Bottomline

Bottomline Hosted Services Master Customer Agreement

The Agreement is made and entered into by and between Bottomline Technologies Limited (registered in England and Wales with number: 8098450) whose registered office is at 1600 Arlington Business Park, Theale, Reading, Berkshire, England, RG7 4SA ("**Bottomline**") and the Customer.

The agreement is made up of the following documents (the "**Agreement**"), and in the event of any conflict between the provisions of the Agreement the following shall be the order of precedence (highest level of precedence first):

1. the Order Form(s) signed pursuant to these Terms and Conditions;
2. the applicable Annexes to the Product Schedules;
3. the applicable Product Schedules;
4. these Terms and Conditions;
5. the Mandatory Terms;
6. the Privacy Terms referenced in Clause 11.3;
7. any applicable Statement of Work; and
8. the SLA.

1. Interpretation

1.1 For the purposes of the Agreement, the following words and phrases shall have the following meanings:

"Annex" means an annex to a Product Schedule containing supplementary terms and conditions applicable to the relevant Bottomline Solution in accordance with the Document Matrix attached to a Product Schedule;

"Applicable Law" means all applicable statutes, by laws, ordinances, subordinate legislation and other laws, including any judicial or administrative interpretation of them, in force from time to time in the United Kingdom;

"Authorised Users" means those employees, agents and independent contractors of the Customer who the Customer has authorised to access and use Bottomline Solutions;

"Bacs" means Bacs Payment Schemes Limited, a company registered in England and Wales with company number 04961302, whose registered address is at 2, Thomas More Square, London, E1W 1YN (or its successor);

"Bottomline Infrastructure" means Bottomline's hardware, communications infrastructure (including the Equipment), programs (including Software) and processes directly used for the provision of Subscription Services, excluding any Bottomline's internal infrastructure and systems;

"Bottomline Solutions" means Subscription Services, Professional Services, Software, Equipment and/or Product Documentation (as applicable);

"Business Day" means a day other than Saturday, Sunday or a public holiday in England when banks in London are open for business;

"Confidential Information" means all information (in any form) that is proprietary, non-public and/or confidential in nature in relation to the disclosing party (or its Group Companies) and (i) is clearly labelled or otherwise identified as confidential, or (ii) from its nature and/or the circumstances of its disclosure it is reasonable to infer that it is confidential information. Confidential information excludes any information: (i) the receiving party can prove was in its possession or in the public domain prior to it being received or obtained from the disclosing party; (ii) the receiving party lawfully or properly obtains without obligation of confidentiality; (iii) that comes into the public domain otherwise than through the default or negligence of the receiving party; or (iv) the receiving party can prove was independently developed by the receiving party without reference to the confidential information of the other party;

"Customer" means the legal entity (including registered company, public body, or financial institution) or a person specified in the Order Form;

"Customer Data" means all data uploaded by the Customer to the Subscription Services (excluding any Bottomline IPR);

"Customer Infrastructure" means the Customer's (or its third party provider's) hardware, software and communication lines required to link to the Bottomline Infrastructure in order to access the Subscription Services;

"Customer IPR" means Intellectual Property Rights (i) owned by the Customer before the Effective, and/or (ii) created by the Customer (or on the Customer's behalf) independently of the Agreement, and in each case excluding any Bottomline IPR;

"Customer Personal Data" has the meaning given to it in the Privacy Terms;

"Data Protection Laws" has the meaning given to it in the Privacy Terms;

"Deemed Employee" means an engagement to which section 61M(1)(d) of ITEPA applies;

"Effective Date" means the last date of signature by either party of the first Order Form made pursuant to these Terms and Conditions;

"Equipment" means any hardware supplied by or on behalf of Bottomline to the Customer;

"Fees" means the charges, including annually recurring charges, payable by the Customer to Bottomline in respect of Bottomline Solutions and Bottomline Infrastructure, as set out in an Order Form;

"FCA" means the UK Financial Conduct Authority (or its successor);

"FPSL" means Faster Payments Scheme Limited, a company registered in England and Wales with company number 07751778, whose registered address is at 2, Thomas More Square, London, E1W 1YN (or its successor);

"Group Companies" means the relevant party, its subsidiaries or holding companies from time to time and any subsidiary of any holding company from time to time, where a reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006;

