

## Bottomline Terms and Conditions for Software

These Terms and Conditions (the “Terms”) govern Customer’s use of Bottomline’s software (the “Products and Services”). These Terms are a legal contract between Bottomline Technologies, Inc., on behalf of itself and its affiliates and subsidiaries (collectively, “Bottomline”) and the customer (“Customer”) identified in a Datadog Marketplace Order, or in a Bottomline Sales Order, as applicable (“Order Form”). Each party represents and warrants that they have the authority to enter into these Terms and doing so does not conflict with any other agreements to which they are a party.

**Trial Use.** PLEASE NOTE: By clicking the “Start 14-Day Trial” button or by activating the Software, you are binding Subscriber to these Bottomline Terms and Conditions for Software (“the “Terms”), and you are representing personally to Bottomline that you have the authority to do so. If Subscriber does not wish to be bound by these Terms, please do not click the “Start 14-Day Trial” button and do not use the Software.

### 1. Customer Acknowledgments and Obligations.

a. **Authorized Users.** A Customer may authorize itself or one or more of its employees, consultants, vendors or agents (collectively, “Authorized Users”) to use or manage the Products and Services on Customer’s behalf. Customer will, and will ensure that each Authorized User will, keep any access credentials confidential and ensure that they are not disclosed to any third-party. Customer is responsible for the acts and omissions of its Authorized Users and is fully responsible for all activity that occurs with use of access credentials. Customer agrees to, and will ensure that each Authorized User will, notify Bottomline at [BTnotifications@bottomline.com](mailto:BTnotifications@bottomline.com) immediately upon learning of any unauthorized use of access credentials. Bottomline may rely on Customer’s and its Authorized Users’ or end users’ access to the Products and Services which is believed by Bottomline to be genuine, and assume an individual using or accessing the Products and Services is, in fact, Customer’s Authorized User or end user. Customer shall be responsible and liable for all use of, access to, and activity within the Products and Services of its Authorized Users and end users.

b. **License Grant.** Subject to the Terms and the applicable Order Form and for the term set forth in an Order Form, Bottomline grants to Customer a non-exclusive, non-transferable, revocable, fee-bearing, limited, non-sublicensable license to install, execute and use the machine-readable, object code form of software that is ordered pursuant to an Order Form and is installed and operated on-site at locations and on servers and devices that Customer controls, including the Client Software and the Server Software (the “Software”) solely: (a) in object code format; (b) in accordance with applicable Documentation and number of licenses purchased; (c) on the server or PC hardware on which the Client Software has been activated and/or installed with Bottomline’s authorization to the extent applicable to the specific Software (the “Designated Equipment”); and (d) for Customer’s internal business purposes. Bottomline will deliver any required activation keys for the Software upon purchase, if applicable.

Except as otherwise set forth in an applicable Order Form, all Software sales are F.O.B. Bottomline's shipping point. "Client Software" means the on-premise software that requires software agents, clients or plug-ins be installed on particular devices. "Server Software" means software in object-code form that is intended to be installed and operated in a server environment, as specified in the Documentation.

c. **Customer Access.** Subject to these Terms, Customer and its Authorized Users and end users (if applicable) may access and use websites, dashboard or portals that are made available to Customer in connection with the Products and Services, solely for internal business operations and solely in accordance with the Documentation, defined herein. If Customer allows access to the Products and Services to its end users, Customer shall enter into terms and conditions with its end users that shall be at least as protective of Bottomline and its Products and Services and Confidential Information (as defined in the Security Terms) as these Terms.

d. **Customer Materials.** "Customer Materials" means any data, information and materials of Customer and its end users: (a) provided to Bottomline or its third-party service providers, either directly by Customer or through Customer's data processing system(s); or (b) processed using the Products and Services. If applicable, Customer hereby appoints Bottomline as Customer's agent to receive Customer Materials from, and deliver Customer Materials to, Customer's data processing system(s), including any third-party providers thereof. Customer shall provide all required and appropriate privacy or other notices to its end users and obtain all required consents from its end users regarding Bottomline's access to Customer Materials for its performance under the Terms. Customer grants to Bottomline a worldwide, non-exclusive, royalty-free, transferable and sublicensable right to use, copy, modify, display, distribute, reproduce and store Customer Materials for the purpose of performing its obligations under these Terms, improving the Products and Services, and as otherwise provided in Bottomline's Privacy Policy. Customer is solely responsible for the content and accuracy of the Customer Materials. Bottomline may compile statistical and other information related to the performance, operation and use of the Products and Services, Customer Materials, and other transactional and usage data derived from the Products and Services in anonymized and aggregated form for security management, business operations, to create statistical analyses, for research and development, to make improvements to the Products and Services, and for marketing purposes.

