



# BACSTEL-IP Services

## Customer Terms and Conditions – Indirect Submitter

### 1. Introduction

These terms and conditions together with the BACSTEL-IP Services Customer Application Form – Indirect Submitter constitute the **“Terms and Conditions”** between you and the Bank. References in these terms and conditions to these **“Terms and Conditions”** should be read accordingly. If you are a **“Large Enterprise”** (as defined below) you agree that the provisions set out in clauses 13.11 and 13.13 shall apply to you instead of clauses 13.8 to 13.10 and 13.12 (which are prescribed by the Payment Services Regulations 2009).

### 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 User Guide;

**“Additional Contact”** means a person (who is not a Primary Security Contact) appointed by a Service User who is permitted to access and use the BACS System via BACSTEL-IP (using ASM) on behalf of that Service User and to whom a Contact ID and an Access Code have been issued by BACS;

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

**“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;

**“Authorised User”** means any person (including an individual) nominated as such by you as stated in the BACSTEL-IP Services Customer Application Form – Indirect Submitter;

**“BACS”** means VocaLink Ltd or, as the context may require, BACS Payment Schemes Limited, 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 VocaLink Ltd or BACS Payment Schemes Limited (as the case may be);

**“BACS Confidential Information”** means all information of BACS and any Member (including the Bank) which is disclosed or made available to you 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) you know or ought reasonably to know is confidential, including (without limitation):
  - (i) information relating to any customer of the Bank or any Member, any person to whom the Bank or any Member provides a public key infrastructure service or ASM, or any customer of such a person;
  - (ii) information relating to the operation, internal management, structure, personnel, policies or business strategies of BACS, the Bank, any Member or BACSTEL-IP; and
  - (iii) computer object or source codes and related documentation related to the BACS System and/or public key infrastructure service and/or ASM;

**“BACS Payment Instruction”** has the meaning given to it in clause 3.2(b);

**“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;

**“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 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 other 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 you or your Personnel 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 Services”** means the services the Bank provides to you to enable you as a Service User to access via BACSTEL-IP and use the BACS System;

**“BACSTEL-IP Services Customer Application Form – Indirect Submitter”** means the form of that name to be completed by you as a constituent part of these Terms and Conditions including (as appropriate): the BACSTEL-IP Services: Excerpt from the Minutes of a Meeting of the Directors of the Customer; or, any additional or other form that the Bank may decide to use from time to time as appropriate in relation to the provision of the BACSTEL-IP Services to you, including (without limitation) those relating to migration, direct credit and direct debit;

**“BACSTEL-IP Services: Excerpt from the Minutes of a Meeting of the Directors of the Customer”** means the document of that name being a constituent part of the BACSTEL-IP Services Customer Application Form – Indirect Submitter;

**“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 BACS to a Member or a Service User, via BACSTEL-IP in connection with the BACS System, including (without limitation) any such communication which allows access to, or changes to be made to, the Reference Database;

**“Bank”** means Clydesdale Bank PLC (including Yorkshire Bank which is a trading name of Clydesdale Bank PLC). Clydesdale Bank PLC registered in Scotland with company number SC001111 whose registered office is at 30 St Vincent Place, Glasgow G1 2HL, and its successors and assigns;

**“Bank Bureau”** means the Bank, 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 or 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 the payments of that person with respect to the BACS System;
- (b) any Member which acts as a bureau for the purpose 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 you as a Service User;

**“Contact ID”** means the unique reference contact identification code issued by BACS for each Contact;

**“Customer”** means the entity which is named as such in the BACSTEL-IP Services Customer Application Form;

**“Customer Service User Guide”** means the document(s) (by whatever name called) issued by the Bank to a Service User setting out the Bank’s requirements for providing BACS support, including but not limited to the Service User Guide - BACSTEL-IP;

**“Data Protection Laws”** means all laws that relate to data protection, privacy, the use of information relating to individuals, and/or the information rights of individuals including, without limitation, the Data Protection Act 1998, European Commission Directive 95/46/EC, the General Data Protection Regulation (EU) 2016/679 and all laws implementing them, in each case as may be replaced, extended or amended;

**“In-House Bureau”** means any service department or office 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 and excludes any service department or office 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 you (or for the purposes of an insolvency event, in relation to any of your Group Companies, any of which will also be included in “you”), any of the following:

- (a) that you are unable or admit you are unable to pay your 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 you contest such demand in good faith)
- (b) an order is made by a court of competent jurisdiction, or a resolution is passed, for your winding up;
  - (c) the presentation of a petition for your winding up 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 your property or assets 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;
    - (ii) a composition, assignment or arrangement with any of your creditors; or
    - (iii) the appointment of a liquidator (other than in respect of a solvent liquidation of your 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 your undertaking or assets; or
  - (f) if any event analogous to (a) to (e) of this definition shall occur in any other jurisdiction to which you are 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;

**"Large Enterprise"** means a sole trader, partnership, company or other organisation who, when the account was opened had 10 or more employees and an annual turnover of more than €2,000,000 (or a sterling equivalent);

**"Local Authority"** has the meaning given to it in the Local Government Act 1992;

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

**"Person"** means (but is not limited to) any company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality, but excluding any individual except as expressly stated in the Terms and Conditions;

**"Personal Notice"** means any notice we send to you by post or using any form of messaging using a secure address or contact number which is notified to us by you or which is provided by us (including without limitation email and SMS);

**"Personnel"** means any of your agents, contractors and employees, or those of the Bank, or any of your Authorised Users, as the context requires;

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

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

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

**"Security Details"** means any details that are used to verify identity and help maintain security, or procedures that we require you, or a Bureau, to follow to verify a BACS Payment Instruction;

**"Service User"** means you once you have agreed to be bound by these Terms and Conditions and you have been granted the authority and the relevant permissions to enable you 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 it in clause 3.2(c)(iii);

**"Terms and Conditions"** means the terms and conditions governing the relationship between you and the Bank in relation to the BACSTEL-IP Services as set out in this document and the BACSTEL-IP Services Customer Application Form – Indirect Submitter;

**"Viruses"** means viruses, worms, Trojan horses, malicious code, locking or destructive mechanisms or anything similar to any of the foregoing or analogous to them; and

**"You"** and **"your"** refers to the customer(s) set out in the BACSTEL-IP Services Customer Application Form – Indirect Submitter who apply to use the BACSTEL-IP Services, and where there is more than one customer, **"you"** means all of them jointly and each of them severally, and shall include your successors and assigns.

### 3. Use of the BACSTEL-IP Services

- 3.1 You may use the BACSTEL-IP Services to access via BACSTEL-IP and use the BACS System. You may only use the BACSTEL-IP Services in connection with the BACS System, including (without limitation):
  - (a) for submitting payment messages and other instructions to BACS indirectly via a Bank Bureau, Commercial Computer Bureau or In-House Bureau which specify or relate to an account maintained by you or any of your Group Companies with the Bank as the account to be debited or, as the case may be, credited;
  - (b) for monitoring and retrieving reports on the processing of such payment messages;
  - (c) for gaining access to or making changes to details held on the Reference Database about you, your Contacts and Authorised Users and accounts maintained by you or any of your Group Companies with the Bank; or
  - (d) for gaining access to any other information held by the BACS System relating to accounts maintained by you or any of your Group Companies with the Bank (including, without limitation, any information relating to the processing of payments made or to be made to or from those accounts).
- 3.2 To enable you to use the BACSTEL-IP Services, the Bank shall:
  - (a) register you as a Service User and allocate to you a Service User Number;
  - (b) set, monitor and revise from time to time any financial limit applicable to payments that the Bank is prepared to make pursuant to a valid payment instruction submitted

on your behalf by a Bank Bureau, Commercial Computer Bureau or In-House Bureau (as applicable) to the BACS System authorising the Bank to pay funds in or out of an account specified by you (see clause 3.2 (c)) (a **"BACS Payment Instruction"**) on any Business Day. The Bank may, where it deems it appropriate, notify you of a financial limit and any revision thereto as soon as practicable after it has been set or revised. You acknowledge that any reduction in or disablement of a financial limit made by the Bank shall not affect your payment obligation under a valid BACS Payment Instruction generated prior to the effective time of the reduction in or disablement of such financial limit; and

