

Bacs Payments Customer Terms and Conditions

Effective from 1 May 2020

TERMS & CONDITIONS

1 INTRODUCTION

- 1.1 Your agreement for the Service is contained in:
- (a) the Important Information Summary ("IIS");
 - (b) these Terms and Conditions (including Appendix 1 (Metro Bank Bacs Payment System) which shall only apply if you have opted to take up our Bacs payment system product) ("Terms");
 - (c) the User Guides;
 - (d) the Service Users Guide – Bacstel-IP;
 - (e) the Direct Credit Best Practice Guidelines
 - (f) the Direct Debit Rules and the Direct Debit Indemnity (where you are acting in the capacity of a Direct Debit Service User); and
 - (g) the Bacstel-IP Service User application form (the "Application Form") and any additional form that we may decide to use as appropriate in relation to your use of the Service, including but not limited to those relating to direct credit and direct debit, together which form the "Agreement". In the event of any conflict, the order of precedence shall be as set out above.
- 1.2 The terms of this Agreement supplements our overarching contract with you, Our Service Relationship with Business Customers ("Customer Agreement"). In the event of any inconsistency between the terms of this Agreement and the terms of the Customer Agreement, the terms of this Agreement will apply to the Service.
- 1.3 You must have an account with us to enable you to benefit from the provision of the Service.
- 1.4 These Terms are legally binding, so you should read them carefully before you agree to them and before you register for the Service and before you use the Service. When you sign the Application Form for the Service, you are agreeing to comply with all of the documents referenced at clause 1.1 above.
- 1.5 We have tried to make these Terms easy to follow but we do understand that you may feel uncertain about some sections when you read them. If there is anything you do not understand or would like a copy of these Terms in another format, please ask any member of the Metro Bank Business Banking Team.
- 1.6 This Agreement only deals with the Service. However, when using the Service for any other application provided by Bacs or Vocalink Limited you are also agreeing to comply with all appropriate rules and guides produced by Bacs or Vocalink for that application.
- 1.7 In this Agreement 'you' and 'your' means the customer named in the Application Form and, where appropriate, includes any person authorised to give instructions to us. 'We', 'us' and 'our' means Metro Bank (which provides the Service) and where appropriate, Vocalink Limited, CHAPS Clearing Company Limited, UK Payments Administration Limited and Bacs.
- 1.8 You must ensure that all Contacts within in your organisation comply with the terms of this Agreement. Prior to any Contact being set up on the Bacs System you must ensure that they undertake training.
- 1.9 In this Agreement, where authorised terms are used, the corresponding definitions are set out at clause 15 of this Agreement.

2 CONTACTING EACH OTHER

- 2.1 We may contact you and give you any notices in connection with this Agreement by post, telephone or email using the latest address, telephone number or electronic mail address you have given us. You must notify us promptly of any changes to the contact details which we hold for you.
- 2.2 You can contact us in the ways and using the details set out in the Customer Agreement.
- 2.3 We may record or monitor telephone calls with you in order to verify our dealings with you and to make sure that we are meeting our service standards.
- 2.4 Without prejudice to the generality of clause 2.3 above, we, Vocalink Limited and Bacs may record communications with you, your agents, employees and contractors (including, but not limited to, Bacstel-IP Transmissions) for any purpose connected with Bacstel-IP which we or Bacs (as the case may be) consider appropriate.

3 GIVING US INSTRUCTIONS

- 3.1 We cannot change or stop a Bacstel-IP Payment Message (except in the limited circumstances set out in the User Guides) once the Bacstel-IP Payment Message has been submitted to the Bacs System. This will be on the day you ask us to. Notwithstanding the previous sentence, upon your request and at your cost, we will provide you with reasonable assistance if you wish to extract or recall a Bacstel-IP Payment Message submitted by you or on your behalf to the Bacs System. You hereby expressly agree that:
- (a) a Bacstel-IP Payment Message shall not be capable of revocation following the security and validation checks undertaken by the Bacs System;
 - (b) once the Bacstel-IP Payment Message has become irrevocable:
 - (i) you shall make no attempt to revoke or recall the Bacstel-IP Payment Message; and
 - (ii) you shall not do anything, or omit to do anything, in any way that might affect our ability to comply with our rights and duties under this Agreement or our obligations in respect of the Bacs System Rules (including but not limited to our obligations as both a Member and as your Sponsor).
- 3.2 Before we can accept instructions given to us using the Service or in any other way described in the User Guides we will agree security procedures with you as set out by us in the Application Form. (By 'security procedures' we mean the use of a password, security keys, card, personal identifier(s), personal digital certificates, codes, Personal Identification Numbers (PINs) or encryption

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device(s) any of which may be changed by agreement in the future). We may also agree security procedures with you before accepting instructions given to us by telephone. You must comply with the security procedures and take such security measures as are set out in the User Guides at all times when using the Service. You will also comply with such other security procedures and take such security measures in relation to the Service as we may deem necessary or appropriate from time to time (including contractually requiring any person acting on your behalf to comply with the User Guides and take any other security measures which we may deem necessary or appropriate including any set out in the Customer Agreement). When you first use a security device which we have sent to you, this will amount to your confirmation of receipt of that security device.

