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Standard Terms and Conditions – PTX®

Definitions

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

“Account Information” means information for each Payment Account held by the Customer, with one or more ASPSPs, including but not limited to: bank name, account number and sort code and statement data.

“Agreement” means these Standard Terms and Conditions.

“Applicant(s) means an End User who has applied to the Customer for either registration, submission or application to a PTX service, via the Subscription Services.

“ASPSP” means an Account Servicing Payment Service Provider providing and maintaining (current, savings and/or card) accounts.

“AUDDIS” means Automated Direct Debit Instruction Service provided by Bacs.

“Authorised User” means a Customer employee that the Customer has authorised to access and use the Subscription Services to submit Transactions and/or Transmissions and/or Account Information access credentials; 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).

“BBAN” means a Basic Bank Account Number comprising as a minimum national account number and bank/branch identifier up to thirty (30) alphanumeric characters in length.

“BPS” means Bottomline Payment Services Limited registered in England & Wales (company number: 3986072) which is a wholly owned subsidiary of the Company and is regulated and authorised by the Financial Conduct Authority of the United Kingdom under the Payment Service Regulations (register reference: 616279) for the provision of payment services and as an “Account Information Services Provider” (AISP) and as a “Payment Initiation Service Provider” (PISP).

“Business Verification” means a single Search via a Subscription Service using six (6) Credits to confirm that a single United Kingdom bank account and sort code combination definitely exists, is open, matches the account holder’s company name, registration number and proprietor details.

“Company” means Bottomline Technologies Limited whose registered offices are at 1600 Arlington Business Park, Theale, Reading, Berkshire, England, RG7 4SA.

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

“Credit(s)” means a unit(s) used in performing Validation, Card Validation, International Validation and/or Verification Searches, as specified in clause 7.8.1.

“Card Validation” means a single Search via a Subscription Service using one (1) Credit to confirm that a single credit or debit card Issuer Identification Number should exist.

“Consumer Verification” means a single Search via a Subscription Service using six (6) Credits to confirm that a single United Kingdom bank account and sort code combination definitely exists, is open, matches the account holder’s name, a single address and date of birth and belongs to a living person.

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

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

“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 Personal Data and other data in whatever form uploaded to the Subscription Services.

“Data Protection Laws” means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 and as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended (including by the various Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations), together with any applicable implementing or supplementary legislation in the UK or any applicable member state of the European Economic Area (including the UK Data Protection Act 2018).

“Document” means all Customer document files (and all data contained therein), including but not limited to invoices, remittances and cheques, in whatever form (including an email and/or document created by the Subscription Services from Data and a Template) uploaded to the Subscription Services.

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

“Equipment” means a smart card reader, multi-factor authentication (“MFA”) token, or other hardware item purchased by the Customer on an Order Agreement.

“Evaluation” means use of the Subscription Services by the Customer for the purposes of making its own assessment as to the suitability of the Subscription Services for its own intended business purposes in a non-production environment.

“IBAN” means an International Bank Account Number comprising a BBAN, a two (2) letter country code and two (2) numeric check digits

“Initial Term” means a period of three (3) years, or other period where specified in an Order Agreement, commencing on date of issue of a Subscription Service Key to the Customer.

“Initial Training Session” means the one time training of the Customer’s authorised administrator to use the Subscription Services provided by the Company as part of the annual Subscription fee, following 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.

"International Validation" means a single Search via a Subscription Service using either: (i) one (1) Credit to confirm that a single IBAN has the correct structure and format; or (ii) four (4) Credits to:

a) confirm that a single IBAN has the correct structure and format; and that the national account number and branch identifier combination contained therein should exist; or

b) confirm that a single BBAN and country code combination has the correct structure and format; and convert the BBAN to an IBAN; or

c) confirm that a single national country code, account number and bank/branch identifier combination should exist; and convert to an IBAN.

"Issuer Identification Number" means the first six (6) digits of a unique credit or debit card number.

"Named User" means a specific named individual registered to use the Subscription Services, irrespective as to whether such user is logged on to, or actively accessing any or all of the Subscription Services. A Named User license may not be shared by multiple users.

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

"Payment Account" means an account held in the Customer's name which is used for the execution of payment transactions.