"Initial Term" means the initial minimum term for the provision of Bottomline Solutions as specified in an Order Form;

"Intellectual Property Rights" means copyright, patent rights, design rights, database rights, trade marks, domain names and all similar or equivalent rights or forms of protection whether registered or unregistered and which subsist or will subsist now or in the future in any part of the world;

"ITEPA" means Incomes Tax (Earnings and Pensions) Act 2003;

"Licence Metrics" means the limited number of users and/or other units (where applicable) relevant to the Subscription Services, as further described in a Product Schedule and Order Form;

"Mandatory Terms" means the flow-down terms and conditions set out in http://www.bottomline.com/uk/product-terms-conditions/mandatoryterms

"Off-payroll Working Rules" means the rules in Chapter 10 of Part 2 of ITEPA;

"Order Effective Date" has the meaning given to it in Clause 3.1;

"Order Form" or "Order Agreement" means a document entered into pursuant to these Terms and Conditions, which specifies the Bottomline Solutions and their associated Fees;

"Pay.uk" means Pay.uk Limited, a company registered in England and Wales with company number 10872449, whose registered address is at 2, Thomas More Square, London, E1W 1YN (or its successor);

"Payment Network Provider" or "PNP" means FPSL, Bacs, Pay.uk, SWIFT, Customer's banks, Customer client's banks or otherwise a third party operating or connecting to a payment and/or settlement scheme;

"PCI-DSS" means the Payment Card Industry Data Security Standard;

"Personal Data" has the meaning given to it by Data Protection Laws;

"PNP Requirements" means all necessary licences, permits, authorisations, consents and agreements required to connect to the PNP networks;

"Product Documentation" means the documentation made available by Bottomline as amended from time to time, which sets out user instructions and description of the Subscription Services, Software and/or Equipment;

"Product Schedule" means a schedule containing supplementary terms and conditions applicable to the relevant Bottomline Solution in accordance with the Document Matrix attached to these Terms and Conditions;

"Professional Services" means those services set out in an Order Form and described therein as "professional services" supplied under the Agreement, including but not limited to consultancy, implementation and training;

"Renewal Period" has the meaning given to it in Clause 2.2;

"SLA" means the service level agreement (as amended from time to time) applicable to the relevant Subscription Services in accordance with the Document Matrix attached to these Terms and Conditions;

"Software" means any user interface and/or other software module licensed under the Agreement and its documentation provided to the Customer as part of Bottomline Solution, including, but not limited to, any related application programming interfaces, associated media, online or electronic documentation (including the applicable Product Documentation), Templates and any updates that may be made available from time to time;

"Statement of Work" or "SOW" means a document specifically referenced in an Order Form which provides further details of the Professional Services to be provided. For the avoidance of doubt, where the Order Form does not reference a Statement of Work, the Order Form shall itself be deemed to be the Statement of Work (where applicable);

"Subscription Services" means the specific subscription-based service(s) as specified in an Order Form, provided to the Customer via the Bottomline Infrastructure;

"SWIFT" means The Society for Worldwide Interbank Financial Telecommunication whose head office is located at Avenue Adele 1, B-1310 La Hulpe, Belgium (or its successor);

"Template" means a single document configuration provided by Bottomline to the Customer for use with the Subscription Service; and

"Terms and Conditions" means these terms and conditions.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of the Agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular, and a reference to one gender shall include a reference to the other gender.

1.5 The Agreement shall be binding on, and enure to the benefit of, the parties to the Agreement and their successors and permitted assigns, and references to any party shall include that party's successors and permitted assigns.

1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.7 A reference to **writing** or **written** includes email.

1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.9 A reference to **the Agreement** or to any other agreement or document referred to in the Agreement is a reference of the Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of the Agreement) from time to time.

1.10 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Term

2.1 The Agreement shall commence on the Effective Date and continue until terminated in accordance with Clause 16.

2.2 Unless otherwise stated, each Order Form and Subscription Services term shall commence on the Order Effective Date and remain in force for the Initial Term. Thereafter, each Order Form and Subscription Services shall automatically renew for successive periods of twelve (12) months ("**Renewal Period**") unless terminated in accordance with Clause 16.

2.3 Subject to Clause 16, an SOW shall be deemed expired at the earlier of: (i) the expiry date set out in an SOW, or (ii) when Bottomline confirms that the Professional Services have been completed.

