.
- 8.3. Entrust shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by Entrust.
- 8.4. If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Approval or in the reasonable opinion of Entrust is likely to be made, Entrust shall notify HMRC and, at its own expense and subject to the consent of HMRC (not to be unreasonably withheld or delayed), use its best endeavours to:
 - 8.4.1. modify the use of the intellectual property without reducing the performance or functionality of the obligations being performed by Entrust under the terms of the Agreement, or substitute alternative ways of working of equivalent performance and functionality so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply to such modified ways of working or to the substituted ways of working; or
 - 8.4.2. procure a licence to use and supply the goods or services which are the subject of the alleged infringement on terms which are acceptable to HMRC, and
 - 8.4.3. in the event that Entrust is unable to comply with Clauses 8.4.1 or 8.4.2 within 20 Working Days of receipt of Entrust's notification, HMRC may Revoke the Approval with immediate effect by notice in writing.

9. Staff vetting

- 9.1. Entrust shall ensure that all persons employed, or engaged by Entrust have been vetted and recruited in line with Good Industry Practice and that the results of those checks are satisfactory.
- 9.2. Entrust shall maintain full and accurate records of its recruitment checks such that HMRC may verify that Entrust has carried out such checks in accordance with Good Industry Practice.
- 9.3. Subject to legal requirements in respect of confidentiality, Entrust shall grant to HMRC the right of reasonable access to all its records of recruitment checks and shall provide all reasonable assistance at all times for the purpose of carrying out an audit of Entrust's compliance with Good Industry Practice.
- 9.4. If HMRC, acting reasonably, gives Entrust notice that any person is not to become involved in or is to be removed from involvement in the performance of the Approval, Entrust, to the extent that it is permitted by law to do so, shall take all steps to comply with such notice and if required by HMRC, Entrust shall replace any person removed under this Clause with another suitably qualified person.
- 9.5. If and when instructed by HMRC, Entrust shall give to HMRC a list of names and addresses of all persons who are or who may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as HMRC may reasonably require.

10. Security of HMRC premises

- 10.1. Entrust shall comply with all reasonable security requirements of HMRC while on HMRC premises and shall ensure that all of its Staff comply with such requirements.
- 10.2. Entrust shall take all steps reasonably required by HMRC to prevent unauthorised persons from being admitted to HMRC premises. HMRC shall afford to the authorised personnel of Entrust at all reasonable times and with prior agreement such access to HMRC's premises as may be necessary for the performance of the Approval, provided always that HMRC shall have the right to refuse admittance to, or order the removal from their premises any person employed by or acting on behalf of Entrust, or any sub-contractor who in the opinion of HMRC (which shall be final) is not a fit and proper person to be on HMRC's premises. Action taken under this Condition shall be confirmed in writing to Entrust by HMRC and shall not relieve Entrust of its obligations under the Approval. At all times personnel of Entrust shall obey HMRC's directions relating to safety.
- 10.3. Where Staff are required to have a pass for admission to HMRC's premises, HMRC's representative shall, subject to satisfactory completion of Approval procedures, arrange for passes to be issued.

AGREED ENTRUST FUNDING METHODOLOGY

STEP 1 (TOA Clause 5.4)	Entrust to discuss with HMRC in-year if it anticipates a shortfall in funding for that year. HMRC may agree revised performance targets to reflect reduced funding.
STEP 2 (TOA Clause 5.1)	16 December: Entrust submit Corporate Plan and resource bid for the coming year to HMRC for consideration including any proposed adjustments. Entrust may include in its resource bid any costs outside its normal operating needs, for example IT Development, for HMRC's consideration and approval as appropriate. In considering such costs, HMRC will consider (not restricted to) Entrust's reserve position including any funds from underspends to be transferred under Step 3. Proposed adjustments to the resource bid in relation to any shortfall/surplus should be sent to HMRC for consideration. Adjustments may be based on information already supplied in reports required under the current and previous year's Corporate Plan. The proposed adjustments may include but not be limited to: Adjustment 1: forecast surplus/shortfall in funding estimated to be provided by contributions received by EBs in the current financial year from the funding amount approved by HMRC for that year. Adjustment 2: Actual surplus/shortfall in funding provided by actual contributions received by EBs in the previous financial year from the funding amount approved by HMRC for that year; less Adjustment 1 in relation to the previous financial year. Details to be provided to HMRC include: Actual contributions received by EBs in the previous three financial years and the current year to date. This is taken from Form 3 data based on date the EB receives the contribution; Forecast contributions received by EBs in the remainder of the current year. This is taken by applying the average monthly profile percentage of contributions received in the equivalent period in the last three financial years; against the original forecast total contributions for the current financial year. In-year efficiency savings Reserve forecast

STEP 3	HMRC consider the resource bid and proposed adjustments. There will be no adjustment in relation to any underspend or overspend from the approved funding. Any funds from underspends must be transferred into Entrust's general reserve to provide for any costs outside the normal operational needs. There will be no provision to replenish Entrust's reserves following any overspend.
STEP 4	HMRC approve Entrust's resource requirement (including adjustments) for the coming financial year as appropriate. Entrust amend its draft Corporate Plan to reflect the approved funding.
STEP 5	HMRC and Entrust agree the three-year outturn adjustment to be applied in forecasting the total amount of contributions expected to be received by EBs in the coming financial year. This is to be estimated using Form 3 data: date the EB receives the contributions and based on: Actual contributions received by EBs in the previous two financial years. Forecast contributions estimated to be received by EBs in the current financial year monthly actuals plus forecast for remainder of year). Compared to: Potential maximum contributions to EBs for those three years i.e. value of the Fund announced at Budget (tax credit) divided by 90%.
STEP 6 (TOA Clause 11.2)	By 15 March: HMRC to estimate the Levy to be paid by EBs to Entrust on contributions received taking into account: Potential maximum contributions to EBs for the coming year i.e. value of the Fund announced at Budget (tax credit) divided by 90% Three-year outturn adjustment Entrust's approved resource requirement (including adjustments).

FORM OF DEED

ANNEX IV

Signed by the parties on the date hereof.

Signed on behalf of Environmental Trust Scheme
Regulatory Body:

Kate Shaw.....

Signed on behalf of HM Revenue and Customs:

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Dated:.....