"Payment Services Regulations" means the Payment Services Regulations 2017 (SI 2017/752).

"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.

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

"PTX" means the Company's cloud-based service providing payments, collection, document management and other functionality.

"PTX Server" means a server on which (i) software providing the PTX Subscription Services to the Customer is run or (ii) any Customer Data is held.

"Search" means a request for data for the purposes of Validation, International Validation, Card Validation and/or Verification.

"SLA" means the "Services Level Agreement – PTX Hosted Services", the current version of which can be found at: https://www.bottomline.com/uk/product-terms-conditions.

"Software" means any user interface and/or other software module licensed under this Agreement and provided for download as part of the Subscription Services and/or shipped from the Company's premises, including, but not limited to, any related application programming interfaces, associated media, online or electronic documentation; and any updates that may be made available thereto from time to time.

"Subscription Service(s)" means the hosted subscription based service(s) (including any integration, set-up, configuration and/or branding) 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" means a single credit, debit, refund or AUDDIS instruction (and includes a Transmission where PTX Refunds is specified on an Order Agreement) issued or a single debit displayed using the Subscription Services.

"Transmission" means the creation of a single Document instance in the Subscription Services by the Customer irrespective of whether such Document is actually transmitted to an End User or not.

"Template" means a single document configuration provided by the Company to the Customer as a deliverable from Professional Services, for use with the Subscription Service.

"Test" means use of the Subscription Services by the Customer for the purposes of testing for its own intended business purposes in a non-production environment.

"Validation" means a single Search, via a Subscription Service using one (1) Credit to confirm that a single United Kingdom bank account and sort code combination and related bank branch should exist.

"Verification" means a single Search via a Subscription Service using six (6) Credits to confirm that a single United Kingdom bank account and sort code combination definitely exists, is open, matches the account holder's name, a single address and date of birth and belongs to a living person.

1. General

This CUA shall apply to the Customer's purchase of Subscription Services (inclusive of support) and/or Equipment and/or Software licence and/or Professional Services or other services from the Company. This CUA 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 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. No amendment or modification of this Agreement or the CUA shall be made except in writing and signed by an authorised signatory of each party. The parties expressly consent and agree that any Order Agreement, this Agreement and any other document forming part of this 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.

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 CUA.

2.3. Commencing in year two (2) of this CUA the Company reserves the right to increase Subscription Services fees annually. Such increase shall be by an amount calculated at the percentage change in UK RPI over the twelve (12) month period to February each year as published by the Office for National Statistics, plus three per cent (3%).

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 and as may be varied by Company pursuant to clauses 2.3, 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 and/or Transmission and/or invoice rate the Company shall collect fees at the specified rate monthly in arrears for Transactions and/or Transmissions and/or invoices used for the duration of this CUA.

3.2 The first year's provision of annual Subscription Services (inclusive of support) shall commence on issue of a Subscription Service Key to the Customer and the fees shall be collected calendar monthly in arrears, annually in advance, or as a one-time fee, as applicable and specified in an Order Agreement. Any initial part month will be collected in arrears pro rata to the end of the calendar month. The annual Subscription Services shall be automatically renewed after the Initial Term for further annual periods and charged at the same frequency, unless terminated by either party in accordance with clause 16.2.

3.3 Professional Services shall be charged at the rate(s) specified in an Order Agreement and will be invoiced as delivered.

3.4 In respect of PTX Cheques Printing Subscription Services, in the event of any changes of design or content by the Customer then the Company shall be permitted to charge for any then unused stock held on behalf of the Customer.

3.5 all related postage will be recharged at cost.

3.6 Where the Customer has:

3.6.1 used all acquired Transactions and/or Transmissions and/or invoices prior to expiry of any then current month, the Company shall collect all fees for subsequent Transactions and/or Transmissions and/or invoices monthly in arrears at the per Transaction or Transmission or invoice 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); and/or

3.6.2 exceeded the permitted number of Applicants prior to expiry of any then current month, the Company shall collect all fees for subsequent Applicants monthly in arrears at a per Applicant rate calculated as the monthly or annual fee divided by the permitted number of Applicants 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).