3. Order Forms and Schedules

3.1 The Customer may procure Bottomline Solutions by agreeing an Order Form with Bottomline. An Order Form shall only be binding at the earlier of: (i) once signed by an authorised representative of each party, or (ii) when Bottomline starts delivering the Bottomline Solutions (the "**Order Effective Date**"). For the avoidance of doubt, all Order Forms made pursuant to these Terms and Conditions shall be governed by and form a part of the Agreement.

3.2 Each Product Schedule (and the applicable Annexes) shall apply as further described therein.

4. Bottomline's Responsibilities

4.1 Subject to the Customer's compliance with the terms and conditions of the Agreement and payment of applicable Fees, Bottomline shall provide the Customer with Bottomline Solutions in accordance with the Agreement.

4.2 Where required, Bottomline shall carry out the necessary on-boarding services to set up and configure the Subscription Services as further described in an SOW (where applicable).

4.3 Bottomline will perform the services in a professional and workmanlike manner, using reasonable care and skill.

4.4 Bottomline shall provide the Subscription Services (including support) in accordance with the SLA at the applicable support level to which the Customer has subscribed.

4.5 Bottomline reserves the right to amend or upgrade Bottomline Solutions and/or Bottomline Infrastructure from time to time. Bottomline will undertake such amendments or upgrades in accordance with the maintenance schedules set out in the applicable SLA.

4.6 If Professional Services are ordered by the Customer, Bottomline shall deliver such Professional Services to the Customer in accordance with the applicable SOW.

4.7 The dates for delivery of Bottomline Solutions are approximates only and time is not of the essence. Bottomline will not be liable in any circumstances for the consequences of any delay in delivery of Bottomline Solutions.

4.8 If Bottomline personnel attend the Customer's premises, Bottomline shall procure that they comply with any reasonable safety and security policies applicable to the Customer's site and made known to Bottomline by the Customer, from the point at which they were made known to Bottomline.

5. Customer's Responsibilities

5.1 The Customer shall:

(a) undertake all Customer responsibilities set out in the Agreement in a timely and efficient manner;

(b) provide all reasonable co-operation and information as requested by Bottomline in relation to the Agreement;

(c) provide all reasonable access to the Customer's premises and Customer Infrastructure as requested by Bottomline (including access required by Bottomline to inspect any Equipment);

(d) provide, maintain and ensure that the Customer Infrastructure complies with the relevant specifications provided by Bottomline from time to time;

(e) be solely responsible for procuring and maintaining its network connections and telecommunications links from Customer Infrastructure to Bottomline Infrastructure;

(f) procure and maintain the PNP Requirements and promptly notify Bottomline and the relevant PNP of any non-compliance;

(g) ensure that access to Bottomline Solutions and/or Bottomline Infrastructure are restricted to Authorised Users only and all Authorised Users are notified of the Customer's obligations under the Agreement;

(h) advise Bottomline of any changes in any named Authorised Users who have access to Bottomline Solutions and/or Bottomline Infrastructure;

(i) use all reasonable endeavours (including security software) to prevent any distribution of malicious code and/or unauthorised access to Bottomline Solutions and/or Bottomline Infrastructure. In the event of any such distribution or unauthorised access, the Customer shall promptly notify Bottomline;

(j) ensure that all devices used by the Customer to access Bottomline Solutions and/or Bottomline Infrastructure are placed in a secure location and accessible only by Authorised Users, and that such devices are secured when not in use through reasonable security procedures;

(k) change the Customer's user passwords at least every ninety (90) days, or sooner when prompted to within the Subscription Services or where an Authorised User is no longer responsible for accessing the Subscription Services;

(l) use all reasonable endeavours to advise Bottomline in advance of any known or expected significant increases in Subscription Services usage or daily message traffic volumes; and

(m) ensure that in the event Customer's personnel attend Bottomline premises, procure that they comply with any reasonable safety and security policies applicable to Bottomline's site and made known to the Customer by Bottomline, from the point at which they were made known to the Customer.

5.2 The Customer shall not:

(a) do or permit anything to be done which will compromise or affect the security of Bottomline Solutions or Bottomline Infrastructure;

(b) permit Bottomline Solutions to be combined with or become incorporated in any other software or service;

(c) license, sell, rent, lease, transfer, assign, distribute, display, disclose, commercially exploit, or otherwise make Bottomline Solutions available to any third parties unless permitted under the Agreement; or

(d) abuse or make unlawful use of Bottomline Solutions including fraudulent use.

