

## General Terms and Conditions – Rev 1.14

### Definitions

"Additional Order" means additional Services added to the Agreement  
"Agreement" means the Customer's Agreement with Swains Plc comprised of the following:  
(i) These general terms and conditions  
(ii) The Service Agreement;  
(iii) Relevant tariff(s) for the Services; and  
(iv) Any additional terms and conditions relating to specific Services.  
"Cease Charges" means any charges incurred by ceasing the Services to the Customer including any charges imposed on Swains at any time before or after termination by its services providers and which the Customer is liable to pay as a result of ceasing the Services in addition to any Termination Fee.  
"Connection Date" means the date Swains confirms to the Customer that the Services are connected  
"CPE" means Customer Premises Equipment  
"Customer" means the company, partnership, organisation or individual listed on the order documentation  
"Equipment" means any Equipment supplied by or on behalf of Swains to the Customer for the purpose of providing Service(s)  
"Formula" means the Formula for working out Termination Fee as set out in clause 4.2  
"Fraudulent Activity" means the fraudulent and/or unauthorised access, use, tampering or manipulation of any or all of the Customer's telephone lines, network or the Equipment by corrupt, dishonest or illegal means, at any time by any person including but not limited to Fraudulent Call Activity.  
"Fraudulent Call Activity" means unauthorised and/or Fraudulent Call Activity including but not limited to:  
(i) Calls to premium rate numbers including "rogue dialler" fraud  
(ii) Calls to destinations known to be used for Fraudulent Activity ("toll fraud"); and/or  
(iii) "hacking" of phone systems  
"Minimum Term" means the minimum period in which the Service Agreement shall run. The Minimum Term starts from the Connection Date of all Services for the agreed Minimum Term and continue thereafter, subject to either party giving service of 90 days written notice of termination expiring on the last day of a calendar month.  
"Order Schedule" means document(s) detailing customer Service requirements  
"Services" means the Service(s) Swains has agreed to provide as described in the Service Agreement, Order Schedules and various editions of Swains' literature and publications and price lists.  
"Service Agreement" means document(s) detailing Services required by the Customer, relevant conditions, Order Schedules, any Additional Orders and pricing  
"Swains" means Swains Plc whose registered office is Wilson House, Saxon Way, Dersingham, King's Lynn, Norfolk PE31 6LY  
"Termination Fee" means the early Termination Fee due to Swains if an Agreement is terminated by the Customer during the Minimum Term or fails to provide 90 days written notice to terminate the Agreement at any other time after the expiry of the Minimum Term.

### 1. Provision of Services

1.1. The Services Swains supply to the Customer are those Services which:  
1.1.1. the Customer has elected to receive as set out in the Order Schedules, or  
1.1.2. the Customer has ordered via telephone and are set out in the order confirmation, or  
1.1.3. have been ordered via our Website or,  
1.1.4. the Customer has subsequently ordered in writing, by fax, by email or by telephone, and in each case which Swains have agreed in writing or by email to supply to the Customer, or  
1.1.5. Services which have been ordered on the Customer's behalf by an authorised Swains Partner and which the Customer has subsequently confirmed that the Customer wish to receive. For the avoidance of doubt, confirmation of the Services will be made if the Customer pays for or continues to use the Services.  
1.2. In the event that there is any inconsistency or ambiguity between words of these terms and conditions and Swains' literature and publications and price lists, the provisions of these terms and conditions shall prevail. Swains reserves the right from time to time to revise or vary the terms of their literature, publications and price lists and provided they have given the Customer notice, such variations and revisions shall form part of the Agreement.  
1.3. These terms and conditions in conjunction with any Service specific terms and conditions prevail over any other documents published or delivered to the Customer by Swains, or any representation made orally to the Customer, and any provisions of the Customer order which attempts directly or indirectly to vary, add to, or restrict these terms and conditions however made or attempted to be made shall fail unless and until the Customer has Swains' express written consent (signed by a Company Director) to such variations, additions or restrictions. Nor shall any oral representation similarly form any part of the Agreement or amount to any inducement to enter into the Agreement or contract collateral to the contract or restrict any enforcement by Swains of any of the terms of the Agreement.  
1.4. Services may include (but are not limited to):  
1.4.1. The ability to make or receive a Telephone Call (Telephone Service); or  
1.4.2. The provision of a Telephone Line or Lines for a rental charge (Line rental Service); or  
1.4.3. The provision of Data Services and Internet Access (Data Service); or  
1.4.4. The provision of Inbound Telephony Services (Inbound Service); or  
1.4.5. The provision of IP Telephony Services (IPT Service); or  
1.4.6. The provision of Mobile Services; or  
1.4.7. Any other Services which Swains may offer from time to time.  
1.5. Swains will use reasonable endeavours to provide Services by the date(s) Swains agrees with the Customer and to continue to operate, maintain and where applicable restore the Services in the event of a failure until this Agreement is terminated. However Swains will not be liable for any loss or damages whatsoever should the Services not commence or restart on the agreed date.  
1.6. In providing the Services Swains shall use the reasonable skill and care that may be expected from a competent communications service provider.  
1.7. Services may be subject to Acceptable Use or Fair Usage Policies which is available on request.  
1.8. Swains cannot guarantee and do not warrant that the Services will be free of interruptions or will be fault-free and Swains will not be liable for any loss or damages should the Services be interrupted from time to time. The Customer accepts that there may also be degradations of the quality of the Service from time to time due to matters beyond our control, and that Swains will not be liable for any loss or damages should the quality of the Service Swains provide be affected by such matters. Service level guarantees may apply to certain Services and which at the time of application will be the latest version available at [www.swainsplc.co.uk](http://www.swainsplc.co.uk)

