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Standard Terms and Conditions – Software Perpetual

Definitions

If the following words are utilised in these Standard Terms and Conditions they shall have these meanings ascribed to them respectively as follows:

"Accessing Entities" means collectively the Customer and Customer Group Companies.

"Agreement" means these Standard Terms and Conditions.

"Back Up Copy(ies)" means a copy(ies) made of the Software as delivered (excluding configuration), for archive and/or back-up purposes.

"Benefitting Entities" mean collectively Accessing Entities who directly or indirectly benefit from use of the Software; and End Users who indirectly benefit from use of the Software by Accessing Entities in providing a service to them or on their behalf.

"Company" means Bottomline Technologies Limited whose registered offices are at 115 Chatham Street, Reading RG1 7JX.

"Company Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the Company.

"Concurrent Users" means the stated maximum number of individual users who are simultaneously accessing any or all of the licensed Software at any given point in time, irrespective as to whether or not any such user is actually using related Software resources.

"Controller" shall have the meaning given to it pursuant to Data Protection Laws.

"Customer" means the legal entity (i.e. registered company, or legally constituted public body or financial institution) specified in the Order Agreement.

"Customer Group Company(ies)" means any company belonging to the same group of companies to which the Customer belongs, where such company controls, is controlled by, or is under common control with the Customer (where "control" means having more than fifty percent (50%) voting securities in a company). For the avoidance of doubt joint ventures, partnerships and any other third parties are specifically excluded under this definition.

"End User(s)" means any third-party company, legally constituted public body or financial institution that is neither a Customer nor a Customer Group Company.

"Customer User Agreement (CUA)" means collectively the initial Order Agreement, any subsequent Order Agreement(s) (signed pursuant to this Agreement) and this Agreement (including any Professional Services Agreement, Software Support Agreement and/or Equipment Maintenance Agreement referenced in clause 9 and where applicable).

"Data Protection Laws" means all laws applicable to the Processing of Personal Data under the Agreement including, where applicable, the Data Protection Act 1998, Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (and any laws, rules and regulations implementing the foregoing).

"Data Subject" shall have the meaning given to it pursuant to Data Protection Laws.

"Equipment" means non-software goods purchased by the Customer on an Order Agreement.

"Guest Operating System" means instances of third-party operating systems licensed by Customer and installed in a virtual machine (or otherwise emulated) or hardware system(s) hosting the Software.

"Named User" means a specific named individual registered on a single installed Software device, irrespective as to whether such user is logged on to, or actively accessing any or all of the licensed Software. A Named User license may not be shared by multiple users nor used concurrently with other Software devices.

"Non-Human Devices" means any device(s) (including but not limited to: virtual PCs, build servers and unattended PCs performing batch jobs) that utilise the Software without interaction. For the avoidance of doubt such Non-Human Devices shall be considered Named or Concurrent Users consistent with the licensing parameters specified in an Order Agreement for the relevant Software product as applicable.

"Order Agreement" means the document which specifies the Software licence(s), Equipment, Professional Services and/or related Support or other service being acquired by the Customer subject to this Agreement.

"Payers" means the quantity specified on an Order Agreement of individual records held in the Software which can accept one or more Direct Debit mandates.

"Payment(s)" means a single payment instruction issued using the Software where such functionality is specified in an Order Agreement.

"PCI-DSS" means the Payment Card Industry Data Security Standard.

"Personal Data" shall have the meaning given to it pursuant to Data Protection Laws.

"Processing" shall have the meaning given to it pursuant to Data Protection Laws.

"Processor" shall have the meaning given to it pursuant to Data Protection Laws.

"Processor Cores" means two or more processors contained within a single CPU integrated circuit where each processor has its own cache and controller.

"Professional Services" means those services including but not limited to consultancy, implementation and training specific in an Order Agreement.

"Security Monitoring Software" means Software which specifically enables the Customer to monitor and/or implement controls over security in connection with its infrastructure and systems, including without limitation user behaviour monitoring and payment fraud.

"Software" means the software products (including any Security Monitoring Software, modules and/or devices that are licensed under this Agreement (or provided as part of a services engagement pursuant to this Agreement), including, but not limited to, any related application programming interfaces, associated media, printed materials, online or electronic documentation; and any updates and maintenance releases thereto.

"Software Licence Key" means, where applicable, a serial number or other unique identifier issued by the Company to activate the Software.

"Sub-processor" means a third party engaged by Company or one of its Affiliates to undertake some or all of Company's obligations under this Agreement, including but not limited to Processing of Personal Data.

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"Supervisory Authority" shall have the meaning given to it pursuant to Data Protection Laws.

"Support" means the provision of remote telephone consultation and advice by qualified technical personnel and the provision of maintenance comprising any applicable Software error corrections and releases in accordance with a current Software Support agreement pursuant to this Agreement.

"Server" means a single physical computer of a type that meets the specifications as set forth in the applicable product data sheets or computer hardware/Software systems compatibility guides published by the Company. Multiple computers that share processing power or operate in a networked configuration as a single logical computer, such as a "server farm" or similar arrangement, constitute multiple separate Servers for the purpose of this Agreement. A Virtual Machine or Guest Operating System shall be deemed to be a Server.

"Virtual Machine" means an instance of a Guest Operating System and any application programs installed thereon, running on a computer on which the Software is installed, or suspended to disk or any other storage media accessible by the computing device.