6. Provision of Equipment

6.1 If Equipment is specified in an Order Form and requires installation, use or maintenance at a Customer site, then the Customer shall:

(a) carry out all preparatory work to allow Bottomline to undertake the installation or maintenance on time; and

(b) at its own cost and expense provide: (i) suitable space and environmental conditions for the Equipment, and (ii) all necessary services at the site for the installation, use and maintenance of the Equipment including, for fixed line services, an adequate power supply, lighting, security and equipment bonding with associated earthing.

6.2 Bottomline shall deliver the Equipment to the delivery address specified in the Order Form. Delivery of the Equipment shall be completed on the completion of unloading of the Equipment at

the delivery address. Risk in the Equipment shall pass to the Customer upon delivery.

6.3 Bottomline retains title in all Equipment provided under the Agreement. The Customer shall: (i) adequately insure the Equipment against risk of loss and damage; and (ii) notify in writing any persons who may be entitled to a charge, security or any other right over the property of the Customer that the Equipment is not the property of the Customer.

6.4 Upon termination or expiration of the applicable Order Form, at Customer's cost and Bottomline's sole discretion: (i) Bottomline shall be entitled forthwith to remove Equipment from the premises of the Customer and the Customer shall provide all reasonable access to its premises; or (ii) Customer shall return the Equipment to Bottomline.

7. Fees and Payments

7.1 All Fees for Bottomline Solutions shall be invoiced in accordance with the relevant Product Schedule.

7.2 Time for payment shall be of the essence of the Agreement. Unless otherwise stated in the Product Schedule, the Customer shall pay Bottomline all Fees as described in an Order Form, or as otherwise due under the Agreement, no later than thirty (30) days from the date of Bottomline's invoice.

7.3 Commencing in year two (2) of any term for the provision of Bottomline Solutions, Bottomline reserves the right to increase 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 percent (3%).

7.4 All sums payable hereunder are payable in pounds sterling and exclusive of value added tax and any other applicable taxes or duty, which shall be added to Bottomline's invoice(s) at the appropriate rate. The Customer shall pay for any taxes, duties or levies which Bottomline is required by law to collect.

7.5 If the Customer is required by law to deduct any amount from the amounts to be paid to Bottomline under the Agreement on account of withholding taxes or any other taxes or levies of any kind, the Customer shall pay all such additional amounts so that the net amounts received by Bottomline are the amounts specified on the invoice. To the extent that any withholding tax is payable, Bottomline and the Customer shall mutually collaborate and provide reasonable assistance requested to obtain the benefits of any applicable tax treaty between the country where Bottomline is located and the applicable jurisdiction where the withholding tax is applied. All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding tax.

7.6 In the event that a PNP or any competent legislative or regulatory authority introduces any mandatory change which requires modification to Bottomline Solutions and/or Bottomline Infrastructure, then Bottomline shall be entitled to revise the Fees to cover the additional costs of such change.

8. Warranties

8.1 Each party warrants that it:

(a) shall comply with Applicable Laws (including the Bribery Act 2010, Criminal Finances Act 2017 and the Modern Slavery Act 2015) in carrying out its obligations under the Agreement;

(b) has all necessary licences, permits, authorisations and consents required for the performance of its obligations under the Agreement; and

(c) shall use commercially available IT security software to protect its IT infrastructure.

8.2 The Customer warrants that it:

(a) is solely responsible for and liable in respect of all access to and use of Bottomline Solutions through the Customer's login and password and shall ensure that private login names, passwords and other Confidential Information remain confidential; and

(b) shall comply with the Mandatory Terms, which may be amended by Bottomline from time to time.

8.3 Bottomline warrants that:

(a) the Subscription Service and Software shall materially conform to their Product Documentation for a period of ninety (90) days from the relevant Order Effective Date; and

(b) the Equipment shall be free from material defects in materials and workmanship on delivery.

8.4 The Customer's sole and exclusive remedy in the event of breach of the warranties in Clause 8.3 (as reasonably determined by Bottomline) is the correction of any failure by Bottomline to comply with such warranty provisions. Correction may comprise, at Bottomline's sole discretion, re-performance of the services or portion thereof, replacing, repairing or adjusting the Subscription Services, Software and/or Equipment without charge to the Customer or refunding a portion of paid fees for any remaining un-used period. All remedies for any breach of the warranty provisions are available only if such breach is reported to Bottomline in writing within ninety (90) days from the relevant Order Effective Date.

