BACS/BACSTEL IP Services

Client terms and conditions

1. Introduction

These terms and conditions together with the BACS/ BACSTEL-IP Services Agreement and the TrustAssured Service Terms and Conditions will constitute the Agreement between the Bank and the Client.

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 or subsequently changed by BACS or the Bank, Service User or Contact as contemplated by these Terms and Conditions and the Client Service Guide;

'**Additional Contact**' has the meaning given to it in the Service User Guide – BACSTEL-IP;

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

'**Alternative Security Method**' or '**ASM**' 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 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;

'**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 BACSTEL-IP Transmissions which would effect a payment from or to an account maintained by the Client or any member of the same Corporate Group as the Client with the Bank to BACS using the PKI Service; and
b) the software's ability to interface, and be interoperable, with BACSTEL-IP and the BACS payment clearing system, on the terms and subject to the conditions of the Agreement for Participation in BACS Approved Software Service;

'**BACS/BACSTEL-IP Services**' means the payment clearing services provided by BACS;

'**BACS/ BACSTEL-IP Services Agreement**' means the form of that name to be completed by the Client as a constituent part of these Terms and Conditions, or any additional form that the Bank may decide to use as appropriate to the Client in relation to the provision of the BACS/BACSTEL-IP Services, including but not limited to those relating to migration, Direct Credit and Direct Debit;

'**BACS Confidential Information**' means all information of BACS and any member of BACS (including the Bank) which is disclosed or made available to the Client 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 Client knows or ought reasonably to know is confidential, including (without limitation):
   (i) information relating to any client of the Bank or any member of BACS, any person to whom the Bank or any member of BACS provides a PKI Service or any client of such a person;
   (ii) information relating to the operation, internal management, structure, personnel, policies or business strategies of BACS, the Bank, any member of BACS or BACSTEL-IP; and
   (iii) computer object or source codes and related documentation;

'**BACS Payment Instruction**' has the meaning given to it in clause 3.1.2;

'**BACSTEL-IP**' means the mechanism and processes adopted by BACS whereby the PKI Service will be used in connection with BACS:

a) to authenticate and sign payment messages submitted to BACS; and
b) to authenticate and sign certain other instructions, messages, files and other communications transmitted to BACS, including (without limitation) any such communication which allows access to, or be made to, the Reference Database;

'**BACSTEL-IP Materials**' means all documents, information and other materials provided or made available to the Client, 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 Transmission**' means an instruction, message, file or other communication which is transmitted in electronic form by the Client to BACS as part of BACSTEL-IP, including (without limitation) any such communication which allows access to, or changes to be made to, the Reference Database;

'**Bank**' means Coutts & Co, registered in England and Wales No. 36695, registered office 440 Strand, London WC2R 0QS;
'**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/BACSTEL-IP Services are fully open and operational;
'**Client**' means a client of the Bank who agrees to be bound by the terms of these Terms and Conditions;
'**Client Service Guide**' means the document(s) (by whatever name called) available from BACS for a Service User setting out the requirements for providing BACS support, including but not limited to the Service User Guide – BACSTEL-IP;
'**Contact**' means a person who is authorised to act on behalf of a Service User and to whom a Contact ID has been issued by BACS, and comprises each Primary Security Contact and any Additional Contacts appointed by that Service User;
'**Contact ID**' means the unique reference contact ID issued by BACS for each Contact;
'**Corporate Group**' in relation to references to companies being members of the same 'Corporate Group', means where one is the Holding Company of the other or where each of them has the same Holding Company;
'**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;
'**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;
'**Holding Company**' has the meaning given to it in the Companies Act 1985;
'**Intellectual Property Rights**' means all intellectual property rights in any part of the world and shall include (without limitation): patents, rights in inventions, registered and unregistered trademarks, rights in business and trade names and get up, rights in domain names, registered designs, unregistered rights in designs, copyrights, 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;
'**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 Client by or on behalf of the Bank;
'**Primary Security Contact**' means any person nominated as such by the Client as stated in the BACS/BACSTEL-IP Services Agreement;
'**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 input by BACS, the Bank and the Client, as the case may be, about the Client, including (without limitation) the levels of authorisation and permission in relation to BACSTEL-IP Transmissions submitted to BACS by the Client as part of BACSTEL-IP;
'**Service User**' means any entity sponsored by the Bank and which has entered into or will enter into an arrangement with the Bank with respect to the BACS/BACSTEL-IP Services;
'**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 3.1.3;
'**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 the terms and conditions governing the relationship between the Bank and the Client in relationship to the Client's use of the PKI Service and ASM in connection with BACS and BACSTEL-IP, as set out in this document, the BACS/BACSTEL-IP Services Agreement and the TrustAssured Service 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 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/BACSTEL-IP Services

