

## BACSTEL-IP terms and conditions

### 1. Definitions

- 1.1 The definitions which define the terms set out in these terms and conditions can be found in the document entitled "Definition of Terms" in the cdrom application pack. The definitions contained in the "Definition of Terms" shall be incorporated into these BACSTEL-IP Customer terms and conditions.
- 1.2 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.

### 2. Use of trust service

- 2.1 The Customer shall only use the bsecure 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 Customer which either:
  - (a) specifies an account maintained by the Customer or such other Corporate Group member as the account to be debited or, as the case may be, credited; or
  - (b) 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).

### 3. Use of BACS approved software

- 3.1 When submitting a BACSTEL-IP Transmission which would affect a payment from or to an account maintained by the Customer or any member of the same Corporate Group as the Customer with the Bank to BACS using the bsecure Service, the Customer shall:
  - (a) only use software which at the relevant time is BACS Approved Software; and
  - (b) act in accordance with any instructions, guidance or procedures provided to it by the Bank; and
  - (c) comply with the provisions of the Service User Guide – BACSTEL-IP.

### 4. Use of BACSTEL-IP

- 4.1 The Customer shall at all times comply with the BACS PKI Service Requirements when using the bsecure Service in connection with BACS, including (without limitation) when Signing any BACSTEL-IP Transmission.
- 4.2 The Customer shall notify the Bank:
  - (a) immediately if the Customer becomes aware of or suspects:
    - (i) any material breach by it of, any material non-compliance with, these terms and conditions or the BACS PKI Service Requirements; or
    - (ii) any fraud in or affecting BACSTEL-IP or the bsecure Service, giving reasonable details of the circumstances; or
  - (b) at the earliest opportunity after the Customer becomes aware of or suspects any material instances of compromise or suggested compromise in relation to the bsecure Service or the Customer's use of it.
- 4.3 Any notification required to be made by a Customer under clause 4.2 shall be made initially by telephone and confirmed by facsimile.

### 5. Confidentiality

- 5.1 While using BACSTEL-IP the Customer shall keep any BACS Confidential Information which it receives confidential at all times, and shall not:
  - (a) 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
  - (b) 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 Customer'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.
- 5.2 Notwithstanding clause 5.1, the Customer is entitled to disclose the BACS Confidential Information:
  - (a) to the extent necessary to comply with these terms and conditions; and/or
  - (b) to a third party to the extent that this is required by any court of competent jurisdiction or by a governmental authority or regulatory authority or that a disclosure is legally required, provided that in the case of paragraph (b) above, where the Customer is able to do so without breaching any legal or regulatory requirements, the Customer gives the owner of the BACS Confidential Information in question written notice as soon as reasonably practicable of the intended disclosure.
- 5.3 The obligations set out in clause 5.1 do not apply to information which:
  - (a) the Customer can show was known by it before it received such information (or learnt of the same) under or in connection with BACSTEL-IP or any payment, clearing or other scheme run by BACS and had not yet previously been obtained under an obligation of confidence; or
  - (b) is in or comes into the public domain, and has not come into the public domain through a breach of this clause 5 or any other confidentiality obligation; or
  - (c) the Customer can show was independently developed by it; or
  - (d) is disclosed to the Customer without restrictions and without breach of any obligation of confidentiality by a third party who has the right to make such disclosure.
- 5.4 Where the Customer ceases to participate in BACSTEL-IP or any payment, clearing or other scheme run by BACS, such Customer shall not be entitled to keep any BACS Confidential Information [except to the extent that it is required to do so in order to comply with any Applicable Requirements or to maintain a record of BACSTEL-IP Transmissions or any other materials relating to its participation in BACSTEL-IP]. The provisions of this clause 5 shall continue to apply to the Customer for so long as it retains any such BACS Confidential Information.
- 5.5 The provisions set out in the clause 5 are in addition to (and not in substitution for) all other confidentiality obligations between the Customer and the Bank, BACS and/or any member of BACS.