8.5 The warranties given by Bottomline in this Clause 8 are made only to the Customer, and Bottomline will have no liability to any third party with respect to the Subscription Services, Software and/or Equipment as a result of such warranties.

9. Intellectual Property Rights

9.1 The Customer acknowledges and agrees that:

(a) Bottomline and/or its licensors own all Intellectual Property Rights in Bottomline Solutions, Bottomline Infrastructure, Bottomline's trademarks, deliverables and any other Intellectual Property Rights in materials provided or produced by Bottomline under the Agreement including but not limited to all copies, modifications, translations, enhancements or derivations thereof (collectively "**Bottomline's IPR**");

(b) except as expressly stated in the Agreement, Bottomline does not grant the Customer any rights to, or in, Bottomline's IPR; and

(c) Bottomline's IPR may be covered by one or more of the patents listed at https://www.bottomline.com/us/bottomline-patent-marking-information.

9.2 Subject to the terms and conditions contained in the Agreement and Customer's payment of applicable Fees, Bottomline hereby grants to the Customer a non-exclusive, non-transferable, revocable licence without rights to sublicense, for so long as the relevant Order Form remains in force, to permit its Authorised Users to use Bottomline Solutions (as applicable) for its day to day business purposes (including provision of services to Customer Group Companies) and only in accordance with the Product Documentation and Licence Metrics. Notwithstanding

the foregoing, unless specified otherwise in a Product Schedule, the Customer shall not permit any direct access to Bottomline Solutions by any Customer Group Companies or other third parties.

9.3 Save from the extent permitted under the Agreement and Applicable Law (irrespective of the limitations contained herein) the Customer will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute Bottomline's IPR.

9.4 The Customer grants Bottomline a non-exclusive, royalty-free licence during the term of the Agreement to use Customer's IPR and Customer Data to the extent required by Bottomline for the provision of Bottomline Solutions and otherwise to perform Bottomline's obligations under the Agreement. Customer retains all right, title, and interest in and to Customer IPR.

10. Indemnity

10.1 Bottomline shall, subject to Clause 10.3, defend and indemnify the Customer against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer by any third party in respect of any claim or action that the use of Bottomline Solution infringes the Intellectual Property Rights of that third party.

10.2 The Customer shall, subject to Clause 10.3, defend and indemnify Bottomline (and Bottomline Group Companies) against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) suffered or incurred by Bottomline (and/or any member of Bottomline Group Companies) arising out of or in connection with:

(a) any claim or action that the use by Bottomline (and/or Bottomline Group Companies) of the Customer's materials or any part or any modifications, enhancements or alterations thereto infringes any third party Intellectual Property Right; and

(b) the contents of a message or file sent from Customer Infrastructure.

10.3 If a party (the "**Indemnifying Party**") is required to defend and indemnify the other party (the "**Indemnified Party**") under this Clause 10, the Indemnified Party shall:

(a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity ("**Claim**") as soon as is reasonably possible;

(b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party prior approval of any settlement terms, such approval not to be unreasonably withheld;

(c) provide the Indemnifying Party with such reasonable assistance regarding the Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's reasonable costs so incurred; and

(d) not, without prior consultation with the Indemnifying Party, make any admission relating to the Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

10.4 In the defence or settlement of any Claim, Bottomline may procure the right for the Customer to continue using the Bottomline Solution, or replace or modify the Bottomline Solution without a reduction or alteration in functionality so that they become non-infringing, or terminate the relevant Order Form (without any liability to the Customer) and refund any prepaid unused portion of the Fees.

10.5 In no event shall Bottomline, its employees, agents and subcontractors be liable to the Customer under Clause 10.1 to the extent that the alleged infringement arises out of or in connection with:

(a) a modification of Bottomline Solution by anyone other than Bottomline;

(b) the Customer's use of Bottomline Solutions in a manner contrary to Bottomline's instructions;

(c) the Customer's use of Bottomline Solutions after notice of the alleged or actual infringement from Bottomline or any appropriate authority;

(d) the Customer's combination of Bottomline Solutions with any other equipment or software not provided by Bottomline; and/or

(e) intellectual property rights owned by Customer or Customer Group Company (or its third party licensors).