- (c) comply with any BACS Payment Instruction and settle the relevant payment by debiting or crediting the relevant account, where the BACS Payment Instruction relates to a payment to be made to or from:
  - (i) an account held by you with the Bank (such account being as nominated by you in Section A or Section C of the BACSTEL-IP Services Customer Application Form – Indirect Submitter, or as otherwise notified to the Bank in writing); or
  - (ii) an account held by one of your Group Companies with the Bank as may be agreed by you with the Bank from time to time,
  - (iii) any account referred to in sub-clauses (i) and (ii) being the **"Settlement Account"**.
- 3.3 Without prejudice to the generality of the above and clause 3.7 below, you hereby irrevocably and unconditionally authorise and request the Bank to act (including by debiting or crediting, as appropriate, the Settlement Account) upon each and every valid payment message submitted to the BACS System on your behalf by a Bank Bureau, Commercial Computer Bureau or In-House Bureau, whether submitted using the trust 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 you or any of your Group Companies with the Bank. You may request a Bank Bureau, Commercial Computer Bureau or In-House Bureau to make BACSTEL-IP Transmissions on your behalf at any time but BACS Payment Instructions will only be processed on Business Days during the hours referred to in the **"BACSTEL-IP Materials"**. BACS Payment Instructions are carried out in the timescales set out in the **"BACSTEL-IP Materials"**.
- 3.4 If the Bank makes a payment which accords with a BACS Payment Instruction received by it in accordance with clause 3.2 (c), then clause 3.7 shall apply notwithstanding that (in the absence of wilful default by the Bank) the payment in question is not credited or debited as you intended. In relation to each BACS Payment Instruction, 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 BACS Payment Instruction.
- 3.5 Subject to these Terms and Conditions, the Bank shall either make payment or receive payment for your account in accordance with a BACS Payment Instruction, such payments to be debited or credited (as the case may be) by the Bank to the Settlement Account. If you, or a Bank Bureau, Commercial Computer Bureau or In-House Bureau, provide incorrect details in a payment being made the Bank will have no liability for any loss or delay, although if the payment is incorrectly executed as a result of this, the Bank will make reasonable efforts to recover the payment. The Bank may charge a fee to cover its reasonable costs for doing this.
- 3.6 In relation to your use of the BACSTEL-IP Services, you shall:
  - (a) comply with such documentation relating to the use of the BACSTEL-IP Services as is applicable from time to time, including (without limitation) the Service User Guide - BACSTEL-IP; and
  - (b) comply with the provisions of any existing contractual arrangement between you and the Bank.
- 3.7 You hereby irrevocably and unconditionally authorise and request 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) you irrevocably authorise 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 you or any of your Group Companies in respect of BACS Payment Instructions arising in relation to you or any of your Group Companies to be carried out that day.
- 3.8 You shall notify the Bank immediately if you become aware of or suspect:
  - (a) any material breach by you of, or any material non-compliance with, these Terms and Conditions; or
  - (b) any fraud in or affecting BACSTEL-IP giving reasonable details of the circumstances.
- 3.9 Any notification required to be made by you under clause 3.8 shall be made in accordance with clause 9.4. 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.
4. **Use of ASM**
  - 4.1 Subject to and in accordance with these Terms and Conditions, you shall be entitled to use ASM for accessing BACSTEL-IP and using the BACS System if you have been sponsored by the Bank as a Service User and have 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 ACSTEL-IP.
  - 4.2 You shall not use ASM except via a Contact who is permitted to use ASM.
5. **Confidentiality**
  - 5.1 You shall keep any BACS Confidential Information which you receive confidential at all times, and shall not:
    - (a) use such BACS Confidential Information or any part of it for any purpose other than your participation in BACSTEL-IP or any payment, clearing or other scheme run by BACS; nor
    - (b) disclose such BACS Confidential Information or any part of it to any person (including an individual) other than to your Personnel or any of your Group Companies to whom disclosure is necessary for your participation in BACSTEL-IP or any payment, clearing or other scheme run by BACS, provided that you ensure that such persons to whom BACS Confidential Information is disclosed are at all times subject to and maintain this obligation of confidentiality.
  - 5.2 Notwithstanding clause 5.1, you are entitled to disclose the BACS Confidential Information:
    - (a) to the extent necessary to comply with these Terms and Conditions; and/ or
    - (b) 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 paragraph (b) above, where you are able to do so without breaching any legal or regulatory requirements, you give the owner of the BACS Confidential Information in question written notice as soon as reasonably practicable of the intended disclosure.