3.1 The Bank authorises the Client to use the BACS/BACSTEL-IP Services. To enable the Client to use the BACS/BACSTEL-IP Services, the Bank shall:

3.1.1 register the Client as a Service User;

3.1.2 set, monitor and revise from time to time any financial limit applicable to payments that the Bank is prepared to make pursuant to a payment instruction submitted to the Bank by the Client in relation to the use of the BACS/BACSTEL-IP Services (a 'BACS Payment Instruction') on any day. The Bank may, where it deems it appropriate, notify the Client of a financial limit and any revision thereto as soon as practicable after it has been set or revised. The Client acknowledges that any reduction in or disablement of a financial limit made by the Bank shall not affect the Client's 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

3.1.3 comply with any BACS Payment Instruction, such BACS Payment Instruction including (without limitation), on receipt by the Bank of a payment made by the Client to an account held at the Bank on behalf of the Client (the 'Settlement Account'), the instruction to settle such payment with BACS.

3.2 If the Bank makes a payment which accords with a BACS Payment Instruction received by it in accordance with clause 3.1.3, then clause 3.5 shall apply notwithstanding that (in the absence of wilful default by the Bank) the payment in question is not credited as the Client 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.

3.3 Subject to these Terms and Conditions, the Bank shall either make payment or receive payment for the account of the Client 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.

3.4 In relation to the use of the BACS/BACSTEL-IP Services by the Client, the Client shall:

3.4.1 comply with such documentation relating to the use of the BACS/BACSTEL-IP Services as is applicable from time to time, including (without limitation) the Service User Guide – BACSTEL-IP; and

3.4.2 comply with the provisions of any existing contractual arrangement between the Bank and the Client.

3.5 The Client 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 Client 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 Client in respect of BACS Payment Instructions arising in relation to that Client that day.

4. Use of the TrustAssured Service and BACS/BACSTEL-IP Services via BACSTEL-IP

4.1 The Client shall at all times comply with the TrustAssured Service Terms and Conditions when using the PKI Service in connection with BACS, including (without limitation) when Signing any BACSTEL-IP Transmission.

4.2 The Client shall notify the Bank:

4.2.1 immediately if the Client becomes aware of or suspects:

(i) any material breach by it of, or any material non-compliance with, these Terms and Conditions or the TrustAssured Service Agreement; or

(ii) any fraud in or affecting BACSTEL-IP or the PKI Service, giving reasonable details of the circumstances; or

4.2.2 at the earliest opportunity after the Client becomes aware of or suspects any material instances of compromise or suggested compromise in relation to the PKI Service or the Client's use of it.

4.3 Any notification required to be made by a Client under clause 4.2 shall be made in accordance with clauses 6 and 11 of the Trust Assured Service Agreement. Where such notification is made by telephone, facsimile or email, the Bank may require the notification to be confirmed in writing before taking any action in relation thereto.

5. Use of Trust Service

5.1 The Client shall only use the PKI Service in connection with BACS for submitting BACSTEL-IP Transmissions directly to BACS via BACSTEL-IP for its own account or on behalf of any member of the same Corporate Group as the Client which either:

5.1.1 specifies an account maintained by the Client or such other Corporate Group member as the account to be debited or, as the case may be, credited; or

5.1.2 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 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).

5.2 Without prejudice to the generality of clause 5.1, the Client shall not use the PKI Service in connection with BACS for submitting BACSTEL-IP Transmissions to BACS 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 any person with respect to the use of the BACS/BACSTEL-IP Services.

6. Use of ASM

6.1 Subject to and in accordance with these Terms and Conditions, the Client shall use ASM for accessing the BACS/BACSTEL-IP Services via BACSTEL-IP if such Client has been sponsored by the Bank as a Service User and has been authorised by the Bank to use ASM for accessing the BACS/BACSTEL-IP Services via BACSTEL-IP.

6.2 The Client shall not be permitted to use ASM in its capacity as a Service User pursuant to clause 6.1 except via a Contact who is authorised 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 maintained by the Client or any member of the same Corporate Group as the Client with the Bank, from or to BACS using the PKI Service, the Client shall:

7.1.1 only use software which at the relevant time is BACS Approved Software;

7.1.2 act in accordance with any instructions, guidance or procedures provided to it by the Bank; and

7.1.3 comply with the provisions of the Service User Guide – BACSTEL-IP.