- 3.3 You must do all that is reasonably possible at all times (and act in accordance with the User Guides) to make sure that the security procedures are kept secret and any security-related device is kept physically secure. This includes making sure that security details are not kept in any form (including by browser or any other software) in such a way that anyone using the same work station can go through the security procedures using stored details.
- 3.4 You must tell us as soon as possible if some unauthorised person may know any security procedures or may have or has had access to any security-related device used to access the Service.
- 3.5 You shall notify us:
- (a) immediately (and provide all the information you have) if you become aware or suspect:
 - (i) any misuse of security procedures and security-related devices;
 - (ii) any material breach or any material non-compliance with this Agreement, the User Guides or the Application Form;
 - (iii) any fraud affecting the Service;
 - (b) at the earliest opportunity after you become aware of or suspect any indications of compromise in relation to the Service itself or your use of the Service. We may pass this information to the police if we think it necessary or appropriate to do so.
- 3.6 You will not use (or permit to be used) any of the Services covered by this Agreement outside the United Kingdom, Channel Islands and Isle of Man if it would or is reasonably likely to result in us or the system operated by VocaLink Limited or Bacs being in breach of any applicable laws or regulations outside of the United Kingdom, Channel Islands and Isle of Man. The software and security-related devices provided with the Service contain cryptographic routines and are subject to import and export regulations and usage restrictions in some countries.

4 USING THE BACS SYSTEM

- 4.1 You may access Bacstel-IP and use the Bacs System. You shall only use the Bacs System for submitting Bacstel-IP Transmission directly to, or for receiving communications or collecting reports from, the Bacs System via Bacstel-IP in accordance with the User Guides provided that at all times you (and you ensure that your Contacts):
- (a) comply with any restrictions or prohibitions that we (or Bacs) may from time to time notify to you in writing, setting out your access rights to Bacstel-IP and your use of the Bacs System if and when it is necessary or appropriate to reflect a change to Bacstel-IP, in the Bacs System Rules or in our own products and services;
 - (b) comply with such documentation relating to the use of Bacstel-IP or the Bacs System as is applicable from time to time, including but not limited to the User Guides; and
 - (c) comply with the terms and conditions of any existing agreement between us and you.
- 4.2 You shall ensure that your organisation has a minimum of two Contacts set up with access to the Bacs System and have knowledge of and access to the User Guides and other documentation listed in clause 1.
- 4.3 Subject to clause 4.4 below, to enable you to access Bacstel-IP and to use the Bacs System, you irrevocably and unconditionally authorise us to take any action we deem necessary or appropriate (including instructing Bacs) with respect to or to give effect to:
- (a) your registration as a Service User and the allocation to you of a Service User number;
 - (b) the implementation, monitoring and amendment as and when we deem it to be necessary or appropriate of any financial limit applicable to payments that we are prepared to make pursuant to a Bacstel-IP Payment Message submitted by you (or on your behalf) in relation to your use of the Bacs System on any Business Day. We may, if we consider it to be necessary or appropriate to do so, notify you of a financial limit and any revision to such limit. You acknowledge that any reduction in or disablement of a financial limit made by us shall not affect your payment obligation under a valid Bacstel-IP Payment Message generated prior to the effective time of the reduction in or disablement of such financial limit; and
 - (c) subject to clause 13.6 below any Bacstel-IP Payment Message and settle the relevant payment by debiting or crediting the relevant account, where the Bacstel-IP Payment Message relates to a payment to be made to or from:
 - (i) an account held by you with us (such account being as nominated by you in the Application Form or as otherwise notified to us in writing) (including for the avoidance of doubt any bank account charged in our favour if we so determine); or
 - (ii) an account held with us in the name of any of your Group Companies provided that this is agreed by you with us from time to time.

Any account referred to above being the "Settlement Account".

- 4.4 If we receive a Bacstel-IP Payment Message before the relevant cut-off time on a Business Day, subject at all times to the provisions of this Agreement and the User Guides, we shall use all reasonable endeavours to process the payment and either make payment or receive payment for your account in accordance with the relevant Bacstel-IP Payment Message, such payment to be debited or credited (as the case may be) by us to your Settlement Account. If we receive a Bacstel-IP Payment Message after the

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- relevant cut-off time or on a day which is not a Business Day, it will be processed on the next Business Day. Notwithstanding the previous sentence, if we receive a Bacstel-IP Payment Message we retain the right to ask for written confirmation before we act on it.
- 4.5 Before acting on a Bacstel-IP Payment Message submitted by you or by anyone acting on your behalf, we will consider whether you have sufficient funds available in your Settlement Account to settle the relevant payment. We may refuse to act on a Bacstel-IP Payment Message if you do not have sufficient funds available or we have reasonable grounds to believe that you will not have sufficient funds available on the settlement date.
- 4.6 We may immediately restrict your ability to access the Bacs System and/or impose limits on the value of Bacstel-IP Payment Messages that you may submit where we have reasonable grounds to believe that there is a significantly increased risk that you will be unable to fulfil your obligations to settle the relevant payment.
- 4.7 Without prejudice to the generality of the above and clause 4.9 below, you hereby irrevocably and unconditionally authorise and request us to act (including by debiting or crediting, as appropriate, the Settlement Account) upon each and every valid Bacstel-IP Payment Message submitted by you or by anyone acting on your behalf.
- 4.8 If we make a payment which accords with a Bacstel-IP Payment Message received by us in accordance with the third limb of clause 4.2 above, then clause 4.9 shall apply notwithstanding that the payment to which such Bacstel-IP Payment Message relates is not credited or debited as you intended. In these circumstances, we will make reasonable efforts to recover the funds. We will charge you a reasonable amount to cover our costs in doing so. We will tell you the amount of the additional charge before we take the action. In relation to each Bacstel-IP Payment Message, we shall not be obliged to verify that the name of the beneficiary accords with the account number for such beneficiary as set out in the Bacstel-IP Payment Message.
- 4.9 You hereby irrevocably and unconditionally authorise and request us to do all such acts and things and execute all such documents as may be required to enable us to fully observe and perform our obligations under this Agreement and our obligations under the Bacs System Rules (including but not limited to our obligations as both a Member and as your Sponsor). In particular (but without limitation) you irrevocably and unconditionally authorise us 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 us in relation to you or any of your Group Companies in respect of Bacstel-IP Payment Messages arising in relation to you or any of your Group Companies to be carried out that day.
- 4.10 Where we sponsor you to act in the capacity of an Indirect Submitter, you further irrevocably and unconditionally authorise us to accept without enquiry all instructions, messages, files, reports and other communications submitted by any Bureau which you have appointed, including (without limitation) any Bacstel-IP Transmissions and the collection of reports from the Bacs System via Bacstel-IP for your own account or on behalf of any of your Group Companies. Furthermore, you hereby represent and warrant to us that all acts and things done by a Bureau on your behalf (even where such acts were not authorised by you) in connection with the Bacs System are within the scope of its authority from you.
- 4.11 For the avoidance of doubt, we shall not be liable to you for any loss suffered by you as a result of any act or omission by a Bureau acting on your behalf, unless that loss is of a type that we have otherwise agreed to be liable for in this Agreement.