- 5.3 The obligations set out in clause 5.1 do not apply to information which:
- you can show you knew before you 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 5 or any other confidentiality obligation;
  - you can show was independently developed by you; or
  - is disclosed to you without restrictions and without breach of any obligation of confidentiality by a third party who has the right to make such disclosure.
- 5.4 Where you cease to participate in BACSTEL-IP or any payment, clearing or other scheme run by BACS, you shall not be entitled to keep any BACS Confidential Information except to the extent that you are 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 your participation in BACSTEL-IP. The provisions of this clause 5 shall continue to apply to you for so long as you retain any such BACS Confidential Information.
- 5.5 The provisions set out in this clause 5 are in addition to (and not in substitution for) all other confidentiality obligations between you and the Bank, BACS and/or any Member.
- 6. Suspension/withdrawal of the BACSTEL-IP Services**
- 6.1 The Bank may terminate, or withdraw or cease to provide the BACSTEL-IP Services to you:
- on 2 months written notice to you; or
  - with immediate effect in any of the following circumstances:
    - where, in the opinion of the Bank, you are in breach of any provision of these Terms and Conditions; or
    - on the occurrence of an Insolvency Event in relation to you.
- 6.2 The Bank may suspend the BACSTEL-IP Services provided to you or an Authorised User if:
- BACS decides for whatever reason not to validate BACSTEL-IP Transmissions from you or an Authorised User;
  - BACS suspends or revokes the Bank's right to use ASM in relation to BACSTEL-IP;
  - the Bank considers it appropriate to do so in order to protect the security, integrity or reputation of BACSTEL-IP;
  - in the case of a BACS Payment Instruction made under a credit facility provided to you, where we reasonably believe there is an increased risk that you may be unable to repay us; or
  - you have exceeded any financial limit set by us under clause 3.2(b).
- 6.3 Upon any suspension or withdrawal in accordance with clauses 6.1 and 6.2 you shall not (and shall ensure that your Personnel shall not) submit any BACSTEL-IP Transmissions using 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 you.
- 6.4 Nothing in these Terms and Conditions shall prejudice the Bank's entitlement to decline to make any payment pursuant to a BACS Payment Instruction unless and until it is satisfied that:
- sufficient funds and/or undrawn credit facilities are or will be freely available to you to enable you to discharge your obligations to the Bank; and
  - such payment is lawful.
- 6.5 You may request that the provision of the BACSTEL-IP Services to you by BACS shall be terminated on 30 days written notice to the Bank.
- 7. Data protection**
- 7.1 You and the Bank shall at all times comply with the Data Protection Laws and any regulations or other legislation made under the Data Protection Laws, and in particular with the data protection principles set out in the Data Protection Laws.
- 7.2 When the Bank gathers personal information from you, or Authorised Users to make BACSTEL-IP Services available, the Bank is acting as a data controller. All of the up to date information about how we will gather, create, share and look after any personal information in providing the BACSTEL-IP Services can be found in the **Fair Processing Notice** at: [www.cbonline.co.uk/privacy](http://www.cbonline.co.uk/privacy) or [www.ybonline.co.uk/privacy](http://www.ybonline.co.uk/privacy). Where we need consent to use personal information we will highlight this to you in the application process and ask for consent separately.
- 7.3 You agree to provide our Fair Processing Notice at: [www.cbonline.co.uk/privacy](http://www.cbonline.co.uk/privacy) or [www.ybonline.co.uk/privacy](http://www.ybonline.co.uk/privacy) to your Authorised Users, and anyone else whose personal information you pass to the Bank to make the BACSTEL-IP Services available.
- 7.4 You and the Bank will each at all times comply with Data Protection Laws when using personal information.
8. For the purposes of this Clause 8, **"personal information"** means personal data provided or otherwise made available to the Bank for the purpose of the BACSTEL-IP Services, and **"data controller"** and **"personal data"** have the meaning given to them in the Data Protection Laws.
- 9. Intellectual Property Rights**
- 9.1 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 9.2, you shall obtain no right, title or interest in the BACSTEL-IP Materials or in any Intellectual Property Rights therein.
- 9.2 The Bank hereby grants you a licence to use and copy (but not to sub-license) the BACSTEL-IP Materials and the Intellectual Property Rights therein, but only to the extent necessary to enable you to participate in BACSTEL-IP and for use only in connection with the BACS System. The Bank gives no warranty that the BACSTEL-IP Materials licensed to you shall not infringe the Intellectual Property Rights of any third party.
- 9.3 The licence set out in this clause 9 shall terminate automatically on the earlier of:
- any termination or suspension under clause 6;
  - the Bank ceasing to participate in BACSTEL-IP; or
  - you ceasing to maintain an account with the Bank or to be permitted by the Bank to use ASM.
- 9.4 On such termination, you are required to return to the Bank or destroy (at the Bank's option) all copies of the BACSTEL-IP Materials provided to you or which are otherwise in your possession, custody or power.
- 10. Your obligations**
- 10.1 You 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); 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 Transmission, ASM or any BACSTEL-IP related hardware or software.
