

Standard Terms and Conditions – Electronic Invoice Service

These terms and conditions, the Order Agreement and Professional Services Agreement (collectively “End User Agreement” or “EUA”) shall apply to the Customer’s purchase of the Software and/or Services and/or Professional Services or other services from the Company. This EUA shall take precedence and shall apply to the exclusion of all oral representations and all other terms and conditions printed on any purchase order or other document(s) prepared by Customer irrespective of their date. The parties agree that they have not relied upon any other representations, terms or conditions in entering into this EUA. 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, the Order Agreement or the professional Services Agreement shall be made except in writing and signed by an authorised signatory of each party.

1 DEFINITIONS

In this Agreement the following words and expressions shall have the following meanings:

“Agreement” shall mean this document together with all annexes hereto.

“Annex 1” means the annex appended to these terms and conditions.

“Back Up Copy(ies)” mean(s) a copy(ies) made of the Software as delivered, or as configured and installed, for archive and/or back-up purposes.

“Commencement Date” shall mean the date from which the Company has made the Services available for access and use by the Customer, for testing purposes and processing of data and confirmed such date in writing to the Customer.

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

“Company Infrastructure” means the infrastructure provided by the Company to the Customer to enable the Customer to access the Services, which may include, but shall not be limited to, computer programs, computer equipment, security equipment and network equipment and the documentation associated therewith.

“Concurrent Users” means the stated maximum number of individual users who are simultaneously accessing any or all of the licensed Software at any given point in time, irrespective as to whether or not any such user is actually using related Software resources.

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

“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.

“Customer Infrastructure” means the Customer’s own hardware, software and communication lines required to link to the Company Infrastructure in order to access the Services.

“Enterprise” means the Software is licensed for use in the day to day business purposes of the Customer and/or Customer Group Companies to process on behalf of each other and/or third parties, but shall not permit access to or use of the Software by any affiliated legal entities or third parties.

“Essential” means the Software is licensed to the Customer solely for use by one or more of its end users. Customer is permitted to grant its end user(s) access to the Company’s related web page to download the Essential Software application. Essential Software licences are not covered by Support under this EUA.

“Guest Operating System” means instances of third-party operating systems licensed by Customer and installed in a Virtual Machine (or otherwise emulated) or hardware system(s) hosting the Software. Virtualisation technology may not be used to circumvent other licensing terms and conditions and related restrictions.

“Implementation Fee” means the initial Professional Services set up fee, as set out in the Order Agreement.

“Incident” means an event which is not part of the standard operation of the Services and which causes or may cause disruption to, or a reduction in the quality of the Services.

“Initial Term” shall mean the period of twelve (12) months, commencing on the Commencement Date.

“Non-Human Devices” means any device(s) (including but not limited to: virtual PCs, build servers and unattended PCs performing batch jobs) that utilise the Software without interaction. For the avoidance of doubt such Non-Human Devices shall be considered Named or Concurrent Users as applicable.

“Order Agreement” means the document to which this Agreement is appended and which specifies the Services, Professional Services and/or other services being acquired by the Customer.

“Processor Cores” means two or more processors contained within a single CPU integrated circuit where each processor has its own cache and controller.

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

“Professional Services Agreement” means the supplementary terms and conditions available at www.bottomline.co.uk/terms&conditions/, under which the Company may provide Professional Services to the Customer.

"Sandbox" means the Software licence may only be used for test, development or pre-production purposes and may not be used in connection with Customer's day to day business as a live Software environment, for disaster recovery, or other purposes. A Sandbox Software licence must be purchased for each separate Software installation which may be used by the Customer to provide any form of test, development or pre-production environment.

"Server" means a single physical computer of a type that meets the specifications as set forth in the applicable product data sheets or computer hardware/Software systems compatibility guides published by the Company. Multiple computers that share processing power or operate in a networked configuration as a single logical computer, such as a "server farm" or similar arrangement, constitute multiple separate Servers for the purpose of this Agreement. A Virtual Machine or Guest Operating System shall be deemed to be a Server.