5 USING THE SERVICE

- 5.1 You (and your Contacts) shall at all times:
- comply with this Agreement when using the Service;
 - where required to do so, only use software which at the relevant time is the Bacs Approved Software; and
 - act in accordance with any instructions or guidance which we provide to you in relation to the Service.
- 5.2 Your Bacs limit will be as agreed between us and you before you enter into this Agreement and may be amended by agreement between us and you from time to time.
- 5.3 You shall not provide any documentation relating to Direct Debit activities to your customers that we have not previously approved in writing. You shall provide us with any documentation that you intend to provide to your customers relating to Direct Debit activities including any changes to documentation previously approved by us.
- 5.4 Where we sponsor you to act as a Direct Submitter, you shall only use the PKI Service in connection with the Bacs System for submitting Bacstel-IP Transmissions directly to the Bacs System or for receiving communications or collecting reports from the Bacs System via Bacstel-IP for your own account or on behalf of any of your Group Companies which either:
- specify an account with us maintained by you or one of your Group Companies as the account to be debited, or as the case may be, credited;
 - make changes to the details held on the Reference Database regarding or associated with any such account or provides access to any other information held by the Bacs System relating to that account (including, without limitation, any information relating to the processing of payments made or to be made to or from that account).
- 5.5 Where we sponsor you to act as an Indirect Submitter, you shall only use the PKI Service in connection with the Bacs System for submitting Bacstel-IP Transmissions to a Bureau for onward submission to the Bacs System (where permitted) or for collecting reports from the Bacs System via Bacstel-IP for your own account or on behalf of any of your Group Companies which either:
- specify an account with us maintained by you or one of your Group Companies as the account to be debited, or as the case may be, credited;
 - make changes to the details held on the Reference Database regarding or associated with any such account or provides access to any other information held by the Bacs System relating to that account (including, without limitation, any information relating to the processing of payments made or to be made to or from that account).

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6 USING THE ASM SERVICE

- 6.1 Subject to and in accordance with this Agreement and the User Guides, you shall be entitled to use ASM for accessing via Bacstel-IP and using the Bacs System if you have been sponsored by us as a Service User and have been authorised by us to use ASM (pursuant to the relevant provisions of the Service User Guide – Bacstel-IP) for accessing the Bacs System via Bacstel-IP.
- 6.2 You shall not be permitted to use ASM except via a Contact who is permitted to use ASM.

7 LEGAL EFFECTIVENESS OF ELECTRONIC SIGNATURES AND CERTIFICATES

- 7.1 You shall not challenge the legal effect, validity and enforceability of a Bacstel-IP Transmission (including, any transmission that purports to be a Bacstel-IP Transmission) on the basis that:
- (a) such Bacstel-IP Transmission is in electronic rather than written form;
 - (b) where you or anyone acting on your behalf (including but not limited to a Bureau) did not see, check or review the contents of the Bacstel-IP Transmission before or when Signing it;
 - (c) the Bacstel-IP Transmission was Signed automatically without direct human instigation or intervention (whether by a hardware security module or otherwise); or
 - (d) the Bacstel-IP Transmission or the Signing, transmission and processing of the Bacstel-IP Transmission constitutes a breach by:
 - (i) you of this Agreement or the User Guides or of the provisions or terms of use of any relevant third party provider or third party scheme; or
 - (ii) anyone acting on your behalf (including but not limited to a Bureau), of the terms on which it acts on your behalf.
- 7.2 We shall be entitled to rely on, and you shall accept full liability for, any Bacstel-IP Transmission Signed in accordance with this Agreement and the User Guides.