- 10.2 If you are sponsored by the Bank to act as a Service User authorised to use ASM, you shall contractually require that each Contact acting on your behalf (whether or not employed by you):
- complies with all the relevant procedures for obtaining and safekeeping his Contact ID and Access Code;
  - complies with the Customer Service User Guide (including but not limited to the Service User Guide - BACSTEL-IP);
  - changes his Access Code as required from time to time by the BACS System;
  - changes his 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 (including an individual) who is not a Contact; and
  - notifies you as soon as such Contact suspects that the security of the Access Code has been compromised as referred to in clause 10.2(d).
- 10.3 Subject to any constraints imposed by law or regulations, you shall notify the Bank immediately upon any of the circumstances specified in clause 6.1(b)(ii) occurring in relation to you and on your receipt of a notification pursuant to clause 10.2(e).
- 10.4 Any notification required to be made by you under clause 10.3 shall be made in writing to:
- BACS Liaison Helpdesk  
2nd Floor, Payments  
Customer Support Centre  
40 St Vincent Place Glasgow  
G1 2HL  
Tel: 0141 242 3120  
Fax: 0141 221 4642  
Email: [bacs.liaison@cybg.com](mailto:bacs.liaison@cybg.com)
- (or to such other address or using such other contact details as the Bank may notify you of from time to time. For security purposes and to maintain a high standard of service, calls to the telephone number quoted may be recorded or monitored) and signed by any Authorised User on your behalf. Any other communications may be made orally by calling the Bank's BACS Liaison Helpdesk on 0141 242 3120, or such other number as the Bank may notify you of from time to time.
- 10.5 You shall not do (or permit to be done by or on your behalf) anything in connection with the BACS System via BACSTEL-IP outside the United Kingdom, the Channel Islands or the Isle of Man which you are or ought reasonably to be aware would result in BACS or the Bank being in breach of any applicable laws or regulations outside the United Kingdom, the Channel Islands or the Isle of Man.
- 11. Bank obligations**
- 11.1 The Bank shall use reasonable care and skill in the provision by it of the BACSTEL-IP Services to you under these Terms and Conditions and in its authorising your use of ASM in connection with BACSTEL-IP.
- 11.2 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:
- perform such obligations as are required to enable a Contact to become authorised to use ASM; and
  - initiate the process to reset the Access Code of a Contact when a change of the Access Code of that Contact is requested.
- 11.3 The Bank will provide you with details of payments made or received using the BACSTEL-IP Services on the regular statements provided for those accounts in accordance with the relevant account terms and conditions. The details will show the aggregate amount of the payment made. Details of individual payments are available through the BACSTEL-IP-Services and information on how this information can be accessed is set out in the BACSTEL-IP Materials.
- 12. Legal Effectiveness**
- 12.1 You acknowledge and agree that all BACSTEL-IP Transmissions submitted by or on your behalf using ASM shall have the same legal effect, validity and enforceability as if such BACSTEL-IP Transmission had been in written rather than 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.
- 12.2 You shall not challenge the legal effect, validity or enforceability of a BACSTEL-IP Transmission (including any transmission that purports to be a BACSTEL-IP Transmission) on the basis that:
- such BACSTEL-IP Transmission is in electronic rather than written form; or
  - in the case of a BACSTEL-IP Transmission made by a Bank Bureau, Commercial Computer Bureau or In-House Bureau on your behalf:
    - the relevant Bureau or the holder of the digital certificate used to create the digital signature on the BACSTEL-IP Transmission did not see, check or review the contents of the BACSTEL-IP Transmission before or when signing that BACSTEL-IP Transmission;
    - the BACSTEL-IP Transmission was signed automatically or without direct human instigation or intervention (whether by a hardware security module or otherwise); or
    - the BACSTEL-IP Transmission, or the signing, transmission and processing of the BACSTEL-IP Transmission, constitutes a breach by the relevant Bureau of the terms on which it acts on your behalf.
- 13. Liability**
- 13.1 Subject to clause 13.2, the Bank shall not be liable to you either in contract, tort (including negligence) or otherwise for:
- any loss or damage that you suffer as a result of your use of the BACSTEL-IP Services except to the extent that such loss or damage is caused directly by the Bank's negligence, wilful default or fraud or by a breach of these Terms and Conditions by the Bank;
  - any (i) loss of profit, (ii) loss of goodwill, (iii) loss of business (iv) loss of anticipated savings or (v) any other loss that you suffer connected with your use of the BACSTEL-IP Services or that is not foreseeable. A loss is foreseeable if it is an obvious consequence of your use of the BACSTEL-IP Services or if it was contemplated by you and the Bank at the time you agreed to be bound by these Terms and Conditions.
  - any losses 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);
  - 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 events or circumstances outside the Bank's reasonable control. Such delay or failure will not constitute a breach of these Terms and Conditions; or
- (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 you.
- 13.2 Nothing in these Terms and Conditions shall limit either party's liability to the other under these Terms and Conditions for:
- (a) fraud, fraudulent misrepresentations or dishonesty; and
- (b) death or personal injury, caused by its negligence, including that of its Personnel's negligence.
