



BACS/BACSTEL-IP Services Customer Terms & Conditions

1. Introduction

These Terms and Conditions will constitute the terms and conditions between the Bank and the Customer in relation to the matters covered by these Terms and Conditions.

2. Definitions

2.1 In these Terms and Conditions:

"Access Code" means the access code associated with a Contact ID as issued by BACS to the relevant Contact in connection with the use of ASM by that Contact or as subsequently changed by BACS (whether at its own instigation or at the request of the Bank or the Contact's Primary Security Contact) or the Contact himself as contemplated by these Terms and Conditions and the Customer Service Guide;

"Additional Contact" means a person (who is not a Primary Security Contact) appointed by the Customer as a Service User who is permitted to access and use the BACS System via BACSTEL-IP (either using a PKI Service or ASM) on behalf of the Customer and to whom a Contact ID and an Access Code (where ASM is being used) have been issued by BACS;

"Applicable Requirements" means any law, statute, regulation, order, rule, guidance, voluntary code or standard applicable to the Customer (including, without limitation, all import and export controls and requirements);

"Application Form" means the BACS/BACSTEL-IP Services Application Form to be completed by the Customer as a constituent part of these Terms and Conditions, or any additional form that the Bank may decide to use as appropriate in relation to the Customer's use of the BACS System, including but not limited to those relating to migration, direct credit and direct debit;

"ASM" or "Alternative Security Method" means an alternative security method available from BACS within BACSTEL-IP which uses a combination of Contact IDs and Access Codes;

"BACS" means BACS Limited (company number 1023742) or, as the context may require, BACS Payment Schemes Limited (company number 4961302), and includes any entity which succeeds in whole or in part to the rights, obligations, functions and responsibilities ascribed to or contemplated as applicable to BACS Limited or BACS Payment Schemes Limited (as the case may be);

"BACS Approved Software" means any software which is at the relevant time approved by BACS under the BACS Approved Software Service;

"BACS Approved Software Service" means the process whereby BACS assesses and evaluates:

- (a) the capability of suppliers' software to generate a BACSTEL-IP Transmission; and
- (b) the software's ability to interface, and be interoperable, with BACSTEL-IP and the BACS System, on the terms and subject to the conditions of the BACS approved software supplier agreement;

"BACS Confidential Information" means all information of BACS and any Member (including the Bank) which is disclosed or made available to the Customer in connection with or for the purposes of BACSTEL-IP and which:

- (a) is by its nature confidential;
- (b) is designated as confidential by the party who discloses it or to whom it relates; or
- (c) the Customer knows or ought reasonably to know is confidential, including (without limitation):
- (d) information relating to any customer of the Bank or any Member, any person to whom the Bank or any Member provides a PKI Service or any customer of such a person;
- (e) information relating to the operation, internal management, structure, personnel, policies or business strategies of BACS, the Bank, any Member or BACSTEL-IP; and
- (f) computer object or source codes and related documentation;

"BACS System" means the system relating to the automated clearing and settlement of payments between Members or, as the context may require, the processes and all that is comprised in them for clearing of payments between Members in relation to that system, as administered and operated by BACS;

"BACS System Rules" means all the terms and conditions for the time being governing access to and use of the BACS System and (as the context may require) those applicable to the Bank as a Member;

"BACSTEL-IP" means the mechanism and processes adopted by BACS to enable a user of the BACS System, by using a public key infrastructure service provided by a Member or (in the case of (d) and (e) only) by either using a public key infrastructure service provided by a Member or ASM:

- (a) to authenticate and sign payment messages submitted to the BACS System and to validate, confirm receipt and report on the processing of such payment messages;
- (b) to authenticate and sign certain other instructions, messages, files and other communications transmitted to the BACS System, including (without limitation) any such communication which allows access to, or changes to be made to, the Reference Database;
- (c) to sign certain instructions, messages, files and communications transmitted by the BACS System (which may be authenticated by the recipients);
- (d) to monitor and retrieve reports on the processing of payment messages; and
- (e) to gain access to, or to make changes to, the Reference Database;

"BACSTEL-IP Materials" means all documents, information and other materials (excluding any software) provided or made available to the Customer, its employees, contractors or agents at any time by or on behalf of the Bank or BACS in connection with the implementation and operation of BACSTEL-IP, including (without limitation) the Service User Guide - BACSTEL-IP;

"BACSTEL-IP Payment Message" means any BACSTEL-IP Transmission Signed using a PKI Service and submitted by or on behalf of the Customer to the BACS System which comprises a payment message (including, without limitation, a recall instruction), whether submitted to the BACS System using the PKI Service of the Bank or of any other Member or in any other manner permitted by the rules of the BACS System, authorising the Bank to pay funds in or out of an account specified by the Customer (see clause 3.2(c)) on any Business Day;

"BACSTEL-IP Transmission" means an instruction, message, file or other communication which is transmitted in electronic form by a Member or a Service User to the BACS System, or by the BACS System to a Member or a Service User via BACSTEL-IP, including (without limitation) any such communication which allows access to, or changes to be made to, the Reference Database;

"Bank" means National Westminster Bank Plc, registered in England under company number 929027 whose registered office is at 135 Bishopsgate, London EC2M 3UR, and its successors and assigns;

"Bank Bureau" means a Member when acting as a bureau for the purposes of making submissions to and/or receiving output from the BACS System on behalf of any Service User (other than a Bureau sponsored by the Bank);

"Bureau" means any Bank Bureau, Commercial Computer Bureau or In-house Bureau;

"Business Day" means a day on which the Bank is ordinarily open to provide services of the kind contemplated in these Terms and Conditions and also on which the BACS System is fully open and operational;

"Commercial Computer Bureau" means:

- (a) any person (other than a Member) which is authorised by a Member to act as a bureau for the purposes of making submissions to and/or receiving output from the BACS System on behalf of any other person with respect to whom a Member (which may not be the Member giving such authorisation) is responsible for settling the payments of that person with respect to the BACS System;
- (b) any Member which acts as a bureau for the purposes of making submissions to and/or receiving output from the BACS System on behalf of any other person (other than any Service User (excluding any Bureau) sponsored by that Member) with respect to whom that Member is responsible as set out in paragraph (a) above when acting in its capacity as such; or
- (c) any service department, division, office or unit within a Local Authority which makes submissions to and/or receives output from the BACS System on behalf of any other Local Authority, and excludes any Bank Bureau or In-house Bureau;

"Contact" means each Primary Security Contact and any Additional Contacts appointed by the Customer as a Service User;

"Contact Details" means the name and telephone number(s) for contacting each Contact as held on the BACS System, as such is amended from time to time;

"Contact ID" means the unique reference contact ID issued by BACS for each Contact;

"Contacts Guide - BACSTEL-IP" means the document entitled "Contacts Guide - BACSTEL-IP", as such is amended from time to time;

"Customer" means a customer of the Bank who agrees to be bound by these Terms and Conditions;

