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Standard Terms and Conditions – Software Subscription

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.

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

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

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

“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.

“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 User Agreement (CUA)” collectively means the initial Order Agreement, any subsequent Order Agreement(s), this Agreement, the Professional Services Agreement and the relevant Software Support Agreement and/or Equipment Maintenance Agreement.

“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).

“Equipment” means non-software goods purchased by the Customer on an Order Agreement.

“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.

“Initial Term” means a period of three (3) years, or the shorter period where specified in an Order Agreement, commencing on last date of signature by a party to the initial Order Agreement.

“Named User” means a specific named individual registered on a single installed Software device, irrespective as to whether such user is logged on to, or actively accessing any or all of the licensed Software. A Named User license may not be shared by multiple users nor used concurrently with other Software devices.

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

“Order Agreement” means the document which references this Agreement and which specifies the Software licence subscription (inclusive of Support), Professional Services or other service or Equipment being acquired by the Customer, as applicable.

“Personal Data” shall have the meaning given to it pursuant to Data Protection Laws.

“Processing” shall have the meaning given to it pursuant to Data Protection Laws.

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

“Renewal Term” means a one (1) year period following the Initial Term or another Renewal Term, as applicable.

“Security Monitoring Software” means Software which specifically enables the Customer to monitor and/or implement controls over security in connection with its infrastructure and systems, including without limitation user behaviour monitoring and payment fraud.

“Software” means Security Monitoring Software, or financial document automation software products and modules that may be licensed on an annual subscription basis under this Agreement (or provided as part of a services engagement pursuant to this Agreement) for deployment on the Customer’s premises and are specified in one or more Order Agreements, including, but not limited to, any related application programming interfaces, associated media, printed materials, online or electronic documentation; and any Updates and Upgrades thereto.

“Support” means the provision of remote consultation and advice by qualified technical personnel and the provision of any applicable Software maintenance in the form of Updates and Upgrades, inclusive with Software licence and in accordance with a Software Support Agreement pursuant to this Agreement.

“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.

"Updates" means error corrections and maintenance releases to the Software which are made generally available from time to time by the Company.

"Upgrades" means Software enhancements that may accomplish incidental, structural, functional and/or performance improvements which are made generally available from time to time by the Company.

“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.

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1. General

This CUA shall apply to the Customer's purchase of Software licence subscription and related Support, and/or Professional Services or other services or Equipment from the Company. In the event of a conflict between this Agreement and any third-party licence agreement supplied with the Software, then 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) (including e-mail) prepared or issued by either party irrespective of their date. The parties agree that they have not relied upon any other representations, terms or conditions in entering into this Agreement. This CUA states the entire agreement between the parties on this subject and supersedes all prior negotiations, understandings and agreements between the parties concerning the subject matter. No amendment or modification of this Agreement or the CUA shall be made except in writing and signed by an authorised signatory of each party.

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 If the Company arranges or undertakes the carriage, freight, insurance and other transport costs beyond its premises, such reasonable costs shall be for the Customer's account and shall in any event not affect the passing of title in the Equipment and/or Software licence.

2.3 Prices quoted are in Pounds Sterling unless otherwise agreed and stated within the CUA or an Order Agreement.

2.4 Commencing in year two (2) of this CUA the Company reserves the right to increase Software subscription 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%). The resulting annual increase shall not exceed ten percent (10%) in total.

3. Invoicing and Payment

3.1 Company shall, upon Software shipment (as defined in clause 4.1) and annually thereafter (unless this CUA is terminated in accordance with clause 17), raise an invoice for all one-time Equipment fees and annual Equipment Maintenance (if any) and Software subscription licence fees (inclusive of annual Software Support) set out in the applicable Order Agreement(s).

3.2 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 (unless specified therein as being an annual fee in which case such annual fees shall be invoiced annually in advance, commencing on the date that the Company signed the relevant Order Agreement), unless terminated in accordance with Clause 17. When deliveries are spread over a period of time each consignment will be invoiced as despatched and treated as a separate account and payable accordingly.