- 13.3 The Bank expressly disclaims any liability:
- (a) for any acts or omissions of BACS, any other Member (including, but not limited to, for its settlement obligations) and the Bank of England;
- (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) for the accuracy of any data, information or other material provided to you by the Bank provided that such data, information or material is passed on as received by the Bank from BACS; 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 BACS.
- 13.4 Subject to clause 13.2, the Bank's maximum liability to you howsoever arising from or in connection with these Terms and Conditions (whether for breach of contract, negligence, misrepresentation or otherwise) shall be limited to and in no event exceed, in the case of any claim made directly arising from any particular BACS Payment Instruction, the amount payable as set out in that BACS Payment Instruction, and, in any other case, the total amount of the fees and charges paid by you to the Bank under these Terms and Conditions in the one year period preceding the relevant event.
- 13.5 If the Bank recovers from a third party any sum which is referable to any loss or damage that you suffer as a result of your use of the BACSTEL-IP Services, the Bank will pay that sum (or an appropriate part) to you.
- 13.6 Upon request and at your cost, the Bank will provide reasonable assistance to you if you wish to extract or recall a BACS Payment Instruction a Bank Bureau, Commercial Computer Bureau or In-House Bureau (as applicable) has submitted to BACS on your behalf. Requests to extract or recall a BACS Payment Instruction 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 have been received until their receipt has been acknowledged to you by the Bank the next Business Day. You acknowledge that:
- (a) a BACS Payment Instruction shall become irrevocable immediately following the security and validation checks undertaken by BACS 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; and
- (b) once the BACS Payment Instruction has become irrevocable:
- (i) the Bank shall not be liable to you for any loss or damage that you suffer as a result of the BACS Payment Instruction becoming irrevocable;
- (ii) you shall not attempt to revoke the BACS Payment Instruction; and
- (iii) you shall not act, or omit to act, in any way that may affect the ability of the Bank to comply with the Bank's obligations under clause 3.7.
- 13.7 You must inform the Bank without undue delay if you become aware of an incorrectly executed BACS Payment Instruction. Details of how to give us notice are set out in clause 9.4.
- 13.8 If you tell us that a BACS Payment Instruction was not authorised by you the Bank will immediately credit the account from which the payment was made and restore the account to the position it would have been in had the payment not been made unless we have good reason to believe that you or an Authorised User did authorise the BACS Payment Instruction. In normal circumstances you can only exercise your rights under this condition if once you become aware of the incorrect payment you tell us without undue delay, and in any event no later than 13 months after the payment was made.
- 13.9 Until we receive notification that any Authorised User's Security Details used in connection with the BACSTEL-IP Services are liable to misuse, you will be liable for any use of the BACSTEL-IP Services using the Security Details. Your maximum liability for any unauthorised use will be £50 unless clause 13.10 applies.
- 13.10 If any Security Details used in connection with the BACSTEL-IP Services are used by a person (other than an Authorised User) with the consent of the Authorised User, or you, or an Authorised User, has acted fraudulently or with gross negligence in connection with any Security Details used in connection with the BACSTEL-IP Services, your liability will be unlimited until you notify us that the Security Details used in connection with the BACSTEL-IP Services may be subject to misuse. Except where you, or the Authorised User, acted fraudulently, you will not be liable for any further loss arising from the use of any Security Details used in connection with the BACSTEL-IP Services once we have been notified. You will be liable for all unauthorised BACS Payment Instructions if you or an Authorised User has acted fraudulently.
- 13.11 If you are a Large Enterprise, clauses 13.8 to 13.10 shall not apply and this clause 13.11 shall apply instead:
- (a) Until the Bank receives effective notification that any Security Details used in connection with the BACSTEL-IP Services may be liable to misuse you will be liable for all use of any Security Details used in connection with the BACSTEL-IP Services. After we have been effectively notified that any Security Details used in connection with the BACSTEL-IP Services may be misused you will not be liable for any BACS Payment Instruction (and any associated charges or interest) unless it has been used by a person with the Authorised User's consent or you, or an Authorised User, has acted fraudulently or with gross negligence in connection with any Security Details used in connection with the BACSTEL-IP Services.
- (b) If you tell the Bank a BACS Payment Instruction was not authorised by you the Bank will, within a reasonable period of time, investigate whether the BACS Payment Instruction was submitted in compliance with these Terms and Conditions or not and will require evidence to show if the BACS Payment Instruction was submitted correctly. The Bank may charge you any reasonable costs it incurs in doing so. If the Bank establishes that the BACS Payment Instruction was not submitted in compliance with these Terms and Conditions, it will immediately credit the affected account and restore it to the position it would have been in had the payment not been made.