3.7 In the event that the Customer fails to arrange the Initial Training Session on or before sixty (60) days from the date that the Subscription Service Key is issued to the Customer, then the Company shall be entitled to invoice the Customer for the Initial Training Session at its then current time and materials list price for Professional Services.

3.8 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 Customer agrees to pay interest at a rate of two per cent (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. Risk in the Software and Equipment shall pass when it leaves the Company's premises; and risk in cheques or other printed material shall pass on collection by the Royal Mail / other postal service and title thereto shall pass only on payment of all amounts due to Company from the Customer in respect of the supply.

5. Ownership

5.1 Customer acknowledges that the Subscription Services, Templates and Software 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, Templates or Software by virtue of this 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 Subscription Services, Templates and/or the Software.

5.2 Any Account Information presented to the Customer via the PTX Account Visibility service pursuant to this CUA shall be owned by the Customer and/or the ASPSP that such Account Information relates to.

6. Subscription Service Availability

6.1 The Company shall make the Subscription Services available and support the Subscription Services in accordance with the SLA the then current published version of which is deemed incorporated into this Agreement.

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 CUA, the Company hereby grants to the Customer a non-exclusive, non-transferable, revocable licence without rights to sublicense, for so long as this CUA remains in force for the provision of Subscription Services, to use: (i) the Subscription Services (for the specified number of Named Users where applicable); (ii) and access support in accordance with the SLA; (iii) Templates; and (iv) the Software; 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.

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

7.3 The Subscription Services, Software and Templates are licensed in accordance with this Agreement and the relevant Order Agreement and are permitted to be used by the Customer (and by Customer Group Companies) for their day to day business purposes which shall include where required, for the provision of services to other Customer Group Companies and/or End Users. Where the Customer has acquired a PTX Verify Subscription Service the Customer may permit direct access by End Users to the PTX Verify Subscription Service, but in all other circumstances the Customer warrants that it shall not permit any direct access to the Subscription Services by any End Users or other third parties. The Customer remains solely liable for all acts and omissions of Customer Group Companies and End Users in connection with any such access to the Subscription Services.

7.4 Where the Subscription Services and/or Software are licensed for Evaluation and/or Test purposes, then the following shall apply:

7.4.1 Customer shall not make the Subscription Services or Software available to any third party, including End Users; and

7.4.2 the Subscription Services and Software are made available on an "AS IS" basis and the provisions of clauses 8.1.2, 8.1.3, 8.2 (in so far as clause 8.2 relates to the warranties provided in clauses 8.1.2 and 8.1.3) and the SLA, shall not apply.

7.5 **Subscription Service Security Requirements**

The Customer shall:

7.5.1 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 provide any passwords that the Customer may use, only to those individuals with a need to know; and

7.5.2 change Customer's user passwords when prompted in service, or sooner if an Authorised User is no longer responsible for accessing the Subscription Services, or if the Customer suspects an unauthorised person has learned the password; and use all security features in the software and hardware the Customer uses to access the Subscription Services; and

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

7.6 **End User Relationship**

Where the Customer is using the Subscription Services to generate Transmissions to an End User, the Customer shall:

7.6.1 keep a record of the details (as specified in clause 7.6.2 below) of each End User's transactional relationship with the Customer in a form that can be promptly produced on request within forty-eight (48) hours of receipt of the request from the Company.

7.6.2 Details of the transactional relationship will include the names of the parties in the relationship, a description of the relationship, the date that the relationship started, how the End User's email address was obtained by the Customer and where known the dates of the first and the most recent Transmission.

7.7 **Retention & Use of Data**

7.7.1 The Company shall retain Data and Documents within the Subscription Service 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 in respect of Data and six (6) months in respect of Documents, from date that such Data and/or Documents were first uploaded to the Subscription Services. Thereafter the Company reserves the right to delete such Data and/or Documents from the Subscription Services. Any back up of such Data and/or Documents and/or data submitted for processing into a Document using a Template is the sole responsibility of the Customer prior to submission to the Subscription Services; and aside from its obligations under clause 15 the Company shall have no liability to the Customer for loss of such Data, Documents or data submitted for processing into a Document using a Template.