3.3 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 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. Where non-payment persists the Company may at its sole option and subject to the provisions of clause 17.2 (i) give notice to terminate this CUA for material breach and upon termination the Customer shall immediately cease all access to and use of the Software. Such termination shall not relieve the Customer of their payment obligations hereunder.

4. Carriage

4.1 All Software and any Equipment 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 Equipment and/or Software shall pass when they leave the Company's premises.

4.2 The dates for delivery of the Equipment and/or Software and any Professional Services are approximate only and time is specifically not of the essence of the CUA. The Company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver the Equipment and/or 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.

5. Security Interest

5.1 Company retains a security interest in all Equipment and Software licences. All intellectual property rights in the Software remain vested with the Company and no intellectual property rights to any Software are transferred to Customer.

5.2 Until all Equipment is paid for in full, Customer shall:

5.2.1 not remove the Equipment supplied hereunder or allow it to be removed from the address to which it was delivered; and

5.2.2 keep the Equipment in good condition and complete; and

5.2.3 not allow the Equipment to become the subject of any charge or lien whether by operation of law or otherwise.

6. Ownership

6.1 Customer acknowledges that the Software is licensed on a temporary subscription basis, is 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 and exclusive property of the Company or its related entities or third party licensors. Customer shall gain no right, title or interest in the Software by virtue of this CUA other than the non-exclusive right of use granted herein. Without limiting the foregoing, Customer specifically acknowledges Company's exclusive rights to ownership in any copy, modification, translation, enhancement, adaptation, or derivation of the Software.

7. Licence and Use

7.1 Subject to the terms and conditions contained in this Agreement and Customer's payment of applicable Software subscription fees under this CUA, the Company hereby grants to the Customer a non-exclusive, non-transferable, revocable licence, without rights to sublicense, to use the Software for the purpose as set forth in the applicable documentation for so long as this CUA remains in force; and according to the licence restrictions set forth in the related Order Agreement(s) and in accordance with this Clause 7.Customer acknowledges and agrees that the Software licensed under this Agreement shall only be accessed and used by the Customer.

7.1.1 Unless explicitly stated otherwise in the Order Agreement, the licence includes the right to install one production copy of the applicable Software products, and any additional copies shall incur an additional subscription fee.

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7.1.2 The Customer may make up to three (3) Back Up Copies of the Software. Back Up Copies may not be utilised for live and/or Test purposes over and above the Software license(s) granted hereunder.

7.1.3 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.

7.2 The Customer may use the Software to process on behalf of Customer Group Companies, but shall not permit access to or use of the Software by any Customer Group Company, affiliated legal entities or third parties.

7.2.1 Notwithstanding the provisions of clause 7.2 above, where the Customer has licenced the Company's Transform® and/or PrecisionForms™ Software then the Customer may permit access to and use of the Software by Customer Group Companies, but not by any affiliated legal entities or other third parties.

7.3 Additional licence parameters dependent upon which Software product is licensed in accordance with the Company's then current price list and specified in an Order Agreement are as follows:

7.3.1 The specified number of Named Users.

7.3.2 The specified number of Concurrent users.

7.3.3 The specified quantity and unit of measure.

7.3.4 Where no specific licence parameter is specified in the Order Agreement then each Software subscription component shall be deemed licensed by the quantity Indicated therein.

7.4 **Disaster Recovery Licence ("DR")** 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 powered up, or non-powered up disaster recovery solutions. A Disaster Recovery Licence must be purchased for each separate Software environment 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.

7.5 **Virtual Disaster Recovery Licence ("Virtual DR")** means the Customer may make one (1) copy of their installed production Software environment including configuration, on a virtual machine for the purposes of recovering the Software and configuration to a new server, in the event of production server failure only. The Customer is not permitted to deploy or use such copy in any production environment where another production environment (virtual or otherwise) is active.

7.6 **Test Licence ("Test")** means the Software 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 Test 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.

7.7 Unless expressly stated otherwise in the Order Agreement, the Customer is responsible for procuring, supporting and maintaining all third-party software, including without limitation, the database software, specified in the documentation supplied with the Software.

8. Warranty

8.1 The Company warrants that in accordance with this Agreement:

8.1.1 it has title to the Software and has the right to sell the Equipment and grant the Software licence(s) purchased by the Customer.