8 OUR LIABILITY TO YOU AND YOUR LIABILITY TO US

- 8.1 Subject to the other conditions of this clause 8, our liability to you shall be strictly limited to any direct loss reasonably incurred by you and resulting from any failure, delay or error in carrying out your instructions in relation to a Bacstel-IP Payment Message (however caused) but our liability will be limited to the amount of any interest you do not receive or any interest you have to pay as a result of such failure, delay or error.
- 8.2 We will not be liable to you if we do not act on your instructions for any reason under clauses 4.4 or 13.6 or if we cannot carry out our responsibilities under this Agreement as a result of anything that we cannot reasonably control. This includes, amongst other things, any machine failing to work, complete or partial closure of any systems of VocaLink Limited, CHAPS Clearing Company Limited, UK Payments Administration Limited or Bacs, industrial disputes and any act, omission or delay of any agent, correspondent or Paying Bank or any third party. We are not liable for transactions or transmissions made with digital certificates which should have been revoked or which were used outside the authority levels ascribed to the holder of them.
- 8.3 We will not be liable to you in any circumstances for any loss or damage:
- (a) that you suffer or incur as a result of your use of the Service except:
 - (i) to the extent set out in clause 8.1 above; and
 - (ii) to the extent that such loss is caused directly as a result of our negligence, willful default or material breach of this Agreement,
 - (b) resulting from services which have been provided by a third party (including, but not limited to services provided by VocaLink Limited, CHAPS Clearing Company Limited, UK Payments Administration Limited and Bacs and services provided by the Bank of England);
 - (c) caused by events outside of our control;
 - (d) caused by our acting or failing to act to the extent that such act or failure to act is in accordance with a request from you, or someone acting on your behalf (including but not limited to a Bureau);
 - (e) caused by our delay in performing or failing to perform our obligations under this Agreement or the User Guides if the delay or failure results from compliance with the Bacs System Rules;
 - (f) resulting from your use of any documentation produced by VocaLink Limited, CHAPS Clearing Company Limited, UK Payments Administration Limited and Bacs;
 - (g) to the extent that such loss or damage constitutes loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special or consequential damages, whether or not we have been advised of (or should have foreseen) the possibility of such loss or damages; and
 - (h) any other type of special, consequential or indirect loss whatsoever.
- 8.4 We expressly disclaim liability:
- (a) for third party acts and/or omissions including, without limitation, acts or omissions by VocaLink Limited, CHAPS Clearing Company Limited, UK Payments Administration Limited, Bacs, any other user of the Bacs System (including another Member or the Bank of England) and anyone acting on your behalf (including but not limited to a Bureau);
 - (b) for any software not owned by us (including any software approved as part of the Bacs Approved Software Service);
 - (c) for any data, file, information or other message or material forwarded to you by us ("Bacs Data") if such Bacs Data is passed on as received by us;

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- (d) for the fitness for purpose or general suitability of any documentation produced by VocaLink Limited, CHAPS Clearing Company Limited, UK Payments Administration Limited and/or Bacs.
- 8.5 Notwithstanding the other provisions of this clause 8, nothing in this Agreement shall purport to limit our or your liability for any loss which cannot be excluded or limited by law, including without limitation for fraud, fraudulent misrepresentation or death or personal injury caused by negligence.
- 8.6 If you wish to make a claim on us under this Agreement you must notify us and give us such details of the loss as we may request as soon as you have identified it and in any case within 13 months after you become aware or should reasonably have become aware of the event or omission on which your claim is based. If you do not do so we will not be liable to you.
- 8.7 You will reimburse us for any costs incurred, loss, damage or liability we or our agents suffer in acting upon your instructions or resulting from the effect of any local laws or regulations on payments made in accordance with your instructions. Furthermore, you agree to indemnify us, along with our directors, employees and officers, against all or any loss, cost, damage, action, proceeding, demand, charge or expense suffered or incurred by (or made or brought against) us directly or indirectly in connection with or arising as a result of:
- (a) our complying with or relying upon any Bacstel-IP Transmission or other instruction, certificate, consent, notice, direction or communication delivered by you pursuant to and in accordance with this Agreement (an "Instruction") (including but not limited to our reliance on any Instruction which is inaccurate, forged or unauthorised);
 - (b) any failure, suspension or termination of your right, pursuant to this Agreement, to use the Bacs System; or
 - (c) any error or failure in any Bacs Approved Software provided to you for use in connection with your use of the Bacs System; or
 - (d) any breach of this Agreement, any negligence, wilful default or fraud on your part, anyone acting on your behalf (including but not limited to a Bureau) or your employees or agents (whether or not authorised by you); or
 - (e) any use of the Bacs System by you in breach of applicable law, court order or requirement of any regulatory or governmental authority or body or any act or omission committed outside of the United Kingdom, the Channel Islands or the Isle of Man by you or anyone acting on your behalf or on behalf of your employees or agents (whether or not you have authorised such action) which would result in us being in breach of any applicable laws or regulations, save that this indemnity shall not extend to any loss, cost, damage, charge or expense arising from our fraud, wilful default or gross negligence or material breach of our obligations under this Agreement.
- 8.8 Where you are a Direct Debit Service User:
- (a) if at any time we receive notice that any amount (or part thereof) which was paid or credited to your account has not been received as cleared funds or has otherwise been recalled (including, for the avoidance of doubt, a recall under an Indemnity Claim) we shall be entitled to debit your account forthwith for the whole or part of such amount;
 - (b) notwithstanding the generality of the above paragraph, if you fail to settle an Indemnity Claim within the requisite time period, you hereby irrevocably and unconditionally authorise us to debit any account you may have with us in the event that we receive notice of non-payment from a Paying Bank. For this purpose, you will ensure that sufficient cleared funds and/or undrawn credit facilities are freely available to you to enable you to discharge your obligations to us in full;
 - (c) if you disagree with the validity of an Indemnity Claim, you must raise a Counter Claim with us within 14 days of settlement of the Indemnity Claim in accordance with the Direct Debit Rules. We will use reasonable endeavours to investigate your Counter Claim but our decision as to whether to accept or reject the Counter Claim shall be final and made in our absolute discretion; and
 - (d) you expressly agree that we may raise a Counter Claim on your behalf in the event that you fail to do so within the necessary time limits imposed by the Direct Debit Rules
- 8.9 We may, at any time and in our absolute discretion, call for the deposit of full cash cover for all or your actual and/or contingent liabilities under this Agreement, together with security over the money so deposited in form and substance satisfactory to us to secure those actual and/or contingent liabilities. It is hereby agreed that the actual and/or contingent liabilities under the Agreement shall include an amount up to any applicable financial limit notified or implemented under clause 4.2 above or otherwise applicable.
- 8.10 For the avoidance of doubt VocaLink Limited, CHAPS Clearing Company Limited, UK Payments Administration Limited and Bacs shall not be liable to you in any circumstances whatsoever.