### 2. Duration and Minimum Term

2.1. The Agreement shall commence from the date of acceptance by Swains and shall continue until terminated in accordance with these terms and conditions and any Service specific terms and conditions. The Agreement is subject to the Minimum Term, dependant on the Services provided.  
2.2. For the avoidance of doubt the standard Minimum Term is 12 months unless specified on the Service Agreement or Order Schedule.  
2.3. Where additional Services are ordered during this Agreement, the Minimum Term of the entire Agreement for all Services will be extended to either:  
2.3.1. the original Minimum Term of the entire Agreement; or  
2.3.2. the standard Minimum Term of the additional Services whichever expires latest.

### 3. Termination

3.1. Notice to terminate must be provided in writing (electronic mail, post) from a Director, partner or owner of the Customer. Notice will not be accepted from any third party. Notice will only be deemed as served once confirmed in writing by Swains (letter or electronic mail) or proof of delivery is supplied.  
3.2. The Customer has the right to cancel the Agreement without incurring termination charges by providing written notice within 14 days of the date of the Agreement. The Customer agrees to pay any charges reasonably incurred through the provisioning of any Services. Where the Customer has commenced using any Service or Equipment the Customer will have deemed to have accepted these conditions and will no longer be able to cancel the Agreement which will be subject to the Minimum Term.  
3.3. Notwithstanding anything to the contrary expressed or implied in the Agreement, Swains (without prejudice to its other rights) may terminate the Agreement forthwith and without notice in the event that:  
3.3.1. A liquidator (otherwise other than for the purpose of amalgamation or reconstruction), trustee in bankruptcy, administrator, receiver or receiver and manager is appointed in respect of the whole or part of the Customer assets and undertaking or the Customer enter into an arrangement or composition with creditors, or if the Customer becomes unable to pay the Customer debts within the meaning of S123 of the Insolvency Act 1986, or other circumstances arise which entitle a court or creditor to appoint a receiver administrator or to make a winding up order, or if any of the proceedings are threatened; or  
3.3.2. The Customer is in breach of obligation to Swains other than the payment of money and upon being given notice of that breach in writing the Customer fails to remedy that breach within twenty-eight days; or  
3.3.3. Any licence under which the Customer has the right to run the Customer telecommunications system and connect it to the Swains system is revoked amended or ceases to be valid, or  
3.3.4. The Customer fails to utilise the Services either to the extent anticipated or at all; or  
3.3.5. The Customer fails to pay Swains' charges whether demanded or not.  
3.4. For the avoidance of doubt, if the Customer is given notice by Swains due to any breach, Termination Fees (early termination fee) will still apply.  
3.5. Either Party may terminate the Agreement at any time by service of a 90 day written notice expiring on or after the Minimum Term on the last day of a calendar month whichever is the latest.  
3.6. As standard, all Services will cease to be provided on the agreed termination date. Where the new third party provider does not transfer the Services by the termination date, Swains may at its sole discretion continue to supply

the contracted Services. In these circumstances, the Customer shall be charged for the Services according to Swains published standard tariff, and will be bound by the general terms and conditions for those Services.