7.7.2 Notwithstanding the provisions of clause 7.7.1 above, where the Customer has acquired PTX Secure Document Storage on an Order Agreement and subject to payment of the related Subscription Services fees all Documents shall be securely stored on the Company's dedicated PTX Servers commencing from the date of expiry of the mandatory six (6) month period specified in clause 7.7.1 and thereafter for the duration of this CUA.

7.7.3 Solely for the purpose of improving or enhancing Customer's (or its End Users') experience, such as enabling or improving the Subscription Services or Software, development of new products and features, machine learning, advanced analytics, or personalisation, the Company may use any information of Customer (or its End Users) or related to Customer's (or its End Users') use of the Subscription Services or Software. Notwithstanding anything to the contrary contained herein, the Company may also: (i) compile statistical and other information related to the performance, operation and use of the Subscription Services, Software, support and other services and/or other Customer or End User Transaction, Transmission and/or usage data; and (ii) use data from the Subscription Services, Software, support and other services and/or other Customer Transaction, Transmission and usage data in aggregated form, for security and operations management, to create statistical analyses and for research and product innovation purposes (clauses (i) and (ii) are collectively referred to as "Data Analyses"). Data Analyses will anonymise Customer's and End User's identity and shall not incorporate any personal data (as defined in the GDPR), or Customer's or end User's Transaction or Transmission data in a form that could serve to identify Customer or End User, the Company retains all intellectual property rights in Data Analyses.

7.8 **PTX® Verify**

Where any PTX Verify Subscription Service is specified on an Order Agreement then the following shall apply in addition to the other terms and conditions in this Agreement (with the exception of clause 3.4):

7.8.1 In accordance with the definitions of Validation, International Validation and Card Validation, Consumer Verification, Business Verification and, the following quantities of Credit(s) are required for each Search type thereunder:

Type of Search	Credits Used
Validation	1
International Validation (Definition section (i))	1
International Validation (Definition section (ii))	4
Card Validation	1
Consumer Verification	6
Business Verification	6

7.8.2 Before using any PTX Verify (including as part of PTX Refunds or PTX Cloud DD) Subscription Services to obtain information about a natural person, the Customer must first obtain the consent of that person and comply with the notification requirements of the Data Protection Laws and in particular, will notify him or her that the information which the person gives to the Customer:

7.8.2.1 may be disclosed to a credit reference or fraud prevention agency, which may keep a record of that information; and

7.8.2.2 that such credit reference or fraud prevention agency may disclose that information, and the fact that a Search was made, to its other customers for the purposes of fraud prevention.

7.8.3 The Customer shall, on request, give the Company a copy, or transcript, of the notification the Customer uses.

7.8.4 To the extent that the Customer is able to do so, the Customer grants to the Company's third party data provider a perpetual, royalty free right to keep a record of the information referred to in clause 7.8.2.1 for the purposes referred to in paragraph 7.8.2.2.

7.8.5 The Customer acknowledges that any un-used Credits remaining upon expiry of any annual period may not be carried forward for use in a subsequent annual period and are not refundable.

8. Warranty

8.1 The Company warrants that in accordance with this Agreement:

8.1.1 it has all licences, authorisations, permissions, approvals, consents, registrations, title to and the right to sell the Subscription Services licensed by the Customer; and

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

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

8.1.4 the Professional Services or other services shall be provided using reasonable care and skill; and

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

8.1.6 where a Transaction 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 warranties in clauses 8.1.2., 8.1.3, 8.1.4, 8.1.5 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 thirty (30) days of date of issue of a Subscription Services Key, shipment of any Software or Equipment, or completion of the defective Professional Services or other services.

8.3 The Customer warrants that it has all licences, authorisations, permissions, approvals, consents, registrations necessary to perform its obligations under this Agreement.

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 CUA) and a copy of which is available at: www.bottomline.com/uk/product-terms-conditions. Customer acknowledges that the Company may amend this Agreement and the Professional Services Agreement from time to time.

10. Liability

10.1 Neither party excludes or limits liability to the other party for, a) death or personal injury caused by its negligence or the negligence of its employees, agents or sub-contractors or, b) for any matter which it would be illegal for a party to exclude or attempt to exclude its liability or, c) any fraudulently made statement or misrepresentation.