9 CONFIDENTIALITY

- 9.1 You will keep all information, including the User Guides, we give you confidential at all times including the User Guides, except for information which by its nature is clearly not confidential.
- 9.2 If you cease to use the Service you shall not be entitled to retain any confidential information given to you including the User Guides.
- 9.3 You may disclose the confidential information to the extent necessary to comply with this Agreement.
- 9.4 The obligations of confidentiality in this clause 9 do not extend to any confidential information which you wish to disclose or use and can show:
- (a) is or becomes generally available to the public other than as a result of a breach of the obligations of confidentiality under this Agreement; or
 - (b) was in your written records prior to the date we enter into this Agreement and not subject to any confidentiality obligations; or
 - (c) was or is disclosed to it by a third party entitled to do so; or

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- (d) the parties agree in writing is not confidential information or may be disclosed; or
- (e) is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

9.5 We may give information you provide to us when using the Service to:

- (a) people who provide a service to us or are acting as our agents, on the understanding that they will keep the information confidential;
- (b) anyone we transfer or may transfer our rights and duties to under this Agreement. We may also give out information about you if we have a duty to do so or are required or able to do so by law.

10 DATA PROTECTION

10.1 We will and you will comply at all times with any legislation (including the regulations on the protection of natural persons with regard to the processing of personal data and on the free movement of such data known as the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018 and related statutory instruments as amended or in force from time to time (the "Data Protection Legislation")) which directly affects the processing and transmission of data when using the Service and any regulations or other legislation made under the Data Protection Legislation and in particular the data protection principles set out in the Data Protection Legislation.

11 SPECIAL TERMS RELATING TO USING THE SERVICE

11.1 We will take reasonable care to ensure the security of and prevent unauthorised access to the Service.

11.2 You must:

- (a) comply with all Applicable Requirements;
- (b) obtain and maintain all necessary and relevant licences, consents, permissions and authorisations necessary and appropriate to use the Service;
- (c) ensure that all required contact details relating to you and anyone acting on your behalf (including but not limited to a Bureau) are up to date with us and on the Bacs System;
- (d) use the Service in accordance with, and subject to, the procedures contained in the User Guides and be responsible for ensuring that you are up to date with any changes made to them;
- (e) ensure all your computer equipment is in safe and efficient operating order and complies with the standards and requirements we tell you about from time to time;
- (f) make your own contingency arrangements to cover system or operating failures or suspension;
- (g) carry out your own virus checks and firewall protection (using up to date virus checking software) and use all reasonable care to prevent the introduction or contamination of any viruses;
- (h) not change, copy or reverse engineer or allow any third party to use, change, copy or reverse engineer any software or any other materials provided by us without our consent;
- (i) provide us with such reasonable assistance as we may require in relation to your use of the Service or to enable us to perform our obligations under this Agreement and the Bacs System Rules;
- (j) tell us as soon as possible if you become aware of any failure, delay, malfunction, virus, programming error or error in the sending or receiving of instructions or any suspected fraud and assist us in any remedial steps we propose.

11.3 Without prejudice to the provisions of clause 11.2, where you are a Direct Debit Service User:

- (a) you expressly agree to comply at all times with the guides and rules applicable to Direct Debit Service Users (including but not limited to the Direct Debit Rules (as may be amended from time to time)). You expressly accept that you will be bound by any updates to the Direct Debit Rules and that responsibility for obtaining updates to such documents lies with you; and
- (b) you shall not act, or omit to act, in any way that might affect our ability to comply with our rights and duties under this Agreement or our obligations in respect of the Direct Debit Scheme generally (including but not limited to both our obligations as a Member and as your Sponsor).

11.4 You warrant and represent to us that:

- (a) you have the power and authority to perform your obligations under this Agreement;
- (b) your obligations under this Agreement are valid, binding and enforceable in accordance with their terms;
- (c) your entry into this Agreement and your performance of your obligations under this Agreement does not and will not violate:
 - (i) any law or regulation to which you are subject;
 - (ii) any of your constitutional documents; or
 - (iii) any agreement or instrument which you are a party to or which is binding on you or any of your assets;
- (d) all information which has been given to us by you prior to, or on date of, this Agreement is true, complete and accurate in all respects. Each of the above warranties will be correct and complied with in all respects and at all times as long as this Agreement remains in full force and effect.

11.5 You acknowledge that the Intellectual Property Rights in the User Guides and in the software supplied to you by us is owned by us or by VocaLink Limited, CHAPS Clearing Company Limited, UK Payments Administration Limited or Bacs or by the licensor of such software to us, if the terms of any contract we have with any licensor so specify. You shall obtain no right, title or interest in any such materials or any Intellectual Property Rights therein.

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- 11.6 If we own any software or security-related devices we have provided, it is licensed to you and you must use it exclusively in connection with this Agreement and as described in the User Guides. The licence is a non-exclusive licence to use and copy (but not sub-licence) the materials to the extent necessary to enable you to Sign, submit and receive Bacstel-IP Transmissions and for use only in connection with the Bacs System. We give no warranty that the User Guides licenced to you shall not infringe the Intellectual Property Rights of any third party. The licence will terminate automatically on the earlier of any suspension of the Service for whatever reason, us ceasing to offer the Service or you ceasing to maintain an account with us. We shall be entitled to access the software and security-related devices during normal business hours and, in the event of any suspension or termination of the Service, to remove the software, security-related devices or other materials we have supplied from your premises.
- 11.7 The records and audit logs we or VocaLink Limited, CHAPS Clearing Company Limited, UK Payments Administration Limited or Bacs maintain of any instructions you give us shall be deemed to be accurate and will be conclusive evidence of your instructions and of the time they are given except where there is an obvious mistake.

