

# BACS/BACSTEL-IP Customer Terms (Customer of an Agency Bank)



These Terms apply to the Customer's use of the automated system for clearing and settling payments (the **BACS System**) provided by BACS Payment Schemes Limited and Vocalink Limited (together **BACS**) and the BACSTEL-IP delivery channel for the BACS System (**BACSTEL-IP**) by use of the public key infrastructure service (**TrustAssured Service**) or an alternative security method (**ASM**). These Terms form part of the **BACS Agreement** made between the Customer and NatWest by the application form which refers to them, together with the **TrustAssured Service Agreement**.

The **Customer** is a customer of an Agency Bank who enters into arrangements with NatWest under which NatWest sponsors and is responsible for payments made by the customer using the BACS System.

The **Agency Bank** is the institution which has agreed with NatWest to sponsor it to act as an agency bank with respect to the BACS System.

The BACS Agreement will remain in force until it is terminated in accordance with the termination provisions set out in these Terms.

## 1. USE OF BACSTEL-IP

1.1 The Customer's use of the BACS System is provided by NatWest on behalf of the Agency Bank through NatWest's arrangements with the Agency Bank. The Customer may use BACSTEL-IP to send and receive electronic communications (**Transmissions**):

1.1.1 via the TrustAssured Service provided by NatWest, to authenticate, sign, confirm receipt of and report on Payment Messages and other communications sent to or received from the BACS System.

1.1.2 via the TrustAssured Service or ASM, to monitor payment messages, collect reports and access or make changes to the Customer's details in the BACS' database (**Reference Database**).

1.2 The Customer will ensure at least two persons authorised to access the BACS System for the Customer (**Primary Security Contacts**) are always appointed to use the BACS System.

1.3 A Primary Security Contact can appoint and remove **Additional Contacts** to use the BACS System for the Customer. NatWest is entitled to rely on the validity of any such appointment or removal of a Contact. **Contact** means Primary Security Contacts and Additional Contacts.

1.4 NatWest is authorised to set, monitor and revise payment limits and to act upon Payment Messages submitted by or for the Customer.

1.5 NatWest may sponsor the Customer to act as a **Direct** or **Indirect Submitter**.

1.6 A Direct Submitter will use the TrustAssured Service for submission of Payment Messages and the TrustAssured Service or ASM to collect reports.

1.7 An Indirect Submitter will send Transmissions to an approved **Commercial Computer Bureau, Bank Bureau or Customer In-house Bureau (Bureau)** for submission of Payment Messages to the BACS System and use the TrustAssured Service or ASM to collect reports.

1.8 If the Customer is an Indirect Submitter, the Customer authorises NatWest to accept the Customer's nominated Bureau's Transmissions using the Customer's BACS service user number.

1.9 NatWest and BACS may record communications with the Customer and its employees, agents and contractors relating to BACS and BACSTEL-IP.

## 2. CUSTOMER'S OBLIGATIONS

2.1 The Customer will:

2.1.1 comply with all documentation relating to the BACS System including documents identified by NatWest as service guides (**BACS Customer Service Guides**);

2.1.2 comply with NatWest's instructions, guidance, procedures and requirements;

2.1.3 comply with all rules, orders, voluntary codes, standards, laws and regulations in any jurisdiction relating to the use of the BACS System and BACSTEL-IP;

2.1.4 comply with all rules, procedures and security measures and operate the security devices, as required by NatWest or BACS and all materials prepared by or originating from BACS;

2.1.5 obtain and maintain all licences, consents, permissions and authorisations necessary to use the BACS System and BACSTEL-IP;

2.1.6 input and update all Contacts' details in the Reference Database and ensure that at least one Contact is available for a minimum of 6 hours from the time each Transmission is sent by or for the Customer;

2.1.7 provide reasonable assistance to NatWest in relation to the Customer's use of the BACS System and BACSTEL-IP; and

2.1.8 not do (or permit) anything in connection with the BACS System or BACSTEL-IP which would result in BACS or NatWest breaching the laws or regulations of any territory.

## 3. INSTRUCTIONS

3.1 NatWest may act on any Transmission which complies with security requirements sent by or for the Customer using the TrustAssured Service authorising or relating to the payment of funds into or out of an Account (**Payment Message**) by debiting or crediting the Agency Bank settlement account and by the Agency Bank debiting or crediting the corresponding amount to/from an Account in accordance with the Payment Message. The Customer authorises NatWest to act on any Transmission even if that Transmission results in an Account being overdrawn.