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

8.1.3 the Software supplied materially conforms to and, will operate in all material respects in accordance with its standard specification; and

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

8.2 The Customer's sole and exclusive remedy in the event of breach of the above warranties in clauses 8.1.2, 8.1.3 and 8.1.4 is the correction of any 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 Equipment and/or 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 ninety (90) days of shipment of the defective Equipment or Software (as defined in Clause 4.1) or in the case of Professional Services within thirty (30) days of completion of the defective services.

8.3 The Company shall prior to shipment use reasonable endeavours in accordance with good industry practice to deploy and update industry standard anti-virus and malware applications to detect the introduction of known computer viruses or other program codes which are likely to damage the Software or Customer systems. The Company shall notify the Customer promptly in the event that the Company becomes aware of a known computer virus or other program code or any other system or technology issue which may negatively affect the operation of the Software or the Professional Services.

8.4 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.

8.5 The warranties given by the Company in clauses 8.1, 8.2, 8.3 and 8.4 above are made only to the Customer and the Company will have no liability to any third party with respect to the Software, the Software Support and/or the Professional Services as a result of such warranties. Except as provided in this clause 8, the Company does not warrant that Security Monitoring Software will correctly detect and/or identify all security threats. The foregoing disclaimers will apply even if any warranty provided under this Agreement fails of its essential purpose.

9. Software Support, Equipment Maintenance, Professional Services & Pre-requisites

9.1 Provision of Software Support, and Professional Services are available and provided subject to the Company's then current published relevanmt "Software Support Agreement", Equipment Maintenance Agreement and the Professional Services Agreement (all of which form part of this CUA) and copies of which are available at: www.bottomline.com/uk/product-terms-conditions.

9.2 The Customer shall comply with all prerequisites notified to it from time to time in respect of the Software, including without limitation, supported versions of hardware, operating system and database management software, and the Company shall not be obliged to provide Support and maintenance for any Customer environment where such prerequisites are not in place.

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9.3 The Customer shall not export the Software outside of the United Kingdom without the Company's prior written permission.

9.4 **Major Technology Changes**. In case of a major evolution or a material technology change (e.g. new communication protocol, new operating system), the Company reserves the right, at its sole discretion, to launch a new Update of the Software with an updated Software subscription fee.

10. Limits of Liability

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

10.2 Subject to Clause 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 Clause 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 Software subscription, Equipment and Professional Services under the Order Agreement to which such claim relates.

10.4 In no event shall the Company have any liability:

10.4.1 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

10.4.2 (including breach of warranty) which arises solely as a result of the misuse of the Equiopment and/or Software supplied hereunder, or use thereof in combination with any equipment and/or software not approved by the Company or as a result solely of any defect or error in any equipment and/or software not supplied by the Company; and

10.4.3 for any illegal or unauthorised access to or release of any Customer data from any device whatsoever connecting to the Software, including, but not limited to, any access or release of such data arising from the accessing of any Customer login credentials and/or login to Customer account(s) by malware, viruses, or worms, for malicious or criminal activities including, but not limited to, fraudulent payments or fraudulent funds transfer.

10.4.4 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 The Customer acknowledges and agrees that in connection with any Security Monitoring Software licence:

10.5.1 effective security threat detection and management are dependent on a multi-layered, multi-faceted combination of software and hardware components, deployed and managed in accordance with appropriate policies and procedures consistently applied. No individual element in such a system, including the Security Monitoring Software, is alone sufficient to detect and prevent all security threats.

10.5.2 the Security Monitoring Software have or will have been, prior to production use, reviewed and tested by the Customer and meet the Customer's business and operational needs; and

10.5.3 the allocation of liability set forth in this CUA fairly reflects the economic circumstances and risks that the parties are willing to undertake in view of the amounts paid or payable for the Security Monitoring Software specified herein.