12 CHANGING THE TERMS OF THIS AGREEMENT

- 12.1 We may change the terms of this Agreement (including charges) and we may introduce changes to our Service(s) and the User Guide at any time by telling you about the change.
- 12.2 We will tell you about any changes by sending you a written notice in accordance with clause 14.2.
- 12.3 We will give you at least two months' notice of any changes, and if you are not satisfied with the proposed change you may terminate by giving us no less than one month's written notice.
- 12.4 You shall ensure that when updates to the User Guides and other documentation listed in clause 1 are made and issued to you, you shall comply with the terms of those updated documents.

13 WITHDRAWAL, SUSPENSION, CLOSURE AND TERMINATION

- 13.1 We may suspend or terminate, or withdraw or cease to permit your right to use the Bacs System:
- (a) on 2 months' written notice to you; or
 - (b) with immediate effect in any of the following circumstances:
 - (i) if Bacs decides for whatever reason not to validate Bacstel-IP Transmissions from you;
 - (ii) if Bacs suspends or revokes our right to use Bacstel-IP or any service associated with them;
 - (iii) where we consider it is appropriate to do so in order to protect the security, integrity or reputation of Bacstel-IP or us;
 - (iv) where, in our opinion, you are in breach of any provision of this Agreement or the User Guides;
 - (v) if you fail to maintain a bank account with us; or
 - (vi) on the occurrence of an Insolvency Event in relation to you.
- 13.2 Upon any suspension or withdrawal in accordance with clause 13.1 above:
- (a) you shall not (and you shall ensure that your agents, contractors and employees shall not) Sign or submit any Bacstel-IP Transmissions after such suspension or withdrawal unless and until, in the case of a suspension, such suspension is lifted by us giving written notice to that effect to you; and
 - (b) we shall provide reasonable assistance to you on the basis set out in clause 3.1 if you wish to extract or recall any Bacstel-IP Payment Message.
- 13.3 You may request that the permission which we have given you to use the Bacs System be suspended or revoked on 30 days' written notice.
- 13.4 Upon termination by either party to this Agreement, you shall promptly return to us or destroy (at our option) all data, materials and other properties belonging to us which are held by your or any of your employees and you shall no longer be entitled to use the Bacs System.
- 13.5 If you fail to perform your obligations under this Agreement we may at any time (and in our absolute discretion) conclude that any of the events referred to in the second limb of clause 13.1 above has occurred or is likely to occur, and (without prejudice to our rights to terminate this Agreement), we shall have the right at our discretion to suspend all or part of your right to use the Bacs System under this Agreement until you have fully performed all such obligations to our satisfaction at which time we shall reinstate your right to use the Service.
- 13.6 Nothing in this Agreement shall prejudice our entitlement:
- (a) to decline to make any payment pursuant to a Bacstel-IP Payment Message unless and until it is satisfied (in its absolute discretion) that:
 - (i) sufficient cleared funds and/or undrawn credit facilities are freely available to you to enable you to discharge your obligations to us (and you hereby irrevocably and unconditionally authorise us to debit your account on the same day that you, or the person acting on your behalf (including but not limited to a Bureau) submits the Bacstel-IP Payment Message to satisfy such obligations);
 - (ii) such payment:
 - (A) does not break any law, regulation, code or other duty which applies to us;
 - (B) has been validly authorised by all necessary parties;
 - (C) does not make us liable to any third party;
 - (D) will not damage our reputation;

Bacs Payments Customer Terms and Conditions *(continued)*

TERMS & CONDITIONS *(continued)*

- (iii) authority for the Service has not been suspended or withdrawn by Bacs, Vocalink Limited or any third party.
 - (iv) such payment is not in excess of any financial limit set by us from time to time;
 - (b) or settle any payment pursuant to a Bacstel-IP Payment Message submitted by you or on your behalf (including but not limited to a Bureau) prior to termination or suspension even if such Bacstel-IP Payment Message will be settled after termination of suspension.
- 13.7 Termination or suspension of this Agreement shall be without prejudice to:
- (a) all rights and obligation accrued up to the date of such termination or suspension; and
 - (b) clauses 9 (Confidentiality) 8 (Liability) 8.7 (Indemnity) 14.6 (Charges) and 14.7 (Waiver) shall continue in full force and effect after and notwithstanding such termination or suspension.

14 GENERAL PROVISIONS

- 14.1 Language: These Terms and all communications between us will be in English.
- 14.2 Notices: Any notice given under these Terms by either party to the other must be in writing and to the contact details set out in clause 2 of these Terms.
- 14.3 Your transfer of rights: you may not transfer any of your rights under these Terms to any other person.
- 14.4 Our transfer of rights: We may transfer any of our rights under these Terms to any person or ask any person to fulfil any aspect of it so long as the performance of these Terms is not affected.
- 14.5 No Rights of Third Parties: Only you and us have any rights under these Terms. No other person shall have any rights under these Terms.
- 14.6 We tell you about the charges for the Service and they will be set out in the IIS. These will normally be debited to your account and you hereby irrevocably and unconditionally authorise us to debit such account on our usual quarterly charging dates or such other dates as the charges fall due for payment. If we are unable to debit your account for any reason, you hereby irrevocably and unconditionally authorise us to debit such charges from any other account which you hold with us from time to time. Some of the fees for our services are charged in advance and you will be told about these before you take up the Service. Any changes in our charges will be subject to clause 12.
- 14.7 Any waiver of a breach of any term of this Agreement shall not affect our rights in the future in respect of any further breach of that or any other term and our rights under this Agreement shall not be prejudiced or restricted by any time, indulgence or forbearance extended to you by us.
- 14.8 Your contractual rights and obligations in connection with your use of the Bacs System, and any duty of care owed to you, shall be exclusively regulated by this Agreement. This Agreement, contains our entire agreement with you in respect of the Service. No warranty, condition, term or representation shall be implied or have any effect whether contained in any material or documentation or information produced or given by us or its agents or contractor to you or otherwise howsoever unless specifically included in this Agreement and in any changes subsequently notified to you in writing or in the additional conditions. If any part of this Agreement is unenforceable, unlawful or void in any jurisdiction then that part shall be separated from the rest of the Agreement which shall continue to be valid and enforceable.
- 14.9 Governing Law and Jurisdiction: These Terms will be governed by English law and any court proceedings related to these Terms must be taken at a court within England and Wales.

