

Bottomline Payment Services 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.

“Authorised Payment Institution” means a company authorised by the FCA in accordance with regulation 2(1) of the payment services regulations 2017 (SI 2017/752) to carry out regulated activities.

“Bacs” means Bacs Payment Schemes limited (registered company number 04961302) and operator Vocalink Limited (registered company number 06119048).

“Bacs Bureau” means Bacs approved commercial bureau as listed in the Bacs approved Bureau scheme at https://www.bacs.co.uk/documentlibrary/babs_directory.pdf.

“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.

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

“Client Account” means an appropriately distinguished, nominated or segregated account held by the Company for storing Customer monies.

“Company” means Bottomline Payment Services Limited a company registered in England and Wales (number 3986072) whose registered office is at 1600 Arlington Business Park, Theale, Reading, Berkshire, England, RG7 4SA and who 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).

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

“CoP” means Confirmation of Payee.

“CoP Verification” means a single Search via a Subscription Service using one (1) Transaction for the Pay.UK Confirmation of Payee service to verify that a single United Kingdom bank account and sort code combination, or secondary reference number, bank account and sort code combination, exists, is open and matches the account holder’s name.

“CoP Participant” means an organisation that is taking part in the Pay.UK Confirmation of Payee services as an accredited member.

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

“Data Protection Laws” means all laws applicable to the Processing of Personal Data under the Agreement including, where applicable, the Data Protection Act 2018, Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 (“GDPR”) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (and any laws, rules and regulations implementing the foregoing).

“Direct Credit” means the direct credit payment instrument operated by Bacs and its operating rules under the Bacs scheme.

“Direct Debit” means the direct debit payment instrument operated by Bacs and its operating rules under the Bacs scheme.

“Direct Debit Management” means the software to manage the workflow in the processing of Direct Debits, which may include the capture and creation of Direct Debit mandates, payer notification, collection schedules, payment processing and exception management in accordance with Direct Debit scheme rules

"Document" means all Customer document files (and all data contained therein), including but not limited to invoices, remittances and cheques, in whatever form (including a 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.

"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).

"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.

"Facilities Managed" means the provision by the Company in its capacity as an Authorised Payment Institution of services which incorporate access to a payment instrument on behalf of the Customer, including access to the payment scheme and operation of a Customer end user payment account.

"Facilities Managed Direct Debit" means the provision by the Company of Direct Debit on a Facilities Managed basis.

"Facilities Managed Direct Credit" means the provision by the Company of Direct Credit payments from the Customer's Company account to the Customers' nominated beneficiary.

"FM-DD" means facilities managed direct debit provider as defined by Bacs under their Bacs accredited facilities management provider scheme at <https://www.bacs.co.uk/Access/BacsApprovedServices/FMProviders/Pages/FMProviders.aspx>

"Incident" means each individual communication received by the Support Centre in respect of a Services error, issue or technical question related to the Subscription Services.

"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.

"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.

"Managed Bureau Service" means the provision by the Company of services that include Direct Debit Management and Bacs Bureau combined.

"Managed Payments Service" means services provided by the Company under a Facilities Managed Model.

"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 EUA.

"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 and Confirmation of Payee Search.

"SLA" means "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.

"Support Centre" means the dedicated Company personnel and resources tasked with the receipt, logging and resolution or work-around for Incidents.

“Transaction” means a single credit, debit, refund, Validation, CoP Verification 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) Transaction to confirm that a single United Kingdom bank account and sort code combination and related bank branch should exist.

1. General

This EUA shall apply to the Customer’s purchase of Subscription Services and/or Equipment and/or Software licence 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. The parties expressly consent and agree that any Order Agreement, this Agreement and any other document forming part of this EUA 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 EUA.
- 2.3. Commencing in year two (2) of this EUA 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 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 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 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, Templates and/or the Software.

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

6. Subscription Service Availability

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 EUA, the Company hereby grants to the Customer a non-exclusive, non-transferable, revocable licence without rights to sublicense, for so long as this EUA 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) Templates; and (iii) 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 provides, and any passwords that the Customer may use, to those individuals with a need to know; and

7.5.2 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 unauthorised 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

7.5.3 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 EUA.