"Customer Service Guide" means the document(s) (by whatever name called) identified as customer service guides by the Bank and setting out the Bank's requirements for providing BACS support or otherwise relating to the BACS System, including but not limited to the Contacts Guide - BACSTEL-IP, the Service User Guide - BACSTEL-IP and the HSM Standard Guide - BACSTEL-IP (where appropriate), as may be amended from time to time;

"Digital Certificate" means an electronic attestation which links a Public Key to the person for whom the corresponding Private Key was generated and confirms the identity of that person;

"Digital Signature" means data in electronic form which are attached to or logically associated with other electronic data (including, without limitation, a BACSTEL-IP Transmission) and which serves as a method of authentication;

"Direct Submitter" means any person (other than a member of the BACS System):

- (a) whom the Bank has permitted to make payments via BACSTEL-IP from or to an account held by that person or any Group Company with the Bank;
- (b) which submits a BACSTEL-IP Transmission directly to the BACS System via BACSTEL-IP using a PKI Service provided by the Bank which BACSTEL-IP Transmission:
 - (i) in the case of a BACSTEL-IP Payment Message, specifies any such account as is referred to in paragraph (a) above as the account to be debited or, as the case may be, credited; or
 - (ii) in the case of any other incoming BACSTEL-IP Transmission, either provides access to or makes changes to the details held on the Reference Database regarding or associated with any such account as is referred to in paragraph (a) above or provides access to any other information held by BACS relating to that account (including, without limitation, any information relating to the processing of payments made or to be made to or from that account),

and, for the avoidance of doubt, excludes an agency bank, a Bureau, an Indirect Submitter and a multi-banked customer (where such account is a nominated account), in each case when acting in its capacity as such;

"DPA" means the Data Protection Act 1998;

"Good Response" means a response that indicates that the Digital Certificate in question:

- (a) was issued by or on behalf of the Bank; and
- (b) is valid, and has not expired, been revoked or suspended, and is not unknown;

"Group Company" means, in relation to a party to these Terms and Conditions any holding company of it, and any subsidiary company of it, or any subsidiary company of any such holding company (as such terms are defined in the Companies Act 1985, as amended from time to time) for the time being and from time to time;

"HSM Standard Guide - BACSTEL-IP" means the document entitled "BACSTEL-IP Subscriber HSM Standard", as such is amended from time to time;

"Indirect Submitter" means any person on whose behalf a Bank Bureau, a Commercial Computer Bureau or an In-house Bureau submits an instruction, message, file or other communication to the BACS System;

"In-house Bureau" means any service department, division, office or unit within the same legal entity (or a Group Company) which makes submissions to and/or receives output from the BACS System via BACSTEL-IP on behalf of that legal entity (or that Group Company), and excludes any service department, division, office or unit within a Local Authority which makes submissions to and/or receives output from the BACS System via BACSTEL-IP on behalf of any other Local Authority;

"Insolvency Event" means in relation to the Customer (or for the purposes of an insolvency event, in relation to any Group Company of the Customer, any of which will also be included in the "Customer"), any of the following:

- (a) that the Customer is unable or admits that it is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986 (the "Act") (other than by reason of the service of a written demand pursuant to section 123(1)(1) of the Act where the Customer contests such demand in good faith);

- (b) an order is made by a court of competent jurisdiction, or a resolution is passed, for the winding up of the Customer;
- (c) the presentation of a petition for the winding up of the Customer where such petition is not restrained from being advertised or is dismissed within 28 days of its presentation;
- (d) distress, attachment, sequestration, execution or other legal process is levied or enforced against all or a material part of property or assets of the Customer and is not fully paid or discharged within 28 days unless and for so long as the same is being contested in good faith;
- (e) any legal proceedings or other procedure or step is taken in relation to:
 - (i) the commencement of a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise), other than a solvent liquidation or reorganisation; or
 - (ii) a composition, assignment or arrangement with any of the creditors of the Customer; or
 - (iii) the appointment of a liquidator (other than in respect of a solvent liquidation of the Customer's business or undertaking), or a provisional liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer is appointed in respect of or over all or a material part of the undertakings or assets of the Customer; or
- (f) if any event analogous to (a) to (e) of this definition shall occur in any other jurisdiction to which the Customer is subject;

"Intellectual Property Rights" means all intellectual property rights in any part of the world and shall include (without limitation): patents (including, without limitation supplementary protection certificates), utility models, rights in inventions, registered and unregistered trade and service marks, rights in business and trade names and get-up, rights in domain names, registered designs, unregistered rights in designs, copyrights and neighbouring rights, database rights, rights in know how, and in each case rights of a similar or corresponding character and all applications and rights to apply for or for the protection of any of the foregoing;

"Local Authority" has the meaning given to it in the Local Government Act 1972;

"Member" means any institution or entity which is a member of the BACS System from time to time;

"PKI Service" means the public key infrastructure service (consisting of a certification authority, registration authority and certificate validation authority that in combination are able to issue, manage and certify digital certificates to enable the authentication and encryption of digital communications) provided to the Customer by or on behalf of the Bank;

"Primary Security Contact" means each or all (as the context requires) of the persons appointed by the Customer as a Service User:

- (a) who is authorised or permitted (as appropriate) to access via BACSTEL-IP and use the BACS System (either using a PKI Service or ASM) on behalf of the Customer;
- (b) to whom a Contact ID and an Access Code (where ASM is being used) have been issued by BACS; and
- (c) who is authorised by the Customer to perform certain functions including (without limitation) to set up and maintain Additional Contacts;

"Private Key" means the key within any asymmetric key pair generated by the PKI Service for a person which is normally known only by that person;

"Public Key" means the key within any asymmetric key pair generated by the PKI Service for a person which is not the Private Key;

"Reference Database" means the database held by BACS which records details inputted by BACS, the Bank and the Customer, as the case may be, about the Customer, including (without limitation) the levels of authorisation and permission in relation to BACSTEL-IP Transmissions submitted to BACS by the Customer as part of BACSTEL-IP;

"Service User" means the Customer once the Customer has agreed to be bound by these Terms and Conditions and has been granted the authority and the relevant permissions to enable the Customer to be registered as a service user on the BACS System or (as the context may require) any person who is registered as a Service User on the BACS System;

"Service User Guide - BACSTEL-IP" means the document entitled "Service User Guide - BACSTEL-IP", as such is amended from time to time;

"Settlement Account" has the meaning given to in clause 3.2(c);

"Sign" means the use of a person's Private Key and associated Digital Certificate to create a Digital Signature on or for a BACSTEL-IP Transmission, and "Signed" and "Signing" shall be construed accordingly;

"Terms and Conditions" means these terms and conditions governing the relationship between the Bank and the Customer in relation to the Customer's use of the BACS System and BACSTEL-IP and, if appropriate, the Customer's use of the PKI Service and ASM in connection with the BACS System and BACSTEL-IP, as set out in this document, together with the Application Form and, if appropriate, the Trust Service Agreement and the Customer Service Guide;

"Trust Service Agreement" means the Business Customer Agreement for the Trust Assured Service terms and conditions to be completed by the Customer as a constituent part of these Terms and Conditions; and

"Viruses" means viruses, worms, trojan horses, malicious code, locking or destructive mechanisms or any thing or things similar to any of the foregoing or analogous to them.