"Services" means the services specified in the Order Agreement and provided to the Customer pursuant to this Agreement.

"Services Fees" shall mean the monthly charges payable by the Customer to the Company in respect of the Services, as set out in the Order Agreement.

"Service Request" means a request from the Customer for information, advice, a change to, or additional access to the Services.

"Software" means the software products, modules and/or devices that are licensed under this Agreement (or provided as part of a services engagement pursuant to this Agreement), including, but not limited to, any related application programming interfaces, associated media, printed materials, online or electronic documentation; and any updates and maintenance releases thereto.

"Software Licence Key" means, where applicable, a serial number or other unique identifier issued by the Company to activate the Software.

"Specifications" means the functional and technical requirements regarding the Customer Infrastructure, together with the procedures specified by the Company for electronic communication between the Customer Infrastructure and the Company Infrastructure.

"Operating Hours" means twenty-four (24) hours a day, Monday to Friday GMT (or BST as applicable) (the "Operating Hours").

"Support" means those services provided by the Company to the Customer from time to time via the Service Desk in support of the Customer's use of and access to the Software and/or Services, in accordance with clause 3 of Annex 1.

"SWIFT" means The Society for Worldwide Interbank Financial Telecommunication whose Head Office is located at Avenue Adele 1, B-1310 La Hulpe, Belgium.

"Virtual Machine" means an instance of a Guest Operating System and any application programs installed thereon, running on a computer on which the Software is installed, or suspended to disk or any other storage media accessible by the computing device. Virtualisation technology may not be used to circumvent other licensing terms and conditions and related restrictions.

2 COMMENCEMENT AND TERM

- 2.1 This Agreement shall become effective on the last date of signature of the Order Agreement by either of the parties. The Services shall commence on the Commencement Date and subject to the provisions for termination in clause 11 of this Agreement, this Agreement and the provision of Services shall remain in force for the Initial Term and thereafter be automatically renewed for successive periods of twelve (12) months, subject to payment of the Implementation Fee and the Services Fees in accordance with clause 5 of the Agreement.

3 RESPONSIBILITIES OF THE COMPANY

- 3.1 The Company shall provide the Company Infrastructure and the Services to enable the Customer to access and use the Services in accordance with the terms of this Agreement.
- 3.2 The Company shall use reasonable endeavours to maintain the same level of security standards for message confidentiality, integrity and systems availability of the Services as is provided by SWIFT to its users.
- 3.3 The Company reserves the right to amend the Specifications from time to time, which shall become effective upon the Company giving written notice thereof to the Customer. The Company will give the Customer sixty (60) days notice of any such amendments.
- 3.4 The Company reserves the right to increase or upgrade the Company Infrastructure. The following terms and conditions will apply to such upgrades:
- 3.4.1 the Company will inform the Customer of such an upgrade as soon as reasonably practicable prior to the upgrade being carried out;
- 3.4.2 the Company will use reasonable endeavours to carry out any such upgrades in such a way as to minimise the impact on the Customer, this will mean wherever possible any upgrades are carried outside of Operating Hours;
- 3.4.3 If the Company foresees that any such upgrade will have an impact on the Customer, the Company will consult with the Customer with a view to ascertaining what action is necessary to try to ensure that so far as possible the Customer will have continued access to and use of the Company Infrastructure and for this purpose the Customer will provide full cooperation to the Company.
- 3.5 The Company reserves the right to take all reasonable action necessary at any time to preserve the security and reliable operation of the Company Infrastructure and the Services, giving Customer as much prior notice of any such action as is practicable.