10.6 Subject to Clause 13, this Clause 10 states the Customer's sole and exclusive remedy in the event that the Customer's use of Bottomline Solutions infringes the Intellectual Property Rights of any third party.

10.7 For the avoidance of doubt, these indemnities shall continue in force indefinitely following termination or expiration of the Agreement for whatever reason.

11. Customer Data and Data Protection

11.1 The Customer shall own all right, title and interest in and to all Customer Data and the Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

11.2 Unless otherwise stated in Bottomline's then current data retention policy and the Privacy Terms, Bottomline shall retain Customer Data for as long as it reasonably believes is necessary in connection with the specific service. Thereafter, Bottomline reserves the right to delete such Customer Data.

11.3 The parties shall, in provision and use of Bottomline Solutions, comply with Bottomline's then current 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 these Terms and Conditions.

12. Confidentiality and Publicity

12.1 Each party undertakes that it shall not at any time during the term of the Agreement, and for a period of five (5) years after termination of the Agreement, disclose any Confidential Information, except as permitted by Clauses 12.2 and 12.3.

12.2 Each party may disclose the other party's Confidential Information:

(a) to its and its affiliates employees, officers, representatives, subcontractors or advisers who need to know such information provided that such employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this Clause 12; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Both parties hereby agree that the Agreement, in whole or parts, may be disclosed to Bottomline's third-party providers (subject to maintenance of confidentiality) as required to maintain accreditation and supply of Bottomline Solutions.

12.4 Each party will have the right to disclose the relationship created by the Agreement on each party's respective website and in press releases and other media, specific content to be mutually agreed in writing in advance by the parties. Each party hereby grants to the other party, the right to reproduce and display the other's logos, trademarks, trade name and other similar identifying material on a royalty free, non-exclusive basis for this purpose.

13. Limitation of Liability

13.1 This clause sets out the entire financial liability of the parties and includes liability in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Agreement.

13.2 Nothing in the Agreement limits any liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

(d) any other liability which cannot be legally limited.

13.3 Subject to Clause 13.2, the following types of loss are wholly excluded by Bottomline:

(a) loss of profits;

(b) loss of sales, business or business opportunity;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of or damage to goodwill; and

(f) indirect or consequential loss (including loss or damage suffered by the Customer as a result of any action brought by a third party).

13.4 Subject to Clause 13.2, in the event of any corruption of software, loss of data or loss of information, including Customer Data, the Customer's sole and exclusive remedy shall be for Bottomline to use reasonable commercial endeavours to restore the lost or damaged data from the latest back-up maintained by Bottomline in accordance with its archiving procedure.

13.5 Subject to Clauses 13.2, 13.3, 13.4 and 13.6, Bottomline's total aggregate liability in contract, tort (including negligence), misrepresentation, restitution, breach of statutory duty or otherwise, arising out of or in connection with the Agreement (including all Order Forms):

(a) for damage to the tangible property of the Customer shall not exceed £1,000,000;

(b) under Clause 10.1 shall not exceed £2,000,000;

(c) under Clause 11.3 for any incident or series of related incidents, shall not exceed an amount equivalent to two hundred percent (200%) of the total Fees received by Bottomline from the Customer under the Agreement in the twelve (12) months immediately preceding the first incident giving rise to such liability; and

(d) for all other liabilities which do not fall within sub-clauses 13.5 (a) to (c), for any incident or series of related incidents, shall not exceed an amount equivalent to one hundred and twenty-five percent (125%) of the total Fees received by Bottomline from the Customer under the Agreement in the twelve (12) months immediately preceding the first incident giving rise to such liability.