- 13.12 When you inform the Bank of an incorrectly executed BACS Payment Instruction, the Bank will refund the payment and any charges or interest you paid as a result of it or pay you interest on the amount of the payment without undue delay unless:
- (a) you have notified the Bank more than 13 months after the payment was made;
- (b) the details contained in the BACS Payment Instruction to make the payment were not correct or complete when clause 3.5 will apply;
- (c) the Bank has good reason to believe you did authorise the payment; or
- (d) the Bank can show that the payment was received at the payee's bank.
- 13.13 If you are a Large Enterprise clause 13.12 shall not apply and this clause 13.13 shall apply instead. If the Bank fails to make a payment in accordance with a BACS Payment Instruction, on request from you the Bank will restore the affected account to the position it would have been in had the payment not been made. The Bank will agree with you the reasonable steps which should be taken to recover any payment, and may charge you a fee to cover our reasonable costs in trying to rectify the position. You can only exercise your right under this clause if once you become aware of the incorrect payment you tell us without undue delay. If the details contained in the BACS Payment Instruction to make the payment were not correct or complete clause 3.5 will apply.
- 14. Indemnity**
- Save to any extent caused by negligence, wilful default, fraud or breach of these Terms and Conditions by the Bank or its employees and agents, you agree 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 or its employees and agents directly or indirectly (including as a result of the Bank acting as your agent in relation to the BACSTEL-IP Services) (except where a different level of liability is imposed by law) in connection with or arising out of:
- (a) any error in or malfunction, suspension or termination of the BACSTEL-IP Services resulting from any negligence, wilful default or fraud on your part or any of your employees or agents (whether or not authorised by you) or Authorised Users;
- (b) any breach of these Terms and Conditions, any negligence, wilful default or fraud on your part or any of your employees or agents (whether or not authorised by you) or Authorised Users;
- (c) your use of the BACSTEL-IP Services in breach of applicable law, court order or requirement of any regulatory or governmental authority or body.
- 15. Force Majeure**
- 15.1 The Bank will not be liable if it is unable to perform its obligations under these Terms and Conditions due (directly or indirectly) to:
- (a) abnormal and unforeseeable circumstances, including (but not limited to) shortages in the availability of personnel caused by epidemic, or the failure of any machine, data processing system or transmission link, the consequences of which would have been unavoidable despite all efforts to the contrary; or
- (b) the Bank's compliance with a requirement of UK or European Community law or as a result of any local laws in any other jurisdiction which prevent or restrict its ability to perform its obligations.
- 15.2 In the event of the Bank becoming aware of any major difficulty, failure or delay affecting the BACSTEL-IP Services, the Bank will use reasonable endeavours to notify you as soon as practicable, advising you of such difficulty, failure or delay but shall not be liable for failure so to do.
- 16. Charges**
- The Bank is hereby irrevocably authorised from time to time to debit the Settlement Account, or such other account as you may nominate, with the charges set out in the Business Banking Tariff and notified to you 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 you hold with the Bank.
- 17. Warranties**
- 17.1 You warrant to and undertake with the Bank that:
- (a) you are duly incorporated and validly existing under the laws of the jurisdiction in which you have been registered, and have full power and authority to enter into and perform your 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 you lawfully to enter into and perform all your 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 your obligations under these Terms and Conditions are valid, binding and enforceable in accordance with their respective terms;
- (d) your entry into these Terms and Conditions and your performance of your obligations hereunder do not and will not violate any law or regulation to which you are subject nor any of the documents constituting you nor any agreement to which you are a party or which is binding on you or any of your assets; and
- (e) all information given to the Bank by you or on your 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.
- 17.2 Each of the warranties in clause 16.1 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.
- 18. Termination**
- 18.1 In addition to the circumstances set out in clause 6, either you or the Bank may terminate their agreement to be bound by these Terms and Conditions forthwith upon written notice to the other if:
- (a) the other party commits a material breach of its obligations under these Terms and Conditions and (if remediable) fails within thirty days of written notice to remedy the same; or
- (b) an Insolvency Event occurs in relation to the other party.
- 18.2 Upon termination by any party to these Terms and Conditions of their agreement to be bound by these Terms and Conditions, you shall promptly return to the Bank all data, materials and other properties of the Bank held by you or any of your employees, agents and Authorised Users and you shall no longer be entitled to use the BACSTEL-IP Services.
- 19. Survival**
- 19.1 Termination of these Terms and Conditions shall be without prejudice to:
- (a) all rights and obligations accrued up to the date of such termination or suspension; and
- (b) clauses 5 (Confidentiality), 13 (Liability), 14 (Indemnity), 15.1 (Force Majeure), 16 (Charges) and 21 (Waiver) in these Terms and Conditions shall continue in