### 4. Termination Fees

4.1. The Customer shall pay the Termination Fees to Swains when the Customer either:  
4.1.1. terminates the Agreement before the expiry of the Minimum Term; or  
4.1.2. fails to give the required 90 days written notice to terminate the Agreement at any other time after the expiry of the Minimum Term.  
4.2. The Termination Fees shall be calculated using the Formula:  

average monthly charge to Customer over a period of 6 months or, if less than 6 months over the total period the Services have been provided (A)	X	Unexpired Minimum Term rounded up to the next whole month or 3 months whichever is the greater (B)
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4.3. For the purposes of calculating the Termination Fees during the Minimum Term the monthly charge to the Customer shall include the actual costs of free Services and hardware supplied under the Agreement.  
4.4. Should the Customer, during the Minimum Term, obtain telephone carrier network Services from another third party service provider this will be treated as a termination of the relevant Service and the Customer will pay Swains Termination Fees calculated using the Formula where 'A' is the diminution in the charges which Swains would otherwise have charged the Customer.  
4.5. Where notice is received in accordance with the Agreement but the Services are transferred prior to the agreed termination date, Termination Fees will be calculated based on a minimum of 3 months' notice using the Formula.  
4.6. For the avoidance of doubt, Termination Fees will be calculated based on all Services (including Services that may remain) at the agreed termination date.  
4.7. Where notice is not received or transfer of Services is completed more than 3 working days prior to the Agreement end date, the minimum number of the remaining whole months for the purpose of the Formula will be 3 months.  
4.8. Any single Service that the Customer transfers to another third party provider will be subject to Termination Fees based on the Formula for the whole account terminating and not any part thereof.  
4.9. Where notice is not received in accordance with the Agreement, Swains reserve the right to suspend Services immediately, pending payment of all outstanding invoices, Termination Fees and any anticipated charges which may be accrued during the contracted Minimum Term or notice period.  
4.10. Swains will apply Cease Charges as well as associated costs at its discretion including, without limitation, any cancellation costs charged by third party suppliers as specified in the product specific terms and conditions using the current price list in force at the time of termination. These charges will be in addition to Termination Fees.  
4.11. The parties confirm that the Termination Fees represents a genuine pre-estimate of Swains' loss.

### 5. Use of the Services

5.1. The Customer is responsible for the safe custody and safe use of the Services and any related Equipment after installation of the Services.  
5.2. The Customer undertakes not to use the Equipment or Services:  
5.2.1. to cause any attachments other than those approved for connection to be connected to the Services or to tamper with Equipment or add any unauthorised additions thereto, or  
5.2.2. as a means of communication for a purpose other than that for which the Services are provided, or  
5.2.3. for the transmission of any material which is defamatory, offensive or of an abusive, obscene or menacing character, or  
5.2.4. for the carrying out of Fraudulent Activity, an unlawful activity, a criminal offence or activity which is not in compliance with its obligations under relevant legislation, or  
5.2.5. in a way which in Swains' reasonable opinion places Swains in breach of its obligations under relevant legislation or regulatory guidance.  
5.3. Should the Customer contravene the Customer's obligations it is agreed that Swains will not be liable for any costs associated with rectification and that all such costs shall be borne by the Customer.  
5.4. The Customer's Premise Equipment shall at all times conform to any relevant standard and Swains shall not be under any obligation to connect or keep connected any equipment if it does not conform or if in the reasonable opinion of Swains it is liable to cause death, personal injury, damage or impair the quality of any Services provided to the Customer.  
5.5. The Customer shall not assign or delegate or otherwise deal with all or any of the Customer's rights under the Agreement which shall only, if at all be enforceable by the Customer against Swains but this sub-clause does not restrict the rights of Swains.

