

Standard Terms and Conditions – PT-X**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.

“Authorised User” means a Customer employee that the Customer has authorised to access and use the Subscription Services and who is trained on the Customer’s obligations under the terms and conditions of this Agreement with respect to such access and use of the Subscription Services.

“Bacs” for the purposes of this Agreement means Vocalink Limited (registered company number 06119048).

“Company” means Bottomline Technologies 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.

“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.

“Data” means all Customer data (including but not limited to End User names, bank account numbers and sort codes) in whatever form uploaded to or the Subscription Services.

“End User(s)” means any individual, third party company, legally constituted public body or financial institution who is a client of either the Customer or a Customer Group Company.

“End User Agreement (EUA)” collectively means the Order Agreement (including subsequent Order Agreements) and this Agreement (including the Professional Services Agreement referenced in clause 9).

“Initial Term” means a period of three (3) years commencing on date of issue of a Subscription Service Key to the Customer.

“Intellectual Property Rights” means proprietary interest, patent rights, copyrights, trademark rights, logos, service mark rights, trade secret rights, know-how, and other similar proprietary rights of any type.

“Order Agreement” means the document which specifies the Subscription Service, Professional Services or other service being acquired by the Customer pursuant to this Agreement.

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

“Subscription Service(s)” means the online subscription based service(s) specified in an Order Agreement.

“Subscription Service Key” means an internet address and unique code provided to the Customer to enable access to Subscription Service.

“Transaction(s)” means a single payment instruction (irrespective of how many individual payments are contained in such instruction) issued using the Subscription Services.

1. General

This EUA shall apply to the Customer’s purchase of Subscription Services and/or Professional Services or other services from the Company. This EUA 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. Prices quoted are in Pounds Sterling unless otherwise agreed and stated within the EUA.
- 2.3. Following the Initial Term the Company reserves the right to increase annual Subscription Services fees for any subsequent annual period by the average percentage increase of the UK Retail Price Index for the preceding twelve (12) month period upon giving to Customer ninety (90) days’ prior written notice.

3. Invoicing and Payment

- 3.1. The Customer agrees to enter into a direct debit mandate in favour of the Company in respect of all fees specified in an Order Agreement, which shall be collected by the Company in accordance with this clause 3 (unless stated otherwise herein) upon issue of a Subscription Service Key to the Customer. Where an Order Agreement specifies unlimited usage at a specified Transaction rate the Company shall collect fees at the specified rate monthly in arrears for Transactions used for the duration of this EUA.
- 3.2. The first year’s provision of annual Subscription Services shall commence on issue of a Subscription Service Key to the Customer and the fees shall be collected in advance at the frequency specified in the Order Agreement. The annual Subscription Services shall be automatically renewed thereafter for further annual periods and charged at the same frequency, unless terminated by either party in accordance with clause 16.2.
- 3.3. Where the Customer has used all acquired Transactions prior to expiry of any then current annual period (or month where specified in an Order Agreement), the Company shall collect all fees for subsequent Transactions monthly in arrears at the per Transaction rate specified in an Order Agreement until renewal of annual Subscription Services for a further annual period in accordance with clause 3.2 above (or for the preceding month as applicable).
- 3.4. Professional Services, or other services shall be charged at the rate(s) specified in an Order Agreement and will not be collected by direct debit. The Company shall invoice Professional Services as delivered, or as staged within an Order Agreement monthly in arrears. 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.

- 3.5 Payment of all invoices shall be due within 30 days of date of invoice. If payment is delayed for more than 30 days 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; and the Company at its sole option may suspend Subscription Services until full payment is received.

4. Carriage

The dates for delivery of the Subscription Services 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 Subscription Services.

5. Ownership

Customer acknowledges that the Subscription Services are 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 Subscription Services 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 Subscription Services.

6. Subscription Service Availability

- 6.1 The Company shall use all reasonable endeavours to make the Subscription Services available between 00.45 – 24.00 hours Monday to Saturday and 07.00 – 24.00 hours on Sundays, exclusive of the time required for planned system enhancements, upgrades, updates, preventative maintenance and unplanned system maintenance for essential or emergency work to maintain availability and/or security of the Subscription Services.
- 6.2 Where the Customer has acquired "PT-X Bacs Indirect Submission" and/or "PT-X FPS Indirect Submission" as specified in an Order Agreement, then related Transactions received from the Customer for same day submission to Bacs via the Subscription Services must be received by the Company no later than 4.15pm each weekday, excluding UK public holidays. Confirmation reports that such Transactions have been received by Bacs should normally be available to be downloaded by Customer directly from the Bacs Payment Schemes Limited website within four (4) hours of submission by the Subscription Services. The Company accepts no liability for the content or availability of such reports, or the Bacs network.