15 DEFINITIONS

“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”

means an alternative security method available from Bacs within Bacstel-IP which uses a combination of contact ids and access codes to provide access to low-risk functions on the Bacs System;

“Bacs”

means Bacs Limited Company (company number 1023742) and/or Bacs Payment Schemes Limited (company number 4961302) as appropriate, and includes any successor entity or entities of such companies;

“Bacs Approved Software”

means any software which is at the applicable time approved by Bacs under the Bacs Approved Software Service;

“Bacs Approved Software Service”

means the process by which Bacs assesses the capability of suppliers' software to generate a Bacstel-IP Transmission and the ability of that software to interface with Bacstel-IP and the Bacs System, on the terms and conditions of the Bacs software supplier agreement;

“Bacs Data”

has the meaning given in clause 8.4;

“Bacs System”

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

Bacs Payments Customer Terms and Conditions *(continued)*

TERMS & CONDITIONS *(continued)*

“Bacs System Rules”

means all the terms and conditions governing access to and use of the Bacs System from time to time and those applicable to us as a Member or as your Sponsor;

“Bacstel-IP”

means the mechanisms and processes adopted by Bacs to enable a user of the Bacs System to:

- (i) authenticate and sign payment messages submitted to the Bacs System and to validate, confirm receipt and report on the processing of such Bacs payment messages;
- (ii) 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;
- (iii) to sign certain instructions, messages, files and communications transmitted by the Bacs System (which may be authenticated by the recipients);
- (iv) to monitor and retrieve reports on the processing of Bacs payment messages; and
- (v) to gain access to, or make changes to, the Reference Database;

“Bacstel-IP Payment Message”

means any Bacstel-IP Transmission Signed and submitted by you or on your behalf to the Bacs System which comprises a payment message (including, without limitation, a recall instruction) authorising us to pay funds in or out of an account specified by you on any Business Day;

“Bacstel-IP Transmission”

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

“Bureau”

means any bureau which makes submissions and/or receives output from the Bacs System on your behalf when you are an Indirect Submitter;

“Business Day”

means a day on which we are ordinarily open to provide services of the sort contemplated in this Agreement and also on which the Bacs System is both open and operational;

“Contact”

means each primary security contact and any additional contacts appointed by you in accordance with the User Guides;

“Counter Claim”

means a claim raised by you as a Service User against a Paying Bank following settlement of an Indemnity Claim which you as Service User believe to be unjustified;

“Digital Signature”

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

“Direct Credit Best Practice Guidelines”

means the Direct Credit Best Practice Guidelines and/or such other guidelines issued by us or Bacs from time to time applicable to direct credits generally;

“Direct Debit”

means the collection of an agreed amount from a bank or building society account by you as a Service User, on the request of a payer and which is subject to the rules of the Direct Debit Scheme;

“Direct Debit Indemnity”

means the Bacs standard form indemnity given by a Service User and addressed to the Members in respect of its obligations as a Direct Debit Service User;

“Direct Debit Instruction”

means an instruction sent by you as a Direct Debit Service User to the payer’s bank or building society, instructing the payment of a Direct Debit from the payer’s account

“Direct Debit Rules”

means the Service User’s Guides and Rules to the Direct Debit Scheme and/or such other rules from time to time issued by us or Bacs applicable to the Direct Debit Scheme generally;

“Direct Debit Scheme”

means the scheme for the manual or automated debiting of bank accounts operated and administered by Bacs;

“Direct Debit Service User”

means any Service User in respect of which we act as Sponsor in relation to the Direct Debit Scheme;

“Direct Submitter”

means a Service User whom we have authorised to make payments via Bacstel-IP from or to an account held with us by that person or any Group Company and who submits Bacstel-IP Transmissions directly to the Bacs System via Bacstel-IP using our PKI Service and for the avoidance of doubt, excludes an agency bank, a Bureau and an Indirect Submitter;

Bacs Payments Customer Terms and Conditions *(continued)*

TERMS & CONDITIONS *(continued)*

“Group Company”

means, in relation to a party to this Agreement, any holding company of it, and any subsidiary of it, or any subsidiary company of any such holding company (as such terms are defined in the Companies Act 2006 as amended from time to time) for the time being and from time to time;

“Indemnity Claim”

means a claim made by a Paying Bank in respect of an incorrect Direct Debit being applied to an account in accordance with the Direct Debit Rules;

“Indirect Submitter”

means any person on whose behalf a Bureau submits an instruction, message, file or other communication to the Bacs System;

“Insolvency Event” means the occurrence of any of the following events in relation to you:

- (i) any general meeting of your creditors (or any section of them) is summoned for the purpose of, or any proposal is made to its creditors generally (or any section of them) for, any moratorium, composition, voluntary arrangement or scheme of arrangement of your debts or any of them, or any application or report is made to the court with a view to a voluntary arrangement in relation to you, or any other proceedings are commenced before any court or body under any procedure for the suspension, reconstruction or adjustment of debts; or
- (ii) any receiver is appointed over, or possession is taken or any encumbrance is enforced, by or on behalf of any creditor, in relation to all or any of your assets; or
- (iii) a distress, execution, attachment or other legal process being levied, enforced or sued out upon or against any of your assets and not being removed, discharged or paid within five Business Days; or
- (iv) any judgment or order is made against you by any court, tribunal or administrative body, which is not promptly paid or satisfied in full; or
- (v) you stop payment of your debts, or are unable to pay your debts as they fall due, or are declared or deemed for the purposes of any statutory provision to be unable to pay your debts; or
- (vi) any resolution is passed (or any meeting is convened or form of written resolution circulated with a view to passing a resolution), or any petition or application is presented to the court, or any other procedure is commenced or any order is made, for winding up, dissolution or striking off or for the appointment of a provisional liquidator or, in the case of the presentation of a petition, if such petition is (to our satisfaction) presented on frivolous or vexatious grounds, you obtain an order restraining advertisement of such petition within five Business Days of presentation and the petition is discharged within ten Business Days of presentation, or
- (vii) any corporate action, legal proceedings or other procedure or step is taken in relation to the appointment of an administrator or the seeking of an administration order; or
- (viii) any event similar or analogous to any of the events described above occurs, whether in England or elsewhere, and whether under English law or pursuant to any other jurisdiction whatsoever;

“Instruction”

has the meaning given in clause 8.5;

“Intellectual Property Rights”

means all intellectual property rights and shall include, without limitation:

- (ix) any registered intellectual property right in any territory or jurisdiction, including, without limitation, patents, trade marks, service marks, registered designs, and any similar right in any territory or jurisdiction and any applications or right to apply for any of the above;
- (x) any invention, copyright, design right or performance right;
- (xi) any trade secrets, know-how and confidential information; and
- (xii) the benefit of any agreement or licence for the use of any such right;

“Members”

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

“Metro Bank Payments System”

means the optional Metro Bank system to enable you to access the Services, additional rules for which are set out in Appendix 1 to these Terms;

“Paying Bank”

means the bank or building society at which a Direct Debit Instruction is lodged for a payer of a Direct Debit and that raises an instruction or other message to advise of amendments or cancellations in relation to the Direct Debit Instruction;

“PKI Service”

means the public key infrastructure service that supports the use of public key based Digital Signatures and encryption, or such other service which may replace the PKI Service from time to time;

“Reference Database”

means the database held by Bacs which records details inputted by Bacs, us and you, 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;

“Service”

means the Bacstel-IP service provided by us in accordance with the terms and conditions of this Agreement and the User Guides including but not limited to any services provided in relation to direct debit;

Bacs Payments Customer Terms and Conditions *(continued)*

TERMS & CONDITIONS *(continued)*

“Service User”

means you, as soon as you have agreed to be bound by this Agreement and have been granted the authority and the relevant permissions to enable you to be registered as a service user on the Bacs System or (if the context so requires) any person who is registered as a service user on the Bacs System;

“Settlement Account”

has the meaning given in clause 4.2;

“Sign”

means the creation and use of a Digital Signature on or for a Bacstel-IP Transmission;

“Signed” and “Signing”

shall be construed accordingly;

“Sponsor”

means us, in our capacity as your sponsor in relation to Bacstel-IP;

“User Guides”

means the user guides, any service definitions and electronic help texts relevant to the Service (including those developed, distributed or used by, or on behalf of VocaLink Limited, Bacs, CHAPS Clearing Company Limited or UK Payments Administration Limited) as well as any terms and conditions relevant to your use of the Bacs System from time to time including, but not limited to, the Service User Guide – Bacstel-IP, the Direct Credit Best Practice Guidelines, the Faster Payments Rules and Procedures and the Direct Debit Rules; and

“Verify”

means an optional service on top of the Metro Bank Payments System you may sign up to receive, which enables bank account validation and verification capabilities, additional rules for which are set out in Appendix 1 to these Terms.

APPENDIX 1

METRO BANK PAYMENTS SYSTEM

1 METRO BANK PAYMENTS SYSTEM

- 1.1 This Appendix 1 only applies if you use the Metro Bank Payments System to access the Service, and if you have signed up to it, Verify.
- 1.2 Our supplier will issue you with any equipment and software required to use the Service. Any software will be sent to you electronically.

2 YOUR OBLIGATIONS

- 2.1 You shall:
 - (a) not copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Services or the software, except only when and to the limited extent that applicable law expressly permits such activity;
 - (b) ensure that the equipment provided by us or our supplier to you to access the Services is kept securely;
 - (c) ensure that any passwords that you use are kept securely and secret;
 - (d) change your passwords at least every ninety (90) days when prompted to do so by the Services, or sooner if:
 - (i) an authorised user is no longer responsible for accessing the Services; or
 - (ii) if you suspect an unauthorised person has learned the password; and
 - (e) use all security features in the software and hardware you use to order or access the Services.

3 PERSONAL DATA IF YOU USE VERIFY

- 3.1 The provisions of this paragraph 3 only apply if you sign up to use Verify.
- 3.2 In this paragraph 3, “Data Protection Laws” means the EU General Data Protection Regulation 2016/679 (“GDPR”) and the UK Data Protection Act 2018 (“DPA”) any other national laws or statutory instructions implementing the GDPR or DPA or otherwise related to privacy and data protection
- 3.3 Before using Verify to obtain information about a natural person, you must first obtain the consent of that person and comply with the notification requirements of the Data Protection Laws and in particular, will notify him or her that the information which the person gives to you:
 - (a) may be disclosed to a credit reference or fraud prevention agency, which may keep a record of that information; and
 - (b) that such credit reference or fraud prevention agency may disclose that information, and the fact that a search was made, to its other customers for the purposes of fraud prevention.
- 3.4 You shall grant our supplier and its third party data provider a perpetual, royalty free right to keep a record of the information referred to above.