### 6. Suspension of Services

6.1. Swains has the right to suspend or cease the provision of Services by immediate notice in writing in the event of the following:-  
6.1.1. The Customer is in material breach of the terms of their Agreement with Swains, or  
6.1.2. Swains believes the Services are being used fraudulently, or  
6.1.3. Swains believes that the Services are being used for any purpose as set out in section 5.2 above, or  
6.1.4. Swains are required to comply with an order, instruction or request from Central or Local Government, the emergency services or other relevant administrative body.  
6.2. The Customer shall reimburse Swains for all reasonable costs incurred by the implementation of the suspension and subsequent reconnection or provision of the Services, where the suspension is caused by breach of Agreement, fault or omission on the Customers part.

### 7. Changes and interruptions to the Services

7.1. Occasionally Swains may have to implement alterations that could affect the Services. These alterations are listed in sub clause 7.2. If Swains have to interrupt the Services Swains will use reasonable endeavours to restore them as quickly as possible.  
7.2. Occasionally Swains may have to:  
7.2.1. change the code or phone number or the technical specification of the Services for operational reasons; or  
7.2.2. interrupt the Services for operational reasons or because of an emergency; or  
7.2.3. give the Customer instructions that Swains believe are necessary for health or safety or to maintain the quality of the Services that Swains supply to the Customer or to our other customers.

### 8. Access to Premises and provision of information

To enable Swains to exercise its obligations under the Service Agreement(s);  
8.1. The Customer will permit or procure permission for Swains or any other person(s) authorised by Swains to have reasonable and safe access to the premises and service connection points where the Services are to be installed.  
8.2. The Customer shall provide information and reasonable assistance where requested.  
8.3. Swains will normally carry out work by appointment during working hours, but may request the Customer to provide access at other times. Such requests to be mutually agreed between the parties.  
8.4. At the Customers request, Swains may agree to work outside of standard working hours and if so the Customer shall pay all reasonable charges for complying with the request.  
8.5. The Customer consents to Swains disclosing information relating to (but not limited to) the nature, timing, and level of usage of the Services as required for the provision, operation, and on-going maintenance of the Services.  
8.6. Where Swains attends the Customer's premises due to any fault(s) reported and Swains considers the fault to be caused by the Customer's Premise Equipment, network, or the fault is outside Swains' remit or responsibility, Swains reserves the right to charge the Customer all visit charges and timescale related charges incurred for attending the premises.  
8.7. Swains shall investigate the cause of the fault and any charge and its judgment on, and decision on whether the charge is maintained shall be final.

### 9. Equipment

9.1. The Customer agrees that any Equipment installed or provided by Swains shall at all times remain the property of Swains until payment is received in full at which point title will transfer to the Customer.  
9.2. Where any Equipment is supplied free of charge or discounted as part of an extended contract term or bulk order the title shall remain with Swains and in the event of termination the Customer shall reimburse Swains full value for the Equipment supplied or return the Equipment to Swains on request.  
9.3. Equipment will be delivered to the address specified on the Order Schedule or Agreement and liability for the Equipment shall transfer to the Customer at the point of delivery.  
9.4. The Customer is responsible for any loss or damage, howsoever caused (except damage or loss caused by Swains), and the Customer agrees to pay for any repairs or replacement.  
9.5. The Customer shall use its reasonable endeavours to secure the Equipment from external sources, maintain adequate security over any passwords or login details and shall safeguard the Equipment against the deployment of viruses, Trojans and worms.  
9.6. Swains will use reasonable endeavours to pass on the benefit of the manufacturer's warranty.  
9.7. All equipment is supplied with a standard "back to base" warranty and it is the Customers' responsibility to arrange and pay for the return of the Equipment to Swains where a claim under the manufacturer's warranty is requested.

## 10. Charges and Payment

10.1. The Customer agrees to pay charges levied by Swains on demand (time being of the essence). The charges will include hardware, rental, installation (where applicable), all usage (including usage specified in clause 11.7) and any other charges as specified in the Service Agreement, Order Schedule, or current price list in force at the time.

10.2. Any costs incurred by Swains associated with moving Customer Premises Equipment at the Customer request will be borne by the Customer. The Customer will also be responsible for the payment of any costs of modification and costs associated with and previously unforeseen by Swains.