7. Licence and Use

- 7.1 Subject to the terms and conditions contained in this Agreement and Customer's payment of applicable Subscription Service 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 Subscription Services for so long as this EUA remains in force; and for the purpose as set forth in the applicable Company documentation; and according to the licence restrictions set forth in the related Order Agreement in accordance with this Clause 7.

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

- 7.2 The Subscription Services are licensed in accordance with the relevant Order Agreement and may be used by the Customer for their day to day business purposes which shall include where required by the Customer the provision of services to Customer Group Companies and/or End Users. Notwithstanding the foregoing the Customer warrants that it shall not permit any direct access to the Subscription Services by any Customer Group Companies or End Users or other third parties.

- 7.3 **Subscription Service Security Requirements** - The Customer shall:

7.3.1 ensure that all devices used by the Customer to access the Subscription Services are placed in a secure location and accessible only by Authorised Users, and that such devices are secured when not in use through such means as screen locks, shutting power controls off, or other reasonable security procedures; and

7.3.2 take all necessary measures to prevent unauthorised access to the Subscription Services by any person other than an Authorised User, including, without limitation, limiting the knowledge of Customer security codes, any telephone access number(s) that the Company provides, and any passwords that the Customer may use, to those individuals with a need to know; and

7.3.3 change Customer's user passwords at least every ninety (90) days, or sooner if an Authorised User is no longer responsible for accessing the Subscription Services, or if the Customer suspects an unauthorized person has learned the password, and using all security features in the software and hardware the Customer uses to order or access the Subscription Services; and

7.3.4 The Customer acknowledges that any un-used Transactions remaining upon expiry of any month or annual period may not be carried forward for use in a subsequent months or annual or periods and are not refundable.

- 7.4 **Data Retention** - The Company shall retain Data within the Subscription Services infrastructure for as long as it reasonably believes is necessary in connection with the specific Subscription Service and in any event for a minimum period of twelve (12) months from date that such Data was first uploaded to the Subscription Services. Thereafter the Company reserves the right to delete such Data from the Subscription Services. Any back-up of such Data is the sole responsibility of the Customer prior to submission of such Data to the Subscription Services. If this EUA is terminated (other than by the Company in accordance with clause 16.3) and the Customer requests in writing return of Data, then subject to Customer's signature of an Order Agreement in respect of any related Professional Services and payment of any associated fees specified therein, the Company shall in so far as is technically possible retrieve Data retained at date of such notice and return it to the Customer in a form to be mutually agreed between the parties.

8. Warranty

- 8.1 The Company warrants that in accordance with this Agreement:

8.1.1 it has title to and has the right to sell the Subscription Services licensed by the Customer;

8.1.2 the Subscription Services shall materially conform to their standard specification; and

8.1.3 the Professional Services or other 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 Professional Services or other services or portion thereof, replacing, repairing or adjusting the Subscription Services without charge to the Customer or refunding a portion of paid fees for any remaining un-used period. All remedies for any breach of the warranty provisions are available only if such breach is reported to Company in writing within 30 days of date of issue of a Subscription Services Key or completion of the defective Professional Services or other services.

9. Professional Services

Provision of Professional Services or other services are available and provided subject to the Company's published Professional Services Agreement (which forms part of this EUA) and a copy of which is available at: www.bottomline.co.uk/terms&conditions. Customer acknowledges that the Company may amend such agreement 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 £100,000 or the combined total amount paid by Customer for Subscription Services (during the preceding twelve (12) months), 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 Data (unless due to the wilful negligence or default of the Company), 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 the non-performance or unavailability, of whatever nature and howsoever arising, of external communications networks (except where such communications networks are contracted by the Company from a third party to which the Subscription Services infrastructure is connected);

10.4.3 the non-performance or unavailability of the Subscription Services due to the unavailability or any failures within the world-wide web

10.4.4 in respect of any liability (including breach of warranty) which arises as a result of the misuse of the Subscription Services 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

10.4.5 unless the Customer shall have served notice in writing of any facts which may give rise to a claim hereunder (and where not excluded under this Agreement) against the Company 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 Company shall not be responsible or liable for any illegal or unauthorised access to or release of any Data from any device whatsoever not under its control or that of its contractors, connecting to the Subscription Services, 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, fraudulent funds transfer or fraudulent funds collection.

10.6 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 Subscription Services provided to Customer under this Agreement infringe 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 and sole discretion: (i) procure for Customer the right to continue to use the licensed Subscription Services; (ii) make the licensed Subscription Services non-infringing; or (iii) terminate the Subscription Services licence and refund any Subscription Service fees for any un-used period, received from Customer.