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 CoP and Validation

Where any PTX Verify CoP or PTX Payouts CoP 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 CoP Verification Subscription Services may only be used where there will ultimately be a payment associated with the account that has been verified.

7.8.2 The Company does not warrant, represent or give any guarantee or commitment that the use of CoP Verification Subscription Service will be accurate or complete or meet the Customer's requirements. The Customer acknowledges that the accuracy and completeness of the Confirmation of Payee Subscription Service is wholly dependent upon the accuracy and completeness of the data and service provided by the CoP Participant.

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

7.8.4 The presentation of the results obtained via CoP Verification Subscription Service is subject to the Customer's Authorised User(s) providing correct and accurate access credentials in connection therewith; and the Company shall not be liable to the Customer to the extent that it is prevented from providing the Customer with such results via CoP Verification Subscription Service thereafter.

7.9 PTX Managed Payment Services

7.9.1 Managed Payment Services:

Where any PTX Managed Services for Direct Debit and Direct Credit Services are specified on an Order then the following shall apply:

7.9.1.1 Company shall carry out checks to ensure that the Customer meets its know-your-customer and anti-money laundering requirements and any other checks Company deems necessary to confirm that it may legally provide the Services to the Customer, and that the Customer satisfies Company's risk appetite ("Due Diligence"). These checks shall be carried out prior to carrying out Services when the Customer is first on-boarded by Company and then as determined necessary by Company thereafter. In the event that Company determines that the results of the Due Diligence are not satisfactory, then Company, at its sole discretion may either (i) require the Customer to take such steps as are necessary to meet its Due Diligence criteria, (ii) suspend the Customer's access to the Services, or (iii) terminate this Agreement.

7.9.1.2 The Customer shall cooperate with the Company and provide all information reasonably required by the Company for all ongoing Due Diligence the frequency to be as reasonably requested by the Company, and shall inform the Company immediately if any person connected with it is a person that is i) listed on, or owned and controlled by a person on any sanctions list, ii) located in or incorporated under the laws of or owned or controlled by or acting on behalf of a person located in or incorporated under the laws of a country or territory which is the subject of sanctions legislation or iii) otherwise the target of sanctions legislation. For this purpose, references to a person shall include bodies corporate, unincorporated associations and partnerships, in each case whether or not having a separate legal personality.

7.9.2 Managed Payment Services - Direct Debit

In addition to clause 7.9.1, where any Managed Payment Services for Direct Debit are specified on an Order then the following shall apply:

7.9.2.1 The Customer shall comply with the provisions detailed in this clause 7.9.2.1 including any guidance and instructions provided to it by the Company in relation to the Agreement and/or in respect of compliance with any codes, guidance or legislation relating to direct debit mandates. For the avoidance of doubt, failure to comply with this clause will amount to a material breach of the Agreement:

7.9.2.1.1 If Customer's end users are signing paper mandates all original mandates once processed should be sent to Company as a minimum of once per month (copy to be retained by Customer if required).

7.9.2.1.2 If Customer's end users are signed up to Direct Debit ("DD") over the telephone then a pre-approved script provided by Company should be used in conjunction with Customer's own sign up process, thus ensuring that the end user is fully aware that they are giving authority to debit their bank account and that they are protected by the DD guarantee.

7.9.2.1.3 In compliance with Bacs rules Customer acknowledges that all invoices/advance notifications issued to its end users (to advise them that the amount that Customer is requesting is to be collected by Direct Debit), should contain the following wording: **"This invoice/notification is for information purposes only. The amount due will be collected by Direct Debit on or immediately after xx/xx/xxxx"** (where xx/xx/xxxx is the collection date agreed with the end user)

7.9.2.1.4 All web-based DD capture screens need to be approved by Company prior to being activated for use by the Customer.

7.9.2.1.5 All non-standard DD Mandates (all mandates not provided directly by Company) need to be authorised by Company prior to being issued to Customer's end users.

7.9.2.1.6 If Customer's End Users are signed up using AUDDIS or the paperless Direct Debit sign-up process then the Customer shall ensure this is effected in accordance with the Bacs Service Users Guide and Rules to the Direct Debit Scheme (as updated from time to time).