1. General

This Agreement shall govern the Customer's purchase of Equipment, Software licences, and related Support, and/or Professional Services or other services from the Company. In the event of a conflict between this Agreement and any licence terms supplied with the Software, then this Agreement shall take precedence and shall apply to the exclusion of all oral representations and all other terms and conditions printed on any purchase order or other document(s) prepared by Customer irrespective of their date. The parties agree that they have not relied upon any other representations, terms or conditions in entering into this Agreement. The CUA states the entire agreement between the parties on this subject and supersedes all prior negotiations, understandings and agreements between the parties concerning the subject matter. The parties expressly consent and agree that any Order Agreement, this Agreement and any other document forming part of the CUA shall be signed electronically where the facility to do so is made available by the Company. The parties further agree that such electronic signatures appearing on any of the aforementioned documents shall for the purposes of validity, enforceability and admissibility, be treated the same as hand written signatures. No amendment or modification of any individual Order Agreement, this Agreement or the CUA shall be made except in writing and signed (including by electronic means) by an authorised signatory of each party.

2. Prices

2.1. All prices are exclusive of value added tax and any other applicable taxes or duty. Charges shall be made for any taxes, duties or levies which the Company is required by law to collect and any withholding tax will be for the Customer's account unless and until such time that Company is able to reclaim such tax.

2.2 If the Company arranges or undertakes the carriage, freight, insurance and other transport costs beyond its premises, such costs shall be for the Customer's account and shall in any event not affect the passing of title in the Equipment and/or Software licence.

2.3 Prices quoted are in Pounds Sterling unless otherwise agreed and stated on an Order Agreement.

3. Invoicing and Payment

Company shall upon shipment raise an invoice for all Equipment, Software licences, Software Support and/or Equipment Maintenance fees. The first year's provision of Software Support and/or Equipment Maintenance shall commence three days from date of shipment of Equipment and/or Software. Professional Services or other services shall be charged at the rate(s) specified in an Order Agreement and will be invoiced as delivered, or as staged within an Order Agreement (unless specified therein as being an annual fee in which case such Professional Services shall be invoiced in advance for a period commencing on the date that the Company signed the relevant Order Agreement and annually thereafter, unless terminated on ninety (90) days written notice prior to any anniversary of commencement for such services). When deliveries are spread over a period of time each consignment will be invoiced as despatched and treated as a separate account and payable accordingly. Payment of all invoices shall be due within thirty (30) days of date of invoice. If payment is delayed for more than thirty (30) days and the Customer has not raised a reasonable dispute in writing regarding the amounts invoiced, Customer agrees to pay interest at a rate of 2% per annum over the Bank of England base rate from the date payment was first due until payment is received in full. Alternatively the Company at its sole option may request the Customer to immediately return any Equipment and/or Software in good and complete condition.

4. Carriage

4.1 All Equipment and Software shall be shipped to the premises as indicated on the Order Agreement by electronic means wherever available. Physical media will be shipped only where specifically requested on the Order Agreement, or where electronic means are unavailable. Risk in the Equipment and/or Software shall pass when they leave the Company's premises.

4.2 The dates for delivery of the Equipment and/or Software and any Professional Services are approximate only and time is specifically not of the essence of the CUA. The Company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver the Equipment and/or Software or any Support or Professional Services. If for any reason the Customer is unable to accept delivery of the Equipment and/or Software when they are due and ready for delivery, the Company may store the Equipment and/or Software at the Customer's risk and the Customer shall be liable to the Company to pay the reasonable costs of such storage and related insurance.

5. Security Interest

5.1 Company retains a security interest in all Equipment and Software licences until paid for in full. All intellectual property rights in the Software remain vested with the Company and no intellectual property rights to any Software are transferred to Customer.

5.2 Until all Equipment is paid for in full, Customer shall:

5.2.1 not remove the Equipment supplied hereunder or allow it to be removed from the address to which it was delivered; and

5.2.2 keep the Equipment in good condition and complete; and

5.2.3 not allow the Equipment to become the subject of any charge or lien whether by operation of law or otherwise.

5.3 Each part of Clause 5.2 is separate, severable and distinct and accordingly in the event of any part being for any reason whatsoever unenforceable the others shall remain in full force and effect.

6. Ownership

Customer acknowledges that the Software is licensed not sold and that all copyrights, patents, trade secrets and other rights, title and interest therein in whole or in part and all copies thereof, are the sole property of the Company or its related entities or third party suppliers. Customer shall gain no right, title or interest in the Software by virtue of the CUA other than the non-exclusive right of use granted herein. Without limiting the foregoing, Customer specifically acknowledges Company's exclusive rights to ownership in any copy, modification, translation, enhancement, adaptation, or derivation of the Software.

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7. Licence and Use

7.1 Subject to the terms and conditions contained in this Agreement and Customer's payment of applicable Software licence fees under the relevant Order Agreement, the Company hereby grants to the Customer a non-exclusive, non-transferable, irrevocable and perpetual licence, without rights to sublicense, to use the Software for the purpose as set forth in the applicable documentation for the Software; and according to the licence restrictions set forth in the relevant Order Agreement in accordance with this Clause 7.

7.1.1 The Customer may make up to three (3) Back Up Copies of the Software. Back Up Copies may not be utilised for live and/or Test purposes over and above the Software license(s) granted hereunder.