- 2.2 In these Terms and Conditions, references to a "person" include (but are not limited to) any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality.

3. Use of the BACS System

- 3.1 The Customer may access via BACSTEL-IP and use the BACS System.

The Customer shall only use the BACS System for submitting BACSTEL-IP Transmissions directly to, or for receiving communications or collecting reports from, the BACS System via BACSTEL-IP (either using a PKI Service or ASM) in accordance with clauses 5 and 6 PROVIDED THAT at all times the Customer:

- (a) complies with any restrictions or prohibitions that the Bank may from time to time specify by written notice to the Customer as to the Customer's use of the BACS System if and when it is necessary or appropriate to reflect a change in the Bank's products or services or in the facilities the Bank offers or a change in the BACS System Rules; and
- (b) complies with such documentation relating to the use of the BACS System as is applicable from time to time, including (without limitation) the Service User Guide - BACSTEL-IP and the HSM Standard Guide-BACSTEL-IP (where appropriate); and
- (c) complies with the provisions of any existing contractual arrangement between the Bank and the Customer; and
- (d) ensures that there is at all times at least two Primary Security Contacts duly appointed by the Customer in such manner as the Bank shall for the time being require; and
- (e) authorises any one Primary Security Contact for the time being to appoint, remove and replace any and all persons other than Primary Security Contacts who are intended to operate or use the BACS System on behalf of the Customer PROVIDED THAT:
 - (i) the Bank shall be entitled to assume that the appointment of a Primary Security Contact remains valid unless and until it receives written notice from the Customer or a partner or director or company secretary or member or authorised signatory of the Customer to the contrary; and
 - (ii) the Bank shall be entitled to rely absolutely upon the validity of appointments, removals and replacements made by a Primary Security Contact and shall (as between the Customer and the Bank) under no circumstances be required to make any enquiry regarding such validity.

- 3.2 Subject to clause 3.3, to enable the Customer to use the BACS System, the Customer authorises and requests the Bank to take any action it deems necessary or appropriate (including instructing BACS) with respect to or to give effect to:

- (a) the Customer's registration as a Service User and the allocation to the Customer of a Service User number;
- (b) the setting, monitoring and revision from time to time of any financial limit applicable to payments that the Bank is prepared to make pursuant to a BACSTEL-IP Payment Message submitted by the Customer, or on behalf of the Customer by a Bureau, in relation to the use of the BACS System on any Business Day. The Bank may, where it deems it appropriate, notify the Customer of a financial limit and any revision thereto as soon as practicable after it has been set or revised. The Customer acknowledges that any reduction in or disablement of a financial limit made by the Bank shall not affect the Customer's payment obligation under a valid BACSTEL-IP Payment Message generated prior to the effective time of the reduction in or disablement of such financial limit; and
- (c) subject to clause 9.6, any BACSTEL-IP Payment Message and settle the relevant payment by debiting or crediting the relevant account, where the BACS Payment Message relates to a payment to be made to or from:
 - (i) an account held by the Customer with the Bank (such account being as nominated by the Customer in the Application Form, or as otherwise notified to the Bank in writing); or

- (ii) an account held by any Group Company of the Customer with the Bank as may be agreed by the Customer with the Bank from time to time, any account referred to in subclauses (i) and (ii) being the "Settlement Account".

- 3.3 Without prejudice to the generality of the above and clause 3.6 below, the Customer hereby irrevocably and unconditionally authorises and requests the Bank to act (including by debiting or crediting, as appropriate, the Settlement Account) upon each and every valid payment message submitted:

- (a) where the Customer is sponsored by the Bank to act as a Direct Submitter, by the Customer to the BACS System; or
- (b) where the Customer is sponsored by the Bank to act as an Indirect Submitter, on behalf of the Customer by a Bureau, whether submitted using the PKI Service of the Bank or of any other Member or in any other manner permitted by the rules of the BACS System, where the account specified in any such BACSTEL-IP Transmission is maintained by the Customer or any Group Company of the Customer with the Bank.

- 3.4 If the Bank makes a payment which accords with a BACSTEL-IP Payment Message received by it in accordance with clause 3.2(c), then clause 3.6 shall apply notwithstanding that (in the absence of wilful default by the Bank) the payment in question is not credited or debited as the Customer intended. In relation to each BACSTEL-IP Payment Message, the Bank shall not be obliged to verify that the name of the beneficiary accords with the account number for such beneficiary as set out in such BACSTEL-IP Payment Message.

- 3.5 Subject to these Terms and Conditions, the Bank shall either make payment or receive payment for the account of the Customer in accordance with a BACSTEL-IP Payment Message, such payments to be debited or credited (as the case may be) by the Bank to the Settlement Account.

- 3.6 The Customer hereby irrevocably and unconditionally authorises and requests the Bank to do all such acts and things and execute all such documents as may be required to enable the Bank fully to observe and perform its obligations under these Terms and Conditions. In particular, (but without limitation) the Customer irrevocably authorises the Bank to debit or credit, as appropriate, the Settlement Account on the same day with such amount or amounts as shall represent payments incurred and received by the Bank in relation to each Customer or any Group Company of the Customer in respect of BACSTEL-IP Payment Messages arising in relation to that Customer or any Group Company of the Customer to be carried out that day.

- 3.7 Where the Customer is sponsored by the Bank to act in the capacity of an Indirect Submitter, the Customer further irrevocably and unconditionally authorises the Bank to accept all instructions, messages, files and other communications submitted by the Bureau appointed by the Customer, including (but without limitation) any BACSTEL-IP Transmissions and the collection of reports from the BACS System via BACSTEL-IP for the Customer's own account or on behalf of any Group Company of the Customer.

- 3.8 The Customer represents to the Bank that all acts and things done by a Bureau on behalf of the Customer (even where such acts or things were not authorised by the Customer) in connection with the BACS System are within the scope of its authority from that Customer.

- 3.9 The Bank shall not be liable to the Customer for any loss suffered by the Customer as a result of any act or omission by the Bureau when acting on behalf of the Customer.

4. Use of the PKI Service and the BACS System via BACSTEL-IP

- 4.1 The Customer shall at all times comply with the Trust Service Agreement when using the PKI Service in connection with the BACS System, including (without limitation) when Signing any BACSTEL-IP Transmission.