7.9.2.2 The Company has an obligation to follow the Service Users Guide and Rules to the Direct Debit Scheme (as updated from time to time) in relation to the processing of Direct Debit. In the event of a conflict between the Service Users Guide and Rules to the Direct Debit Scheme and the Agreement, the Service Users Guide and Rules to the Direct Debit Scheme shall take precedence.

7.9.3 Managed Payment Services - Direct Credit

In addition to clause 7.9.1, where any Managed Payment Services for Direct Credit are specified on an Order then the following shall apply:

7.9.3.1 The Customer shall comply with the provisions detailed in this clause 7.9.3.1 including any guidance and instructions provided to it by the Company in relation to the Agreement and/or in respect of compliance with any codes, guidance or legislation relating to Direct Credit. For the avoidance of doubt, failure to comply with this clause will amount to a material breach of the Agreement:

7.9.3.1.1 All Direct Credit payments shall be subject to beneficiary validation according to the rules of the Company as updated from time to time.

7.9.3.1.2 The Customer shall provide true and accurate information as required by the Company to validate the beneficiary of any Direct Credit payment.

7.9.3.1.3 The Company has the right to refuse any payment to a beneficiary that has not been validated, cannot be validated, or that would breach any code, guidance or legislation the Company is subject to under this clause 7.9.3.1.

7.9.3.1.4 All Direct Credit payments to beneficiaries require funds to be available in the Customer payment account held with the Company.

7.9.3.1.5 No payments shall be made if funds are not available, it is the sole responsibility of the Customer to ensure sufficient funds are in place in advance of payment initiation.

7.9.4 Managed Payments Service SUN sponsorship

Where any Facilities Managed SUN sponsorship Services are specified on an Order then the following shall apply in addition to the terms in clause 7.9.2:

7.9.4.1 The Customer's allocated unique SUN will be linked to the Company's bureau (B60684) to facilitate the download of Bacs reports linked to that SUN, via the Bacs Payment Services Website. This data will be used to monitor key risk metrics including but not limited to any unpaid items and indemnity frequencies/amounts/trends.

7.9.4.2 The frequency of access and downloads referenced in clause 7.9.4.1 will be determined at the sole discretion of the Company and may vary over time, dependent upon the risk profile of the Customer and/or the corporate risk appetite or reporting requirements of the Company.

7.9.4.3 The Company will hold an inalienable right to fully audit the Customers payment activity in the event the Company, at its sole discretion, deems it necessary for the purposes of risk monitoring, external audit requirements or any other relevant purpose.

7.9.4.4 The Customer agrees to provide any information (including, but not limited to, Bacs submission reports, individual payment summaries and overall activity summaries) relating to payment activity, as requested by the Company in a timely manner (considered to be no later than next working day from the date of request unless otherwise agreed between the parties);

7.9.4.5 Where any of the information detailed within clauses 7.9.4.1, 7.9.4.3 or 7.9.4.4 highlights risk concerns, or where the requested information is either not provided, is not sufficiently detailed or is not considered to be sufficiently accurate, the Company may categorise the Customer as 'Heightened Risk', as defined in clause 7.9.7.1, and may invoke any/all of the controls outlined within clause 7.9.7.2.

7.9.4.6 Should the Company continue to have concerns after undertaking the actions detailed in clause 7.9.4.5, the Company reserves the right to terminate this Agreement with immediate effect, pursuant to clause 16.10.3.

7.9.5 Managed Bacs Bureau Services

Bacs Bureau Services shall include submission, contingency or emergency processing as specified in the Order. In each case the Bacs Bureau Services provided shall include the following:

7.9.5.1 Submission only processing:

7.9.5.1.1 Customer unique SUN linked to Company's Bureau number, to facilitate processing on the Customer's behalf.

7.9.5.1.2 The Customer is responsible for linking their own SUN to Company's Bureau number (B60684). The Bacs Bureau submission Service shall include:

- (i) access to Company's secure Managed File Transfer (MFT) server
- (ii) receipt of Bacs direct debit/credit files from the Customer
- (iii) onward submission of Customer's Bacs file to Bacs
- (iv) provision of the Bacs submission report via MFT
- (v) retrieval of Bacs A messages where agreed and made available via MFT