e. **Documentation.** Customer agrees to comply with Bottomline's Security Terms found here, user manuals, third party service providers' terms and conditions (as applicable), technical requirements and specifications, and other documentation available at Bottomline's websites, FAQs, as updated from time to time, and which are incorporated herein by this reference (together, the "Documentation"). In the event of a conflict between provisions that appear in different documents, these Terms shall control.

f. **Restrictions.** Customer acknowledges and agrees that it shall not, and shall ensure its Authorized Users and end users do not: (i) access or use the Products and Services in any manner or for any purpose

other than expressly permitted by these Terms and the Documentation; (ii) change, modify or otherwise create derivative works of all or any portion of the Products and Services; (iii) modify, disassemble, decompile or reverse engineer any part of the Products and Services or apply any other process or procedure to derive source code algorithms, methods or techniques of any software included in the Products and Services or any portion thereof (except solely to the extent permitted by applicable law); (iv) access or use the Products and Services in a way intended to avoid exceeding usage or transaction limits; (v) use the Products and Services in order to build a similar or competitive application or service; (vi) remove, tamper with or alter any disabling mechanism or circumvent any technical protection measures associated with the Products and Services, or otherwise use any tool to enable features or functionalities that are otherwise disabled in the Products and Services; (vii) distribute, disclose, market, rent, lease, assign, resell, pledge, license or otherwise transfer the Products and Services or any portion thereof to any unauthorized third-party, (viii) permit the Products and Services to be used in connection with any facility management services or service bureaus or otherwise to be used for processing the data of any third-party other than its end users; or (ix) remove or alter any proprietary notices (e.g., copyright and trademark notices) pertaining to the Products and Services; (x) perform, or release the results of benchmark tests or other comparisons of the Products and Services or perform other unauthorized technical acts such as screen or data scraping. Customer further acknowledges and agrees to: (i) only use the Products and Services on the Designated Equipment; (ii) purchase additional licenses or rights to use the Products and Services for additional Designated Equipment, if needed; (iii) use the Products and Services in accordance with the Documentation; and (iv) not to interfere or attempt to interfere with any activation keys. Should any aspect of Customer's deployment or use not adhere to the applicable Documentation for the Products and Services, none of Bottomline's contractual duties or obligations shall apply to such aspect that is not in compliance, and Bottomline shall have the right to treat such noncompliance as a material breach of the Terms. Customer's rights to use the Products and Services, including without limitation, any applicable allotment of End Users, shall not extend to acquired entities, in whole or in part, or new entities established as a result of an acquisition. In such event, the Fees set forth in any associated Order Forms shall be adjusted. Customer shall not offer to any third parties products or services substantially similar to the Products and Services provided by Bottomline to Customer hereunder.

## 2. Software-Specific Terms.

Cyber Fraud and Risk Management Hosted Services ("CFRM"). If Customer uses or purchases CFRM, Customer acknowledges and agrees that: (i) CFRM has been reviewed and tested by Customer and it meets Customer's business and operational needs; and (ii) effective security threat detection and management are dependent on a multi-layered, multi-faceted combination of software, hardware and services components, deployed and managed in accordance with appropriate policies and procedures consistently applied, and no individual element in such a system, including CFRM, alone is sufficient to detect and prevent all security threats. Customer shall be solely responsible for its, and its end users, use of CFRM, including any data and other output generated from CFRM, and for verifying any such data and other output. Customer acknowledges that the quality of such data and other output and the result of using CFRM are dependent on the data inputted by Customer and its end users. Bottomline may, at

times, provide suggestions for Customer's use of CFRM and Bottomline disclaims all liability related thereto.

Professional Services. Professional Services terms are available here.