- 4.2 The Customer shall notify the Bank:

- (a) immediately if the Customer becomes aware of or suspects:
 - (i) any material breach by it of, or any material non-compliance with, these Terms and Conditions (including without limitation the terms of the Trust Service Agreement); or
 - (ii) any fraud in or affecting BACSTEL-IP or the PKI Service, giving reasonable details of the circumstances; or
- (b) at the earliest opportunity after the Customer becomes aware of or suspects any material instances of compromise or suggested compromise in relation to the PKI Service or the Customer's use of it.

- 4.3 Any notification required to be made by a Customer under clause 4.2 shall be made in accordance with clause 27.1(a). Where such notification is made by telephone, fax or e-mail, the Bank may require the notification to be confirmed in writing before taking any action in relation thereto.

5. Use of the PKI Service

- 5.1 Where the Customer is sponsored by the Bank to act in the capacity of a Direct Submitter, the Customer shall only use the PKI Service in connection with the BACS System for submitting BACSTEL-IP Transmissions directly to the BACS System or for receiving communications or collecting reports from the BACS System via BACSTEL-IP for its own account or on behalf of any Group Company of the Customer which either:
- specifies an account maintained by the Customer or such Group Company with the Bank as the account to be debited or, as the case may be, credited; or
 - makes changes to the details held on the Reference Database regarding or associated with any such account or provides access to any other information held by the BACS System relating to that account (including, without limitation, any information relating to the processing of payments made or to be made to or from that account).
- 5.2 Where the Customer is sponsored by the Bank to act in the capacity of an Indirect Submitter, the Customer shall only use the PKI Service in connection with the BACS System for submitting BACSTEL-IP Transmissions to a Bureau for onward submission to the BACS System (where permitted) or for collecting reports from the BACS System via BACSTEL-IP for its own account or on behalf of any Group Company of the Customer which either:
- specifies an account maintained by the Customer or such Group Company with the Bank as the account to be debited or, as the case may be, credited; or
 - makes changes to the details held on the Reference Database regarding or associated with any such account or provides access to any other information held by the BACS System relating to that account (including, without limitation, any information relating to the processing of payments made or to be made to or from that account).
- 5.3 Where the Customer is sponsored by the Bank to act in the capacity of an Indirect Submitter, the Bank agrees to settle payments associated with BACSTEL-IP Transmissions submitted on behalf of the Customer by a Bureau where that Bureau uses the Bank's PKI Service or the PKI Service of another member of the BACS System, where the account specified in any such BACSTEL-IP Transmission is maintained by the Customer with the Bank or such Group Company with the Bank.
- 5.4 The Customer shall not do (or permit to be done by or on its behalf) anything in connection with the BACS System via BACSTEL-IP outside of the United Kingdom, the Channel Islands or the Isle of Man which would or is reasonably likely to result in BACS or the Bank being in breach of any applicable laws or regulations outside of the United Kingdom, the Channel Islands or the Isle of Man.
- 5.5 Without prejudice to the generality of clauses 5.1 and 5.2, the Customer shall not use the PKI Service in connection with the BACS System for submitting BACSTEL-IP Transmissions to the BACS System via BACSTEL-IP for any other purpose or in any other capacity (including as a Bureau) and must not hold itself out as capable of sponsoring or authorising any person with respect to the use of the BACS System.

6. Use of ASM

- 6.1 Subject to and in accordance with these Terms and Conditions, the Customer shall be entitled to use ASM for accessing via BACSTEL-IP and using the BACS System if the Customer has been sponsored by the Bank as a Service User and has been authorised by the Bank to use ASM (pursuant to the relevant provisions of the Service User Guide – BACSTEL-IP) for accessing the BACS System via BACSTEL-IP.
- 6.2 The Customer shall not be permitted to use ASM except via a Contact who is permitted to use ASM.

7. Use of BACS Approved Software

- 7.1 Subject to any specific waiver granted in writing from time to time by the Bank, when submitting a BACSTEL-IP Transmission which would effect a payment from or to an account held with the Bank, such account being the Settlement Account held by the Customer or an account held by any Group Company of the Customer, from or to the BACS System using the PKI Service, the Customer shall:
- only use software which at the relevant time is BACS Approved Software;
 - act in accordance with any instructions, guidance or procedures provided to it by the Bank; and
 - comply with the provisions of the Customer Service Guide.

8. Confidentiality

- 8.1 The Customer shall keep any BACS Confidential Information which it receives confidential at all times, and shall not:
- use such BACS Confidential Information or any part of it for any purpose other than its participation in BACSTEL-IP or any payment, clearing or other scheme run by BACS; nor
 - disclose such BACS Confidential Information or any part of it to any person other than to those employees, agents, contractors or any Group Company of the Customer to whom disclosure is necessary for its participation in BACSTEL-IP or any payment, clearing or other scheme run by BACS, provided that it ensures that such persons to whom BACS Confidential Information is disclosed are at all times subject to and maintain this obligation of confidentiality.
- 8.2 Notwithstanding clause 8.1, the Customer is entitled to disclose the BACS Confidential Information:
- to the extent necessary to comply with these Terms and Conditions; and/or
 - to a third party to the extent that this is required by any court of competent jurisdiction or by a governmental authority or regulatory authority or that a disclosure is legally required, provided that in the case of sub-clause (b), where the Customer is able to do so without breaching any legal or regulatory requirements, the Customer gives the owner of the BACS Confidential Information in question written notice as soon as reasonably practicable of the intended disclosure.
- 8.3 The obligations set out in clause 8.1 do not apply to information which:
- the Customer can show was known by it before it received such information (or learnt of the same) under or in connection with BACSTEL-IP or any payment, clearing or other scheme run by BACS and had not previously been obtained under an obligation of confidence;
 - is in or comes into the public domain, and has not come into the public domain through a breach of this clause 8 or any other confidentiality obligation;
 - the Customer can show was independently developed by it; or
 - is disclosed to the Customer without restrictions and without breach of any obligation of confidentiality by a third party who has the right to make such disclosure.
- 8.4 Where the Customer ceases to participate in BACSTEL-IP or any payment, clearing or other scheme run by BACS, such Customer shall not be entitled to keep any BACS Confidential Information except to the extent that it is required to do so in order to comply with any Applicable Requirements or to maintain a record of BACSTEL-IP Transmissions or any other materials relating to its participation in the BACSTEL-IP. The provisions of this clause 8 shall continue to apply to the Customer for so long as it retains any such BACS Confidential Information.
- 8.5 The provisions set out in this clause 8 are in addition to (and not in substitution for) all other confidentiality obligations between the Customer and the Bank, BACS and/or any Member.