7.1.2 Customer will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Software, except only when and to the limited extent that applicable law expressly requires such activity, irrespective of the limitations contained herein.

7.2 The Software is licensed for use for the internal day to day business purposes of the Customer. The Customer warrants that it shall not allow access to the Software by any Customer Group Companies, or provide services to, or on behalf of, any Customer Group Company, End User, or other third party, unless the Customer has acquired a quantity of Benefitting Entity licences equivalent to the actual maximum number of Benefitting Entities, in which case the provisions of clause 7.3 below shall apply.

7.3 Where the Customer has acquired Benefitting Entity licences in accordance with 7.2 above then the Customer: (a) shall be permitted to allow direct benefit from the Software by means of granting access to and operation of the Software by Customer Group Companies; and (b) shall be permitted to provide indirect benefit from the Software by means of providing services to or on behalf of any Customer Group Company and/or End Users. The Customer warrants that it shall only permit the Software to be directly accessed and operated by one or more Accessing Entities.

7.4 Transform® Software where specified in an Order Agreement is licensed for use by the Customer and any number of Customer Group Companies but specifically excludes any rights to process on behalf of End Users or other third parties and clause 7.3 shall not apply.

7.5 Create!form® Software where specified in an Order Agreement is licensed for use by the Customer only for its internal day to day business purposes and clause 7.3 shall not apply. Where a Create!Form "Additional Business Entity" licence(s) is acquired, such licence(s) may be used by a single Customer Group Company subject to the Customer's licence.

7.6 In addition to the Software licence scope specified in clauses 7.1, 7.2 and 7.3, the following supplemental licence parameters may be specified in an Order Agreement dependent upon which Software product is licensed in accordance with the Company's then current price list:

7.6.1 The specified number of Servers, each operating in conjunction with a single instance of the Software on a single database instance.

7.6.2 The specified number of Named Users.

7.6.3 The specified number of Concurrent users.

7.6.4 The specified number of Payers.

7.6.5 The specified number of Processing Cores.

7.6.6 Where Software is specified as being licensed on a "seat" or "user" basis, for the purposes of this Agreement such licences shall be deemed to be Named Users.

7.6.7 Where no specific licence parameter is specified in the Order Agreement then the Software shall be deemed licensed by the quantity indicated therein for each respective Software component listed.

7.7 **Disaster Recovery Licence ("DR")** means the Software may only be used by the Customer to provide redundancy for the Customer's live or other environments, including but not limited to dedicated powered up, or non-powered up disaster recovery solutions. A Disaster Recovery Licence must be purchased for each separate Software environment used by the Customer to provide any form of disaster recovery; and may only be used in connection with Customer's day to day business in the event that the dedicated live, test or development Software environment becomes unavailable. Virtualisation technology may not be used to circumvent other licensing terms and conditions and related restrictions.

7.8 **Virtual Disaster Recovery Licence ("Virtual DR")** means the Customer may make one (1) copy of their installed production Software environment including configuration, on a Virtual Machine for the purposes of recovering the Software and configuration to a new server, in the event of production server failure only. The Customer is not permitted to deploy or use such copy in any production environment where another production environment (virtual or otherwise) is active. Virtualisation technology may not be used to circumvent other licensing terms and conditions and related restrictions.

7.9 **Test Licence ("Test")** means the Software may only be used for test, development or pre-production purposes and may not be used in connection with Customer's day to day business as a live Software environment, for disaster recovery, or other purposes. A Test Software licence must be purchased for each separate Software installation which may be used by the Customer to provide any form of test, development or pre-production environment.

8. Warranty

8.1 The Company warrants that in accordance with this Agreement:

8.1.1 it has title to the Equipment and the Software and has the right to sell the Equipment and grant the Software licence(s) purchased by the Customer;

8.1.2 the Equipment will, on delivery be free from material defects in materials and workmanship;

8.1.3 the Software will, on delivery materially conform to its standard specification; and

8.1.4 the services shall be provided using reasonable care and skill consistent with applicable industry standards.

8.1.5 where a Payment contains card payment instructions the processing of which would require PCI-DSS compliance, that its contracted third party processor shall be PCI-DSS compliant.

8.2 The Customer's sole and exclusive remedy in the event of breach of the above warranties in clauses 8.1.2, 8.1.3 and 8.1.4 is the correction of any failure reasonably determined by the Company as a failure by the Company to comply with such warranty provisions. Correction may comprise, at the Company's sole discretion, re-performance of the services or portion thereof, replacing, repairing or adjusting the Equipment and/or Software without charge to the Customer or refunding any relevant portion of paid fees. All remedies for any breach of the warranty provisions are available only if such breach is reported to Company in writing within ninety (90) days of shipment of the defective Equipment or Software or within thirty (30) days of completion of the defective services.

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8.3 The Company shall prior to shipment use reasonable endeavours in accordance with good industry practice to deploy and update industry standard anti-virus and malware applications to detect the introduction of known computer viruses or other program codes which are likely to damage the Software or Customer systems. The Company shall notify the Customer promptly in the event that the Company becomes aware of a known computer virus or other program code or any other system or technology issue which may negatively affect the operation of the Software or the Professional Services.