10.5.4 it shall be solely responsible for any use of the Security Monitoring Software, including any data and other output generated therefrom, and for verifying any data or output resulting from use of the Security Monitoring Software. Customer acknowledges that the quality of such data and output and the result of using the Security Monitoring Services are dependent on the data used by the Customer. The Customer further acknowledges and agrees that the Security Monitoring Services do not provide advice or recommendations for correct action, but rather solely generate output directly reflecting the data used by the Customer or arising from the Customer's use of the Security Monitoring Software.

10.6 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.

10.7 Off-payroll Working Rules

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

11. Third Party Intellectual Property Infringement

11.1 The Company agrees to indemnify the Customer against all costs, claims, liabilities and expenses incurred by the Customer and which are finally determined to have been caused by any claim that any Software licensed to Customer under this Agreement infringes any patent or copyright recognised by one of the signatories to the Berne Convention including but not limited to paying for any settlement, or any damages finally awarded in any such claim or suit against the Customer ("Losses"), and subject to the Customer using its reasonable endeavours to mitigate such Losses.

11.2 Company's obligations under this Clause 11 shall not be effective unless the Customer notifies Company in writing of any claim or threatened or actual suit and Customer gives full control of the defence and settlement at the Company's own expense, along with Customer's commercially reasonable co-operation, to Company.

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11.3 Company may, at its own expense: (i) procure for Customer the right to continue to use the licensed Software; (ii) make the licensed Software non-infringing; or (iii) where the options under (i) and (ii) are not available to the company on commercially reasonable terms, terminate the Software licences and refund any licence fees received from Customer for any remaining un-expired periods.

11.4 Company shall have no liability for any claim based on: (i) Customer's continued use after written notification, of a non-current release of the applicable licensed Software so long as a current release was made available to Customer without additional charge (subject to having purchased current Software Support); (ii) Customer's use of the licensed Software other than in accordance with the rights granted under this Agreement; (iii) Customer's combination of the licensed Software 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.

11.5 This Clause 11 states Customer's sole remedy and Company's exclusive liability in the event that Customer's use of any Software provided under this CUA infringes the intellectual property rights of any third party.

11.6 The indemnity provisions of this Clause 11 specifically do not apply to Equipment and to third party software (e.g. software which may be provided to the Customer by the Company wherein the Company is operating as a distributor for the third-party licensor of such software) and the Customer shall instead benefit from any intellectual property indemnity that may be provided by the third-party licensor, to the Company. Company warrants that to the best of its knowledge, the Customer's use of Equipment and of third party software, if any, that it supplies in accordance with the terms of this CUA will not infringe 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 Software supplied hereunder nor, without the prior written consent of the Company, to permit the whole or any part of the Software supplied hereunder to be combined with or become incorporated in any other software.

13. Company Intellectual Property

Customer 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 in the Software itself, 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.

14. Software Audit

The Customer agrees that upon reasonable prior written notice the Company may periodically gain reasonable access to Customer site(s) to confirm the Customer's adherence to the terms of use and 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 CUA to rectify such variance and the Customer shall pay any related 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 licence and/or Support with immediate effect and Customer shall cease use of such Software, returning all copies thereof to the Company in accordance with Clause 17.3.

15. Confidentiality

Each party shall treat as confidential information all information (including Software and the terms of the CUA) obtained from the other pursuant to the contract between them and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the CUA (and not subject to any confidentiality undertakings), which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach) 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.

16. 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.

17. Term and Termination

17.1 The CUA shall commence on the first date of signature on the initial Order Agreement and shall continue in force for the duration of the Initial Term and thereafter shall automatically renew for subsequent annual Renewal Terms, unless terminated by:

17.1.1 the Company on not less ninety (90) days prior written notice to the Customer, such notice to expire no earlier than the end of the Initial Term or the end of any Renewal Term thereafter; or

17.1.2 the Customer by written notice to the Company at any time to the following e-mail address: emeacontractnotice@bottomline.com.

In the event that the Agreement is terminated by the Customer in accordance with sub clause 17.1.2 above then the Company shall refund the Customer for any prepaid Software subscription licence fees and any other amounts in respect of other services received by the Company for periods extending beyond the date of termination notice.