7.2 The Client acknowledges that the software supplied to the Client by the Bank is the property of the Bank and/or its licensors unless otherwise agreed and that copyright therein is vested in the Bank and/or its licensors and undertakes that such materials will not be copied or used for any purpose except as hereby licensed and specifically authorised in the User Guide and/or in these Conditions of Use.

7.3 The Bank shall not be responsible for the compatibility or reliability of equipment, systems or software supplied to the Client by third parties and used in conjunction with the Service.

8. Confidentiality

8.1 The Client shall keep any BACS Confidential Information which it receives confidential at all times, and shall not:

8.1.1 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

8.1.2 disclose such BACS Confidential Information or any part of it to any person other than to those employees, agents, contractors or any member of the Client's Corporate Group 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 Client is entitled to disclose the BACS Confidential Information:

8.2.1 to the extent necessary to comply with these Terms and Conditions; and/or

8.2.2 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 8.1.2 above, where the Client is able to do so without breaching any legal or regulatory requirements, the Client 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:

8.3.1 the Client 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; or

8.3.2 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; or

8.3.3 the Client can show was independently developed by it; or

8.3.4 is disclosed to the Client 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 Client ceases to participate in BACSTEL-IP or any payment, clearing or other scheme run by BACS, such Client 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 BACSTEL-IP. The provisions of this clause 8 shall continue to apply to the Client 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 Client and the Bank, BACS and/or any member of BACS.

9. Suspension/withdrawal of the BACS/BACSTEL-IP Services

9.1 The Bank may suspend or terminate, or withdraw or cease to provide the BACS/BACSTEL-IP Services to the Client:

9.1.1 on 60 days' written notice to the Client; or

9.1.2 with immediate effect in any of the following circumstances:

(i) if BACS has suspended or withdrawn its authorisation for the use by the Client of the PKI Service and/or ASM in connection with BACSTEL-IP; or

(ii) where the Bank considers it appropriate to do so in order to protect the security, integrity or reputation of BACSTEL-IP; or

(iii) where, in the opinion of the Bank, the Client is in breach of any provision of these Terms and Conditions (including, without limitation, any breach of the TrustAssured Service Agreement); or

(iv) if any of the following events occurs:

a) the presentation of any non-frivolous petition for the liquidation or winding-up of the Client or for the appointment of a liquidator or an administrator in relation to the Client;

b) the appointment or purported appointment of a liquidator, administrator, receiver, administrative receiver, manager, trustee or similar person in respect of the Client or any substantial part of the property or assets of the Client;

c) the dissolution of the Client or the publication in the Gazette of a notice of prospective striking off pursuant to Section 652 of the Companies Act 1985 or the making of an application by the Client for its striking off pursuant to Section 652A of the Companies Act 1985; or

d) the occurrence under the laws of any applicable jurisdiction of anything analogous to or having a substantially similar effect to any of the events described in sub-paragraphs (a) to (c) above.

9.2 Upon any suspension or withdrawal in accordance with clause 9.1 the Client shall not (and shall ensure that its employees, contractors and agents 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 Client.

9.3 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:

9.3.1 sufficient funds and/or undrawn credit facilities are or will be freely available to the Client to enable the Client to discharge its obligations to the Bank; and

9.3.2 such payment is lawful.

9.4 The Client may request that the provision of the BACS/BACSTEL-IP Services to it by BACS shall be suspended or revoked on 30 days' written notice to the Bank.

10. Intellectual Property Rights

10.1 All right, title, interest and Intellectual Property Rights in the BACSTEL-IP Materials shall vest in the Bank's licensors and, except to the extent set out in clause 10.2, the Client shall obtain no right, title or interest in any BACSTEL-IP Materials or in any Intellectual Property Rights therein.

10.2 The Bank hereby grants the Client a licence to use and copy (but not to sub-licence) the BACSTEL-IP Materials (other than any documents, information and other materials relating to the BACS Approved Software Service), but only to the extent necessary to enable the Client to Sign, submit and receive BACSTEL-IP Transmissions.

10.3 The licence set out in this clause 10 shall terminate automatically on the earlier of:

10.3.1 any termination or suspension under clause 9;

10.3.2 the Bank ceasing to participate in BACSTEL-IP; or

10.3.3 the Client ceasing to maintain an account with the Bank.