10.3. Swains will provide the Customer with not less than 28 days' notice in writing of any increase in charges. Where the Customer continues to use the Services following receipt of the notification the Customer will be bound by and is obliged to pay the revised charges.

10.4. Charges payable by the Customer shall be calculated by reference data recorded or logged by Swains or its carrier and not by reference to any data recorded or logged by the Customer.

10.5. Swains may ask the Customer for a payment in advance before payment would normally be due which will be Swains' best estimate of the Customer's following month's invoice. Where any advance payment exceeds the actual invoice to the Customer the additional payment will be credited to the Customer's account to be offset against future months' invoices or may be used by Swains in accordance with clause 10.6.

10.6. Swains may ask the Customer to pay a deposit at any time as security for payment of any charges to be incurred.

10.7. Swains reserves the right to charge interest at the rate of 3% above the published Bank of England base rate on a daily basis on any overdue amounts until final payment in full is received, together with any solicitors costs and disbursements on the indemnity losses involved in enforcing payment, whether before or after judgment.

10.8. The Customer will be invoiced by Swains at the billing address specified by the Customer. Payment of the invoice shall be made by the Customer to Swains by direct debit (unless otherwise agreed in writing) and collected on or around the 25th day following the date of invoice. Receipt of payment by Swains will be deemed the only valid discharge of all debts.

10.9. Swains reserve the right to charge a nominal fee each time Swains processes a payment other than by Direct Debit, for any payment refused by the Customer's bank, or for cancelled Direct Debit Mandates.

10.10. Where a Direct Debit Mandate is cancelled or an indemnity claim is lodged, Swains reserve the right to suspend Services immediately, pending payment of all outstanding invoices, termination charges, and any anticipated charges which may be accrued during the contracted Minimum Term or notice period.

10.11. Where Swains makes a supply to the Customer and value added (or similar) tax is payable in respect of such supply the Customer shall pay on demand, supported by a value added (or similar) tax invoice the amount of value added (or similar) tax so payable.

10.12. Payment of all sums due from the Customer shall be made without any set-off, cross claims, or deduction whatsoever and howsoever arising.

10.13. For the avoidance of doubt, the Customer shall be liable for all and any charges payable to Swains or any third party arising out of use of the Services.

10.14. Swains reserves the right to apply Cease Charges as well as associated costs at its discretion including, without limitation, any cancellation costs charged by third party suppliers as specified in the product specific terms and conditions using the current price list in force at the time of termination. These charges will be in addition to Termination Fee.

10.15. Failure to pay by the due date is considered a material breach of the Agreement.

10.16. If the Customer identifies an error on any invoice, the Customer must give notice to Swains within 120 days after the error first appeared on the invoice and Swains will investigate the charge. If no notice is received within this period, the Customer releases Swains from all liability and claims of loss resulting from the error and Swains will not be required to correct the error or issue a refund. If Swains identifies an error on an invoice it will aim to correct the error within 90 days but shall not waive Swain's right to invoice the Customer for any charges properly incurred which were omitted from any invoice for the billing period in question.

10.17. Swains reserve the right to request the payment on demand of any outstanding sums, or anticipated charges including free of charge Equipment and Services.

## 11. Liability

11.1. Swains nor any authorised representatives or agents are under any liability to the Customer or any third party in respect of any injury, loss, damage or expense of whatever nature, directly or indirectly arising from any defect in or failure of the Services to operate in the way the Customer expects or anticipates and whether in contract, tort or otherwise and whether in respect of loss of any business contracts, actions and claims at law, anticipated savings or profits, claims for interest or otherwise.

11.2. Swains shall not be responsible for any loss or damage which the Customer may suffer resulting from any cause whatsoever beyond Swains' actual control, nor has any person not directly employed by Swains any authority to make any representations as to quality to fitness for purpose of the Services unless Swains shall have informed the Customer in writing, signed by a Company Director, that such person has such authority.

11.3. Swains shall not be liable to the Customer for any delay in either providing a Connection Date or another reason for delay in connection.

11.4. In the event the Services fail to operate and call or data traffic is routed over an alternative carrier, Swains shall not in any circumstances be liable for that carrier's charge.

11.5. The Customer shall indemnify Swains against all liabilities, claims, damages, losses and expenses arising from the use of the Services in breach of this Agreement.