11.4 Company shall have no liability for any claim based on: (i) Customer's use of the licensed Software and/or Subscription Services other than in accordance with the rights granted under this Agreement; (ii) Customer's combination of the licensed Subscription Services with any other equipment or software not provided by Company, where such infringement would not have occurred but for such combination; or (iii) 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 Subscription Services provided under this EUA infringes on the intellectual property rights of any third party.

12. Alterations

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

13. Company Intellectual Property

Customer acknowledges that the information contained in the Subscription Services 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 therein, or not, does not constitute publication or otherwise impair the confidential nature thereof. No intellectual property rights as they may exist anywhere in the world are conveyed to the Customer or to any third party. Customer shall implement all reasonable measures necessary to safeguard the Company's (and its third party licensors') ownership of, and the confidentiality of the Subscription Services, including, without limitation: (a) allowing its employees and agents access to the Subscription Services 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, as appropriate) in the enforcement of such compliance by Customer's employees and agents; and (d) not allowing access to the Subscription Services to any third party other than to the limited extent permitted under this Agreement. Notwithstanding the foregoing, the Customer agrees not to allow access to the Subscription Services (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 or day-to-day management and/or support responsibility for the Subscription Services. Customer acknowledges that use or disclosure of the Subscription Services in violation of this Agreement may cause irreparable harm to the Company (and its third party licensors). Customer acknowledges that no remedy available in law may be sufficient in the event of a material breach of this clause by the Customer in respect of the confidentiality of the Company's (and its third party licensors') intellectual property; and that in connection therewith the Company (and its third party licensors) shall each have the right to seek injunctive relief in addition to any other legal or financial remedies to which they may be entitled.

14. Confidentiality

Each party shall treat as confidential information all information (including the Subscription Services, any data obtained via use thereof; and the terms of the EUA) obtained from the other pursuant to the EUA 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 of this clause), is required to be disclosed by law or relevant regulatory body, 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.

15. 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 and as may be amended from time to time.

16. Term & Termination

- 16.1 The Subscription Services shall be made available for the duration of the Initial Term and thereafter for subsequent annual periods unless terminated in accordance with this clause 16.
- 16.2 Either party may terminate this EUA for convenience by giving to the other party not less than sixty (60) days written notice prior to expiry of the Initial Term or expiry of any subsequent annual period.
- 16.3 Either party may terminate this EUA in writing if:
- (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;
- 16.4 The Company may further without prejudice to its other rights, suspend access to Subscription Services and the performance of Professional Services 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 amount due thereunder in accordance with the foregoing payment terms.
- 16.5 Following termination for any reason whatsoever, any monies owing from the Customer to the Company shall immediately become due and payable.

17. 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.

18. 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.

19. 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 or the Customer at its registered address for the attention of an officer of the Company or Customer, as applicable. Any notice or document shall be deemed served: if delivered electronically by e-mail at the time of opening; and if posted 48 hours after posting.

20. Invalidity

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

21. Third Party Rights

Except for the rights granted to Bacs pursuant to clause 23, 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. This condition does not affect any right or remedy of any person which exists or is available otherwise pursuant to the Act.

22. 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.

23. Bacs Approved Software – Bacs Limitation of Liability

Insofar as any Software provided to Customer operates in conjunction with any application, test, or upgrade of systems associated with Bacs, Bacs' liability to Company, Customer and any third party shall be limited as follows

23.1 Bacs shall have no liability to the Customer, the Company 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, the Company or any such third party arising from, or in relation to:

23.1.1 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

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

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

23.2 In addition Bacs shall have no liability to the Customer, the Company 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, the Company or any such third party arising from or in relation to the use of, or inability to use, or reliance upon:

23.2.1 the Bacs test environments; or

23.2.2 any Bacs materials in the development and testing of applications.

23.3 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 Company, 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 connection with the Company's agreement with Bacs in each annual period commencing on 7th March each year.

23.4 Bacs shall not be liable to the Company, 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 Company in excess of the cap provided in Clause 23.3, or for any indirect, consequential or special loss or damage suffered by the Company, 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.

23.5 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.

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

23.7 The Customer and the Company each acknowledge and agree that the limitations on, and exclusions of, Bacs' liability to the Company, the Customer and any other third party are fair and reasonable in the context of the commercial relationship between the parties.

23.8 Any approval granted by Bacs for any Software does not constitute any warranty, representation, guarantee, term, condition, 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.

23.9 This Clause 23 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 23.

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