

ANNEX

BACS SETTLEMENT

APPLICATION

This Annex to the RTGS Account Mandate Terms and Conditions (the "**Terms and Conditions**") applies where the Account Holder is a Participant of the BACS System.

1 DEFINITIONS

In this Annex, except where the context otherwise requires:

- 1.1 terms defined in the Terms and Conditions or any other Annex have the same meaning; and
- 1.2 the following expressions shall have the following meanings:

"BACS Completion Funds Account"	has the meaning given to the term "BACS CFA" in the BACS Settlement Agreement;
"BACS Documents"	means the BACS Settlement Agreement, the Deed of Charge and the Settlement Trust Deed;
"BACS Email Instruction"	means an email instruction given or appearing to have been given by two authorised signatories of the BACS System Operator;
"BACS Random Number"	means a number on the BACS Random Numbers' List;
"BACS Random Numbers' List"	means a random numbers' list, supplied by the Bank to the BACS System Operator for the purpose of authenticating BACS Email Instructions;
"BACS Minimum Balance"	has the meaning given to the term "Minimum Balance" in the BACS Settlement Agreement;
"BACS Reserves Collateralisation Account"	has the meaning given to the term "Reserves Collateralisation Account" in the Deed of Charge;
"BACS Settlement Collateralisation Account"	has the meaning given to the term "Settlement Collateralisation Account" in the Deed of Charge;
"BACS Settlement Cycle"	has the meaning given to the term "BACS Cycle" in the BACS Settlement Agreement;
"BACS System"	means the BACS payment clearing system managed by the BACS System Operator;

"BACS Settlement Agreement"	means the BACS Settlement Agreement dated 3 June 2019 between (amongst others) the BACS System Operator and the Participants of the BACS System (as amended from time to time);
"BACS System Operator"	means Pay.UK Limited as the operator of the BACS System;
"Bank PSP Participant"	has the meaning given to it in the BACS Settlement Agreement;
"Deed of Charge"	means the Deed of Charge dated 3 June 2019 between the Participants of the BACS System (other than Non-Bank PSP (RF) Participants) (as chargors) and the Bank (as security trustee) (as amended from time to time);
"Exclusion Event"	has the meaning given to it in clause 1.1 of the BACS Settlement Agreement;
"Non-Bank PSP (OF) Participant"	has the meaning given to it in the BACS Settlement Agreement;
"Non-Bank PSP (RF) Participant"	has the meaning given to it in the BACS Settlement Agreement;
"Participant"	
"Payment Message"	has the meaning given to it in clause 1.1 of the BACS Settlement Agreement;
"Settlement Trust Deed"	has the meaning given to it in the BACS Settlement Agreement;
"STB Entitlement"	has the meaning given to it in the BACS Settlement Agreement; and has the meaning given to it in the BACS Settlement Agreement.

- 1.3 Clauses 3.1(i), 3.1(j), 5.1(j), 5.1(k), 6.1(l), 9.8 and 10.6 of the Terms and Conditions shall be amended so that any references to "a CF Settlement Account" are replaced by "a CF Settlement Account or a BACS Completion Funds Account".

2 OPENING AND OPERATION OF ACCOUNTS

- 2.1 In respect of an Account Holder which is Bank PSP Participant, the Bank is requested to open in the name of the Account Holder a BACS Reserves Collateralisation Account (or in the case of a Bank PSP Participant which is not a participant in the Sterling Monetary Framework, a BACS Settlement Collateralisation Account).

- 2.2 In respect of an Account Holder which is a Non-Bank PSP (OF) Participant, the Bank is requested to open in the name of the Account Holder a BACS Settlement Collateralisation Account.
- 2.3 In the case of an Account Holder which is a Non-Bank PSP (RF) Participant, the Bank is requested to open in the name of the Account Holder a BACS Completion Funds Account. Where the Account Holder holds more than one BACS Completion Funds Account, the provisions of these terms and conditions relating to BACS Completion Funds Accounts shall for the avoidance of doubt apply separately to each BACS Completion Funds Account.
- 2.4 The BACS Reserves Collateralisation Account, the BACS Settlement Collateralisation Account or the BACS Completion Funds Account (as the case may be) is an Account for the purposes of the Terms and Conditions.