9. Termination and suspension

- 9.1 The Bank may suspend or terminate, or withdraw or cease to permit the Customer's right to use the BACS System:
- on 30 days written notice to the Customer; or
 - with immediate effect in any of the following circumstances:
 - if BACS decides for whatever reason not to validate BACSTEL-IP Transmissions from the Customer;
 - if BACS suspends or revokes the Bank's right to use the PKI Service or ASM in relation to BACSTEL-IP;
 - where the Bank considers it appropriate to do so in order to protect the security, integrity or reputation of BACSTEL-IP or the PKI Service;
 - where, in the opinion of the Bank, the Customer is in breach of any provision of these Terms and Conditions (including, without limitation, any breach of the Trust Service Agreement); or
 - on the occurrence of an Insolvency Event in relation to the Customer.
- 9.2 Upon any suspension or withdrawal in accordance with clause 9.1:
- the Customer shall not (and it shall ensure that its agents, contractors and employees shall not) Sign or submit any BACSTEL-IP Transmissions using the PKI Service or ASM after such suspension or withdrawal unless and until, in the case of a suspension, such suspension is lifted by the Bank giving written notice to that effect to the Customer; and
 - the Bank shall provide reasonable assistance to the Customer on the basis set out in clause 15.7 if the Customer wishes to extract or recall any BACSTEL-IP Payment Message.

- 9.3 The Customer may request that the Bank's permission to it to use the BACS System shall be suspended or revoked on 30 days written notice to the Bank.
- 9.4 Upon termination by any party to these Terms and Conditions of their agreement to be bound by these Terms and Conditions, the Customer shall promptly return to the Bank or destroy (at the Bank's option) all data, materials and other properties of the Bank held by the Customer or any of the Customer's employees and the Customer shall no longer be entitled to use the BACS System.
- 9.5 If the Customer fails to perform its obligations under these Terms and Conditions in accordance with its terms or the Bank at any time (and in its absolute discretion) concludes that any of the events referred to in sub-clauses (b)(iii), (iv) and (v) of clause 9.1 has occurred or is likely to occur, then (without prejudice to its right (if any) at any time thereafter to terminate this Agreement) the Bank shall have the right at its discretion to suspend all or part of the Customer's right to use the BACS System under these Terms and Conditions until the Customer has fully performed all such obligations to the satisfaction of the Bank at which time the Bank shall reinstate the Customer's right to use the BACS System.
- 9.6 Nothing in these Terms and Conditions shall prejudice the Bank's entitlement:
- to decline to make any payment pursuant to a BACSTEL-IP Payment Message unless and until it is satisfied that:
 - sufficient funds and/or undrawn credit facilities are or will be freely available to the Customer to enable the Customer to discharge its obligations to the Bank;
 - such payment is lawful; and
 - such payment is not in excess of any financial limit set by the Bank from time to time; and
 - to settle any payment pursuant to a BACSTEL-IP Payment Message submitted by or on behalf of the Customer on or prior to termination or suspension even if such BACSTEL-IP Payment Message will be settled after termination or suspension.
- 9.7 Termination or suspension of these Terms and Conditions shall be without prejudice to:
- all rights and obligations accrued up to the date of such termination or suspension; and
 - clauses 8 (Confidentiality), 15 (Liability), 16 (Indemnity) 17.1 (Force Majeure), 18 (Charges) and 21 (Waiver) in these Terms and Conditions and clauses 9 (Charges), 19 (Confidentiality) and 22 (Liability and Indemnity) in the Trust Service Agreement and such other clauses as are referred to in the above clauses which shall continue in full force and effect after and notwithstanding such termination or suspension.

10. Data protection

- 10.1 The Bank and the Customer shall at all times comply with the DPA and any regulations or other legislation made under the DPA, and in particular with the data protection principles set out in the DPA.
- 10.2 Where personal data is provided or disclosed to the Bank or BACS by the Customer, the Customer shall ensure that all necessary consents have been obtained from the relevant data subjects to allow the Bank and its data processors (including BACS) to receive such personal data and to use and process it in order to:
- provide the PKI Service to the Customer; and
 - validate and process BACSTEL-IP Transmissions submitted by the Customer or on behalf of the Customer by a Bureau.
- 10.3 For the purposes of this clause 10, the terms "personal data", "data subjects" and "data processors" shall have the meaning given to them by the DPA.

11. Intellectual Property Rights

- 11.1 All right, title, interest and Intellectual Property Rights in the BACSTEL-IP Materials shall vest in the Bank or the Bank's licensors and, except to the extent set out in clause 11.2, the Customer shall obtain no right, title or interest in any BACSTEL-IP Materials or in any Intellectual Property Rights therein.
- 11.2 The Bank hereby grants the Customer a sub-licence to use and copy (but not to sub-licence) the BACSTEL-IP Materials and the Intellectual Property Rights therein (other than any documents, information and other materials relating to the BACS Approved Software Service), but only to the extent necessary to enable the Customer to participate in BACSTEL-IP and for use only in connection with the BACS System.
- 11.3 The Bank gives no warranty that the BACSTEL-IP Materials sub-licensed to the Customer shall not infringe the Intellectual Property Rights of any third party.
- 11.4 The licence set out in this clause 11 shall terminate automatically on the earlier of:
- any termination or suspension under clause 9;
 - the Bank ceasing to participate in BACSTEL-IP and/or the BACS System; or
 - the Customer ceasing to maintain an account with the Bank; or

- the Customer ceasing to be permitted by the Bank to use the PKI Service and/or ASM.

- 11.5 On such termination, the Customer is required to return to the Bank or destroy (at the Bank's option) all copies of the BACSTEL-IP Materials provided to the Customer or which are otherwise in the Customer's possession, custody or power.

12. Customer obligations

- 12.1 The Customer shall:
- comply at all times with all Applicable Requirements;
 - obtain and maintain at all times all licences, consents, permissions and authorisations necessary to participate in BACSTEL-IP (including, without limitation, those relating to the import or export of any equipment, software or technology);
 - obtain, update and maintain at all times at least one copy of the Customer Service Guide, unless the Bank has specifically waived this requirement in writing; Customer Service Guides shall be made available to the Customer by the internet, and updates shall be notified by e-mail, or by such other means as the Bank may decide from time to time;
 - input, update and maintain at all times its Contact Details on the BACS System;
 - ensure that at least one Contact is always available and contactable in accordance with its Contact Details for a period of at least 6 hours from the time of each BACSTEL-IP Transmission submitted by or on behalf of the Customer;
 - provide such reasonable assistance as may be requested by the Bank in relation to the Customer's use of the BACS System or which the Bank may otherwise require in order to properly perform its obligations under these Terms and Conditions; and
 - use all reasonable care (including, without limitation, the use of up to date Virus checking software) to prevent the introduction of any Viruses into, or any Virus contamination (including cross-contamination) of:
 - any BACSTEL-IP Transmissions;
 - the PKI Service;
 - ASM;
 - any public key infrastructure service used by any other participant in BACSTEL-IP; or
 - any BACSTEL-IP related hardware or software.
- 12.2 A Customer sponsored by the Bank to act as a Service User permitted to use ASM shall contractually require that:
- each Contact acting on behalf of such Customer (whether or not employed by such Service User):
 - complies with all the relevant procedures for obtaining and safekeeping this Contact ID and Access Code;
 - complies with the Customer Service Guide (including but not limited to the Service User Guide - BACSTEL-IP and the Contacts Guide - BACSTEL-IP);
 - changes this Access Code as required from time to time by the BACS System;
 - changes this Access Code if such Contact suspects that the security of the Access Code has been compromised, including (without limitation) where the Bank suspects that the Access Code has been used by a person who is not a Contact;
 - notifies the Customer as soon as such Contact suspects that the security of the Access Code has been compromised as referred to in sub-clause (iv) above; and
 - a Primary Security Contact shall reset the Access Code of a Contact when a change of the Access Code of that Contact is requested.
- 12.3 Subject to any constraints imposed by law or regulations, the Customer shall notify the Bank:
- immediately if the Customer becomes aware of or suspects:
 - any material breach of or non-compliance by it with these Terms and Conditions; or
 - any fraud in or affecting BACSTEL-IP, any PKI Service used or any use of ASM in connection with BACSTEL-IP, giving reasonable details of the circumstances; and
 - immediately upon any of the circumstances specified in clause 9.1(b)(v) occurring in relation to it.

