Standard Terms and Conditions – WinBacs Subscription

Definitions

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

"Agreement" means these Standard Terms and Conditions.

"Back Up Copy" means a copy made of the Software as delivered, or as configured and installed, for archive and/or back-up purposes.

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

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

"End User Agreement (EUA)" collectively means the Order Agreement, this Agreement (including any Secure Outsourced Services Agreement, Professional Services Agreement, Software Support Agreement and/or Equipment Maintenance Agreement, where applicable).

"Equipment" means non-software goods purchased by the Customer under this EUA.

"Order Agreement" means the document to which this Agreement is appended and which specifies the Software, Equipment, Professional Services and/or related Support or other service being acquired by the Customer, as applicable.

"Professional Services" means those services including but not limited to consultancy, implementation and training, supplied under this EUA.

"Software" means the software products, 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.

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

1. General

This EUA shall apply to 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 agreement 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. This EUA 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. No amendment or modification of this Agreement or the EUA shall be made except in writing and signed 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 within the EUA.

3. Invoicing and Payment

Company shall upon shipment raise an invoice for all Equipment and/or Equipment Maintenance fees. Software subscription fees shall be collected by direct debit monthly in advance from the Customer and the Customer agrees to enter into a direct debit mandate in favour of the Company, in respect of all Software subscription fees due hereunder. The first year's provision of Equipment Maintenance shall commence three days after shipment of Equipment. 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 between the Company and the Customer as part of this EUA. 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 not of the essence. 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.

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5.3 Each part of Clause 5.2 is separate, severable and distinct and accordingly in the event of any of them 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 this EUA 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.

7. Licence and Use

7.1 Subject to the terms and conditions contained in this Agreement and Customer's payment of applicable monthly Software subscription fees under this EUA, the Company hereby grants to the Customer a non-exclusive, non-transferable, revocable 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 following licence terms:

7.1.1 **Departmental Licence** means the Software may only be used for the internal business purposes of the Customer within a single Customer department and only by Customer employees whose day to day duties on behalf of the Customer relate solely to such department.

7.1.2 **DR (Disaster Recovery) Licence** 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 virtual, powered up, or non-powered up disaster recovery solutions. A Disaster Recovery Licence must be purchased for each separate Software environment (virtual or otherwise), which may be 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.

7.1.3 The Customer shall not permit access to the Software, nor use or benefit of the Software, by any company in the same group of companies as the Customer, affiliated legal entity or third party.

7.1.4 The Customer may make one (1) Back Up Copy of the Software and/or Software environment. The Back Up Copy may not be utilised for live and/or Test purposes over and above the Software licence granted hereunder.

7.1.5 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 permits such activity, irrespective of the limitations contained herein.

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 supplied materially conforms to its standard specification; and

8.1.4 the services shall be provided using reasonable care and skill.

8.2 The Customer's sole and exclusive remedy in the event of breach of the above warranty 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 90 days of shipment of the defective Equipment or Software or within 30 days of completion of the defective services.

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 relevant published "Software Support Agreement – Payments Software", Equipment Maintenance and Professional Services Agreements (all of which form part of this EUA) and copies of which are available at: www.bottomline.co.uk/terms&conditions. Customer acknowledges that the Company may amend such agreements from time to time.

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.

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 £25,000 or the combined total amount paid by Customer for Equipment, Software subscription, and Professional Services under the Order Agreement to which such claim 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 in respect of any liability (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 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.

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10.5 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.

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.

11.3 Company may, at its own expense: (i) procure for Customer the right to continue to use the licensed Software; (ii) make the licensed Software non-infringing; or (iii) terminate the Software licences and refund the applicable licence fee (subject to three-year straight line depreciation) received from Customer.

11.4 Company shall have no liability for any claim based on: (i) 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); (ii) Customer's use of the licensed Software other than in accordance with the rights granted under this Agreement; (iii) 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 (iv) 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 this EUA 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 licensors) ownership of, and the confidentiality of the Software, including, without limitation: (a) allowing its employees, agents and third parties 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 Clause 13; (b) cooperating with the Company (and its third party licensors, if appropriate) in the enforcement of such compliance by Customer's employees, agents and third parties; (c) prohibiting the removal or alteration of any copyright or confidentiality labels or notices contained in the Software; (d) prohibiting the copying of the Software except as permitted pursuant to this Agreement; and (e) 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 by the Customer, its agents, employees, sub-contractors or third parties, or Customer Group Companies in respect of the confidentiality of the Company's intellectual property.

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 use and licence parameters specified under this Agreement. Where such audit confirms any variance to such terms and parameters, then the parties will execute an addendum to the EUA 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 this Agreement in relation to such licence and/or Support with immediate effect and Customer shall cease use of such Software, 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 EUA) obtained from the other pursuant to the contract between them and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) 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 EUA (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) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this condition and ensure that it is observed and performed by them.

16. Data Protection

The Parties further agree to handle all personal data in accordance with all applicable data protection legislation and in particular the Data Protection Act 1998.

17. Term and Termination

17.1 This Agreement shall commence on the first date of signature on the Order Agreement and shall continue in force for a an initial period of three (3) years ("Initial Term") and thereafter shall automatically renew for subsequent annual periods, unless terminated by either party upon six (6) months prior written notice to the other party, such notice to expire at the end of the Initial Term or of any subsequent annual period.

17.2 Either party may without prejudice to its other rights, terminate this Agreement forthwith on giving written notice to the other if:

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(i) the other party commits any material breach of any term of this EUA 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;

17.3 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 EUA 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.

17.4 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.

17.5 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 EUA, 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

With the exception of payment of outstanding invoices, 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 EUA 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 EUA 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 EUA 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 EUA other than the payment of monies due.

20. Notices

Any notice or other communication to be given under this EUA 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 this EUA shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this EUA (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.

23. 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.

24. Bacs

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

(i) 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:

(a) 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

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

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

(ii) 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:

(a) the Bacs test environments; or

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

(iii) 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.

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(iv) 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.

(v) 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.

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

(vii) 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.

(viii) 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.

(ix) This Clause 24 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 24.

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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