3 ACCOUNT HOLDER'S AUTHORITY TO THE BANK

- 3.1 Subject to the Terms and Conditions, and in addition to the authorities granted and requests made to the Bank in the Terms and Conditions, the Account Holder authorises and requests the Bank:
- 3.1.1 to act upon instructions which may be received via authenticated SWIFT message from the BACS System Operator or other means agreed with the Account Holder or the BACS System Operator to transfer funds to or from the Accounts for the purpose of settling the BACS System; or
 - 3.1.2 in a contingency situation and provided the Bank has agreed to permit the BACS System Operator to give instructions via email, to act upon BACS Email Instructions which are received by the Bank from the BACS System Operator, including, but not limited to, BACS Email Instructions to transfer funds from the Accounts.
- 3.2 In a contingency situation and with the Bank's permission, unless otherwise notified by the Bank to the BACS System Operator, the instructions given pursuant to paragraph 3.1.2 above shall be valid only if sent in a BACS Email Instruction, provided such BACS Email Instruction:
- (a) is in a form approved by the BACS System Operator and the Bank;
 - (b) bears a BACS Random Number which is the next unused BACS Random Number on the BACS Random Numbers' List; and
 - (c) is received via encrypted email.
- 3.3 The Bank and the Account Holder each agrees that the BACS System Operator may submit instructions in respect of the BACS Reserves Collateralisation Account, the BACS Settlement Collateralisation Account or the BACS Completion Funds Account (as the case may be) in accordance with the provisions of the BACS Documents.
- 3.4 The Account Holder hereby authorises the Bank to act upon instructions received from the BACS System Operator in respect of the BACS Reserves Collateralisation Account, the BACS Settlement Collateralisation Account or the BACS Completion Funds Account (as the case may be) and to transfer such amounts from the BACS Reserves Collateralisation Account, the BACS Settlement Collateralisation Account or the BACS Completion Funds Account (as the case may be) as are contemplated by the BACS Documents.

- 3.5 The Account Holder must not submit any instructions which, if acted upon, would result in the balance of the BACS Reserves Collateralisation Account, the BACS Settlement Collateralisation Account or the BACS Completion Funds Account (as the case may be) falling below the BACS Minimum Balance. The Bank retains the right to refuse to act on any instruction received from the Account Holder in relation to the BACS Reserves Collateralisation Account, the BACS Settlement Collateralisation Account or the BACS Completion Funds Account (as the case may be).

4 BACS EMAIL INSTRUCTIONS

- 4.1 Where the Bank considers that there is any doubt regarding whether a BACS Email Instruction is genuine, the Bank may, in its discretion, refuse to give effect to that BACS Email Instruction. In the case of such refusal the Bank agrees to use its reasonable endeavours to notify the BACS System Operator of such refusal and the reasons for it.
- 4.2 The Account Holder understands that email is not a secure method of communication and that messages so delivered may be intercepted, lost, destroyed, corrupted or delayed in transmission.
- 4.3 The Account Holder hereby agrees that:
- 4.3.1 neither the Bank nor any of its representatives or agents shall incur any liability or be responsible for any Loss suffered by the Account Holder as a result of the Bank giving effect, or failing to give effect, to any BACS Email Instruction, except to the extent that any such Loss is shown to be attributable to wilful default or reckless disregard of the Bank's obligations on the part of the Bank or its representatives and agents; and
 - 4.3.2 it shall on demand indemnify the Bank and keep the Bank indemnified against any Loss suffered or incurred by the Bank as a result of it acting upon any BACS Email Instruction which is not a genuine instruction emanating from two authorised signatories of the BACS System Operator, or which contains any error or is intercepted, lost, destroyed, corrupted, delayed or otherwise distorted or altered during the course of transmission except to the extent that any such Loss is shown to be attributable to wilful default or reckless disregard of the Bank's obligations on the part of the Bank or its representatives and agents.

