

Standard Terms and Conditions – eConnect Online**Definitions**

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

“Agreement” means these Standard Terms and Conditions.

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

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

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

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

“Data” means customer owned data including but not limited to Recipient names and addresses, Customer Logo, bank account numbers and sort codes and financial data, uploaded to the Subscription Services.

“Document” means a Customer generated document uploaded to the Subscription Services and/or a document created by the Subscription Services from Data and a Template.

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

“Excess Usage” means Transmissions used in excess of those acquired on an Order Agreement, in any then current annual period.

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

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

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

“Recipient” means a Customer end user who may receive a Transmission from the Subscription Services.

“Subscription Service(s)” means the hosted subscription based service(s) specified in an Order Agreement, which provide an annual specified quantity of Transmissions for use by the Customer during each twelve (12) month period for its internal day to day business purposes.

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

“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 a Recipient 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.

1. General

This EUA shall apply to the Customer’s purchase of Subscription Services and/or Professional Services or other services from the Company. In the event of a conflict between this Agreement and any other terms and conditions, this Agreement shall take precedence and shall apply to the exclusion of all oral representations and all other terms and conditions printed on any purchase order or other document(s) prepared by Customer irrespective of their date. The parties agree that they have not relied upon any other representations, terms or conditions in entering into this Agreement. This EUA states the entire agreement between the parties on this subject and supersedes all prior negotiations, understandings and agreements between the parties concerning the subject matter. No amendment or modification of this Agreement or the EUA shall be made except in writing and signed by an authorised signatory of each party.

2. Prices

- 2.1. All prices are exclusive of value added tax and any other applicable taxes or duty. Charges shall be made for any taxes, duties or levies which the Company is required by law to collect and any withholding tax will be for the Customer’s account unless and until such time that Company is able to reclaim such tax.
- 2.2. Prices quoted are in Pounds Sterling unless otherwise agreed and stated within the EUA.
- 2.3. Following the first annual period of Subscription Services, the Company reserves the right to increase annual Subscription Services fees for any subsequent annual period by the average percentage increase of the UK Retail Price Index for the preceding twelve (12) month period.

3. Invoicing and Payment

Company shall no earlier than five (5) business days following provision of the Subscription Service Key raise an invoice for all annual Subscription Services fees and Professional Services fees. The first year’s provision of annual Subscription Services shall commence on issue of a Subscription Service Key to the Customer and shall thereafter be automatically renewed and invoiced for further annual periods unless terminated by either party in accordance with clause 15.1. Where the Customer has used all acquired Transmissions prior to expiry of any then current annual period, the Company shall invoice the Customer for all subsequent Transmissions monthly in arrears as Excess Usage at the per Credit rate specified in an Order Agreement until renewal of annual Subscription Services for a further annual period. Subsequent Professional Services, or other services shall be charged at the rate(s) specified in an Order Agreement and will be invoiced as delivered, or as staged within an Order Agreement between the Company and the Customer as part of this EUA. When deliveries are spread over a period of time each consignment will be invoiced as despatched and treated as a separate account and payable accordingly. Payment of all invoices shall be due within 30 days of date of invoice. If payment is delayed for more than 30 days and the Customer has not raised a reasonable dispute in writing regarding the amounts invoiced, Customer agrees to pay interest at a rate of 2% per annum over the Bank of England base rate from the date payment was first due until payment is received in full. Alternatively the Company at its sole option may suspend Subscription Services.

4. Delivery Dates

The dates for delivery of the Subscription Services, Subscription Service Key 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, Subscription Service Key or Professional Services.

5. Ownership

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

6. Licence, Use and Availability

- 6.1 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 annual licence without rights to sublicense to access and use the Subscription Services and any Templates for the purpose as set forth in the applicable documentation and according to the licence restrictions set forth in the related Order Agreement.

6.1.1 Customer acknowledges and agrees that the Subscription Services licensed under this Agreement shall only be used by the Customer for its day to day business purposes and for the benefit of any Customer Group Companies. The Customer shall not permit access to or use of the Subscription Services by any Customer Group Company, affiliated legal entities or third parties, other than by Recipients in accordance with this Agreement.