4 RESPONSIBILITIES OF THE CUSTOMER

- 4.1 The Customer shall:
- 4.1.1 acquire and maintain the Customer Infrastructure;
- 4.1.2 comply with all reasonable instructions given by the Company which relate to the Customer Infrastructure and the Company Infrastructure;

- 4.1.3 obtain and maintain in effect all necessary licences and consents that are required for the Company to access, use, operate, copy and modify the Customer Infrastructure as required by the Company, only so far as may be necessary solely in connection with the performance of the Services;
- 4.1.4 ensure that the security features to access the SWIFT system and service remain under its control and to procure that access to the SWIFT system is restricted to authorised users only;
- 4.1.5 ensure that its use of and access to the Company Infrastructure, the Services and the Customer Infrastructure is in accordance with the Specifications at all times;
- 4.1.6 ensure that the Customer Infrastructure is equipped and updated regularly with current industry-standard virus-scanning software and at all times meets the Specifications;
- 4.1.7 confirm to the Company in writing nominated contact persons for the Customer. This will include at least a primary and secondary contact for both business and technical personnel and should include all relevant contact details such as name, address, email, telephone and fax numbers. Also to update the Company in writing as to changes of the nominated contact persons and/or their contact details as described above;
- 4.1.8 supply the Company with a detailed list of a minimum of two operational contacts stating their level of authorisation that will be utilised for the authorisation of requests made by the Customer, such as those required to create new users of the service. This list will also include the contacts required if the Company needs to invoke disaster procedures and appropriate replacements or escalation path if the usual contacts are unavailable
- 4.2 The Customer hereby agrees that it is solely responsible for and liable in respect of all access to and use of the Services through the Customer's login and password and the Customer shall ensure that private login names, passwords and other confidential information remain confidential.
- 4.3 The Customer hereby agrees that it is solely responsible for and liable in respect of all statutory and legal requirements as amended from time to time in connection with the content, value and presentation of any message or electronic invoice generated and/or sent using the Software and/or the Services.
- 4.4 The Customer shall not abuse or make any fraudulent use of the Services, which may include without limitation:
- 4.4.1 any illegal or unlawful activity;
- 4.4.2 the collection, development or distribution of malicious code;
- 4.4.3 hacking or cracking activities;
- 4.4.4 the circumvention of copy-protection mechanisms;
- 4.4.5 assisting or allowing any third person to do any of the foregoing; or
- 4.4.6 using the Services in such a manner as to unreasonably interfere with the use of or access to the Services by any other customer or authorised person.
- 4.5 The Customer shall not do or permit anything to be done which will compromise or affect or jeopardise the security of the Company Infrastructure.

5 PAYMENT OF CHARGES

- 5.1 The Company shall invoice the Customer for any Software licence fees and annual Software Support specified in an Order Agreement upon shipment of the related Software. The first year's provision of Software Support shall commence within three (3) days of shipment of Software. Professional Services shall be charged at the rate(s) specified in an Order Agreement and will be invoiced as delivered. The Services Fees shall be invoiced each month in advance beginning on the Commencement Date for the Initial Term and thereafter on a monthly basis (to include any additional transactional charges for Service usage over and above the contracted transaction level specified in an Order Agreement for the prior month) for successive twelve (12) month periods, until this Agreement is terminated in accordance with clause 11. The Company reserves the right to increase the Services Fees at any time upon sixty (60) days notice to the Customer prior to any renewal of the Initial Term, but no more than once during the Initial Term or in any subsequent twelve (12) month period, where such increases are required as a result of;
- 5.1.1 changes in service levels e.g. enhancements or upgrades to the Company Infrastructure; or
- 5.1.2 any change to the Company's standard list prices for the Services in the ordinary course of its business.5.2 Following signature of the EUA, in the event that the Customer enters into a new Order Agreement for alternative services which are intended to replace the Services already being provided, then any change in service level and related fees shall be applied from the first day of the month following signature of such new Order Agreement.
- 5.3 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 request the Customer to immediately return any Equipment and/or Software in good and complete condition.
- 5.4 The Company reserves the right to charge the Customer interest on any payment not made by the due date for payment. Interest will be calculated on a daily basis, both before and after any judgement, at the rate of 2% per annum over the Bank of England base rate, for the period from the due date for payment until the date on which such amount is paid.
- 5.5 Notwithstanding the provisions of clause 5.4 above, in the event that the Customer fails to pay any Company invoice by the due date for payment, the Company may restrict the use of the Services and initiate the Dispute Resolution process identified in clause 12 of this Agreement, or terminate the Agreement (including the EUA as a whole) as defined under clause 11 of this document.
- 5.6 All sums payable hereunder are exclusive of VAT and all other taxes or duties. Where applicable, such taxes or duties shall be charged in addition to the sums payable hereunder at the rates in force at the time of invoice.