17.2 Either party may without prejudice to its other rights, terminate the CUA immediately forthwith on giving written notice to the other if:

17.2.1 the other party commits any material breach of any term of this CUA and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing so to do; or

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17.2.2 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;

17.3 The Company may further without prejudice to its other rights and specifically its right to terminate under clause 17.2 (i) for un-remedied material breach, stop Equipment and/or Software in transit or shipment, suspend the performance of Professional Services or further deliveries of Equipment and/or Software forthwith on giving notice in writing to the Customer if Customer fails to pay any invoice in accordance with clause 3.

17.4 Upon expiry of termination of any Software licence, irrespective of cause, the Customer shall cease all use of the Software from the date of termination and shall promptly (and in any event no later than ten (10) business days from date of termination) confirm to the Company in writing signed by an officer of the Customer that all copies of the Software have been purged from its systems, and all copies thereof have been deleted and/or destroyed.

17.5 Following termination of this CUA for any reason whatsoever (other than by the Customer in accordance with 17.1.2 and 17.2 above) any monies owing from the Customer to the Company including any remaining Software subscription fees due for the remainder of the Initial Term or then current annual period, shall immediately become due and payable."

17.6 Without prejudice to any other remedies which the Company may have under this CUA or at law, the Company shall be entitled to suspend the provision of the Equipment, Software licence, Software Support, Equipment Maintenance and/or Professional Services or to terminate this CUA in the event that the Company is required to do so by any law, regulation or regulatory body. Notwithstanding any other term of this Agreement, the Company may terminate without notice, or indefinitely suspend, this CUA or any contractual provision herein as required to fulfil its obligations to comply with sanctions regulations.

17.7 The termination of this CUA, for whatever reason, shall not affect the rights of either of the parties: that may have accrued before the termination of this Agreement; or which expressly or by their nature are intended to survive the termination of this CUA.

18. Assignment

The Customer shall not be entitled to assign, sub-licence or otherwise transfer the rights and obligations granted hereunder, or under the CUA, whether in whole or in part unless otherwise agreed in writing by a duly authorised representative of the Company. The Company shall be entitled to sub-contract any Professional Services work relating to any Order Agreement provided that such work is performed in accordance with the terms of this Agreement and the Customer is provided with prior written notice.

19. 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; and industrial action or lockouts. In the event of such a Force Majeure event, the time for performance or cure shall be extended for a period equal to the greater of the duration of the Force Majeure or three (3) months. The party claiming to be prevented, hindered or delayed in the performance of any of its obligations under the CUA by reason of a Force Majeure event shall use all reasonable commercial endeavours to mitigate against the effects and consequences of the Force Majeure event. The affected party shall resume performance of its obligations under the CUA immediately upon the end of the Force Majeure event. Where no performance or cure is possible after the three (3) month period has elapsed, and in the reasonable view of the parties will not be forthcoming or possible within a further one (1) month from that date, the party not affected by the Force Majeure event may decide to terminate the CUA on service of written notice upon the party so prevented, hindered or delayed, in which case no party shall have any liability or obligation to the other under the CUA other than the payment of monies due.

20. Notices

Any notice or other communication to be given under this CUA must be in writing and may be delivered or sent by e-mail to an officer of either party and/or by registered or recorded letter post to either Party at its registered address. Any notice or document shall be deemed served: if delivered electronically by e-mail at the time of delivery; and when posted on signed receipt.

21. Invalidity

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

22. Third Party Rights

A person who is not a party to this CUA shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this CUA (including Customer Group Companies, aside from any rights that they may have to use the Software pursuant to the Customer's licence grant hereunder). This condition does not affect any right or remedy of any person which exists or is available otherwise pursuant to the Act.

23. 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.

24. Publicity

The Company shall not mention the signing of this licence in the Company's external communication or include the Customer's name in a list of customers which may be provided to the Company's clients and prospects, without the Customer's prior written consent.

25. 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 and the Company agree that they have read this Agreement and agree to be bound by the terms and conditions contained herein.

Tel: +44 (0) 118 925 8250 Fax: +44 (0) 118 982 2259 www.bottomline.co.uk
Bottomline Technologies Limited Registered Office: 1600 Arlington Business Park, Theale, Reading, Berkshire, England, RG7 4SA Registered in England No: 08098450