7.9.5.2 Contingency processing:

7.9.5.2.1 Customer unique SUN linked to Company's Bureau number, to facilitate processing on the Customer's behalf.

7.9.5.2.2 The Customer is responsible for linking their own SUN to Company's Bureau number (B60684). The Managed Bacs Submission Only Service shall include:

- (i) access to Company's secure Managed File Transfer (MFT) server
- (ii) receipt of Bacs direct debit/credit files from the Customer
- (iii) onward submission of Customer's Bacs file to Bacs
- (iv) provision of the Bacs submission report via MFT
- (i) retrieval of Bacs A messages where agreed and made available via MFT

7.9.5.3 Emergency processing

7.9.5.3.1 Customer unique SUN linked to Company's Bureau number, to facilitate emergency processing on the Customer's behalf.

7.9.5.3.2 Company will be responsible for providing a Bacs emergency submission service. The Customer is responsible for linking their own SUN to Company's Bureau number (B60684). The service shall include:

- (i) agreed method of file transfer (for emergency submission this can be provided by the Customer via password protected email or hand delivered USB)
- (ii) receipt of Bacs direct debit/credit files from the Customer
- (iii) onward submission of Customer's Bacs file to Bacs
- (iv) The provision of the Bacs submission report via an agreed method

7.9.6 Smart Mandate Services

Where the following PTX eMandates Smart Mandate Services are specified on an Order the provisions below shall apply:

7.9.6.1 Where Smart Mandate Essentials has been selected the Customer shall be entitled to replace up to five PTX Direct Debit capture forms. Smart Mandates can be used to create 240 new Direct Debit End User each contract year.

7.9.6.2 Where Smart Mandate Pro is specified the Customer shall be entitled to replace up to twenty five PTX Direct Debit capture forms. Smart Mandates can be used to validate and create 2,400 new Direct Debit End User each contract year.

7.9.6.3 Any new Direct Debit End User over the agreed volume usage band threshold set out in the Agreement/ shall be charged at £0.25 per End User validated and created.

7.9.6.4 Where Smart Mandates Individual has been selected then the applicable charges shall be as described in the Order.

7.9.7 Credit Risk Management

7.9.7.1 The Company operates an active credit risk management monitoring process in relation to its PTX Service. As part of this monitoring process the Customer will be categorised by the Company as either meeting the Company's standard risk or heightened risk criteria. Where the Customer is categorised as meeting the heightened risk criteria (such criteria to be determined at the sole discretion of the Company) the additional provisions detailed in clause 7.9.7.2 may apply to this Agreement.

7.9.7.2 Where the Customer is categorised as meeting the heightened risk criteria, in addition to the provisions set out in clause 10.10.9, the Company shall notify the Customer in writing and the following measures shall apply in whole or in part with immediate effect:

- a) The Company may require that an indemnity reserve account be established. This account will be used at the Company's discretion for the settlement of any indemnity claims made against the Customer's Service User Number whether such claims have already been invoked by the End User or are likely to be invoked;
- b) The Company may apply an extended settlement period for payments collected under the Customer's Service User Number. The standard extension will be 28 days, though the Company reserves the right to amend this dependent upon the Customer's risk profile;
- c) The Company may withhold part, or all, of any collection for the purpose of settling any prevailing, pending or potential indemnity claims. This right will extend to instances where there are overdue amounts owing to BPS Ltd for provision of contracted services;
- d) The Company may review and amend any applicable Customer transaction limits at Company's sole discretion;
- e) Where the Customer's risk profile is considered to be elevated the Company may review all prevailing pricing and service charges set out in the Agreement to ensure these accurately reflect the heightened risk. In such circumstances the Company may also require invoiced amounts to be settled directly from collections made by the Customer.

7.9.7.3 Where the Company deems the Customer's heightened risk profile to have improved, the Company may, at its sole discretion, categorise the Customer to a standard risk status.

7.9.8 Managed Bureau

The following shall apply in so far as Managed Bureau Services are specified in an Order:

7.9.8.1 Customer unique Service User Number ("SUN") provided by the Customer shall be linked to Company's Bureau number to facilitate processing on the Customer's behalf.