<https://www.bottomline.com/us/saas-terms/professional-services-specific-terms>.

Support Services. Support services Documentation is available here.

<https://www.bottomline.com/us/software-terms/software-support>

### 3. Proprietary Information.

a. **Reservation of Rights.** As between the parties, Customer acknowledges and agrees that the software, code, hardware, trademarks, trade secrets, proprietary methods and systems used to provide the Products and Services ("Bottomline Technology") and the content made available or displayed by Bottomline through the Products and Services, including all text, graphics, images and the look and feel of such Products and Services (collectively "Bottomline Content") are owned by or licensed to Bottomline. Nothing in these Terms or any of the Documentation shall be considered an assignment or other transfer of ownership in and to the Bottomline Technology or the Bottomline Content to Customer, either expressly, or by implication, estoppel, or otherwise. Other than the authorizations or licenses as may be conferred or granted by Bottomline to Customer in these Terms, Bottomline reserves all right, title and interest in and to Bottomline Technology and Bottomline Content. No right or license is granted by Bottomline to Customer or its end users to use any Bottomline trademark, trade name, service mark, product name or other source designator.

b. **Pre-release Services.** Bottomline may develop software, products, services, enhancements or features as pre-release, alpha or beta services (collectively, the "Pre-Release Services"). Customer acknowledges and agrees that: (i) use of the Pre-Release Services is for the sole purposes of evaluating and testing the Pre-Release Services and providing Feedback (as defined below) to Bottomline; (ii) Customer will not use Customer Materials, Confidential Information (as defined in the Security Terms), personal identifiable information, Protected Health Information (as defined by HIPAA), sensitive financial information, production data, or any other information that is sensitive in nature in relation to its evaluation and testing of the Pre-Release Services; (iii) the Pre-Release Services will only be used in a non-production environment; and (iv) the Pre-Release Services are provided for a limited time and are experimental in nature, have not been fully-tested and may be discontinued at any time with or without notice.

c. **Feedback.** In the course of using the Products and Services, Customer may provide Bottomline reports, comments, suggestions or ideas relating to the Products and Services ("Feedback"). Bottomline shall have no obligation to incorporate Feedback into the Products and Services, and Customer shall

have no obligation to provide Feedback. Bottomline shall have no obligation to treat such Feedback as Customer's confidential or trade secret information. Customer, on behalf of itself and its successors in interest, grants Bottomline a world-wide, non-exclusive, irrevocable, perpetual, and royalty-free right and license to use, profit from, disclose, publish, or otherwise exploit any Feedback. Without limiting the generality of the foregoing, Customer agrees that its provision of Feedback does not give it any intellectual property or any other right, title, or interest in or to any aspects of the Products and Services, even if such Feedback leads Bottomline to create new Products and Services. No representations, warranties, or indemnities as may be granted by either party to the other under these Terms or the Documentation shall apply to Feedback.

4. **Software Warranty.** Bottomline represents and warrants to Customer that, for a period of ninety (90) days from the date of shipment, the Products and Services as provided by Bottomline will materially conform with the specifications set forth in the applicable Documentation when used as prescribed by Bottomline (the "Software Warranty"). This Software Warranty shall not apply to the extent the Products and Services or a portion thereof, have been altered or modified by any party other than Bottomline. Customer must submit any claim for breach of the Software Warranty in writing on or before ninety (90) days from the date of shipment, or such claims shall be deemed waived. Upon written notice of a Products and Services non-conformity, Bottomline agrees to use reasonable efforts to correct such non-conformity during the warranty period. If Bottomline is unable to correct such non-conformity, Customer's sole and exclusive remedy shall be the refund of Fees paid to Bottomline for the defective Products and Services. The Software Warranty is intended solely for the benefit of Customer and Customer shall have no authority to extend or transfer this warranty to any other person or entity.