### 6. Data Protection

- 6.1 The Bank and the Customer shall at all times comply with the DPA and any regulations or other legislation made under DPA, and in particular with the data protection principles set out in the DPA.
- 6.2 Where personal data is provided or disclosed to the Bank or BACS by the Customer, the Customer shall ensure that all necessary consents have been obtained from the relevant data subjects to allow the Bank and its data processors (including BACS) to receive such personal data and to use and process it in order to:
  - (a) provide the PKI Service to the Customer; and
  - (b) validate and process BACSTEL-IP Transmissions submitted by or on behalf of the Customer.
- 6.3 For the purposes of the clause 6, the terms "personal data", "data subjects" and "data processors" shall have the meaning given to them by the DPA.

### 7. Intellectual property rights

- 7.1 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 7.2, the Customer shall obtain no right, title or interest in any BACSTEL-IP Materials or in any intellectual property rights therein.
- 7.2 The Bank hereby grants the Customer a licence to use and copy (but not to sub-license) the BACSTEL-IP Materials (other than any documents, information and other materials relating to BACS), but only to the extent necessary to enable the Customer to Sign, submit and receive BACSTEL-IP Transmissions.
- 7.3 The Customer shall indemnify and keep indemnified the Bank against all and any liability, losses, damages, claims and costs which arise out of or in connection with any breach by the Customer of the terms of the licence granted to the Customer by the Bank.
- 7.4 Subject to Condition 10.2, the Bank shall indemnify and keep indemnified the Customer against all and any liability, losses, damages, claims and costs which arise out of or in connection with any infringement by the Bank of any third party intellectual property rights relating to BACSTEL-IP Materials.
- 7.5 The Bank gives no warranty that the BACSTEL-IP Materials licensed to the Customer shall not infringe the intellectual property rights of any third party.
- 7.6 The licence set out in this clause 7 shall terminate automatically on the earlier of:
  - (a) any termination or suspension under Condition 12;
  - (b) the Bank ceasing to participate in BACSTEL-IP;
  - (c) the Customer ceasing to maintain a business current account with the Bank.
- 7.7 On such termination, the Customer is required to return to the Bank or destroy (at the Bank's option) all copies of the BACSTEL-IP Materials provided to the Customer or which are otherwise in the Customer's possession, custody or power.

### 8. Applicable requirements

- 8.1 The Customer shall:
  - (a) comply at all times with all Applicable Requirements; and
  - (b) 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).

### 9. Viruses

- 9.1 The Customer shall 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:
  - (a) any BACSTEL-IP Transmission; or
  - (b) the bsecure Service; or
  - (c) any public key infrastructure service used by any other participant in BACSTEL-IP; or
  - (d) any BACSTEL-IP related hardware or software.

### 10. Liability

- 10.1 The liability of the Bank under these terms and conditions for:
  - (a) fraud, fraudulent misrepresentation or dishonesty; and
  - (b) death or personal injury caused by negligence, including that of its employees, agents or sub-contractors, shall not be limited. This does not in any way confer any greater rights than a party would otherwise have at law or in equity.
- 10.2 Subject to conditions 10.1, 10.3 and 10.4, the Bank's entire liability (including liability for acts or omissions for any person for whom the Bank is vicariously liable) under these terms and conditions (including its liability under Condition 7.4) in respect of any and all claims by any customers of any Member arising out of or in connection with BACSTEL-IP (including, without limitation, the use in connection with BACSTEL-IP of the bsecure Service used or provided by or on behalf of the Bank) including the signing of any BACSTEL-IP Transmission (and the Bank's breach of or non-compliance with the BACS Rules), whether arising in contract, tort (including negligence), misrepresentation (other than fraudulent misrepresentation), breach of statutory duty or otherwise shall be limited to and shall in no event exceed £10,000,000 (ten million pounds sterling) in respect of any and all acts, omissions, facts, circumstances and events giving rise to any such claims which occur in any calendar year.
- 10.3 Where the Bank is rendered liable to any customer of any Member as a consequence of BACS being liable to the Bank in connection with BACSTEL-IP, the Bank's entire liability as set out in 10.2, shall be limited to such sum which the Bank, using its reasonable endeavours, can recover from BACS.
- 10.4 The Bank shall not be liable in respect of any claim under these terms and conditions unless the Customer claimant has given written notice of the claim (including full details of the claim and the claimant's best estimate of the amount of the Bank's liability in respect of the claim), to the Bank on or before the date which is one calendar month after the date on which the claimant became aware of the specific act, fact, circumstance or event which gave rise to the claim or if earlier the date on which the claimant ought reasonably (having regard to all the circumstances) to have become so aware.
- 10.5 Claims notified in accordance with condition 10.3 (a "claim") to the Bank or, as the case may be, BACS shall be dealt with as follows:
  - (a) the Bank or, as the case may be, BACS shall determine whether to accept or dispute the claim;
  - (b) where a claim is accepted (an "accepted claim"), the Bank or, as the case may be, BACS shall promptly pay the amount claimed until it has paid an amount equal to the limit set out in 10.2, as the case may be, in relation to that accepted claim or in aggregate in relation to all accepted claims;
  - (c) where a claim is disputed, no amount shall be paid until the dispute has been settled between the parties or final judgement has been obtained in the English Court (a "settled claim" and together with an accepted claim, an "eligible claim");
  - (d) where the aggregate of all eligible claims exceeds the limit for claims set out in condition 10.2, as the case may be, each eligible claim shall be reduced pro rata so that the aggregate amount of all such eligible claims equals the relevant limit, and the amount payable by the Bank or, as the case may be, BACS, in relation to each and all such eligible claims shall be reduced accordingly; and
  - (e) where any eligible claim which has already been paid fails to be reduced in accordance with paragraph (d) above, the person to whom such payment has been made shall be obliged to repay the difference to the Bank or, as the case may be, BACS within 14 calendar days of notice to that effect and upon receipt of any such repayment the Bank, or as the case may be, BACS shall as soon as reasonably practical pay (or part pay) any eligible claims where no payment was made or where there is a shortfall between the amount paid and the amount payable (with no interest being payable on or in relation to any such payment).