7.9.8.2 Design and provision of branded direct debit paper and web-based mandate.

7.9.8.3 Provision of an approved script for paperless direct debit sign up (e.g. for use in telesales)

7.9.8.4 Access to a web-based Customer administration site.

7.9.8.5 The Customer is responsible for linking their own SUN to Company's Bureau number (B60684). The Customer's SUN must be AUDDIS enabled. Where a paperless application is required the Customer's own SUN must also be Paperless enabled. The Managed Bureau Service can include a paper and web based paperless application which shall include:

- 7.9.8.5.1 receiving completed direct debit mandate forms ("DDI") from Customer end users and lodging them with the relevant bank.
- 7.9.8.5.2 managing returned, amended and cancelled DDI's.
- 7.9.8.5.3 managing the sending of payment files to Bacs and the collection of direct debit instructions on the payment due date(s).
- 7.9.8.5.4 managing the reconciliation of processed, rejected and returned items.
- 7.9.8.5.5 access to a web-based Customer administration site allowing multiple permission-based Customer users to view/amend End User records, view/print/email payment histories and generate standard reports.
- 7.9.8.5.6 integration via Company API where agreed.

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 on behalf of the Company by BTL subject to the Professional Services Agreement (which forms part of this EUA) 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 by the Company in its capacity as an 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.

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 by the Company and 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:

10.7.1 the Customer acknowledges that the accuracy and completeness of the Transaction information displayed through use of PTX Pay Direct is wholly dependent upon the accuracy and completeness of the data and service provided by the Customer End User's ASPSP; and

10.7.2 the Company is not responsible for 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; and the Customer acknowledges that PTX Pay Direct 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

10.7.3 the presentation of Transaction information via PTX Pay Direct is subject to the Customer's End User(s) providing correct and accurate access credentials and data in connection therewith; and

10.7.4 related payment services are provided by the Company in its capacity 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 PTX Managed Payments

Where the Customer has acquired Subscription Services for PTX Managed Payments as specified in an Order, the Company shall not be liable to the Customer for any breach, loss or damage arising under this Agreement due to:

10.9.1 the Customer's failure to provide accurate information to Company or to fulfil its responsibilities or any matter under the control of the Customer including any liability (including breach of warranty) which arises as a result of the misuse of the PTX Service supplied hereunder;

10.9.2 any breach of security by any third party or any breach of confidentiality by a third party or otherwise arising from any access howsoever obtained by a third party to the Customer's information, data, or messages or other traffic, other than where such breach or access occurs within the environment under the control of Company or its contractors and is due to negligence or breach of this Agreement by Company or its contractors;

10.10 Managed Payment Services Indemnities

Where the Customer has acquired Managed Payment Services as specified in an Order, the following indemnity shall apply:

10.10.1 The Customer shall indemnify Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) (each a "Claim") suffered or incurred by Company arising out of or in connection with:

10.10.1.1 all or any negligent and/or fraudulent acts or omissions; and/or

10.10.1.2 the failure of the Customer to supply Company with accurate and valid direct debit instructions; and/or

10.10.1.3 the processing of direct debits, which are incorrect for whatever reason; and/or

10.10.1.4 the reclaim from Company, for whatever reason, of any Direct Debits collected by Company in the provision of the Services; and/or

10.10.1.5 any payment collected using the Services and passing through Company's related infrastructure that originates from the Customer pursuant to the Agreement.

10.10.2 If a payment due from the Customer under this indemnity is subject to tax (whether by way of direct assessment or withholding at its source), Company shall be entitled to receive from the Customer such amounts as shall ensure that the net receipt, after tax, to Company in respect of the payment is the same as it would have been being the payment not subject to tax.

10.10.3 If any third party makes a Claim, or notifies an intention to make a Claim, against Company which may reasonably be considered likely to give rise to a liability under this indemnity, Company shall notify the Customer and shall be entitled to retain and/or set off an amount equivalent to the estimated amount of the Claim from any monies held by Company on behalf of the Customer at any time.

10.10.4 In addition, and at the absolute discretion of Company, the Customer shall within 7 days of receiving any such written request from Company hereby assign to the Company all or any legal and/or equitable rights, Claims, choses in action and/or similar which the Customer has or may have against the End User with a view to Company successfully recovering from the End User all or any loss which is suffered by Company in relation to a Claim. The Customer shall indemnify the Company for any losses incurred by the Company as a result of the Customer's failure to effect any such assignment within the 7 day written notification request.