10.2 Subject to Conditions 10.1 and 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 Conditions 10.1, 10.2 and 10.4 and with the exception of the separate limitation of liability under clause 10.8, the Company's maximum aggregate liability for any breach of its contractual obligations or any tortious act or omission shall be limited to the greater of £25,000 or an amount equal to two times the total amount paid by Customer (during the preceding twelve (12) months) for the Subscription Services 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 and/or Documents (unless due to the negligence or wilful default of the Company), profits, goodwill, business interruption, delay 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 **PTX® Account Visibility**

Where the Customer has acquired Subscription Services for PTX Account Visibility as specified in an Order Agreement:

10.5.1 the Company does not warrant, represent or give any guarantee or commitment that the Account Information obtained from the Customer's ASPSP through use of PTX Account Visibility will be accurate or complete or meet the Customer's requirements; and

10.5.2 the Company is not responsible for any delays, delivery failures, or any loss, damages, costs or expenses resulting from the transfer of Account Information over communications networks and facilities, including, but not limited to, banking systems, financial messaging networks or the internet; and the Customer acknowledges that PTX Account Visibility may be subject to limitations and delays inherent in the use of such communications facilities which are outside of the control of the Company; and

10.5.3 the presentation of Account Information via PTX Account Visibility is subject to the Customer's Authorised User(s) providing correct and accurate access credentials in connection therewith; and where the Customer withdraws its consent for the Company to process Account Information (such consent having been granted by the Customer via the Customer's ASPSP), the Company shall not be liable to the Customer to the extent that it is prevented from providing the Customer with Account Information via PTX Account Visibility thereafter; and

10.5.4 related payment services are provided on behalf of the Company by Bottomline Payment Services Limited registered in England & Wales (company number: 3986072) ("BPS"). BPS is a wholly owned subsidiary of the Company and is regulated and authorised by the Financial Conduct Authority of the United Kingdom under the Payment Service Regulations (register reference: 616279) for the provision of payment services and as an "Account Information Services Provider (AISP)".

10.6 **PTX® International Payments**

Where the Customer has acquired Subscription Services for PTX International Payments as specified in an Order Agreement:

10.6.1 the Customer shall be liable to the Company and shall on demand pay the Company for all losses, liabilities, fines, charges, damages, actions, costs and expenses, professional fees (including legal fees actually incurred) and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties incurred by the Company, in connection with:

10.6.1.1 all of its acts and omissions in connection therewith including without limitation: (i) the input of currency trade and/or Transaction data into the Subscription Services; (ii) the setting of default trading limits, spreads and permissions (where applicable); and (iii) any currency trade contract and/or Transaction funding and/or settlements and any delays in respect thereof; and

10.6.1.2 (including losses and expenses from any action taken to seek to cover or reduce exposure under any currency trade contract) arising from or in connection with: (i) the Company's third party supplier acting on instructions or apparent instructions made by or on behalf of the Customer (including, where applicable and without limitation, by e-mail, fax, telephone, or via the Subscription Services); and (ii) the Company's third party supplier exercising its rights to take any action to conclude, cover or reduce its exposure in relation to a currency trade contract; and

10.6.2 the Customer shall fully indemnify the Company (and our directors, employees and agents) on demand against all damages awarded against the Company or agreed to in a written settlement agreement entered onto by the Company arising out of any third-party claim: (i) alleging that the Customer's actions in connection with its use of the Subscription Services violates any third party's rights of privacy or violates the Data Protection Laws; and (ii) arising from or relating to Customer data. The Customer shall: (a) promptly notify the Company in writing of any such claim; (b) authorise the Company to control the defence and all related settlement negotiations; (c) provide the Company with the assistance and information reasonably necessary to defend and/or settle the any such claim; (d) in no event jeopardise, settle or admit liability with respect to any such claim without the Company's prior written consent, and (e) use reasonable endeavours to mitigate any such claim; and

10.6.3 related screening and payments due diligence is conducted on behalf of the Company by: i) BPS; and ii) its authorised third party The Currency Cloud Limited, registered in England & Wales (company number: 6323311) and regulated and authorised by the Financial Conduct Authority of the United Kingdom under the Electronic Money Regulations 2011 and Payment Service Regulations (register reference 900199) for issuing of electronic money and the provision of payment services