13.6 Subject to Clause 13.2, Bottomline shall not be liable to the Customer for any loss or damage (or any other liability) arising out of or in connection with:

(a) defects, errors, delays, non-performance or unavailability of Customer Infrastructure, third party systems, external networks (including the Internet and networks operated by PNP) or any equipment, software or infrastructure not supplied or operated by Bottomline;

(b) results obtained, and conclusions drawn, by the Customer from the use of Bottomline Solutions;

(c) any information, instructions or scripts provided by the Customer, PNP or any other third party (or the accuracy thereof), or any actions taken by Bottomline at the Customer's direction;

(d) the use of Bottomline Solutions in a manner, or combination with any equipment and/or software, not approved by Bottomline in writing;

(e) any third-party content or use of, or correspondence with, any third parties, PNPs or interfaces (such as SWIFT or banks) via Bottomline Solutions, or any transactions completed, and any contract entered into by the Customer, with any such third party;

(f) defects, errors, delays, non-performance or unavailability of Bottomline Solutions due to the service, repairs maintenance, upgrades, modification, alterations or replacement of the Customer's equipment or hardware forming part of the Customer's equipment of whatever nature;

(g) any illegal or unauthorised access to, or release of any information, data or message from any environment or device whatsoever not under Bottomline's control or that of its contractors connecting to Bottomline Solutions; and/or

(h) any regulatory fine imposed on the Customer for its breach of any law or any regulation, including a breach of Data Protection Laws (for the avoidance of doubt, Bottomline will be responsible for any regulatory fine imposed on Bottomline for Bottomline's breach of Applicable Law).

13.7 Except as expressly set out in the Agreement all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute, common law, or otherwise are, to the fullest extent permitted by law, excluded from the Agreement.

14. Compliance

14.1 For the purposes of section 61M(1) ITEPA, the parties do not intend that either the Customer nor any Customer Group Company is a "client" in relation to any individual engaged by Bottomline or any Bottomline Group Company in the provision of the services to the Customer ("**Bottomline Personnel**"). Where Bottomline Personnel provide their services through an intermediary that meets one of the conditions in sections 61N(9) to (11) ITEPA, Bottomline 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:

(a) issue an initial status determination statement in respect of such individual in accordance with the Off-payroll Working Rules; or

(b) if Bottomline determines that the individual is a Deemed Employee, then Bottomline shall: (i) where Bottomline is the "fee payer" (as such term is defined in section 61N ITEPA), account to HMRC 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 (ii) 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.

14.2 The Customer acknowledges and agrees that Bottomline Solutions may be subject to export control laws and regulations of the United Kingdom, United States, EU and nation(s) where the Customer is based or operates in. The Customer shall comply with all applicable export laws, restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and any other United States, European Union, Singapore or other agency or authority and shall not, nor allow others to, without prior appropriate government authorisation, import, export, re-export, or transfer any services, technology or information it obtains pursuant to the Agreement, either directly or indirectly, to any country subject to a U.S. trade sanction or embargo or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury, or the Department of State's Debarred Parties List, as published and revised from time to time, or any other comparable European or local regulations. In addition, any Bottomline Solutions may not be imported, exported, re-exported, or transferred to anybody known or suspected to be engaged in activities related to weapons of mass destruction including, without limitation, any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by the U.S. Export Administration Regulations or an applicable arms embargo, unless authorised by the relevant government agency by regulation or specific licence.

15. Suspension of the Services

15.1 Without affecting any other right or remedy available to it, Bottomline shall be entitled to suspend part or all the provision of Bottomline Solutions:

(a) with fourteen (14) days' prior written notice, if the Customer commits a material breach of the Agreement or fails to pay any sums due in accordance with the payment terms;

(b) to enable Bottomline to carry out maintenance, modification and testing of Bottomline Infrastructure, if there is a technical failure of Bottomline Infrastructure, or to safeguard the security and integrity of Bottomline Infrastructure;

(c) to prevent fraud, illegal activity or misuse of Bottomline Solutions; and/or

(d) if required by law or regulation (including compliance with sanctions).

15.2 Bottomline shall keep all suspensions to a minimum.

16. Termination

16.1 **Termination without Cause.** Either party may terminate:

(a) the Agreement for convenience on at least thirty (30) days' prior written notice to the other party, provided there are no uncompleted Order Forms in effect on expiry of such notice;

(b) an Order Form (or a specific Subscription Service under an Order Form) with ninety (90) days prior written notice to the other party, such notice to expire at the end of the Initial Term or any Renewal Period.