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

11. Client obligations

11.1 The Client shall:

11.1.1 comply at all times with all Applicable Requirements;

11.1.2 obtain and maintain at all times all licences, consents, permissions and authorisations necessary to Sign, submit or receive BACSTEL-IP Transmissions (including, without limitation, those relating to the import or export of any equipment, software or technology); and

11.1.3 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:

(i) any BACSTEL-IP Transmissions;
(ii) the PKI Service;
(iii) any public key infrastructure service used by any other participant in BACSTEL-IP;
(iv) ASM; or
(v) any BACSTEL-IP related hardware or software.

11.2 A Client sponsored by the Bank to act as a Service User authorised to use ASM shall contractually require that each Contact acting on behalf of such Service User (whether or not employed by such Service User):
11.2.1 complies with all the relevant procedures for obtaining and safekeeping their Contact ID and Access Code;
11.2.2 complies with the Service User Guide – BACSTEL-IP;
11.2.3 changes their Access Code at least every 90 days; and
11.2.4 changes their 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.

11.3 Subject to any constraints imposed by law or regulations, the Client shall notify the Bank:
11.3.1 immediately if the Client becomes aware of:
(i) any material breach of or non-compliance by it with these Terms and Conditions; or
(ii) 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
11.3.2 immediately upon any of the circumstances specified in clause 9.4(iv) occurring in relation to it.

11.4 Any notification required to be made by the Client under clause 11.3 shall be made in writing to:
Coutts & Co
BACS Operations
1 Redheughs Avenue
Edinburgh
EH12 9JN
and signed by any Primary Security Contact (as stated in the BACS/BACSTEL-IP Services Application Form) on behalf of the relevant Client.

12. Bank obligations

12.1 The Bank shall use reasonable care and skill:
12.1.1 in the provision by it of the BACS/BACSTEL-IP Services to the Client under these Terms and Conditions; and
12.1.2 in the provision by it of a PKI Service to the Client in connection with BACS or in its authorisation of ASM in connection with BACSTEL-IP.

12.2 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:
12.2.1 perform such obligations as are required to enable a Contact to become authorised to use ASM; and
12.2.2 reset the Access Code of a Contact referred to in clause 11.2.4 when a change of the Access Code of that Contact is requested.

13. Legal effectiveness and admissibility of electronic signatures and certificates

13.1 All BACSTEL-IP Transmissions Signed by or on behalf of the Client using a Private Key and Digital Certificate issued by the PKI Service to the Client 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 Client, provided that:
13.1.1 the Digital Certificate is within its validity period; and
13.1.2 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.

13.2 The Client shall not challenge the legal effect, validity or enforceability of a BACSTEL-IP Transmission (including, in relation to this clause 13.2, any transmission that purports to be a BACSTEL-IP Transmission) on the basis that:
13.2.1 such BACSTEL-IP Transmission is in electronic rather than written form; or
13.2.2 the Client 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; or
13.2.3 the BACSTEL-IP Transmission was Signed automatically or without direct human instigation or intervention (whether by a hardware security module or otherwise); or
13.2.4 the BACSTEL-IP Transmission, or the Signing, transmission and processing of the BACSTEL-IP Transmission, constitutes a breach by the Client of these Terms and Conditions or of the provisions or terms of use of any relevant third party provider or third party trust scheme.

13.3 The Bank shall be entitled to rely on, and the Client shall accept full liability for, any BACSTEL-IP Transmission Signed using a Private Key and Certificate issued by the PKI Service to the Client, provided that:
13.3.1 the Digital Certificate used to Sign such BACSTEL-IP Transmission is valid, has not expired, has not been revoked or suspended and the Client has not requested that it be revoked or suspended following the procedure set out in clause 4.6 of the TrustAssured Service Agreement; and

13.3.2 the period of notice relating to a notice to suspend or revoke the BACS/BACSTEL-IP Services requested by the Client in accordance with clause 9.4 has not been expired;

13.3.3 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.

14. Liability

14.1 Subject to clause 14.2, the Bank shall not be liable to the Client either in contract, tort (including negligence) or otherwise for:

14.1.1 any loss or damage that the Client suffers as a result of the Client's use of the BACS/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;

14.1.2 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 Client's use of the BACS/BACSTEL-IP Services 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;

14.1.3 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);

14.1.4 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 control. Such delay or failure will not constitute a breach of these Terms and Conditions;

14.1.5 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 Client.

14.2 Subject to clause 14.3, nothing in these Terms and Conditions shall limit either party's liability to the other under these Terms and Conditions for:

14.2.1 fraud, fraudulent misrepresentations or dishonesty; and

14.2.2 death or personal injury, caused by its negligence, including that of its employees, agents or sub- contractors' negligence.