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

- 6.2 **Subscription Service Availability** - The Company shall use all reasonable endeavours to make the Subscription Services available twenty-four (24) hours a day, three hundred and sixty-five (365) days a year, exclusive of the time required for planned system enhancements, upgrades, updates, preventative maintenance and unplanned system maintenance for essential or emergency work to maintain availability and/or security of the Subscription Services. The Company shall use all reasonable endeavours to schedule planned work outside of normal business hours wherever possible.

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

6.3.1 ensure that all devices used by the Customer to access the Subscription Services are 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

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

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

- 6.4 **Recipient Consent** - The Customer shall:

6.4.1 obtain written consent from each Recipient to receive e-mail communications via the Subscription Services using an affirmative means, such as an opt-in procedure; and

6.4.2 retain evidence of such written consent in a form that can be promptly produced on request, within 48 hours of receipt of a written request by the Company to disclose such evidence; and

6.4.3 use reasonable endeavours to ensure that the person providing consent has authority to do so and is the legitimate owner or user of the e-mail address provided and for which such consent is given.

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

- 6.6 **Data Retention** - The Company shall retain Data and Documents within the Subscription Services for a period of one hundred and eighty (180) days from date of Transmission. Thereafter the Company reserves the right to delete such Data and Documents from the Subscription Services. For the avoidance of doubt all responsibility for any back-up of Data and/or Documents remains solely with the Customer.

7. Warranty

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

7.1.1 it has title to and has the right to sell the Subscription Services licence(s) purchased by the Customer;

7.1.2 the Subscription Services will be free from material defects in materials and workmanship;

7.1.3 the Subscription Services shall materially conform to its standard specification; and

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

- 7.2 The Customer's sole and exclusive remedy in the event of breach of the above warranty is the correction of any failure reasonably determined by the Company as a failure by the Company to comply with such warranty provisions. Correction may comprise, at the Company's sole discretion, re-performance of the services or portion thereof, replacing, repairing or adjusting the Subscription Services without charge to the Customer or refunding any relevant portion of paid fees.

7.3 All remedies for any breach of the warranty provisions specified in this clause 7 are available only if such breach is reported to Company in writing within 30 days of date of issue of a Subscription Services Key or completion of the defective services.

8. Professional Services

Provision of Professional Services are provided subject to the Company's published Professional Services Agreement (which form part of this EUA) a copy of which is available at: www.bottomline.co.uk/terms&conditions. Customer acknowledges that the Company may amend such agreement from time to time.

9. Limits of Liability

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

9.2 Subject to Condition 9.4, 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.

9.3 Subject to Condition 9.4 the Company's maximum aggregate liability for any breach of its contractual obligations or any tortious act or omission, except for negligence pursuant to Clause 9.2, shall be limited to the greater of £100,000 or the combined total amount paid by Customer for Subscription Services (during the preceding twelve (12) months) and Professional Services, to which such claim or series of related claims relates.

9.4 In no event shall the Company have any liability:

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

9.4.2 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

9.4.3 for any illegal or unauthorised access to or release of any Data from any device whatsoever connecting to the Subscription Services, including, but not limited to, any access or release of Data arising from the accessing of any Customer login credentials and/or login to Customer account(s) by malware, viruses, or worms, for malicious or criminal activities including, but not limited to, fraudulent payment collections; and

9.4.4 for the content, accuracy or intended purpose of the Data or any Document; and

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

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

10. Third Party Intellectual Property Infringement

10.1 Company agrees to defend, at its expense, any suit against Customer based upon a claim that the Subscription Services provided to Customer under this EUA infringe any patent or copyright recognised by one of the signatories to the Berne Convention, and to pay any settlement, or any damages finally awarded in any such suit.

10.2 Company's obligations under this Clause 10 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.

10.3 Company may, at its own expense: (i) procure for Customer the right to continue to use the Subscription Services; (ii) make the Subscription Services non-infringing; or (iii) terminate the Subscription Services and refund any Subscription Service fees for any un-used period, received from Customer.