full force and effect after and notwithstanding such termination.

## **20. Variation**

20.1 The Bank or its agent may vary these Terms and Conditions (including the Bank's charges), and add to, withdraw features of and introduce changes to, the BACSTEL-IP Services. Any such variation may be made only prospectively, and no retrospective amendments will be made. The Bank will, to the extent possible, give you reasonable notice of any such variation (to be no less than two months) by giving you Personal Notice and you will be treated as accepting the change on the date the change is to come into effect unless, before then you tell us you do not accept the change. If you do not accept a variation either you can terminate the BACSTEL-IP Services without charge before the date the Bank tells you the change will come into effect or the Bank's notice of the change will be deemed to be our notice to terminate under clause 6.1.

20.2 The Bank will incorporate any such variation into a new version of these Terms and Conditions. The date and time at which the new version becomes effective will be indicated on the first page of such version. The most recent effective copy of these Terms and Conditions will supersede all previous versions and be binding upon you in respect of your use of the BACSTEL-IP Services.

20.3 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 you 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 Your contractual rights and obligations in connection with your use of the BACSTEL-IP Services, and any duty of care owed to or by you, shall be exclusively regulated by these Terms and Conditions and the agreement between the parties in relation to the fees and charges of the Bank. 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 you 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:

- (i) the Terms and Conditions contained in this document; over
- (ii) the BACSTEL-IP Services Customer Application Form – Indirect Submitter.

## **23. Communications and electronic records**

23.1 BACS and the Bank may record communications with you, your Personnel (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 held by the Bank or BACS in relation to 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 person claiming that they are inaccurate.

## **24. Assignment and third party rights**

24.1 Neither you, the Bank 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 you or (pursuant to clause 23) BACS in these Terms and Conditions.

24.3 No person other than you, the Bank 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. 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.

## **26. Notices**

26.1 Other than as set out in clause 18.1, any notice to be given under or in connection with these Terms and Conditions shall be in writing by facsimile, email or by prepaid first class letter sent or addressed in the case of:

- (a) the Bank, in accordance with clause 9.4; or
- (b) you, in accordance with the latest postal address, email address or facsimile number shown on the BACS reference database, as amended from time to time. You shall notify the Bank promptly of any change to any such contact details held on the BACS reference database.

26.2 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 two Business Days after posting (if by letter) or when it enters the computer of the relevant recipient whether or not any person is aware of its receipt (if delivered by email) or when delivered to that address (if delivered by hand). Either party may alter its address for the service of notices by not less than seven days' written notice to the other.

26.3 The language of these Terms and Conditions is English and communications and notices between you and us shall be in English. If you require a further copy of these Terms and Conditions you can obtain a copy from the Bank by contacting Your Branch or Relationship Manager or online at [www.cbonline.co.uk](http://www.cbonline.co.uk) or [www.ybonline.co.uk](http://www.ybonline.co.uk).

## **27. Dispute Resolution**

If you are not happy with any aspect of the Bank's service, please request a copy of our internal complaint handling procedures from any branch or from your Relationship Manager. Our aim is to resolve complaints to the satisfaction of our customers. However, if, having followed our published complaint procedures, you disagree with the final decision we have made, you may be eligible to refer the matter to the Financial Ombudsman Service. Details are available on request from any branch or your Relationship Manager or from [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk). Please note that due to the Financial Ombudsman Service's eligibility criteria not all customers will be covered by this service.

## **28. Governing law and jurisdiction**

These Terms and Conditions and the transactions contemplated by these Terms and Conditions are governed by and construed in accordance with the law of the country in which the branch of the Bank holding your main business banking connection is situated and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that country.

## **29. Good Banking**

We are fully committed to high standards of service, treating our customers fairly, helping our customers understand how their accounts operate and giving them a better understanding of banking services and maintaining confidence in the security and integrity of banks. For further information please refer to our website or contact your Branch or Relationship Manager.

**This document is available in large print, Braille and audio. Please speak to a member of staff for details.**

[cbonline.co.uk](http://cbonline.co.uk) | [ybonline.co.uk](http://ybonline.co.uk)

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