8.4 Except as expressly provided in this Agreement all warranties, conditions, representations, indemnities and guarantees, whether express or implied, arising by law, custom, oral or written statements of the Company or its third-party licensors or otherwise (including, without limitation, any warranties of merchantability, fitness for particular purpose, or of error-free and uninterrupted use) are hereby superseded, excluded and disclaimed to the fullest extent permitted by law.

8.5 The warranties given by the Company in clauses 8.1, 8.2, 8.3 and 8.4 above are made only to the Customer and the Company will have no liability to any third party with respect to the Software, the Software Support and/or the Professional Services as a result of such warranties. Except as provided in this clause 8, the Company does not warrant that Security Monitoring Software will correctly detect and/or identify all security threats. The foregoing disclaimers will apply even if any warranty provided under this Agreement fails of its essential purpose.

9. Software Support, Equipment Maintenance & Professional Services

Provision of Software Support, Equipment Maintenance and Professional Services are available and provided subject to the Company's published Software Support Agreement (either "Software Support Agreement – Payments Software" or "Software Support Agreement – Document Processing Software" as applicable), Equipment Maintenance and Professional Services Agreements (all of which form part of the CUA where applicable) and copies of which are available at: www.bottomline.co.uk/terms&conditions.

10. Limits of Liability

10.1 Notwithstanding any other provisions in this Agreement the Company's liability to the Customer for death or injury resulting from the Company's negligence or the negligence of its employees agents or sub-contractors shall not be limited under the CUA.

10.2 Subject to Condition 10.4, the Company's maximum aggregate liability for any damage to the tangible property of Customer resulting from the negligence of the Company or its employees, agents or sub-contractors shall not exceed £1,000,000.

10.3 Subject to Condition 10.4 the Company's maximum aggregate liability for any breach of its contractual obligations or any tortious act or omission, except for negligence pursuant to Clause 10.2, shall be limited to the greater of £100,000 or the combined total amount paid by Customer for Equipment, Software licences, and Professional Services or other services under the Order Agreement to which such claim (or series of related claims) relates.

10.4 In no event shall the Company have any liability:

10.4.1 for loss of profits, goodwill, business interruption, delay or failure in provision of services, or any type of special, indirect, consequential or incidental loss or damages (including loss or damage suffered by the Customer as a result of any action brought by a third party) even if the Company has been advised of the possibility of such damages; and

10.4.2 (including breach of warranty) which arises as a result of the misuse of the Equipment and/or Software supplied hereunder, or use thereof in combination with any equipment and/or software not approved by the Company or as a result of any defect or error in any equipment and/or software not supplied by the Company; and

10.4.3 for any illegal or unauthorised access to or release of any Customer data from any device whatsoever connecting to the Software, including, but not limited to, any access or release of such data arising from the accessing of any Customer login credentials and/or login to Customer account(s) by malware, viruses, or worms, for malicious or criminal activities including, but not limited to, fraudulent payments or fraudulent funds transfer.

10.4.4 unless the Customer shall have served notice in writing of any facts which may give rise to a claim against the Company hereunder within six years of the date it either became aware of the circumstances giving rise to a claim or the date when it ought reasonably to have become so aware.

10.5 The Customer acknowledges and agrees that in connection with any Security Monitoring Software licence:

10.5.1 effective security threat detection and management are dependent on a multi-layered, multi-faceted combination of software and hardware components, deployed and managed in accordance with appropriate policies and procedures consistently applied. No individual element in such a system, including the Security Monitoring Software, is alone sufficient to detect and prevent all security threats.

10.5.2 the Security Monitoring Software have or will have been, prior to production use, reviewed and tested by the Customer and meet the Customer's business and operational needs; and

10.5.3 the allocation of liability set forth in this CUA fairly reflects the economic circumstances and risks that the parties are willing to undertake in view of the amounts paid or payable for the Security Monitoring Software specified herein.

10.5.4 it shall be solely responsible for any use of the Security Monitoring Software, including any data and other output generated therefrom, and for verifying any data or output resulting from use of the Security Monitoring Software. Customer acknowledges that the quality of such data and output and the result of using the Security Monitoring Services are dependent on the data used by the Customer. The Customer further acknowledges and agrees that the Security Monitoring Services do not provide advice or recommendations for correct action, but rather solely generate output directly reflecting the data used by the Customer or arising from the Customer's use of the Security Monitoring Software.

10.6 The parties acknowledge and agree that neither party will be permitted to recover the same loss resulting from a claim, or series of related claims, on more than one occasion pursuant to this Agreement.

11. Third Party Intellectual Property Infringement

11.1 Company agrees to defend, at its expense, any suit against Customer based upon a claim that any Software licensed to Customer under this Agreement infringes any patent or copyright recognised by one of the signatories to the Berne Convention, and to pay any settlement, or any damages finally awarded in any such suit.

11.2 Company's obligations under this Clause 11 shall not be effective unless Customer notifies Company in writing of any claim or threatened or actual suit within ten (10) days of knowledge thereof and Customer gives full control of the defence and settlement, along with Customer's full co-operation, to Company.

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11.3 Company may, at its own expense: (a) procure for Customer the right to continue to use the licensed Software; (b) make the licensed Software non-infringing; or (c) terminate the Software licences and refund a proportion of the applicable licence fee received from Customer, from the date of the alleged infringement and subject to three-year straight line depreciation.