3.2 An Account is (i) the Customer's account held with the Agency Bank as nominated in the application form or notified to NatWest by the Customer in writing or (ii) an account held with the Agency Bank of any company within the Customer's group (**Group Company**), which has been accepted as a Third Party Service User whose account can be operated by the Customer.

3.3 NatWest will notify the Customer of the amount which can be paid in any Payment Message or period.

3.4 NatWest will only act on Payment Messages during the BACS hours of operation on a day in which banks in the United Kingdom are generally open for business other than weekends or local bank holidays (**Business Day**).

3.5 NatWest may honour Payment Messages where settlement would occur on or after termination/suspension of the Customer's use of the BACS System.

3.6 NatWest is not responsible for checking the beneficiary name against the account details supplied to it in a Payment Message.

3.7 NatWest is not responsible for the settlement of Payment Messages if:

3.7.1 the Customer is a Government Grade User and an instruction exists which substitutes an account at the Bank of England for the Account.

3.7.2 the account in the Payment Message is held with the Customer's Agency Bank.

3.8 NatWest will provide reasonable assistance to extract a file or recall a Payment Message sent by or for the Customer upon request to NatWest by telephone, in writing or in the agreed manner and at the Customer's cost. Any request received by NatWest outside NatWest's normal business hours will be effective on the next Business Day.

3.9 Payment Messages will be irrevocable after security and validation checks by the BACS System.

3.10 If NatWest refuses to act on a Payment Message, NatWest will notify the Customer and/or the Agency Bank by either letter, telephone or any other form of communication agreed and, if possible, give NatWest's reasons for doing so. The Customer can obtain information about the refusal and, if possible, NatWest's reason for refusing to act on the Payment Message, along with any information on how to correct any errors that led to the refusal, by contacting the Agency Bank (unless a legal or certain other limited circumstances beyond NatWest's control prevents NatWest from providing the Customer with this information).

3.11 Payment Messages in relation to the Account will be cleared and settled in the currency of the Account.

## 4. SECURITY

4.1 The Customer will use all reasonable care to prevent the introduction of viruses into or any virus contamination (including cross contamination) of:

4.1.1 Transmissions;

4.1.2 the TrustAssured Service or ASM;

4.1.3 any public key infrastructure service used by any other participants in BACSTEL-IP; and

4.1.4 any BACSTEL-IP related hardware or software.

4.2 The Customer will only use software approved by BACS (**BACS Approved Software**) to connect to the BACS System.

4.3 The Customer will only use ASM via a Contact permitted to use ASM.

4.4 A Customer authorised to use ASM will contractually require each Contact to:

4.4.1 comply with all procedures for obtaining and safekeeping the unique reference **Contact ID** and **Access Code** relating to BACS;

4.4.2 change any Access Code if required by BACS or if a Contact suspects the security of the Access Code has been compromised; and

4.4.3 notify the Customer as soon as the Contact knows or suspects the security of an Access Code has been compromised. A Primary Security Contact will reset a Contact's Access Code upon request.

4.5 The Customer will tell NatWest immediately if the Customer suspects or believes that:

4.5.1 any security device is lost, misused or stolen;

4.5.2 there is a material breach of these Terms;

4.5.3 there is any fraud in or affecting BACSTEL-IP, ASM or the TrustAssured Service (giving details of the circumstances); and/or

4.5.4 there is any compromise relating to the TrustAssured Service.

## 5. CONFIDENTIALITY

- 5.1 The Customer will keep all information relating to the BACS System and BACSTEL-IP confidential (**Confidential Information**).
- 5.2 The Customer will only use Confidential Information for participating in the BACS System or BACSTEL-IP.
- 5.3 The Customer may disclose Confidential Information to employees, agents, contractors or any Group Company only to the extent necessary for its use of the BACS System and BACSTEL-IP provided the Customer ensures they agree to otherwise maintain confidentiality.
- 5.4 The Customer may disclose Confidential Information if required by law. Unless prevented by law, the Customer must give written notice to NatWest and BACS as soon as reasonably practicable of the intended disclosure.
- 5.5 The Customer must not retain Confidential Information when it stops using the BACS System or BACSTEL-IP unless required by law or any guidance, voluntary codes or standards or to maintain a record of Transmissions.

## 6. FEES AND CHARGES

- 6.1 The Agency Bank is responsible for any charges payable for the services provided to the Customer by NatWest.
- 6.2 The Agency Bank and the Customer will deal with their charging arrangements separately.

## 7. DATA PROTECTION

The Customer will obtain all necessary consents to allow NatWest and its data processors (including BACS) to (i) receive, use and process personal data and (ii) to provide the TrustAssured Service to the Customer and validate and process Transmissions sent by the Customer or Bureau.