11.6. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement. If any Statute has the effect of modifying the effects of any other terms of this clause then in so far as may be practicable the same shall continue in full.

11.7. The Customer shall be liable for the costs and/or losses whether direct or indirect, inclusive of all charges arising out of or in connection with any and all Fraudulent Activity including Fraudulent Call Activity.

11.8. Swains may, but is not obliged to, suspend any Service where it is aware or reasonably suspects that Fraudulent Call Activity is taking place.

## 12. Other Terms

12.1. Failure by either party to exercise or enforce any right shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any other occasion.

12.2. For operational reasons Swains may vary the technical specification of the Services and after variation the Services so varied shall constitute the Services Swains is obliged under the Agreement to render to the Customer.

12.3. The Customer must indemnify Swains against any costs, claims or proceedings arising from the use, by the Customer of the Services where such costs, claims or proceedings are brought or threatened against Swains by any other party.

12.4. Any notice, invoice or other document which may be given by Swains shall be deemed to have been duly given if left at or sent by post to an address notified to Swains in writing by the Customer as an address which notices, invoices or other documents may be sent or the Customer usual or last known place of abode or business; or if sent by facsimile to the Customer last known facsimile number or if by e-mail to the Customer last known e-mail address.

12.5. Swains' address for Services of any such notices by the Customer under this Agreement shall be the correspondence address as is shown on the last invoice rendered or such address as Swains may prescribe for that purpose.

12.6. This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby agree to submit to the exclusive jurisdiction of the English Courts.

## 13. Variation

13.1. Swains may vary the terms and conditions of the Agreement or any other Service Agreement by providing a minimum of 28 days' notice which includes notice on any subsequent invoice or by email notification.

13.2. Terms and conditions in force will be published on the Swains website at [www.swainsplc.co.uk](http://www.swainsplc.co.uk)

13.3. Where Swains provides notice of a date the variation of the terms and conditions or variation to the charges is applicable from, and the Customer continues to utilise the Service after the variation date, the Customer will be deemed to have accepted the revised terms and conditions and these will form the applicable terms and conditions of the Service Agreement for the remaining term of the Agreement.

13.4. The Customer agrees any terms and conditions cannot be modified by their own terms and conditions of business without the prior written consent of a Director of Swains Plc.

## 14. Assignment

14.1. Swains may assign or delegate the rights under this Agreement

14.2. The Customer may only assign its rights or obligations under this Agreement with the prior written consent of Swains.

## 15. Data Protection/Confidentiality

15.1. Swains complies with its obligations of the Data Protection Act 1998. Swains will utilise any personal or sensitive personal data obtained for the purposes of establishing and administering the Customer, enabling Swains' service providers, authorised agents and representatives to supply the Services, and for invoicing and marketing purposes

15.2. Swains shall be entitled to carry out a credit check on the Customer owners, directors and officers at any time including carrying out searches with credit reference agencies which may keep a record of that search. The Customer expressly consents and shall procure the consent of owners, directors and officers to use of the relevant individual's name address and other personal data in order to carry out a credit check.

15.3. Swains may from time to time use the data to provide information on Services which it considers may be of interest to the Customer. The Customer can request information is not used for this purpose by writing to Marketing Manager, Swains Plc, Wilson House, Saxon Way, Dersingham, Norfolk, PE31 6LY

15.4. For the purposes of this clause personal or sensitive data shall have the meanings given to them by the provisions of the Data Protection Act 1998.

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## The Direct Debit Guarantee



- This Guarantee is offered by all banks and building societies that accept instructions to pay Direct Debits
- If there are any changes to the amount, date or frequency of your Direct Debit Swains Plc will notify you 10 working days in advance of your account being debited or as otherwise agreed. If you request Swains Plc to collect a payment, confirmation of the amount and date will be given to you at the time of the request
- If an error is made in the payment of your Direct Debit, by Swains Plc or your bank or building society, you are entitled to a full and immediate refund of the amount paid from your bank or building society
  - If you receive a refund you are not entitled to, you must pay it back when Swains Plc asks you to
- You can cancel a Direct Debit at any time by simply contacting your bank or building society. Written confirmation may be required. Please also notify us.