11.4 Company shall have no liability for any claim based on: (a) Customer's continued use after written notification, of a non-current release of the applicable licensed Software so long as a current release was made available to Customer without additional charge (subject to having purchased current Software Support); (b) Customer's use of the licensed Software other than in accordance with the rights granted under this Agreement; (c) Customer's combination of the licensed Software with any other equipment or software not provided by Company, where such infringement would not have occurred but for such combination; or (d) intellectual property rights owned by Customer or any of its affiliates.

11.5 This Clause 11 states Customer's sole remedy and Company's exclusive liability in the event that Customer's use of any Software provided under the CUA infringes on the intellectual property rights of any third party.

11.6 The indemnity provisions of this Clause 11 specifically do not apply to Equipment or third party software (e.g. software which may be provided to the Customer by the Company wherein the Company is operating as a distributor for the third party licensor of such software). Company's sole obligation in the event that Customer's use of Equipment or third party software infringes on the intellectual property rights of any third party is to provide all reasonable co-operation and assistance to the Customer, as necessary, for the Customer to benefit from any intellectual property indemnity that may be provided by the Equipment manufacturer or the third party licensor, to the Company.

12. Alterations

The Customer hereby undertakes not to alter or modify the whole or any part of any Software supplied hereunder nor, without the prior written consent of the Company, to permit the whole or any part of the Software supplied hereunder to be combined with or become incorporated in any other software.

13. Company Intellectual Property

Customer acknowledges that the information contained in the Software is confidential and contains trade secrets and proprietary data belonging to the Company (or its third party licensors) and that the presence of copyright notices on the medium containing the Software, or not, does not constitute publication or otherwise impair the confidential nature thereof. Customer shall implement all reasonable measures necessary to safeguard the Company's (and its third party licensor's) ownership of and confidentiality of the Software, including, without limitation: (a) allowing its employees and authorised sub-contractors access to the Software only to the extent necessary to permit the performance of their ordinary services to the Customer and to require, as a condition to such access, that such persons comply with the provisions of this Agreement including this clause 13; (b) prohibiting the removal or alteration of any copyright or confidentiality labels or notices contained in the Software; (c) prohibiting the copying of the Software except as permitted pursuant to this Agreement; and (d) not disclosing the Software to any third party other than to the limited extent permitted under this Agreement. Notwithstanding the foregoing, the Customer agrees not to disclose the Software (without the Company's prior written consent) to any service bureau or other third party whose primary function shall be to provide the Customer with hosting and/or day-to-day management and support responsibility for the Software. Customer acknowledges that use or disclosure of the Software in violation of this Agreement may cause irreparable harm to the Company (and/or its third party licensors). Customer acknowledges that no remedy available in law may be sufficient in the event of a material breach of this Agreement or in respect of a breach of the confidentiality of the Company's intellectual property, by the Customer, its employees and sub-contractors, Customer Group Companies or third parties.

14. Software Audit

The Customer agrees that upon reasonable prior written notice the Company may periodically gain access to Customer site(s) to confirm the Customer's adherence to the terms of Software use and licence parameters specified under the CUA. Where such audit confirms any variance to such terms and parameters, then the parties will execute an Order Agreement subject to this Agreement to rectify such variance and the Customer shall pay any related licence and Support fees agreed thereunder. In the event that the parties fail to agree such fees, then Company reserves the right to terminate the relevant Order Agreement and/or the CUA as applicable, in relation to such Software licence and/or Support with immediate effect and Customer shall cease use of the affected Software licences, returning all copies thereof to the Company in accordance with Clause 17.3.

15. Confidentiality

Each party shall treat as confidential information all information (including Software and the terms of the CUA) obtained from the other pursuant to the CUA and shall not disclose such information to any person (except to such party's own legal advisers, auditors, employees and then only to those employees who have a reasonable need to know the same; and in the case of the Company to their third-party licensors where applicable (all such disclosure subject to each party being made aware of the confidential nature of the information and agreeing to abide by terms no less onerous than those specified in this clause 15)) without the other party's prior written consent, provided that this shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the CUA, (and not subject to any confidentiality undertakings), which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach), which is trivial or obvious, or is required to be disclosed by law or regulatory body.

16. Data Protection and Processing

The Company shall handle all data (including any Personal Data) in accordance with the Data Protection Laws.

16.1 **Processing of Personal Data**

16.1.1 Roles of the Parties: The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller, Company is the Processor and that Company or Company Affiliates may engage Sub-processors subject to this Agreement.

16.1.2 Customer's Processing of Personal Data: Customer shall, in its use of Support, Process Personal Data in accordance with the requirements of Data Protection Laws. For the avoidance of doubt, Customer's instructions to Company for the Processing of Personal Data shall comply with Data Protection Laws. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and its instructions for processing Personal Data, and the means by which Customer acquired its Personal Data and any necessary permissions for Company to Process it on behalf of the Customer, including where applicable obtaining consent from the holders of parental responsibility over Personal Data pertaining to children.

16.1.3 Company Processing of Personal Data: Company shall and shall procure that its Sub-processors shall, in the provision of the Services, Process Personal Data in accordance with the requirements of Data Protection Laws. Company shall treat Personal Data as Confidential Information and shall and shall procure that its Sub-processors shall only Process Personal Data on behalf of and in accordance with Customer's documented instructions including with regard to transfers of Personal Data outside the European Economic Area (or the UK as applicable) for the following purposes: (i) Processing in accordance with the Agreement and applicable Order Agreement(s); (ii) Processing initiated by Customer users in their use of Support; and (iii) Processing to comply with other documented reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement.