## 8. INTELLECTUAL PROPERTY

- 8.1 All materials supplied by or for NatWest or BACS in connection with the BACS System and BACSTEL-IP are the property of NatWest or its licensors and are protected by copyright and other intellectual property rights.
- 8.2 NatWest grants the Customer a non-transferable licence to copy BACS and BACSTEL-IP materials solely for the purpose of using the BACS System and BACSTEL-IP for the duration of the BACS Agreement. NatWest does not warrant that this does not infringe any third parties intellectual property rights.
- 8.3 At NatWest's option, the Customer will either destroy or return to NatWest all copies of BACS and BACSTEL-IP materials on termination of the BACS Agreement.

## 9. ELECTRONIC SIGNATURES AND CERTIFICATES

- 9.1 Transmissions signed by or for the Customer using a **Private Key** (as defined in the TrustAssured Service Agreement) and **Digital Certificate** issued by the TrustAssured Service will be effective if the Digital Certificate is confirmed by the validation process.
- 9.2 Transmissions sent using ASM will be effective if all procedures for using ASM in the BACS Customer Service Guides are complied with.

## 10. LIABILITY AND INDEMNITY

- 10.1 NatWest is not liable for loss or delay arising from the BACS System or other settlement services or from other BACS members (**Member**) or any cause beyond NatWest's control, unless caused by NatWest's negligence, wilful default or breach of contract.
- 10.2 NatWest is not liable to the Customer for:
- 10.2.1 loss of business, loss of revenue, goodwill, opportunity or anticipated savings;
- 10.2.2 loss or corruption of data or business interruption;
- 10.2.3 any indirect loss arising from the cause of the Customer's claim;
- 10.2.4 loss arising from NatWest's delay in performing or failing to perform its obligations caused by compliance with BACS requirements;
- 10.2.5 loss arising from the Customer's use of BACS Approved Software, BACSTEL-IP materials or the TrustAssured Service; and/or
- 10.2.6 the accuracy of materials prepared by or originating from BACS.
- 10.3 Nothing in the BACS Agreement excludes liability for NatWest's fraud, fraudulent misrepresentation, death or personal injury.
- 10.4 The Customer will indemnify NatWest against any claims, liabilities, costs, expenses, proceedings, damages or losses (whether direct or indirect) that NatWest incurs in complying with the Customer's instructions in connection with:
- 10.4.1 any payment made or received (or not made or received) by NatWest for the Customer;
- 10.4.2 any incorrectly executed payment or non-executed payment by NatWest as a result of incorrect instructions received by NatWest from the Customer;
- 10.4.3 any error or malfunction of the BACS System or the suspension or termination of the Customer's right to use it;
- 10.4.4 any breach of these Terms or negligence, wilful default or fraud by the Customer, its employees or agents;
- 10.4.5 any use by the Customer of another Members' public key infrastructure service;

- 10.4.6 any unauthorised use of the BACS System by the Customer; and/or
- 10.4.7 any breach by the Customer of any applicable law.

## 11. TERMINATION/SUSPENSION

- 11.1 The Customer may terminate the BACS Agreement by giving NatWest and the Agency Bank 30 days' written notice.
- 11.2 NatWest may terminate the BACS Agreement by giving the Customer and/or the Agency Bank not less than 60 days' written notice.
- 11.3 NatWest may suspend the Customer's use of the BACS system for security reasons, or where NatWest suspects unauthorised or fraudulent use of the BACS system. Unless there is a security or other legal reason not to, NatWest will notify the Customer and/or the Agency Bank either before it takes any action, or immediately after, and give the reasons for doing so.
- 11.4 NatWest may terminate the BACS Agreement without notice and with immediate effect if:
- 11.4.1 the Customer's Transmissions are not validated by BACS;
- 11.4.2 NatWest's or the Agency Bank's right to use the BACS System, the TrustAssured Service or ASM is suspended or revoked;
- 11.4.3 in NatWest's opinion it is appropriate to protect the security, integrity or reputation of BACS, BACSTEL-IP or the TrustAssured Service;
- 11.4.4 the Customer breaches the BACS Agreement;
- 11.4.5 NatWest is no longer able to provide access to the BACS System to the Agency Bank;
- 11.4.6 the Customer ceases to maintain an Account with the Agency Bank or the Agency Bank ceases to maintain an account with NatWest;
- 11.4.7 the Customer is unable or admits it is unable to pay its debts (except by service of a written demand which the Customer contests in good faith);
- 11.4.8 there is any resolution or petition for liquidation or bankruptcy or insolvency proceedings are commenced in relation to the Customer in any jurisdiction (except as part of a reorganisation agreed by NatWest);
- 11.4.9 any security is enforced or a receiver or similar official is appointed in respect of any of the assets of the Customer (except in a solvent liquidation);
- 11.4.10 there is an application or petition for an administration order, or notice is given to any person of intention to appoint an administrator, or an administrator or similar official is appointed in relation to the Customer;
- 11.4.11 the Customer proposes a voluntary arrangement, composition or assignment with its creditors;
- 11.4.12 any other circumstances occur in any jurisdiction which cause NatWest to believe that the Customer's obligations to NatWest will not be met.