10.10.5 The Customer hereby undertakes to co-operate fully and to use its best endeavours in relation to all requests which Company makes in relation to all or any assignments set out in this clause 10.10 and to provide within a reasonable time all information and documentation to Company which may be required by Company in relation to any such assignment and to sign all documents and to do whatever necessary to give effect to the assignment. For the avoidance of doubt, any such assignment to Company will not amount to a release or waiver of the Customer's contractual obligations to Company in relation to a Claim.

10.10.6 These indemnities shall continue in force indefinitely following termination or expiry of this Agreement for whatever reason.

10.10.7 The Customer hereby agrees that in the event of the termination of this Agreement by Company pursuant to clauses 16.3; 16.4, 16.6 and 16.10 Company shall be entitled to hold and/or retain for the Customer an amount up to the equivalent of the aggregate amount of monies held by Company at termination on behalf of the Customer for a period of up to 12 calendar months from termination as security for any future claims and/or liabilities.

10.10.8 If any third party makes a claim, or provides notification of its intention to make a claim against the Company which may reasonably be considered likely to give rise to a liability under this indemnity, Company shall notify the Customer and shall be entitled to retain and/or set off an amount equivalent to the estimated amount of the Claim from any monies held by the Company on behalf of the Customer at any time. With regards to Claims effected under the Direct Debit Guarantee in accordance with the Bacs policy governing such matters, the Company will prioritise set off as follows in order of preference:

10.10.8.1 In the first instance and in the case of insufficient monies being held in a Client Account, the Company will seek to set off the indemnity amount against any monies held or received in respect of collections initiated by the Customer;

10.10.8.2 thereafter, the Company shall set off the amount of the Claim against any monies held by the Customer in a pre-funded reserve held in a specific Client Account if such a facility has been arranged;

10.10.8.3 then, the Company reserves the right to either instruct a Direct Debit payment or seek payment by other means from the Customer to cover the liability failing which;

10.10.8.4 if, after 14 Business Days from receipt of the Claim there remains any amount outstanding then an equivalent charge will be made to the Customer and included on the next scheduled invoice.

10.10.9 In respect of monies referenced in 10.10.7:

10.10.9.1 The Customer may seek an immediate withdrawal of such monies, in whole or part, at any time except where monies are being held under 10.10.8. The Company will remit such monies, via BACS transfer, on written instruction from the Customer, provided:

- (i) there are no liabilities outstanding, or at the Company's sole discretion, reasonably likely to be incurred or;
- (ii) where the Company's liability for future indemnity Claims is extinguished in its entirety (such as, through a bulk transfer of Direct Debit instructions to another provider) the Company will decide at its sole discretion whether reserve monies may be released back to the Customer in whole or part.

10.10.9.2 Where reserve monies are repaid to the Customer, the Company will assess whether the Facilities Managed Services can continue to be provided and, if so, will revert to remedies outlined in 10.10.8.1, 10.10.8.3 and 10.10.8.4 if Claims are subsequently received.

10.10.9.3 The Company will regularly review the amount of monies in reserve and may seek a top up, or an increased level of reserve at its sole discretion. The Customer has the right to refuse such a request, in which case the Company will assess whether services can continue to be provided.

10.10.9.4 The monies held in reserve will only be used for the express and exclusive purpose of funding indemnity Claims.

10.11 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.

10.12 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.

10.13 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 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 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, 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 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 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 EUA 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 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 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 EUA 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 EUA 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 EUA, 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.

16.10 Where the Customer has acquired PTX Managed Payments the following additional termination provisions shall apply:

16.10.1 If less than the required notice period is given by the Customer, Company will be entitled to liquidated damages calculated as the average of the previous 6 highest month's Charges over the previous 12 months for the remainder of the Initial Term and the notice period pursuant to clause 5.1.

16.10.2 Company may terminate this Agreement with immediate effect (or following such notice period as it sees fit), if the Customer fails to process under the Service User Number (SUN) for 3 consecutive months or if the Customer is in breach of any BACS operational regulations (including the BACS Guidelines as set out in Schedule 1, Appendix 1) as advised in writing by Company from time to time.