10.7 **PTX® Pay Direct**

Where the Customer has acquired Subscription Services for PTX Pay Direct as specified in an Order Agreement, then the following shall apply:

10.7.1 The Customer acknowledges that: (i) the accuracy and completeness of the Transaction information (including but not limited to account and sort code data) provided by the Customer End User and processed through use of PTX Pay Direct is wholly dependent upon the accuracy and completeness of the data provided by the Customer End User; and (ii) PTX Pay Direct may be subject to limitations and delays inherent in the use of communications facilities which are outside of the control of the Company.

10.7.2 The Company is not responsible for: (i) validating the accuracy or content of any Transaction data provided by the Customer; and (ii) any delays, delivery failures, or any loss, damages, costs or expenses resulting from the transfer of the relevant Transaction information over communications networks and facilities, including, but not limited to, banking systems, financial messaging networks or the internet.

10.7.3 Through authentication between the Customer End User and its selected ASPSP, the Customer End User shall give consent to payment initiation by BPS acting as a PISP.

10.8 **PTX® Cheques Printing**

Where the Customer has acquired Subscription Services for PTX Cheques Printing as specified in an Order Agreement:

10.8.1 Company will use maximum reasonable security, methods, devices and procedures, but shall not in any event be liable to the Customer in respect of any losses of whatever nature caused by fraudulent alteration, duplication or presentation which may occur to any instrument once issued from Company or by fraudulent instructions received from the Customer. In the event of any such fraudulent alteration, duplication or presentation, Company's sole obligation and liability will be to use its reasonable endeavours to assist the Customer to mitigate any losses.

10.8.2 Company will utilise the public mail system on behalf of the Customer and shall not be liable to the Customer for any loss, damage, fraud, theft, misappropriation, duplication, delay or failure which may occur in the course of delivery.

10.8.3 Company will not be liable to the Customer in respect of any cheque which clears which has been the subject of a stop cheque request from the Customer.

10.8.4 In the event of a claim under this clause 10.8, Company's liability to the Customer shall not in any circumstance exceed the lesser of:

10.8.4.1 the face value of a cheque or the sum of the face value of more than one cheque giving rise to a claim under this clause 10.8 subject in any case to an overall maximum of £1,000,000; or

10.8.4.2 the sum on the face of any instrument issued by Company in respect of which a claim is made; subject in any case to an overall maximum of £1,000,000.

10.9 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.

10.10 The Company shall not be responsible or liable for any illegal or unauthorised access to or release of any Data or Document 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 or Document 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.

10.11 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.

10.12 **Off-payroll Working Rules**

The Company's and the Customer's understanding and intention is that for the purposes of section 61M(1) ITEPA neither the Customer nor any Customer Group Company is a "client" in relation to any individual engaged by the Company or any Company Affiliate in the provision of the services to the Customer under the CUA ("Company Personnel"). Accordingly, it is the Company's understanding that if any Company Personnel provide their services through an intermediary that meets one of the conditions in sections 61N(9) to (11) ITEPA, the Company will be the "client" in respect of such individual for the purposes of section 61M(1) ITEPA, and will in accordance with and to the extent required by law: (i) issue an initial status determination statement in respect of such individual in accordance with the Off-payroll Working Rules (and if required issue a further status determination statement in respect of such individual in accordance with the Off-payroll Working Rules); or (ii) if the Company makes a determination for the purpose of the Off-payroll Working Rules that such individual would be an employee of the Company for income tax purposes if the services of that individual were provided under a contract directly between the Company and that individual, then the Company shall: a) where the Company is the "fee payer" (as such term is defined in section 61N ITEPA), account to Her Majesty's Revenue & Customs for any income tax and National Insurance contributions liabilities as is required pursuant to the Off-payroll Working Rules and any associated tax legislation; and b) otherwise comply with all of its obligations as a "client" and, if applicable, a "fee payer" under the Off-payroll Working Rules in connection with such individual.