6 CARRIAGE

- 6.1 All Software shall be shipped to the premises as indicated on the Order Agreement by electronic means wherever available. Physical media will be shipped only where specifically requested on the Order Agreement, or where electronic means are unavailable. Risk in the Software shall pass when it leave the Company's premises.
- 6.2 The dates for delivery of Software and any Professional Services are approximate only and time is not of the essence. The Company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver the Software or any Support or Professional Services. If for any reason the Customer is unable to accept delivery of the Equipment and/or Software when they are due and ready for delivery, the Company may store the Equipment and/or Software at the Customer's risk and the Customer shall be liable to the Company to pay the reasonable costs of such storage and related insurance.

7. SOFTWARE OWNERSHIP AND CONFIDENTIALITY

- 7.1 Customer acknowledges that the Software is licensed not sold and that all copyrights, patents, trade secrets and other rights, title and interest therein in whole or in part and all copies thereof, are the sole property of the Company or its related entities or third party suppliers. Customer shall gain no right, title or interest in the Software by virtue of this EUA other than the non-exclusive right of use granted herein. Without limiting the foregoing, Customer specifically acknowledges Company's exclusive rights to ownership in any copy, modification, translation, enhancement, adaptation, or derivation of the Software.
- 7.2 Customer further acknowledges that the information contained in the Software is confidential and contains trade secrets and proprietary data belonging to the Company (or its third party licensors), and that the presence of copyright notices on the medium containing the Software, or not, does not constitute publication or otherwise impair the confidential nature thereof. Customer shall implement all reasonable measures necessary to safeguard the Company's (and its third party licensors) ownership of, and the confidentiality of the Software, including, without limitation: (a) allowing its employees, agents and third parties access to the Software only to the extent necessary to permit the performance of their ordinary services to the Customer and to require, as a condition to such access, that such persons comply with the provisions of this Clause 13; (b) cooperating with the Company (and its third party licensors, if appropriate) in the enforcement of such compliance by Customer's employees, agents and third parties; (c) prohibiting the removal or alteration of any copyright or confidentiality labels or notices contained in the Software; (d) prohibiting the copying of the Software except as permitted pursuant to this Agreement; and (e) not disclosing the Software to any third party other than to the limited extent permitted under this Agreement. Notwithstanding the foregoing, the Customer agrees not to disclose the Software (without the Company's prior written consent) to any service bureau or other third party whose primary function shall be to provide the Customer with hosting and/or day-to-day management and support responsibility for the Software. Customer acknowledges that use or disclosure of the Software in violation of this Agreement may cause irreparable harm to the Company (and/or its third party licensors). Customer acknowledges that no remedy available in law may be sufficient in the event of a material breach of this Agreement by the Customer, its agents, employees, sub-contractors or third parties, or Customer Group Companies in respect of the confidentiality of the Company's intellectual property.