16.1.4 Details of the Processing: The subject-matter of Processing of Personal Data by Company is the performance of Support activities pursuant to the Agreement. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed is set out in Annex 1 and is subject to the Agreement.

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16.2 **Rights of Data Subject**

Data Subject Request: Company shall, to the extent legally permitted, promptly notify Customer if it receives a request from a Data Subject exercising their rights under Data Protection Laws including, for the purpose of accessing, correcting or deleting that person's Personal Data, if a Data Subject objects to the Processing thereof ("Data Subject Request"), they enforce their right to rectification, restriction of Processing, erasure, data portability or, their right not to be subject to an automated individual decision. Company shall not respond to a Data Subject Request without Customer's prior written consent (unless required to do so under any Applicable Law). Company shall upon Customer's request and instructions, taking into account the nature of the Processing, provide commercially reasonable assistance, by appropriate technical and organizational measures in accordance with the IT Security Policies, insofar as this is possible, for the fulfilment of Customer's obligation to respond to a Data Subject Request under Data Protection Laws. To the extent legally permitted, Customer shall be responsible for any costs arising from Company's provision of such assistance.

16.3 **Company Personnel and Sub-Processors**

16.3.1 Confidentiality: Company shall ensure that its personnel and Sub-processors engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training in respect of their responsibilities and security of Personal Data and have executed written confidentiality agreements. Company shall ensure that such confidentiality obligations survive the termination of the personnel and Sub-processors' engagement.

16.3.2 Reliability: Company shall take commercially reasonable steps to ensure the reliability of any personnel and Sub-processors engaged in the Processing of Personal Data.

16.3.3 Limitation of Access: Company shall ensure that Company access to and Processing of Personal Data is limited to those personnel and Sub-processors performing services in accordance with the Agreement and subject to Customer's documented instructions.

16.3.4 Data Protection Officer: Company has appointed a data protection officer. The appointed person may be reached at DataProtectionOfficer@bottomline.com

16.4 **Sub-Processors**

16.4.1 Sub-processors: Customer acknowledges and agrees that: (a) Company Affiliates may be retained as Sub-processors; and (b) Company and Company Affiliates respectively may engage third-party Sub-processors in connection with the provision of Support. Company or its Affiliate shall enter into a written agreement with each Sub-processor containing data protection obligations no less protective than those in this clause 16 with respect to the protection of Customer's Personal Data to the extent applicable to the nature of Support provided by such Sub-processor.

16.4.2 Objection Right for New Sub-processors: Customer may object to Company use of a new Sub-processor by notifying Company promptly in writing within ten (10) business days after receipt from Company of notice to change its Sub-processor. In the event Customer objects to a new Sub-processor, as permitted in the preceding sentence, Company will use reasonable efforts to make available to Customer a change in Support or recommend a commercially reasonable change to Customer's configuration or use of Support to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Customer. In the event that no such change is possible on a reasonable basis, then the Customer may terminate the Agreement for convenience, on written notice to that effect.

16.4.3 Liability: Subject to the limitations of liability set out in the Agreement, Company shall be liable for the acts and omissions of its Sub-processors to the same extent Company would be liable if performing the Support activities of each Sub-processor directly under the terms of the Agreement, except as otherwise set forth within the Agreement.

16.5 **Security**

16.5.1 Controls for the Protection of Personal Data: Company shall maintain and procure that its Sub-Processors maintain, appropriate technical and organizational measures in accordance with the IT Security Policies for protection of the security (including protection against unauthorised or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorised disclosure of, or access to, Customer Data), confidentiality and integrity of Customer Data. Company regularly monitors compliance with these measures. Company will not materially decrease the overall security of Support during the term of the Agreement.

16.5.2 Third-Party Certifications and Audits: Upon Customer's written request at reasonable intervals, and subject to the confidentiality obligations set forth in the Agreement, Company shall make available to Customer (or Customer's independent, third-party auditor that is not a competitor of Company) (a) a copy of Company's then most recent third-party certifications and/or audits, as applicable; and as may be available in respect of Support and/or (b) reasonable access to the Company's premises and infrastructure to the extent necessary to perform audits of any Processing activities related to Customer's Personal Data provided that (i) if such audits are covered by other provisions of the Agreement, then such provisions shall apply to and take precedence over the rights granted in this paragraph 6.2, (ii) to the extent permitted by law, such audits shall take place no more frequently than once in any one calendar year, (iii) the auditors shall use their best endeavours to minimise any disruption to the Company's business and Support provision, (iv) such audits shall be conducted at the Customer's expense, including for the avoidance of doubt, the Company's reasonable costs for supporting such audits and (v) under no circumstances will the Customer or its auditors be entitled to access any data or information which is protected by a confidentiality agreement between the Company and any third party. Notwithstanding the foregoing, in the event that any audit reveals a material non-compliance with the provisions of this clause 16 in respect of Processing the Customer's Personal Data, then the Customer shall be entitled to carry out reasonable follow up audits for the purpose of verifying that any agreed remedial actions have been properly carried out.