14.3 The Bank expressly disclaims any liability:

14.3.1 for any acts or omissions of BACS, any other Member of BACS (including, but not limited to, its settlement obligations) and the Bank of England;

14.3.2 to any Contact directly;

14.3.3 in relation to or respect of any software approved under the BACS Approved Software Service (including any approvals granted by BACS thereunder);

14.3.4 for the accuracy of any data, information or other material provided to the Client by the Bank provided that such data, information or material is passed on as received by the Bank from BACS; or

14.3.5 for the suitability and fitness for purpose of the BACSTEL-IP Materials and any technical information or specifications made available (or confirmed) by BACS.

14.4 Subject to clause 14.2, the Bank's maximum aggregate liability to the Client howsoever arising from or in connection with these Terms and Conditions (whether for breach of contract, negligence, misrepresentation or otherwise) shall not in any circumstances exceed:

14.4.1 the greater of £65,000 and the amount of charges paid by the Client to the Bank in relation to the provision of the BACS/BACSTEL-IP Services over the one-year period preceding the event for which the Bank is alleged to be liable; or

14.4.2 such other sum or sums as the Bank may from time to time notify the Client 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 14.4.1 above.

14.5 If the Bank recovers from a third party any sum which is referable to any loss or damage that the Client suffers as a result of the Client's use of the BACS/BACSTEL-IP Services, the Bank will pay that sum (or an appropriate part) to the Client.

14.6 Upon request and at the Client's cost, the Bank will provide reasonable assistance to the Client if the Client wishes to extract or recall a BACS Payment Instruction the Client has submitted to BACS. (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 be received until the commencement of normal business hours the next Working Weekday). The Client acknowledges that:

14.6.1 a BACS Payment Instruction shall become irrevocable following the security and validation checks undertaken by BACS. (Including, for the avoidance of doubt were the checks undertaken outside the Bank's normal business hours before an extraction or recall request is made or deemed to be received by the Bank.)

14.6.2 once the BACS Payment Instruction has become irrevocable:

(i) the Bank shall not be liable to the Client for any loss or damage that the Client suffers as a result of the BACS Payment Instruction becoming irrevocable;

(ii) the Client shall not attempt to revoke the BACS Payment Instruction; and
(iii) the Client 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 3.5.

15. Indemnity

15.1 Save to any extent caused by negligence, wilful default, fraud or breach of contract by the Bank or its employees, the Client 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 Client in relation to the BACS/BACSTEL-IP Services) in connection with or arising out of:

15.1.1 any payment made or received (or not made or received) by it pursuant to these Terms and Conditions for the Client;
15.1.2 any error in or malfunction, suspension or termination of the BACS/BACSTEL-IP Services;
15.1.3 any error or malfunction in any BACS Approved Software provided to the Client for use in connection with the BACS/BACSTEL-IP Services;
15.1.4 any breach of these Terms and Conditions, any negligence, wilful default or fraud on the part of the Client or any of the Client's employees or agents (whether or not authorised by the Client) or such person as may be nominated by the Client as a Primary Security Contact as stated in the BACS/BACSTEL-IP Services Application Form;
15.1.5 any BACS Payment Instruction which is inaccurate, forged or unauthorised; and
15.1.6 any use of the BACS/BACSTEL-IP Services by the Client in breach of applicable law, court order or requirement of any regulatory or governmental authority or body.

16. Force majeure

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

16.1.1 any loss, injury or damage or any failure to comply, or delay in complying, with its obligations hereunder;
16.1.2 any other obligations in respect of or in connection with the BACS/BACSTEL-IP Services; or
16.1.3 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/BACSTEL-IP Services;
(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 Client or any other person having access to the BACS/BACSTEL-IP Services), 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.

16.2 In the event of the Bank becoming aware of any major difficulty, failure or delay affecting the BACS/BACSTEL- IP Services, the Bank will use reasonable endeavours to notify the Client as soon as practicable, advising it of such difficulty, failure or delay but shall not be liable for failure so to do.

17. Charges

17.1 The Bank is hereby irrevocably authorised from time to time to debit the account nominated by the Client in the BACS/BACSTEL-IP Services Application Form, or such other account as the Client 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 Client holds with the Bank.