13. Bank obligations

13.1 The Bank shall use reasonable care and skill:

- (a) in performing its obligations relating to its authorisation of the Customer to use the BACS System to the Customer under these Terms and Conditions; and
- (b) in the provision by it of a PKI Service to the Customer in connection with BACSTEL-IP or in its authorisation of the Customer to use ASM in connection with BACSTEL-IP.

13.2 The Bank, in the process of and as a result of authorising the use of ASM in connection with BACSTEL-IP, shall use its reasonable endeavours to:

- (a) perform such obligations as are required to enable a Contact to become authorised to use ASM; and
- (b) initiate the process to reset the Access Code of a Primary Security Contact when a change of the Access Code of that Primary Security Contact is requested.

14. Legal effectiveness and admissibility of electronic signatures and certificates

14.1 All BACSTEL-IP Transmissions Signed by or on behalf of the Customer using a Private Key and Digital Certificate issued by the PKI Service to the Customer shall have the same legal effect, validity and enforceability as if such BACSTEL-IP Transmission had been in writing signed by or on behalf of the Customer, provided that:

- (a) the Digital Certificate is within its validity period; and
- (b) the recipient of the BACSTEL-IP Transmission requests a validation of such Digital Certificate and the response received to such validation request is a Good Response.

14.2 All BACSTEL-IP Transmissions submitted using ASM shall have the same legal effect, validity and enforceability as if such BACSTEL-IP Transmission had been in writing rather than in electronic form provided that each party wishing to rely on such BACSTEL-IP Transmission has complied with the procedures relating to the use of ASM in the Service User Guide – BACSTEL-IP.

14.3 The Customer shall not challenge the legal effect, validity or enforceability of a BACSTEL-IP Transmission (including, in relation to this clause 14.3, any transmission that purports to be a BACSTEL-IP Transmission) on the basis that:

- (a) such BACSTEL-IP Transmission is in electronic rather than written form;
- (b) the Customer, (where the Customer is an Indirect Submitter) the Bureau or the holder of the Digital Certificate did not see, check or review the contents of the BACSTEL-IP Transmission before or when Signing it;
- (c) the BACSTEL-IP Transmission was Signed automatically or without direct human instigation or intervention (whether by a hardware security module or otherwise); or
- (d) the BACSTEL-IP Transmission, or the Signing, transmission and processing of the BACSTEL-IP Transmission, constitutes a breach by
 - (i) the Customer of these Terms and Conditions or of the provisions or terms of use of any relevant third party provider or third party trust scheme; or
 - (ii) (where the Customer is an Indirect Submitter) the Bureau of the terms on which it acts on behalf of such Customer.

14.4 The Bank shall be entitled to rely on, and the Customer shall accept full liability for, any BACSTEL-IP Transmission Signed using a Private Key and Certificate issued by the PKI Service to the Customer or to a Bureau acting on behalf of the Customer, provided that:

- (a) the Digital Certificate used to Sign such BACSTEL-IP Transmission is valid, has not expired, has not been revoked or suspended and the Customer has not requested that it be revoked or suspended following the procedure set out in clause 4.6 of the Trust Service Agreement;
- (b) the period of notice relating to a notice to suspend the Customer's right to use the BACS System pursuant to clause 9 has not expired; and
- (c) where the Customer is sponsored by the Bank to act in the capacity of a Direct Submitter, the BACSTEL-IP Transmission does not contravene the levels of authorisation and permission set out in the Reference Database in relation to the holder of the Digital Certificate used to Sign such BACSTEL-IP Transmission; or
- (d) where the Customer is sponsored by the Bank to act in the capacity of an Indirect Submitter, the BACSTEL-IP Transmission does not contravene the levels of authorisation and permission set out in the Reference Database in relation to the relevant Service User whose Contact has used its Digital Certificate to Sign such BACSTEL-IP Transmission.

15. Liability

15.1 Subject to clauses 15.2 and 15.3, the Bank shall not be liable to the Customer either in contract, tort (including negligence) or otherwise for:

- (a) any loss or damage that the Customer suffers as a result of the Customer's use of the BACS System except to the extent:
 - (i) provided for in clause 15.2; or
 - (ii) that such loss or damage is caused directly by the Bank's negligence, wilful default or by breach of these Terms and Conditions by the Bank;
- (b) any direct or indirect loss of profit, goodwill, business or anticipated savings nor for any indirect, special or consequential loss or damage resulting from the Customer's use of the BACS System whether or not the possibility of such loss occurring was foreseeable, foreseen or known by the Bank or if the Bank had been advised of the possibility of such loss in advance;
- (c) any loss resulting from third party services outside the Bank's reasonable control (including, but not limited to, clearing services provided by BACS and settlement services provided by the Bank of England);
- (d) any loss caused by delay by the Bank in performing, or failure to perform, the Bank's obligations under these Terms and Conditions if the delay or failure results from the Bank complying with its obligations under the BACS System or from events or circumstances outside the Bank's control: such delay or failure will not constitute a breach of these Terms and Conditions;
- (e) any act or omission to act by the Bank to the extent that such act or omission to act is in accordance with a request from a Customer or from a Bureau acting on behalf of a Customer;
- (f) any loss or damage resulting from the Customer's use of the BACSTEL-IP Materials; or
- (g) any loss or damage resulting from the use of the PKI Service: any liability for such loss or damage will be covered by, and subject to the limitations and exclusions in, the Trust Service Agreement.