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 or Software or Equipment provided 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 and sole discretion: (i) procure for Customer the right to continue to use the licensed Subscription Services and/or Software and/or Equipment; (ii) make the licensed Subscription Services and/or Software and/or Equipment non-infringing; or (iii) terminate the Subscription Services and/or accept return of the Equipment and/or Software and refund any Subscription Service fees received from Customer for any un-used period pro-rata from the date termination is effective, and/or refund a proportion of the applicable Equipment 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: (i) Customer's use of the licensed Software and/or Subscription Services and/or Equipment other than in accordance with the rights granted under this Agreement; (ii) Customer's combination of the licensed Software or Subscription Services or Equipment 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 CUA 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, Software and Equipment 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, Software and Equipment, including, without limitation: (a) allowing its employees and agents access to the Subscription Services, Software and Equipment 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 (c) not allowing access to the Subscription Services, Software and Equipment 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, Software and/or Equipment 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 or document obtained via use thereof; and the terms of the CUA) obtained from the other pursuant to the CUA 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 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 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 and Processing

The Company will process all data, including Personal Data, in accordance with its then current GDPR Privacy Terms published at https://www.bottomline.com/uk/privacy/current-gdpr-data-privacy-terms, the currently published version of which is deemed incorporated into this Agreement.

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 CUA upon expiry of the Initial Term or of any subsequent annual period, for convenience, by giving to the other party not less than ninety (90) days written notice prior to expiry thereof.

16.3 Either party may terminate this CUA in writing if:

(i) the other party commits any material breach of any term of this CUA 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 CUA 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 In the event that the Company gives notice of its intention to relocate one or more of its datacentres in which the PTX Servers are hosted outside the territory of the United Kingdom, then the Customer shall be entitled to terminate this CUA either pursuant to clause 16.2, or on rendering at least sixty (60) days' notice in writing to expire no later than the date when the PTX Servers are to be relocated. In the event of termination under this clause 16.5, the Customer shall be entitled to a pro-rata refund of fees paid in advance for any period falling after the effective date of termination.

16.6 Without prejudice to any other remedies which the Company may have under this Agreement or at law, the Company shall be entitled to suspend the provision of the Subscription Services or to terminate this Agreement forthwith on written notice to the Customer in the event that the Customer has been or is in breach of any applicable law or regulation or in the event that the Company is required to do so by any law, regulation or regulatory body or upon demand by one of the Company's third party suppliers for reasonable cause directly due to the Customer's acts or omissions in connection with its misuse of the Subscription Services. Notwithstanding any other term of this Agreement, the Company may terminate without notice, or indefinitely suspend, this Agreement or any contractual provision herein as required to fulfil its obligations to comply with sanctions regulations.

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

16.8 Following termination the Parties will promptly return all confidential information received (excluding any Data and/or Documents retained in accordance with clause 7.7), together with all copies, or certify in writing that all such confidential information and copies thereof have been destroyed. Any obligation to return, destroy or permanently erase confidential information shall not be applicable to confidential information that is retained on electronic back-up media made in the ordinary course of business and from which the confidential information can not readily be isolated from other information and deleted, and the provisions of this Agreement shall continue to apply to any confidential information retained on such electronic back-up media.

The Customer may at any time (including for the avoidance of doubt if this CUA is terminated) request in writing a copy of the Data, and subject to Customer's signature of an Order Agreement in respect of the 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 receipt of such request and deliver it to the Customer in a form to be mutually agreed between the parties, and additionally on termination of this CUA, if so specified in the Order Agreement, shall delete the Data from the PTX Servers.

16.9 Where the Customer has acquired Subscription Services for PTX Cheques Printing, following termination for any reason the Customer will pay for any unused cheque & related envelope stationery within 10 days of the effective date of termination; and the Customer will notify the relevant bank that Company no longer have mandated authority to issue cheques in their name.

17. 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.

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 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.

19. Notices

Any notice or other communication to be given under this CUA 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 24, a person who is not a party to this CUA shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this CUA. This condition does not affect any right or remedy of any person which exists or is available otherwise pursuant to the Act.

22. 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.

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 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

24.1 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:

24.1.1 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

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

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

24.2 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:

24.2.1 the Bacs test environments; or

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

24.3 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.

24.4 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 24.3, 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.

24.5 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.

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

24.7 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.

24.8 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.

24.9 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.