8. LICENCE AND USE OF SOFTWARE

- 8.1 Subject to the terms and conditions contained in this Agreement and Customer's payment of applicable Software licence fees under this EUA, the Company hereby grants to the Customer a non-exclusive, non-transferable, irrevocable and perpetual Enterprise Licence, without rights to sublicense, to use the Software for the purpose as set forth in the applicable documentation for the Software; and according to the licence parameters specified in an Order Agreement as follows:
- 8.1.1 The specified number of Servers, each operating in conjunction with a single instance of the Software on a single database instance.
- 8.1.2 The specified number of Concurrent users.
- 8.1.3 The specified number of Processing Cores.
- 8.1.4 Where no specific licence parameter is specified in the Order Agreement then the Software shall be deemed licensed by the quantity indicated therein for each respective Software component listed.
- 8.2 The Customer may make up to three (3) Back Up Copies of the Software and/or Software environments. Back Up Copies may not be utilised for live and/or Test purposes over and above the Software license(s) granted hereunder.
- 8.3 Customer will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Software, except only when and to the limited extent that applicable law expressly permits such activity, irrespective of the limitations contained herein.
- 8.4 DR licence means the Software may only be used by the Customer to provide redundancy for the Customer's live or other environments, including but not limited to dedicated virtual, powered up, or non-powered up disaster recovery solutions. A Disaster Recovery Licence must be purchased for each separate Software environment (virtual or otherwise), which may be used by the Customer to provide any form of disaster recovery; and may only be used in connection with Customer's day to day business in the event that the dedicated live, test or development Software environment becomes unavailable.

9 WARRANTIES

- 9.1 The Company warrants that in accordance with this Agreement:
- 9.1.1 it has title to the Software and has the right to and grant the Software licence(s) purchased by the Customer;
- 9.1.2 the Software supplied materially conforms to its standard specification;
- 9.1.3 the services shall be provided using reasonable care and skill;

- 9.2 The Customer's sole and exclusive remedy in the event of breach of the above warranty is the correction of any failure reasonably determined by the Company as a failure by the Company to comply with such warranty provisions. Correction may comprise, at the Company's sole discretion, re-performance of the Professional Services or portion thereof, replacing, repairing or adjusting the Software without charge to the Customer or refunding any relevant portion of paid fees. All remedies for any breach of the warranty provisions are available only if such breach is reported to Company in writing within 90 days of shipment of the defective Software or within 30 days of completion of the defective Professional Services.
- 9.3 Company warrants that it has acquired and will continue to acquire, all necessary licences and permissions required to provide shared connectivity to the Services as necessary.
- 9.4 The Customer warrants that it has full right, power and authority to enter into and perform its obligations under this Agreement and has all licences, permits, authorisations and consents necessary to carry on its business .
- 9.5 The parties warrant that no information submitted via the Services by either party shall be accessed, interpreted or tampered with by the other party, except with the consent of the submitting party and such information shall be treated as confidential by the parties and will not be disclosed to any third party, except as required by law or as necessary to provide the Services.
- 9.6 Without prejudice to the generality of clause 6.5 above, the Company does not warrant or guarantee that information transmitted or made available to the Customer by way of the Services:
- 9.6.1 will be suitable for any purpose; or
- 9.6.2 will be free of any inaccuracies of any kind.

10 REMEDIES AND LIMITATION OF LIABILITY

- 10.1 Notwithstanding any other provisions in this Agreement the Company's liability to the Customer for death or injury resulting from the Company's negligence or the negligence of its employees agents or sub-contractors shall not be limited.
- 10.2 Subject to Condition 10.4, the Company's maximum aggregate liability for any damage to the tangible property of Customer resulting from the negligence of the Company or its employees, agents or sub-contractors shall not exceed £1,000,000.
- 10.3 Subject to Condition 10.4 the Company's maximum aggregate liability for any breach of its contractual obligations or any tortious act or omission, except for negligence pursuant to Clause 10.2, shall be limited to the greater of £100,000 or the combined total amount paid by Customer for Equipment, Software licences, and Professional Services under the Order Agreement to which such claim relates.
- 10.4 In no event shall the Company have any liability for:
- 10.4.1 loss of profits, goodwill, business interruption, delay or failure in provision of services, or any type of special, indirect, consequential or incidental loss or damages (including loss or damage suffered by the Customer as a result of any action brought by a third party) even if the Company has been advised of the possibility of such damages; and
- 10.4.2 in respect of any liability (including breach of warranty) which arises as a result of the misuse of the Software and/or 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
- 10.4.3 unless the Customer shall have served notice in writing of any facts which may give rise to a claim against the Company hereunder within six years of the date it either became aware of the circumstances giving rise to a claim or the date when it ought reasonably to have become so aware.
- 10.5 Customer shall be liable, and shall indemnify the Company in full and on demand, against all claims, loss and damage caused by a message sent via the Services that originates from the Customer.
- 10.6 Save as expressly set out 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 and the Customer acknowledges that none of the foregoing have induced it to enter into this Agreement.