5. **Disclaimers.** BOTTOMLINE EXPRESSLY DISCLAIMS ANY AND ALL RESPONSIBILITY AND LIABILITY FOR ANY ILLEGAL OR UNAUTHORIZED ACCESS TO OR RELEASE OF ANY CUSTOMER MATERIALS, ANY FRAUDULENT PAYMENTS OR FUNDS TRANSFERS ARISING OUT OF OR RESULTING FROM CUSTOMER'S OR ITS END USER'S NETWORK OR DEVICES (SUCH AS A MOBILE PHONE, TABLET, LAPTOP OR PC), OR ILLEGAL OR UNAUTHORIZED ACCESS TO CUSTOMER'S OR ITS END USER'S ENVIRONMENT OR ACCESS CREDENTIALS. BOTTOMLINE DOES NOT WARRANT THAT OPERATION OF THE PRODUCTS AND SERVICES SHALL BE UNINTERRUPTED OR ERROR FREE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, THAT ANY ENCRYPTION AND OTHER SECURITY MEASURES WILL BE SECURE OR EFFECTIVE OR THAT THE PRODUCTS AND SERVICES WILL CORRECTLY DETECT OR IDENTIFY ALL SECURITY THREATS (IF APPLICABLE). BOTTOMLINE DOES NOT WARRANT THAT THE PRODUCTS AND SERVICES WILL RUN PROPERLY IN ALL CUSTOMER INFORMATION TECHNOLOGY INFRASTRUCTURE OR OPERATING SYSTEMS; OR WILL OPERATE IN COMBINATIONS THAT MAY BE SELECTED FOR USE BY CUSTOMER OR ITS END USERS. FURTHER, CUSTOMER ACKNOWLEDGES AND AGREES THE PRODUCTS AND SERVICES ARE DESIGNED TO GENERATE DATA OUTPUTS AS A RESULT OF CUSTOMER'S DATA INPUTS, NOT TO PROVIDE ADVICE OR RECOMMENDATION FOR ACTION, AND BOTTOMLINE DISCLAIMS ANY AND ALL LIABILITY THEREOF. FOR THE AVOIDANCE OF DOUBT, BOTTOMLINE EXPRESSLY DISCLAIMS ANY AND ALL RESPONSIBILITY AND LIABILITY FOR ANY AND ALL DAMAGES RESULTING FROM MALWARE, VIRUSES OR WORMS INFECTING CUSTOMER'S OR ITS END USER'S NETWORK OR DEVICES. THE PRODUCTS AND SERVICES MAY ACCESS AND TRANSFER INFORMATION OVER THE INTERNET AND CUSTOMER

ACKNOWLEDGES AND AGREES THAT BOTTOMLINE DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT: (i) VIRUSES, WORMS, TROJAN HORSES AND OTHER UNDESIRABLE DATA OR COMPONENTS MAY ENTER CUSTOMERS' INFORMATION TECHNOLOGY ENVIRONMENT; (ii) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER MATERIAL AND CUSTOMER'S INFORMATION TECHNOLOGY INFRASTRUCTURE; (iii) CUSTOMER IS SOLELY RESPONSIBLE FOR MAINTAINING ITS OWN INTERNET AND DATA CONNECTIONS; AND (iv) COMPONENTS OF THE PRODUCTS AND SERVICES THAT ARE ACCESSED OR USED THROUGH INTERNET CONNECTIONS MAY BE SUBJECT TO CUSTOMER'S INTERNET SERVICE PROVIDER'S FEES AND DOWNTIME. CUSTOMER ACKNOWLEDGES AND AGREES BOTTOMLINE IS NOT RESPONSIBLE FOR SUCH ACTIVITIES. THE WARRANTIES SET FORTH IN HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, AND EXCEPT AS SET FORTH HEREIN, THE PRODUCTS AND SERVICES ARE PROVIDED BY BOTTOMLINE "AS-IS", "WHERE-IS" AND WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. BOTTOMLINE, ON BEHALF OF ITSELF, ITS AFFILIATES, SUBSIDIARIES, PARTNERS, LICENSORS, AND ANY THIRD-PARTY SERVICE PROVIDERS PROVIDING THE PRODUCTS AND SERVICES, OR PORTIONS THEREOF, EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND QUIET ENJOYMENT, ACCURACY, NON-INFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

#### 6. Fees and Payment.

a. Order Form. Customer purchases the Products and Services by executing an Order Form. "Order Form" means the document, in either electronic or paper form, that establishes the Products and Services purchased, the Fees to be paid and other material business terms.