16.6 **Incident Notification**

Company maintains security incident management policies and procedures specified in the Bottomline Incident Security Documentation and shall, notify Customer without undue delay (and in any event within 48 hours) after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, transmitted, stored or otherwise Processed by Company or its Sub-processors of which Company becomes aware (a "Customer Data Incident"). Thereafter Company shall (a) make reasonable efforts to identify the cause of such Customer Data Incident and take such steps as the Company deems necessary and reasonable in order to remediate the cause of such a Customer Data Incident to the extent the remediation is within the Company's reasonable control; and (b) where a Customer Data Incident relates to Personal Data provide a written report describing the Customer Data Incident and in so far as is possible the nature of the Personal Data breach. The obligations herein shall not apply to incidents that are caused by Customer, Customer Affiliates, or Customer's Users.

16.7 **Return and Deletion of Customer's Personal Data**

16.7.1 On expiry or termination of the Agreement, Company shall and shall procure that its Sub-Processors cease to use and return Personal Data to Customer and, to the extent allowed by Applicable Law, delete Personal Data in accordance with the procedures and timeframes specified in the applicable Company documentation and policies.

16.7.2 The parties agree that the certification of deletion of Personal Data shall be provided by Company to Customer only upon Customer's request.

16.8 **EU Contract Governance**

16.8.1 GDPR: With effect from 25 May 2018, Company will Process Personal Data in accordance with the GDPR requirements directly applicable to Company's provision of Support.

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16.8.2 Data Protection Impact Assessment: With effect from 25 May 2018, upon Customer's request, Company shall at the Customer's cost provide Customer with reasonable cooperation and assistance needed to fulfil Customer's obligation under Data Protection Laws to carry out a data protection impact assessment, breach notifications and compliance with security related to Customer's use of Support, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to Company. Company shall provide reasonable assistance to Customer in the cooperation or prior consultation with a Supervisory Authority in the performance of its tasks relating to Processing Personal Data under this Agreement, to the extent required under the Data Protection Laws.

16.8.3 Transfer mechanisms for data transfers: The Company shall not and will ensure that its Sub-Processors shall not under any circumstances transfer the Personal Data outside the European Economic Area or the UK (as applicable) unless previously authorised in writing to do so by the Customer. The Company's Support Servers shall be located in datacentres within the territory of the European Economic Area. In the event that the Company wishes to relocate one of more of its Support Servers outside the territory of the European Economic Area, it shall be entitled to do so provided that its gives the Customer at least twelve (12) months' written notice of its intention to do so.

16.8.4 Notice from regulatory or government body: Company and its Sub-Processors, shall (subject to being permitted by Applicable Law) notify Customer promptly upon receipt of a notice from any regulatory or government body, including the Information Commissioner and any Supervisory Authority, which relates directly or indirectly to the Processing of Personal Data.

16.8.5 Order of precedence: In the event that services are covered by more than one transfer mechanism, the transfer of Personal Data will be subject to a single transfer mechanism in accordance with the following order of precedence: (1) the Agreement; (2) Company EU-U.S. or Swiss-U.S. Privacy Shield Framework self-certifications (as applicable); and (3) the EU Model Contractual Clauses (as may be updated from time to time by the EU).

16.9 **Privacy Shield**

Company and its U.S. Affiliates shall self-certify to and comply with the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks, as administered by the US Department of Commerce, and Company shall ensure that such entities maintain their self-certifications to and compliance with the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks with respect to the Processing of Personal Data that is transferred from the European Economic Area and/or Switzerland to the United States.

17. Termination

17.1 Either party may terminate the CUA in writing if:

(i) the other party commits any material breach of any term of the CUA (which shall include failure to meet payment obligations hereunder) and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing so to do; or

(ii) the other party has an interim or bankruptcy order made against it or enters into or becomes subject to a scheme, composition or voluntary arrangement with its creditors or becomes subject to a winding-up, dissolution, administration or receivership proceedings;

17.2 The Company may further without prejudice to its other rights, stop Equipment and/or Software in transit, suspend the performance of Professional Services or further deliveries of Equipment and/or Software, and/or terminate the CUA and any licences granted to Customer forthwith on giving notice in writing to the Customer if Customer fails to pay any invoice in accordance with the foregoing payment terms.

17.3 Upon termination of any Software licence, irrespective of cause, the Customer shall return forthwith all copies of the Software subject to the terminated licence without any rights of refund, unless such termination is made by the Company in accordance with the provisions of Clause 11.3.

17.4 Following termination for any reason whatsoever, any monies owing from the Customer to the Company shall immediately become due and payable.

18. Assignment

The Customer shall not be entitled to assign, sub-licence or otherwise transfer the rights and obligations granted hereunder, or under the CUA, whether in whole or in part unless otherwise agreed in writing by a duly authorised representative of the Company. The Company shall be entitled to sub-contract any Professional Services work relating to any Order Agreement without the consent of the Customer provided that such work is performed in accordance with the terms of this Agreement.