11 CONFIDENTIAL INFORMATION

- 11.1 Each of the parties hereby undertakes to hold in trust and confidence and not to use or disclose to any other party, during and after the termination of this Agreement, any information disclosed to it orally, visually, or which is in writing or other tangible form, supplied to one another directly or indirectly or to any of their subsidiaries, directors, employees, agents, brokers or advisers regarding the business practices of the other party, including but not limited to pricing, services, transactional data, client information, payments, ideas, concepts, methods, processes, computer programs and any electronic information which is transmitted across the technical Company Infrastructure, (including but not limited to the contents of messages passing through the Company Infrastructure), (the "Information").
- 11.2 Each party agrees:
- 11.2.1 to take all reasonable steps to maintain the confidentiality of the Information, it being agreed that such Information is a valuable asset of the disclosing party which would be severely prejudiced and which would suffer damages in the event of such Information being disclosed to any third party or used by such third party for whatever purpose;
- 11.2.2 to restrict the use of the Information exclusively for the contemplated purposes at the time of the disclosure thereof and will only make the Information available to such of its directors and senior employees who need access to the Information;
- 11.2.3 not to make copies of or reproduce in any form the Information;

11.2.4 to keep the Information secure and in such a way as to prevent unauthorised access by any third party, and will apply to the Information the same degree of care with which it treats and protects its own proprietary information against public disclosure.

11.3 The Parties agree that the contents of this Agreement shall be treated as Information and accordingly pursuant to this clause 8 will not be disclosed to any other party, save that this Agreement, in whole or parts, may be disclosed to authorised officers of SWIFT as part of the Company maintaining their SWIFT accreditation for the provision of fully certified SWIFT Access Service.

11.4 Notwithstanding clause 11.3 above,

11.5 Neither party shall have any obligations with respect to any Information which:

11.5.1 is or becomes publicly known, otherwise than as a consequence of a breach of the Agreement;

11.5.2 is disclosed as required by law or regulation;

11.5.3 is approved for release by written authorisation from the other party to this Agreement;

11.5.4 is independently developed by either party or its representatives or advisers.

11.6 All Information will remain the property of the party who developed or disclosed the Information and will be returned to the owner on termination of this Agreement.

11.7 Notwithstanding the foregoing provisions of this clause 11, the Customer acknowledges and agrees that their company name, address for electronic invoicing and value added tax or sales tax reference will be published on a web page or web site in the public domain, for the purposes of enabling use of the Services by the Customer and its end users.

12 INTELLECTUAL PROPERTY RIGHTS

12.1 The Parties hereby agree that all intellectual property rights arising during the term of this Agreement in respect of alterations modification and enhancements of the Company Infrastructure made by the Company or in respect of any other software or other developments made by or procured by the Company on behalf of the Customer shall belong to the Company (or to its third party licensor) and the Customer undertakes as necessary to assign or procure the assignment of all such intellectual property rights without charge to the Company.

12.2 The Company shall indemnify and hold harmless the Customer against all damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the use by the Customer of any part of the Company Infrastructure or any modifications enhancements or alterations thereto in connection with the provision of the Services during the term of this Agreement infringes any intellectual property right of the said third party.

12.3 The Customer shall indemnify and hold harmless the Company against all damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the use by the Company of the Customer Infrastructure or any part or any modifications, enhancements or alterations thereto during or after the termination or expiry of this Agreement infringes any intellectual property right of the said third party.