18. Warranties

18.1 The Client warrants to and undertakes with the Bank that:

18.1.1 the Client is duly incorporated 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;

18.1.2 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 Client 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;

18.1.3 all the obligations of the Client under these Terms and Conditions are valid, binding and enforceable in accordance with their respective terms;

18.1.4 the entry by the Client into these Terms and Conditions and the performance by the Client of its obligations hereunder do not and will not violate any law or regulation to which the Client is subject nor any of the documents constituting the Client nor any agreement to which the Client is party or which is binding on the Client or any of the Client's assets; and

18.1.5 all information given to the Bank by the Client 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.

18.2 Each of the warranties in clause 18.1 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.

19. Termination and Suspension

19.1 The Bank may terminate the Agreement with 90 days' written notice; and inform the Client of our reason for doing so.

19.1.1 The Client may terminate their agreement to be bound by these Terms and Conditions forthwith upon written notice to the Bank.

19.1.2 The Bank may suspend the Client's use of the BACS System for security reasons, or where the Bank suspects unauthorised or fraudulent use of the BACS System. Unless there is a security or other legal reason not to, the Bank will notify the Client.

19.1.3 The Bank may terminate the Agreement without notice and with immediate effect if the Client:

(i) commits a material breach of its obligations under these Terms and Conditions and (if remediable) fails within 30 days of written notice to remedy the same;

(ii) becomes unable to pay its debts for the purposes of Section 123 of the Insolvency Act 1986;

(iii) calls a meeting of its creditors or makes any arrangement with or compounds with its creditors;

(iv) enters into any liquidation (other than for the purposes of a voluntary reconstruction or amalgamation for which the prior consent of the other party has been obtained);

(v) has an encumbrancer take possession or a judicial factor or receiver or administrative receiver or manager or administrator appointed (other than where such possession or appointment is discharged within 14 days of being effected) of all or any material part of its assets; or

(vi) the Client ceases to maintain an Account with the Bank.

19.2 Any termination by any party of its agreement to be bound by these Terms and Conditions howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

19.3 Upon termination by any party to these Terms and Conditions of their agreement to be bound by these Terms and Conditions, the Client shall promptly return to the Bank all data, materials and other properties of the Bank held by the Client or any of the Client's employees and the Client shall no longer be entitled to use the BACS/BACSTEL-IP Services.

Suspension

19.4 If the Client fails to perform its obligations under these Terms and Conditions in accordance with its terms, the Bank shall have the right at its discretion to suspend all or part of its authorisation to use the BACS/BACSTEL-IP Services under these Terms and Conditions to the Client until the Client has fully performed all such obligations to the satisfaction of the Bank.

Survival

19.5 Termination or suspension of these Terms and Conditions shall be without prejudice to:

19.5.1 all rights and obligations accrued up to the date of such termination or suspension; and

19.5.2 clauses 14 (Liability), 15 (Indemnity), 16 (Force majeure), 17 (Charges) and 21 (Waiver) which shall continue in full force and effect after and notwithstanding such termination or suspension.

20. Variation

20.1 The Bank may alter any of these Terms and Conditions. If the change is to the Clients advantage the Bank will notify the Client before the change takes effect or at the earliest opportunity afterwards, otherwise the Bank will give at least 60 days' prior notice to the Client (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.

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 client 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 Client 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 Client in connection with its use of the BACS/BACSTEL-IP Services, and any duty of care owed to or by the Client, 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 Client or otherwise howsoever.

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

22.2.1 the BACS/BACSTEL-IP Services Client Terms and Conditions; over

22.2.2 the TrustAssured Service Agreement; over

22.2.3 the BACS/BACSTEL-IP Services Application Form.

23. Communications and electronic records

23.1 BACS and the Bank may record communications with the Client, 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) considers appropriate.

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

24. Assignment and third party rights

24.1 Without prejudice to clause 25, neither the Client, 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 the Client in these Terms and Conditions.

24.3 No person other than the Bank, the Client 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

25.1 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 delegates.

26. Servability

26.1 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, email or by prepaid first class letter sent or addressed in the case of:

27.1.1 the Bank, in accordance with clause 11.4; or

27.1.2 the Client, in accordance with the latest postal address, email address or facsimile number shown in the Bank's records, as amended from time to time. The Client 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 letter) two Business Days after 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 seven 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 Client 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.

29. Your information

We will use your information in accordance with the clause headed 'Your information' which forms part of the Conditions of Use of your existing Business Current Account agreement with us. If you require a copy of that clause, please contact your Commercial Banker.

In the clause above, 'you' and 'your' extends to any person who has supplied us with personal information in relation to the Account(s).

If you would like this document in another format such as Braille, large print or audio, please let us know.