19. Force Majeure

Neither Party shall be responsible for any delay or failure in performance resulting from acts beyond the control of such party. Such acts shall include but not be limited to: an act of God; an act of war; civil unrest; terrorism; riot; epidemic/pandemic; fire; explosion or accidental damage; extreme weather conditions (including but not limited to: flood, storm, or other disaster); an act of government; industrial action or lockouts; and failure of the world wide web. In the event of such a Force Majeure event, the time for performance or cure shall be extended for a period equal to the greater of the duration of the Force Majeure or three (3) months. The party claiming to be prevented, hindered or delayed in the performance of any of its obligations under the CUA by reason of a Force Majeure event shall use all reasonable commercial endeavours to mitigate against the effects and consequences of the Force Majeure event. The affected party shall resume performance of its obligations under the CUA immediately upon the end of the Force Majeure event. Where no performance or cure is possible after the three (3) month period has elapsed, and in the reasonable view of the parties will not be forthcoming or possible within a further one (1) month from that date, the party not affected by the Force Majeure event may decide to terminate the CUA on service of written notice upon the party so prevented, hindered or delayed, in which case no party shall have any liability or obligation to the other under the CUA other than the payment of monies due.

20. Notices

Any notice or other communication to be given under the CUA must be in writing and may be delivered or sent by pre-paid first class letter post to the Company at its registered address or facsimile transmission to an officer of the Company. Any notice or document shall be deemed served: if delivered electronically by e-mail at the time of delivery; if posted 48 hours after posting; and if sent by facsimile transmission at the time of delivery.

21. Invalidity

The invalidity, illegibility or unenforceability of any provision shall not affect any other part of this Agreement.

22. Third Party Rights

A person who is not a party to the CUA shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the CUA (including Customer Group Companies, aside from any rights that they may have to use the Software pursuant to the Customer's licence grant hereunder). This condition does not affect any right or remedy of any person which exists or is available otherwise pursuant to the Act.

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23. Non Solicitation

While this Agreement remains in effect and for one (1) year following the termination of the Agreement, neither party shall directly or indirectly recruit, solicit or hire any employee of the other party, or induce or attempt to induce any employee of a party hereto to terminate his/her employment with the other party; provided that either party shall be permitted to hire any employee of the other party who responds to a general employment advertisement or solicitation.

24. Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

25. Bacs

25.1 Insofar as any Software provided to Customer operates in conjunction with any application, test, or upgrade of systems associated with Vocalink Limited (**"Bacs"**), Bacs liability to the Customer or any third party shall be limited as follows:

25.1.1 Bacs shall have no liability to the Customer or any third party, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, for any indirect, consequential or special loss or damage suffered by the Customer or any third party arising from, or in relation to:

(i) the re-allocation or cancellation of Bacs tests in respect of any application (or any upgrade or any Software as the case may be); or

(ii) the use of, inability to use, or reliance upon any application or upgrade (whether such application or upgrade becomes Bacs approved software or not).

(iii) Bacs granting (or refusing to grant), suspending or terminating an approval for any Bacs approved solution.

25.1.2 In addition Bacs shall have no liability to the Customer or any third party, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, for any indirect, consequential or special loss or damage suffered by the Customer or any third party arising from or in relation to the use of, or inability to use, or reliance upon:

(i) the Bacs test environments; or

(ii) any Bacs materials in the development and testing of applications.

25.1.3 The entire liability of Bacs under or in connection with this agreement, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, is limited to direct loss and damage to the Customer or any third party, which shall be capped at a sum equal to £250,000 (two hundred and fifty thousand pounds), in respect of all acts, omissions, facts, circumstances or events occurring in any year.

25.1.4 Bacs shall not be liable to the Customer or any third party, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, for any direct loss and damage to the Supplier in excess of the cap provided in Condition 10.3, or for any indirect, consequential or special loss or damage suffered by the Customer or any third party (including, without limitation, any loss of profit, loss of bargain, loss of interest, goodwill, business opportunity, anticipated saving or data) arising out of or in connection with this agreement.

25.1.5 For the avoidance of doubt, in no circumstances shall Bacs owe any duty of care, express or implied, to the Customer or any third party, in respect of the performance of Bacs testing or the accuracy, completeness, suitability, or fitness for purpose of applications and upgrades (whether such applications or upgrades become Bacs approved software or not), Bacs materials, the test environments, and/or the technical specification.

25.1.6 Nothing in this Agreement shall operate to exclude or restrict Bacs liability for death or personal injury resulting from Bacs' negligence or fraud.

25.1.7 The Customer and any third party acknowledges and agrees that the limitations on, and exclusions of, Bacs' liability to the Customer and any third party are fair and reasonable in the context of the commercial relationship between the parties.

25.2 Any approval granted by Bacs for any Software does not constitute any warranty, representation, guarantee, term, conditions, undertaking or promise to the Customer or any third party in respect of the Software that it will be error free or free from any inaccuracies or defects or will operate in accordance with the Customer's or any third party's requirements.

25.3 This Clause 25 is for the benefit of Bacs and shall be fully enforceable by Bacs and Bacs shall be entitled to assign the benefit of this Clause 25.

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Annex 1 - The details **of the Processing** taking place pursuant to the terms of the Agreement are summarised below:

Data Subjects

Customer end users

Categories of data

Customer end user name, address, e-mail address and/or bank account and sort code

Categories of sensitive personal data

None

Processing purposes

Resolution of Support Incidents

Nature of processing

Replication of Support Incidents

Duration of the processing

The duration of the Agreement.

The Customer agrees that it has read this Agreement and agrees to be bound by the terms and conditions contained herein.

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