## 12. CONSEQUENCES OF TERMINATION/SUSPENSION

- 12.1 On termination or suspension of the BACS Agreement the Customer will not and will not permit its agents, contractors or employees to sign or send Transmissions.
- 12.2 NatWest will give written notice to the Customer if the suspension is lifted.
- 12.3 At NatWest's option, the Customer will either return to NatWest or destroy all materials relating to BACS and BACSTEL-IP on termination of the BACS Agreement.
- 12.4 Termination of the BACS Agreement will not affect any rights of either party accrued to the date of termination.

## 13. TRANSFERS/DELEGATION

- 13.1 The Customer may not transfer the benefit of the BACS Agreement.
- 13.2 Each party may delegate responsibility to a third party or appoint agents to act on their behalf.
- 13.3 NatWest may allow any person to take over any of its rights and duties under the BACS Agreement. The Customer authorises NatWest to give that person or its agent any financial or other information about the Customer. References to NatWest in the BACS Agreement include its successors.

## 14. NON-WAIVER

If either party waives any of its rights under the BACS Agreement, it does not mean it will waive that right in the future.

## 15. SEVERABILITY

If any Term is held to be unlawful or unenforceable, it will be severed to that extent from the remaining Terms which will continue in full effect.

## 16. ENTIRE AGREEMENT

- 16.1 This BACS Agreement forms the entire agreement between the parties. To the maximum extent permitted by law, all implied terms in relation to the Customer's use of the BACS System and BACSTEL-IP are excluded.
- 16.2 Except as set out in the BACS Agreement, the parties do not have any rights against each other in relation to, and have not relied on, any oral or written representation, warranty, condition or collateral contract made before the date of the BACS Agreement in relation to BACS or BACSTEL-IP.
- 16.3 The following order of precedence applies to any inconsistencies between the documents: the Terms over the TrustAssured Service Agreement over the application form over the BACS Customer Service Guides.

## 17. CHANGES TO THE TERMS

NatWest may change any of these Terms. If the change is to the Customer's advantage, NatWest may make the change immediately and will notify the customer either before the change comes into effect or at the earliest opportunity

afterwards. In other cases, NatWest will give the Customer not less than 60 days' advance notice of the changes made. The Customer may within 60 days of the date of the advance notice, terminate the BACS Agreement without paying charges to NatWest. Revised Terms will be available online or from NatWest.

## **18. COMMUNICATIONS**

18.1 All notices and other communications must be in writing and in English.

18.2 NatWest may deliver a notice or communication to the Customer at the contact details last known to NatWest, the Customer's registered office or electronically where the parties agree.

18.3 A notice or communication by NatWest will be effective at the time of personal delivery; when an electronic message is sent; on the second Business Day after posting; or, if by fax, at the time of sending, if sent before 6.00pm on a Business Day, or otherwise on the next Business Day.

18.4 A notice from the Customer to NatWest must be addressed to National Westminster Bank Plc, BACS Operations, GTS Operations (UK and Europe), Ground Floor North, Drummond House, 1 Redheughs Avenue, Edinburgh EH12 9JN and will be effective on receipt.

18.5 The Customer will promptly notify NatWest of changes to their contact details.

18.6 Each party must give seven days' written notice to the other of a change of address for service of notice.

## **19. LAW AND JURISDICTION**

19.1 English law applies to the BACS Agreement and the English Courts have exclusive jurisdiction.

19.2 For the benefit of NatWest, the Customer irrevocably submits to the jurisdiction of the relevant courts and irrevocably agrees that a judgment or ruling in any proceedings in connection with the BACS Agreement in those courts will be conclusive and binding on the Customer and may be enforced against the Customer in the courts of any other jurisdiction.

## **20. REGULATORY INFORMATION**

National Westminster Bank Plc is authorised and regulated by the Financial Services Authority. NatWest is entered on the Financial Services Authority's Register under firm reference number 121878.