15.2 Subject to clauses 15.1 and 15.3, the Bank's liability to the Customer under these Terms and Conditions shall be limited to direct loss reasonably incurred by the Customer but only to the extent that such loss:

- (a) in the event of:
 - (i) a referral from the BACS System in relation to a BACSTEL-IP Transmission submitted by or on behalf of the Customer; or
 - (ii) a request from the Customer to extract or amend a BACSTEL-IP Transmission,is caused directly by the Bank's negligence or wilful default in acting (or failing to act) in accordance with such referral or request, provided that (in the case of a request) the Customer's instructions were reasonable, clear and given to the Bank in good time. In the event of a referral, in the absence of the Customer's instructions given by way of a related request, the Bank shall be entitled to respond to, and the Customer shall accept full liability for, any referral where the Customer is not contactable in accordance with its Contact Details and/or clause 12.1(e); and
- (b) comprises:
 - (i) any funds which have been incorrectly paid and which are not recoverable by the Customer, the Bank and/or the affected party; or
 - (ii) any loss of interest, overdraft charges and other bank charges reasonably suffered by the Customer and/or the affected party and any additional operational costs reasonably incurred by the Customer (e.g. for a "work-around"), provided always that the Bank's liability for any additional operational costs shall not in any circumstances exceed the total aggregate sum of £5,000.

15.3 Nothing in these Terms and Conditions shall limit either party's liability to the other under these Terms and Conditions for:

- (a) fraud or fraudulent misrepresentations;
- (b) death or personal injury, caused by its negligence, including that of its employees, agents or subcontractors' negligence; or
- (c) any other loss which by law cannot be excluded or limited.

15.4 Subject to clauses 15.2 and 15.3, the Bank's maximum aggregate liability to the Customer howsoever arising from or in connection with these Terms and Conditions (whether for breach of contract, negligence, wilful default, misrepresentation or otherwise) shall not in any circumstances exceed:

- (a) the greater of £65,000 or the amount of charges paid by the Customer to the Bank in relation to the Customer's use of the BACS System over the one-year period preceding the event for which the Bank is alleged to be liable; or
- (b) such other sum or sums as the Bank may from time to time notify the Customer of in writing (or such other method as the Bank may decide from time to time) as being substituted for the amounts provided for under sub-paragraph (a) above.

15.5 The Bank expressly disclaims any liability:

- (a) for any acts or omissions of any third party including, without limitation, BACS, any other Member (including, but not limited to, its settlement obligations), the Bank of England and any Bureau;
- (b) to any Contact directly;
- (c) in relation to or respect of any software approved under the BACS Approved Software Service (including any approvals granted by BACS thereunder);
- (d) or the accuracy of any data, information or other material provided to the Customer by the Bank provided that such data, information or material is passed on as received by the Bank from the BACS System; or
- (e) for the suitability and fitness for purpose of the BACSTEL-IP Materials and any technical information or specifications made available (or confirmed) by the BACS System.

15.6 If the Bank recovers from a third party any sum which is referable to any loss or damage that the Customer suffers as a result of the Customer's use of the BACS System, the Bank will pay that sum (or an appropriate part) to the Customer.

15.7 Upon request and at the Customer's cost, the Bank will provide reasonable assistance to the Customer if the Customer wishes to extract or recall a BACSTEL-IP Payment Message submitted by or on behalf of the Customer to the BACS System*. The Customer acknowledges that:

- (a) a BACSTEL-IP Payment Message shall become irrevocable following the security and validation checks undertaken by the BACS System;*
- (b) once the BACSTEL-IP Payment Message has become irrevocable:
 - (i) the Bank shall not be liable to the Customer for any loss or damage that the Customer suffers as a result of the BACSTEL-IP Payment Message becoming irrevocable;
 - (ii) the Customer shall not attempt to revoke the BACSTEL-IP Payment Message; and
 - (iii) the Customer shall not act, or omit to act, in any way that may affect the ability of the Bank to comply with the Bank's rights and obligations under these Terms and Conditions.

16. Indemnity

Save to any extent caused by negligence, wilful default, fraud or breach of contract by the Bank or its employees, the Customer agrees to indemnify the Bank, its employees and agents, against all or any liability, loss, damage, claims, proceedings, charges, costs and expenses incurred by the Bank directly or indirectly (including as a result of the Bank acting as the agent of the Customer in relation to the Customer's use of the BACS System) in connection with or arising out of: Services) in connection with or arising out of:

- (a) any payment made or received (or not made or received) by it pursuant to these Terms and Conditions for the Customer;
- (b) any error in or malfunction, suspension or termination of the Customer's right pursuant to these Terms and Conditions to use the BACS System;
- (c) any error or malfunction in any BACS Approved Software provided to the Customer for use in connection with the Customer's use of the BACS System;
- (d) any breach of these Terms and Conditions, any negligence, wilful default or fraud on the part of the Customer or any of the Customer's employees or agents (whether or not authorised by the Customer) or such person as may be nominated by the Customer as a Primary Security Contact stated in the Application Form or as recorded on the BACS System;
- (e) any BACSTEL-IP Payment Message which is inaccurate, forged or unauthorised;
- (f) any use of the BACS System by the Customer in breach of applicable law, court order or requirement of any regulatory or governmental authority or body; and
- (g) any act or omission committed outside the United Kingdom, the Channel Islands or the Isle of Man by or on behalf of the Customer or any of the Customer's employees or agents (whether or not authorised by the Customer) or Contacts which would result in the Bank being in breach of any applicable laws or regulations.

17. Force majeure

17.1 The Bank shall not be liable for or in respect of:

- (a) any loss, injury or damage or any failure to comply, or delay in complying, with its obligations hereunder;
- (b) any other obligations in respect of or in connection with the Customer's use of the BACS System; or

- (c) any failure to make, receive or credit or delay or error in making, receiving or crediting any payment which is caused directly or indirectly by:
 - (i) any suspension, unavailability for use, breakdown, failure or damage (however caused) of or to the BACS System;
 - (ii) any computer, communications or other service system owned or controlled by whomsoever;
 - (iii) any interruption, cessation, failure or shortage of power, services or communications, equipment malfunction, complete or partial system closure or suspension;
 - (iv) any error or failure in any facility or service provided by BACS, or error in relation to information supplied by other information providers; or
 - (v) any intervention, act or omission of any third party, fraud of any person (other than an employee of the Bank), force majeure, act of God, war, hostilities, act of terrorism, political unrest, governmental action, strike, boycott, embargo, industrial dispute or disturbance, suspension of payments by or insolvency, receivership, administration, bankruptcy or liquidation of any person (including, without limitation, the Customer or any other person having access to the BACS System), fire, flood, explosion, adverse weather or atmospheric conditions, abnormal operating conditions, shortage of personnel at BACS, accident, or any cause, event, or circumstance whatsoever beyond the Bank's reasonable control.

17.2 In the event of the Bank becoming aware of any major difficulty, failure or delay affecting the Customer's use of the BACS System, the Bank will use reasonable endeavours to notify the Customer as soon as practicable, advising it of such difficulty, failure or delay but shall not be liable for failure so to do.

18. Charges

The Bank is hereby irrevocably authorised from time to time to debit the account nominated by the Customer in the Application Form, or such other account as the Customer may nominate, with the charges notified from time to time. In the event that there are insufficient funds in such nominated account, or such nominated account has been closed, the Bank is hereby irrevocably authorised to debit such charges from any other account that the Customer holds with the Bank.