5 ACCOUNT HOLDER UNDERTAKINGS

- 5.1 The following shall apply in place of clause 5.1(m) of the Terms and Conditions:
- (m) where the Account Holder holds a OF Settlement Account (and where relevant a BACS Settlement Collateralisation Account), at all times to ensure that its OF Settlement Account (and where relevant its BACS Settlement Collateralisation Account) only contains own funds (and not any Relevant Funds), and to only use such OF Settlement Account in connection with its participation in the Systems.
- 5.2 An Account Holder which is a Non-Bank PSP (RF) Participant acknowledges and agrees that, inter alia, during and in respect of each BACS Settlement Cycle and subject at all times to the provisions of the Settlement Trust Deed:
- (a) the Bank shall have no obligation to repay or otherwise transfer the credit balance (or any part of the credit balance) standing on the BACS Completion Funds Account to, or at the direction of, the Account Holder; and

- (b) the Account Holder shall have no right to withdraw or transfer, or instruct the Bank to withdraw or transfer, such credit balance (or any part of such credit balance),

unless and until all Payment Messages that have been accepted in the BACS System in accordance with the BACS Settlement Agreement are finally settled in the manner provided by clause 7 of the BACS Settlement Agreement, or unless such repayment, withdrawal or transfer is permitted in accordance with clause 5.4 of the BACS Settlement Agreement.

6 POSITION OF THE BANK

[No additional provisions]

7 PAYMENTS AND DELIVERIES

[No additional provisions]

8 DEFAULT

In addition to the Events of Default specified in clause 8 of the Terms and Conditions, it shall constitute an Event of Default if an Exclusion Event has occurred under the BACS Settlement Agreement and the Bank serves a Default Notice.

9 DISABLEMENT AND TERMINATION OF ACCOUNTS; SET-OFF

[No additional provisions]

10 INTEREST

- 10.1 The Bank shall pay to the Account Holder, at a rate equal to the rate applicable to its Reserves Account (or, if the Account Holder does not have a Reserves Account, the rate applicable to the Reserves Account of its Parent), interest on any credit balance on a BACS Reserves Collateralisation Account, calculated in accordance with the RTGS Rules and the Sterling Monetary Framework Documentation. Such rate may be zero, or negative. If the rate is negative, interest shall be paid by the Account Holder to the Bank. If Bank Rate is negative the Bank may additionally decide to apply a rate other than Bank Rate to part of the balance, with Bank Rate being applied to the remainder, in accordance with the RTGS Rules and the Sterling Monetary Framework Documentation.
- 10.2 The Account Holder shall pay to the Bank, at a rate equal to the rate applicable to its Reserves Account (or, if the Account Holder does not have a Reserves Account, the rate applicable to the Reserves Account of its Parent), interest on any debit balance on a BACS Reserves Collateralisation Account, calculated in accordance with the RTGS Rules and the Sterling Monetary Framework Documentation.
- 10.3 The Bank shall pay interest to the Account Holder, at such rate as may be determined by the Bank, on any credit balance on a BACS Settlement Collateralisation Account or a BACS Completion Funds Account in accordance with the RTGS Rules. Such rate may be zero, or negative. If the rate is negative, interest shall be paid by the Account Holder to the Bank. The Account Holder shall pay interest to the Bank, at such rate as may be determined by the Bank, on any debit balance on a BACS Settlement Collateralisation Account or a BACS Completion Funds Account in accordance with the RTGS Rules.
- 10.4 In the event that the interest rate applicable to any credit balance is negative, the Account

Holder would be required to maintain a Minimum Balance to cover any interest that may become owed to the Bank. The size of this balance shall be at the Bank's discretion, and calculated in accordance with the Sterling Monetary Framework Operating Procedures.

11 DEFAULT INTEREST AND CHARGES

[No additional provisions]

12 SUMS DENOMINATED IN DIFFERENT CURRENCIES

[No additional provisions]

13 OTHER ARRANGEMENTS

[No additional provisions]

14 VARIATION AND WAIVER

[No additional provisions]

15 CONFIDENTIALITY

Notwithstanding clause 15 of the Terms and Conditions, the Account Holder hereby consents to the disclosure by the Bank to the BACS System Operator of account balances and actual and anticipated payments and receipts in the event of late settlement of the BACS System as a result of the Account Holder having insufficient funds on its Accounts. The Account Holder also hereby consents to the disclosure of any information relating to the BACS Reserves Collateralisation Account, the BACS Settlement Collateralisation Account or the BACS Completion Funds Account (as the case may be) to the BACS System Operator.

16 ASSIGNMENT AND OTHER DEALINGS

[No additional provisions]

17 SINGLE AGREEMENT; ENTIRE MANDATE

[No additional provisions]

18 NOTICES

[No additional provisions]

19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

[No additional provisions]

20 GOVERNING LAW

[No additional provisions]

21 JURISDICTION

[No additional provisions]

22 AGENT FOR SERVICE OF PROCESS

[No additional provisions]