16.10.3 In the event the Customer does not meet the Company's credit risk management criteria as defined in clause 7.9, and where the heightened risk profile of the Customer does not improve, or continues to deteriorate, the Company reserves the right to terminate this Agreement with immediate effect.

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 24, 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. 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. Audit and Complaints Procedure

23.1 Company reserves the right to audit the Customer's financial statements and processes including but not limited to accounting information, bank statements, direct debit records and Customers' End User contracts and to request documentary evidence. For the avoidance of doubt, failure to comply with this clause will amount to a material breach of the Agreement.

23.2 In the event that the Customer has any complaint regarding the PTX Managed Payments, then the parties shall manage the complaint according to the procedure set out in Schedule 1.

24. Law and Jurisdiction

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

25. Bacs 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:

- 25.1 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:
- 25.1.1 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
 - 25.1.2 the use of, inability to use, or reliance upon any application or upgrade (whether such application or upgrade becomes Bacs approved software or not); or
 - 25.1.3 Bacs granting (or refusing to grant), suspending or terminating an approval for any Bacs approved solution.
- 25.2 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:
- 25.2.1 the Bacs test environments; or
 - 25.2.2 any Bacs materials in the development and testing of applications.
- 25.3 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.
- 25.4 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 25.3, 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.
- 25.5 For the avoidance of doubt, in no circumstances shall Bacs owe any duty of care, express or implied, to the Customer or any third party, in respect of the performance of Bacs testing or the accuracy, completeness, suitability, or fitness for purpose of applications and upgrades (whether such applications or upgrades become Bacs approved software or not), Bacs materials, the test environments, and/or the technical specification.
- 25.6 Nothing in this Agreement shall operate to exclude or restrict Bacs' liability for death or personal injury resulting from Bacs' negligence or fraud.
- 25.7 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.
- 25.8 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.
- 25.9 This Clause 25 is for the benefit of Bacs and shall be fully enforceable by Bacs and Bacs shall be entitled to assign the benefit of this Clause

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

Schedule 1 – Complaints Procedure for Facilities Managed Services

Bottomline Payment Services are regulated by the Financial Conduct Authority and therefore follow the rules set out by the regulatory authority when managing complaints. If the Customer has a complaint about the Company's service, the Company wants to hear about it and will do its best to put it right.

The Company's Complaints Procedure has the following goals:

- To make it easy for the Customer to the Company about its complaint
- To deal with complaints fairly, efficiently and effectively
- To ensure that all complaints are handled in a consistent manner
- To make sure the Customer is satisfied with how its complaint was resolved
- To increase customer satisfaction
- To use complaints constructively in the planning and improvement of all services

If the Customer is not satisfied with any aspect of the Company's service, the Customer can tell the Company about its complaint in the following ways:

In writing – address the letter to the Head of Compliance

Bottomline Payment Services Limited
16 Daresbury Court
Evenwood Close
Manor Park
Runcorn
WA7 1LZ

By telephone – 0344 8266 700

By e-mail – contact the Company via e-mail at Disputes@bottomline.com

What's next?

The Company aims to resolve the Customer's complaint straight away. However if the Company has not been able to do so, the Company will aim to resolve the complaint within 15 business days.

If the Company has not been able to resolve the Customer's complaint within 15 business days, the Company will write to the Customer to explain:-

- why it has not yet resolved the complaint
- who is dealing with the complaint
- when the Company will contact the Customer again, this will not exceed 35 business days from when the Customer reported the complaint to the Company.

Company's response

Once the Company have fully investigated the matter, the Company will write to the Customer confirming its decision, how it was reached and any offer of redress and/or what remedial action was taken where this is appropriate. Should the Customer be unhappy about the Company's response, the Company may refer the matter to the Financial Ombudsman Service.

The Financial Ombudsman Service (FOS) is an independent arbitration service provided free for customers. Should the Customer be dissatisfied with the Company's response the Customer may contact the FOS within six months, unless informed otherwise, using the contact details below:

- Address: Financial Ombudsman Service, Exchange Tower, London, E14 9SR
- Telephone: 0800 023 4567 or 0300 123 9123
- Email: complaint.info@financial-ombudsman.org.uk
- Website: www.financial-ombudsman.org.uk