19. Warranties

19.1 The Customer warrants to and undertakes with the Bank that:

- (a) the Customer is duly incorporated (where appropriate) and validly existing under the laws of the jurisdiction in which it has been registered, and has full power and authority to enter into and perform its obligations under these Terms and Conditions;
- (b) all acts, conditions and things required to be done, fulfilled or to have happened prior to the signing of these Terms and Conditions (including the obtaining of all necessary consents, whether governmental, regulatory or otherwise) in order to enable the Customer lawfully to enter into and perform all its obligations under these Terms and Conditions and to constitute all such obligations as valid, binding and enforceable in accordance with their respective terms and make these Terms and Conditions admissible in evidence have been done, performed and have happened and a copy of every necessary consent has been delivered to the Bank;
- (c) all the obligations of the Customer under these Terms and Conditions are valid, binding and enforceable in accordance with their respective terms;
- (d) the entry by the Customer into these Terms and Conditions and the performance by the Customer of its obligations hereunder do not and will not violate any law or regulation to which the Customer is subject nor any of the documents constituting the Customer nor any agreement to which the Customer is party or which is binding on the Customer or any of the Customer's assets; and
- (e) all information given to the Bank by the Customer or on its behalf prior to the signing of these Terms and Conditions is, and all information provided hereafter will be, true, complete and accurate in all material respects.

19.2 Each of the warranties in clause 19.1 will be correct and complied with in all respects at all times as long as these Terms and Conditions remain in force as if repeated then by reference to the circumstances existing at that time.

20. Variation

20.1 The Bank may alter any of these Terms and Conditions on giving at least one month's prior notice to the Customer (in writing or by such other method as the Bank may decide from time to time). This notice will contain the date on which the alteration takes effect.

*Requests to extract or recall a BACSTEL-IP Payment Message which are received by the Bank outside its normal business hours, as in force for the time being from time to time, shall not be deemed to be received until the commencement of normal business hours on the next working day.

**Including, for the avoidance of doubt, where the checks are undertaken outside the Bank's normal business hours before an extraction or recall request is made or, where made, deemed to be received by the Bank.

20.2 The Bank reserves the right to alter any of these Terms and Conditions without altering any terms and conditions entered into by the Bank with any other customer of the Bank.

21. Waiver

The rights of the Bank under these Terms and Conditions shall not be prejudiced or restricted by any time, indulgence or forbearance extended to the Customer and no waiver by the Bank in respect of any breach shall operate as a waiver in respect of any subsequent or other breach.

22. This agreement and other documents

22.1 The contractual rights and obligations of the Customer in connection with its use of the BACS System, and any duty of care owed to or by the Customer, shall be exclusively regulated by these Terms and Conditions and the agreement between the parties in relation to bank charges. No other warranty, condition, term or representation on the part of the Bank, express or implied, is given or shall have legal effect, whether contained in any material or documentation or information produced or given by the Bank or its agent or contractor to the Customer or otherwise howsoever.

22.2 In the event of any inconsistency between the provisions of any of the following documents that comprise these Terms and Conditions, then to the extent necessary to resolve that inconsistency, the following order of precedence shall apply:

- (a) the Terms and Conditions; over
- (b) the Trust Service Agreement; over
- (c) the Application Form; over
- (d) the Customer Service Guide.

22.3 The Customer acknowledges that under the Trust Service Agreement use of the PKI Service is not limited to use in connection with the BACS System. Some of its provisions may have no relevance in the context of the BACS System.

23. Communications and electronic records

23.1 BACS and the Bank may record communications with the Customer, its agents, employees and contractors (including, but not limited to, BACSTEL-IP Transmissions) for any purpose connected with BACSTEL-IP which BACS or the Bank (as the case may be) consider appropriate.

23.2 Records and audit logs maintained by BACS or the Bank in relation to the PKI Service, any BACSTEL-IP Transmission or BACSTEL-IP shall be deemed to be accurate until the contrary is proven and the burden of proof that they are inaccurate shall lie with the Customer.

24. Assignment and third party rights

24.1 Without prejudice to clause 25, neither the Customer nor any third party who may have any right to enforce or to any remedy under these Terms and Conditions may transfer or assign any of its rights, benefits or obligations under these Terms and Conditions.

24.2 The Bank shall not, save as required by law, recognise the interest of any person other than the Customer in these Terms and Conditions.

24.3 No person other than the Bank, the Customer or (pursuant to clause 23) BACS shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term (express or implied) of these Terms and Conditions, but this is without prejudice to any right or remedy of a third party which may exist or be available apart from that Act.

25. Delegation

Either party may delegate responsibility to a third party, or appoint one or more agents to act on its behalf, in respect of its obligations under these Terms and Conditions. The appointment of an agent or the delegation of authority by a party as permitted under this clause 25 shall not relieve that party of its responsibility as primary obligor under these Terms and Conditions and that party shall be responsible for the acts and omissions of its agents and/or delegate.

26. Severability

If any provision of these Terms and Conditions or any part of any such provision shall be held to be invalid, unlawful or unenforceable, such provision or part thereof (as the case may be) shall be ineffective only to the extent of such invalidity, unlawfulness or unenforceability, without rendering invalid, unlawful or unenforceable or otherwise prejudicing or affecting the remainder of such provision or any other provision of these Terms and Conditions.

27. Notices

27.1 Any notice to be given under or in connection with these Terms and Conditions shall be in writing by facsimile or by registered or recorded delivery post sent or addressed in the case of:

(a) the Bank, to:

National Westminster Bank Plc
BACS Operations
Electronic Banking Operations
2nd Floor, 34 Fettes Row
Edinburgh EH3 6UY; or

(b) the Customer, in accordance with the latest postal address or facsimile number shown in the Bank's records, as amended from time to time. The Customer shall notify the Bank promptly of any change to any such contact details held by the Bank.

27.2 Any such notice shall be deemed to have been made or delivered when sent (if by facsimile and in such case, subject to proof of actual receipt) or (if by registered or recorded delivery post) 2 Business Days following the date of posting or (if delivered by hand) when delivered to that address. Either party may alter its address for the service of notices by not less than 7 days' written notice to the other.

28. Governing law and jurisdiction

28.1 These Terms and Conditions are governed by and shall be construed in accordance with English law.

28.2 The parties irrevocably agree, for the benefit of the Bank, that the English Courts are to have jurisdiction to settle any legal action or proceedings to enforce these Terms and Conditions and to settle any dispute arising out of or in connection with these Terms and Conditions ("proceedings"). The Customer waives any objection to proceedings in such Courts on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

28.3 The provisions of clause 28.2 shall not affect the right of the Bank to take proceedings in any other jurisdiction nor shall the taking of proceedings in any jurisdiction preclude the Bank from taking proceedings in any other jurisdiction.