- 10.6 The Bank shall not be liable to the Customer:
- (a) as a result of its participation in BACSTEL-IP (including under condition 11.2) for any indirect, special or consequential loss (including loss of profit or loss or bargain of any kind), whether or not the possibility of any 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;
  - (b) for any delay, loss or damage arising on account of a Force Majeure Event and the Bank shall be absolved from performing its obligations under these terms and conditions to the extent that, and so long as, performance is delayed, hindered or prevented by a Force Majeure Event.
- 10.7 In the event that there is any inconsistency or conflict between these terms and conditions and those contained within the bsecure Service terms and conditions, those relating to BACSTEL-IP will take precedence, save that the limits contained within Conditions 22.5 and 22.6 of the bsecure Service terms and conditions shall remain in full force and effect and shall take precedence where liability arises from or in connection with the bsecure Service (but subject to there being sufficient funds available to meet these claims pursuant to this Condition 10).
- 11. Legal effectiveness and admissibility of electronic signatures and certificates**
- 11.1 All BACSTEL-IP Transmissions Signed by or on behalf of the Customer using a Private Key and a Digital Certificate issued by the bsecure Service to the Customer shall have the same legal effect, validity and enforceability as if such BACSTEL-IP Transmission had been in writing signed by or on behalf of the Customer, provided that:
- (a) the Digital Certificate is within its validity period; and
  - (b) the recipient of the BACSTEL-IP Transmission requests a validation of such Digital Certificate and the response received to such validation request is a Good Response.
- 11.2 The Customer shall not challenge the legal effect, validity or enforceability of a BACSTEL-IP Transmission (including, in relation to this clause 11.3, any transmission that purports to be a BACSTEL-IP Transmission) on the basis that:
- (a) such BACSTEL-IP Transmission is in electronic rather than written form; or
  - (b) the Customer 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
  - (c) the holder of the Digital Certificate exceeded his authority to act on behalf of the Customer or was not so authorised at all in relation to the content of the BACSTEL-IP Transmission; or
  - (d) the holder of the Digital Certificate did not Sign the BACSTEL-IP Transmission or the BACSTEL-IP Transmission was not Signed using the Digital Certificate, as in both cases, these link to the issues of an end-user's authority and whether a Customer has requested revocation of a certificate;
  - (e) the BACSTEL-IP Transmission was Signed automatically or without direct human investigation or intervention (whether by a hardware security module or otherwise); or
  - (f) the BACSTEL-IP Transmission, or the Signing, transmission and processing of the BACSTEL-IP Transmission, constitutes a breach by the Customer of these terms and conditions or of the provisions or terms of use of any relevant third party provider or third party trust scheme.
- 11.3 The Bank shall be entitled to rely on, and the Customer shall accept full liability for, any BACSTEL-IP Transmission Signed using a Private Key and Certificate issued by the bsecure Service to the Customer, provided that:
- (a) the Digital Certificate used to Sign such BACSTEL-IP Transmission is valid, has not expired, has not been revoked or suspended and the Customer has not requested (in accordance with Condition 5.2.2 of the bsecure Service terms and conditions) that it be revoked or suspended; and
  - (b) the BACSTEL-IP Transmission does not contravene the level 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.
- 12. Suspension/withdrawal of trust service/BACSTEL-IP Transmissions**
- 12.1 The Bank may suspend or terminate, or withdraw or cease to provide BACSTEL-IP related services/the bsecure Service to the Customer:
- (a) on 30 days' written notice to the Customer; or
  - (b) with immediate effect in any of the following circumstances:
    - (i) if BACS has suspended or withdrawn its authorisation for the bsecure Service to be used 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 Customer is in breach of any provision of these terms and conditions (including, without limitation, any breach of the BACS PKI Service Requirements); or
    - (iv) if any of the following events occurs:
      - (1) you at any time cease or suspend the payment of your debt or be deemed unable to pay your debt; or
      - (2) any step, application or proceeding is taken by you or against you, for your dissolution, winding up or bankruptcy or the appointment of a receiver, administrative receiver, administrator or similar officer to you or over all or any part of your assets and undertaking;
      - (3) where you are a partnership, such partnership is dissolved or joins or amalgamates with any other partnership;
      - (4) you commence negotiations with any of your creditors with a view to the general readjustment or rescheduling of your indebtedness, making a proposal for a voluntary arrangement or enter into an arrangement for the benefit of any of your creditors;
      - (5) you suspend or cease or threaten to suspend or cease all or a substantial part of your operations; or
- if any event occurs which, under the applicable law of any jurisdiction has an analogous or equivalent effect to any of the events mentioned above.
- 12.2 Upon any suspension or withdrawal in accordance with clause 12.1 the Customer shall not (and shall ensure that its employees, contractors and agents shall not) Sign or submit any BACSTEL-IP Transmissions using the bsecure Service after such suspension or withdrawal unless and until, in the case of a suspension, such suspension is lifted by the Bank giving written notice to that effect to the Customer.
- 13. Communications and electronic records**
- 13.1 BACS and the Bank may record communications with the Customer, its agents, employees and contractors (including, but not limited to, BACSTEL-IP Transmissions) for any purpose connected with BACSTEL-IP which BACS or the Bank (as the case may be) consider appropriate.
- 13.2 Records and audit logs maintained by the Bank or BACS in relation to the bsecure 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 Customer.
- 14. Charges**
- 14.1 You agree to pay the applicable charges as set out in Schedule 1, together with any taxes applicable, for use of BACSTEL-IP.
- 15. BACSTEL-IP service description and availability**
- 15.1 Please refer to the definition of "BACSTEL-IP" in the "Definition of Terms" document contained on the cdrom for a description of the service. The service shall be available for use by the Customer subject to the processing cycle restrictions referred to in the BACSTEL-IP Customer Application Form.
- 16. Incorporation of terms**
- The terms and conditions relating to the Bank's bsecure Service shall be incorporated into these BACSTEL-IP Customer terms and conditions. The Customer shall read both sets of terms and conditions together as one set of terms and conditions.

#### SCHEDULE 1: CHARGES

**The Charges for use of BACSTEL-IP are contained in the standard tariff relating to your business account. Please contact your relationship manager for further details.**

**Please call +44 (0) 3457 213 213<sup>†</sup> (8am to 8pm Monday to Friday, 9am to 12pm Saturday) if you would like to receive this information in an alternative format such as large print, audio or Braille.**

The Co-operative Bank p.l.c. is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (Financial Services Register No: 121885). Registered office: 1 Balloon Street, Manchester, M4 4BE. Registered in England and Wales (Company No: 990937).

<sup>†</sup>Calls to 03 numbers cost the same as calls to numbers starting with 01 and 02. Charges for calls made outside of the UK will be determined by your local provider. Calls may be monitored or recorded for security and training purposes.