16.2 **Termination for Cause.** Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

(c) the other party takes, or has taken against it (other than in relation to a solvent restructuring) any step or action in connection with entering administration, examinership, provisional liquidation or any composition or arrangement with its creditors, applying to a court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

(d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

16.3 Bottomline may terminate the Agreement without notice as required in order to comply with laws, sanctions and export laws and regulations, or where the Customer's financial position deteriorates to such an extent that in Bottomline's reasonable opinion its capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

17. Consequence of termination

17.1 On termination of the Agreement for any reason:

(a) the parties shall not enter into any further Order Forms;

(b) all licences granted under the Agreement shall immediately terminate;

(c) Bottomline shall be entitled to invoice the Customer for all outstanding Fees, which shall become payable immediately;

(d) each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;

(e) subject to Clause 11.2 and unless otherwise agreed, each party will promptly return or expunge (or destroy where possible) all of the Confidential Information it has received from the other party, including all copies, reproductions, summaries, analyses or extracts thereof or based thereon. Notwithstanding the foregoing, any obligation to return, destroy or expunge Confidential Information shall not apply to Confidential Information on electronic back-up media which cannot be readily isolated from other information and deleted, and the

confidentiality provisions of the Agreement shall continue to apply to any such Confidential Information;

(f) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination shall not be affected or prejudiced; and

(g) any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

18. Force Majeure

18.1 With the exception of payment of invoices, neither party shall be in breach of the Agreement nor liable for delay in performing, or a failure to perform, any of its obligations under the Agreement if such delay or failure is due to events, circumstances or causes beyond its reasonable control including an act of war, civil unrest, war, epidemic/pandemic, government, industrial action, failure of the Internet, or non-performance by suppliers (a "**Force Majeure Event**"). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for at least three (3) months, the party not affected by the Force Majeure Event, may terminate the Order Form(s) affected by the Force Majeure Event by giving fourteen (14) days' written notice to the affected party. In which case no party shall have any liability or obligation to the other party under Order Form(s) affected by the Force Majeure Event other than the payment of monies due.

19. Non-Solicitation

19.1 Subject to Clause 19.2, the Customer shall not, without the prior written consent of Bottomline, at any time from the date of the Agreement and until the expiry of six (6) months after the termination or expiry of the Agreement, solicit or entice away from Bottomline or employ or attempt to employ any person who is, or has been, engaged as an employee of Bottomline in the provision of the services.

19.2 Either party shall be permitted to hire any employee of the other party who responds to a genuine general employment advertisement or solicitation.

20. General

20.1 **Assignment and other dealings.** Bottomline may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of Bottomline.

20.2 **No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

20.3 **Entire agreement.** The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. All terms and conditions in the Customer's purchase orders or confirmations are expressly rejected.

20.4 **Waiver.** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

(a) waive that or any other right or remedy; or

(b) prevent or restrict the further exercise of that or any other right or remedy.

20.5 **Severance.** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

20.6 **Notices.** Any written notice given under the Agreement, shall be deemed to be sufficiently and duly given hereunder if sent to the registered office of the receiving party and either: (i) delivered by hand or by courier to the addressee; or (ii) sent by certified or registered mail. A notice shall be deemed received by the receiving party:

(a) if delivered by hand or by courier, on the date of delivery to the addressee or to their representative, unless delivered after the close of business in which case such notice will be deemed received on the next ensuing Business Day; and

(b) if sent by certified or registered mail, on the Business Day that it was signed for as correctly received.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

20.7 **Third parties' rights.** Unless expressly stated otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement. The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.

20.8 **Variation.** Without prejudice to the Mandatory Terms, Privacy Terms and SLAs, no variation to the Agreement shall be effective unless it is agreed in writing and signed by an authorised representative of the parties. Notwithstanding the foregoing, Bottomline may amend these Terms and Conditions, Product Schedules and Annexes from time to time by publishing the amended terms and conditions on www.bottomline.com/uk/product-terms-conditions ("**Updated Terms**"). Unless otherwise stated, the Agreement shall be deemed amended from when the Customer signs any new Order Form after the date the Updated Terms are published.

20.9 **Governing law.** The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

20.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

DOCUMENT MATRIX

The corresponding Product Schedules and SLAs shall apply and supplement the terms and conditions where the Customer procures any Bottomline Solution with a product prefix listed below.

Product prefix	Description	Link
'PTX'	Product Schedule	CLICK HERE
	SLA	CLICK HERE
'Financial Messaging' or 'FM'	Product Schedule	CLICK HERE
	SLA	CLICK HERE
'TreasuryXpress' or 'TX'	Product Schedule	CLICK HERE
	SLA	CLICK HERE