10.4 Company shall have no liability for any claim based on: (i) Customer's use of the Subscription Services other than in accordance with the rights granted under this Agreement; (iii) Customer's combination of the Subscription Services with any other equipment or software not provided by Company, where such infringement would not have occurred but for such combination; or (iv) intellectual property rights owned by Customer or any of its affiliates.

10.5 This Clause 10 states Customer's sole remedy and Company's exclusive liability in the event that Customer's use of the Subscription Services provided under this EUA infringes on the intellectual property rights of any third party.

11. Alterations

The Customer hereby undertakes not to alter or modify the whole or any part of the 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.

12. Company Intellectual Property

Customer acknowledges that the information contained in the Subscription Services is confidential and contains trade secrets and proprietary data belonging to the Company (or its third party licensors), and that the presence of copyright notices within the Subscription Services, or not, does not constitute publication or otherwise impair the confidential nature thereof. No Intellectual Property Rights as they may exist anywhere in the world are conveyed to the Customer or to any third party. Customer shall implement all reasonable measures necessary to safeguard the Company's (and its third party licensors') ownership of, and the confidentiality of the Subscription Services, including, without limitation: (a) allowing its employees, agents and third parties access to the Subscription Services only to the extent necessary to permit the performance of their ordinary services to the Customer and to require, as a condition to such access, that such persons comply with the provisions of this Clause 12; (b) cooperating with the Company (and its third party licensors, as appropriate) in the enforcement of such compliance by Customer's employees, agents and third parties; (c) prohibiting the removal or alteration of any copyright or confidentiality notices contained in the Subscription Services; (d) not disclosing the Subscription Services to any third party other than to the limited extent permitted under this Agreement.

Notwithstanding the foregoing, the Customer agrees not to disclose 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 and/or day-to-day management and/or support responsibility for the Subscription Services. Customer acknowledges that use or disclosure of the Subscription Services in violation of this Agreement may cause irreparable harm to the Company (and its third party licensors). Customer acknowledges that no remedy available in law may be sufficient in the event of a material breach of this Agreement by the Customer, Customer Group Companies, its agents, employees, sub-contractors or third parties, 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.

13. Confidentiality

Each party shall treat as confidential information all information (including the Subscription Services, Data, Documents 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.

14. Data Protection

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

15. Termination

- 15.1 Either party may terminate this EUA at the end of any then current annual period by giving to the other party ninety (90) days prior written notice to that effect.
- 15.2 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;
- 15.3 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 invoice in accordance with the foregoing payment terms.
- 15.4 Upon termination of this EUA, irrespective of cause, the Company shall terminate access to the Subscription Services without any rights of refund, unless such termination is made by the Company in accordance with the provisions of Clause 10.3.
- 15.5 Following termination for any reason whatsoever, any monies owing from the Customer to the Company shall immediately become due and payable.

16. 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.

17. Force Majeure

Neither Party shall be responsible for any delay or failure in performance resulting from acts beyond the control of such party. Such acts shall include but not be limited to: an act of God; an act of war; civil unrest; terrorism; riot; epidemic/pandemic; fire; explosion or accidental damage; extreme weather conditions (including but not limited to: flood, storm, or other disaster); an act of government; industrial action or lockouts; and failure of the world wide web. In the event of such a Force Majeure event, the time for performance or cure shall be extended for a period equal to the greater of the duration of the Force Majeure or three (3) months. The party claiming to be prevented, hindered or delayed in the performance of any of its obligations under the 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.

18. 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 registered post to the relevant party at its respective registered address for the attention of an officer of that party. Any notice or document shall be deemed served: if delivered electronically by e-mail at the time of delivery; and if posted 48 hours after posting.

19. Invalidity

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

20. Third Party Rights

A person who is not a party to this EUA shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this EUA (including Customer Group Companies). This condition does not affect any right or remedy of any person which exists or is available otherwise pursuant to the Act.

21. 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.

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