12.4 Each Party's respective obligation under clause 12.2 and 12.3 respectively ("Defending Party"), shall not be effective unless the claiming party (each the "Claimant"), give to the Defending Party written notice of any claim or threatened or actual action within ten (10) days of knowledge thereof and give full control of the defence and settlement, along with the Claimant's full co-operation, to the Defending Party. Subject to clause 12.2 or 12.3 as applicable, the Defending Party may then at its own expense: (i) procure for the Claimant the right to continue to use the Claimant's infrastructure; (ii) make such Claimant's infrastructure non-infringing; or (iii) where the Customer is the Claimant, the Company may terminate this Agreement and refund a portion of any fees paid which are proportional to any un-used period then remaining under this Agreement.

13 TERMINATION

13.1 Without prejudice to any other remedies which the parties may otherwise have under this Agreement either party shall be entitled to terminate this Agreement by written notice to the other as follows:

13.1.1 by not less ninety (90) days prior written notice, such notice to expire at the end of the Initial Term or, on any anniversary of the Commencement Date thereafter;

13.1.2 by immediate notice if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 as amended or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as amended or if a trustee receiver administrative receiver administrator or liquidator or similar officer is appointed in respect of all or any part of the business or assets of the other party or if notice of intention to appoint an administrator of the other party is given by any person or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);

13.1.3 by immediate notice if the other commits a breach of any term of this Agreement and fails to remedy such breach within seven (7) (seven) calendar days after receiving notice from the other party requiring it to do so.

13.2 In the event that this Agreement is terminated for any reason prior to the expiry of the Initial Term, the Customer shall pay to the Company immediately on demand all outstanding invoices that have been properly raised in accordance with this Agreement.

13.3 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 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.

13.4 The termination of this Agreement, for whatever reason, shall not affect the rights of either of the parties:

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Bottomline Technologies Europe Limited Registered Office: 115 Chatham Street, Reading, Berkshire RG1 7JX Registered in England No: 08098450

13.4.1 that may have accrued before the termination of this Agreement; or

13.4.2 which expressly or by their nature are intended to survive the termination of this Agreement.

13.5 Upon termination or expiry of this Agreement the Customer will deliver to the Company all Software, Equipment and Company Infrastructure, if any, in the Customer's custody or possession.

14 DISPUTE RESOLUTION

14.1 In the event of any dispute arising out of or relating to this Agreement each party agrees not to commence legal proceedings without first attempting in good faith to resolve the dispute amicably and in a timely manner in accordance with the dispute resolution procedures set out below.

14.2 Any dispute shall be referred in the first instance to the Head of SWIFT Access Service for the Company and a duly appointed representative for the Customer.

14.3 If the dispute is not resolved within 14 (fourteen) working days after referral in accordance with clause 14.2 the parties shall meet to consider whether and on what terms they wish to refer the matters in dispute to external mediation, arbitration or assessment by an expert.

14.4 If the matter has not been resolved within 14 (fourteen) days of the parties' meeting as referred to in clause 14.3 this dispute resolution procedure shall be considered at an end as regards the dispute in question and either party may refer the dispute to the English courts and the parties submit to their exclusive jurisdiction for that purpose.

15 SOFTWARE AUDIT

15.1 The Customer agrees that upon reasonable prior written notice the Company may periodically gain access to Customer site(s) to confirm the Customer's adherence to the terms of use and Software licence parameters specified under this Agreement. Where such audit confirms any variance to such terms and parameters, then the parties will execute an addendum to the EUA to rectify such variance and the Customer shall pay any related Software licence and Support fees agreed thereunder. In the event that the parties fail to agree such fees, then Company reserves the right to terminate this Agreement in relation to such Software licence and related Support with immediate effect and Customer shall cease use of such Software, returning all copies thereof to the Company in accordance with Clause 13.5.

16 MISCELLANEOUS

16.1 If any provision of this Agreement is found or held to be invalid or unenforceable, that provision shall be enforced to the maximum extent possible, and the validity and enforceability of all the other provisions of this Agreement will not be affected thereby.

16.2 This Agreement does not constitute either of the parties a partner, an agent or legal representative of the other, for any purposes whatsoever, and neither of the parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.

16.3 The Customer gives its written consent and agrees that the Company may refer to the Customer as a client of the Company in any of its marketing material and refer to the type of services that the Company has provided. The Customer may also agree for the Company to publish and circulate any case study describing the Services supplied by the Company to the Customer (for use by the Company as a marketing tool). With prior written consent from the Customer, the Company may use any of the Customer's trademarks in the Company's marketing and publicity materials. The Customer's trademarks shall remain the exclusive property of the Customer and this Agreement does not entitle the Company to acquire any goodwill or other rights in the Customer's trademarks.

16.4 Any notice or other communication to be given under this EUA must be in writing and may be delivered or sent by pre-paid first class letter post to the Company at its registered address or facsimile transmission to an officer of the Company. Any notice or document shall be deemed served: i) if delivered electronically by e-mail, at the time of delivery; ii) if posted, 48 hours after posting; and iii) if sent by facsimile transmission, at the time of delivery.

16.5 With the specific exception of payment obligations hereunder, neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fire, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority (an "Event of Force Majeure"). Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure. If a default is due to an Event of Force Majeure and shall continue for more than four (4) weeks then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

16.6 No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the parties.

16.7 The Customer shall not be entitled to assign, delegate or transfer any rights, obligations, share or interest acquired under or pursuant to this Agreement, in whole or in part, to any other party or person without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed.

16.8 No waiver on the part of either party to this Agreement of any breach of any provision of this Agreement by the other, will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

16.9 This Agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the exclusive jurisdiction of the English Courts.

ANNEX 1: SERVICES AVAILABILITY, CRYPTOGRAPHIC KEYS AND SUPPORT

1 AVAILABILITY

- 1.1 The Company shall use reasonable endeavours to provide connectivity to the Company Infrastructure and Services during the Operating Hours.
- 1.2 The Company shall use reasonable endeavours to provide connectivity to the Company Infrastructure and Services on Saturday and Sunday in line with availability of the subscribed services and network infrastructure as supplied by SWIFT or any other relevant third party.
- 1.3 The Company may withdraw connectivity for the Services at any time after 18:00, Monday to Friday GMT (or BST as applicable) and at any time on Saturday and Sunday where the Company, in its sole opinion, deems it necessary or desirable for maintenance purposes. The Company shall notify the Customer in advance of any planned maintenance. The Company shall use reasonable endeavours to notify the Customer in advance of any un-planned maintenance which it deems to be necessary for essential maintenance to ensure the security and continued provision of the Services to the Customer during Operating Hours.
- 1.4 The Company may withdraw connectivity to the Services for the purposes of disaster recovery testing, which the Company shall use reasonable endeavours to carry-out on four (4) week-ends per year. The Company shall use reasonable endeavours to notify the Customer in advance of such withdrawal of connectivity.

2 CRYPTOGRAPHIC KEYS

- 2.1 The Customer's private PKI keys and certificates will be held securely on the Company Infrastructure in accordance with SWIFT best practice, i.e. HSMs.
- 2.2 The Customer's private PKI keys and certificates will be accessible only to authorised Company personnel. The Customer may request, at any time, a list of the Company authorised personnel that can access the Customer's private PKI keys and certificates.
- 2.3 Any disabling, revoking, creation, or usage of the Customer's private PKI keys and certificates; and changes in the user profile (defined in the context of Role Based Access Control (RBAC) by the Company) will be performed according to strict procedures defined in the Company SWIFT Bureau Cryptographic Key Management Procedure ("SBCKMP").
- 2.4 The initiation, modification, and termination of cryptographic secrets and arrangements by the Company will be performed according to strict procedures defined in the SBCKMP.
- 2.5 The Customer may request an audit trail of all actions carried out by the Company in relation to the Customer's private PKI keys and certificates.

3 SUPPORT

- 3.1 Provision of Software and Services Support is available and provided subject to the Company's published "Support Agreement – Document Processing Software" (which forms part of this EUA) a copy of which is available at: www.bottomline.co.uk/terms&conditions.

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