b. Fees. Customer agrees to pay all fixed and recurring fees (collectively, the "Fees") in net thirty (30) days from the date of invoice. Customer shall reimburse Bottomline for all expenses it may incur in its efforts to collect any amounts owed to Bottomline. Any portion of the Fees that are not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. Customer shall pay the Fees without offset or deduction. Any amounts Customer disputes must be disputed in writing within thirty (30) days from receipt of invoice or Customer's right to dispute such amounts shall be deemed waived. Bottomline may increase its Fees upon forty-five (45) days prior written notice after the first twelve (12) months of the Term (as defined in the applicable Order Form). Bottomline shall pass-through any third-party service fees (such as telecommunication charges) to Customer. Professional Service Fees, if any, will be invoiced as rendered. Customer shall be entitled to terminate Order Forms by written notice to Bottomline at any time and pay all outstanding Fees owing through the termination date. On a pro rata basis, Bottomline will refund Customer any prepaid annual Fees relating to periods after the effective termination date.

c. Taxes. Customer shall pay all sales, use and excise taxes relating to or arising under these Terms, exclusive of taxes based on Bottomline's net income. All amounts payable hereunder by Customer shall be paid without deduction or withholding for or on account of any present or future tax, levy, impost, fee, assessment, deduction or charge by any taxing authority.

7. Term. These Terms shall commence as of the effective date set forth on the applicable Order Form and shall remain in effect for the period of time the applicable Order Form(s) remain active unless terminated in accordance with these Terms.

8. Termination. Except as otherwise specified on an Order Form, Customer may terminate the Order Form and these Terms by providing written notice to Bottomline at [contracts@bottomline.com](mailto:contracts@bottomline.com), provided however, Customer shall remain responsible for payment of any and all Fees set forth on the applicable Order Form. Upon such termination or expiration, Customer acknowledges and agrees to remove all Software from its systems and environment within thirty (30) days of such expiration or termination and provide Bottomline with certification thereof. Furthermore, either party may terminate these Terms upon written notice to the other party if: (i) the other party materially breaches any term or condition of these Terms and fails to cure such breach within thirty (30) days following receipt of written notice; (ii) the other party becomes insolvent or unable to pay its debts when due; (iii) the other party files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against the party, such petition is not removed within sixty (60) days after such filing; (iv) the other party discontinues its business; or (v) a receiver is appointed or there is an assignment for the benefit of the other party's creditors.

9. Effect of Termination. Termination of these Terms in accordance with the previous section will not release Customer from its obligation to pay any fees or expenses owed or payable to Bottomline as of the effective date of such termination. Upon termination of these Terms: (i) all rights and licenses granted to Customer pursuant to these Terms shall immediately terminate; (ii) any and all amounts owed to Bottomline, whether or not invoiced shall become immediately due and payable; and (iii) Customer shall promptly and without charge return to Bottomline or destroy (at Bottomline's option) all copies of Documentation and other materials containing any of Bottomline's Confidential Information (as defined in the Security Terms) in Customer's possession or control (including, without limitation, all electronic copies).

10. Indemnification.

a. Indemnification by Bottomline. Bottomline agrees to defend, at its expense, any third-party claim that Bottomline's proprietary technology or intellectual property infringes upon any US patent or copyright, and to pay any settlement, or damages finally awarded, in any such suit. Notwithstanding the foregoing, Bottomline shall have no liability for any claim arising from: (i) any modification of the Products and Services; (ii) use of an old or discontinued version of the Products and Services; (iii) use of

the Products and Services in combination with any products or services not provided or authorized by Bottomline; (iv) use of the Products and Services in violation of these Terms or the Documentation; (v) Bottomline's or its third-party service providers' compliance with Customer's designs, specifications or instructions; or (vi) any claim for which Customer is required to indemnify Bottomline. In the event the Products and Services, or any portion thereof, becomes or, in Bottomline's opinion, is likely to become, subject to any claim of infringement of a third-party's intellectual property rights, Bottomline may, in its sole discretion: (i) procure for Customer the right to continue to use the Products and Services; (ii) replace or modify the Products and Services with a version that does not infringe; or (iii) if Bottomline cannot accomplish (i) or (ii) using commercially reasonable efforts, terminate these Terms and the Order Form. THIS SECTION SETS FORTH THE ENTIRE LIABILITY OF BOTTOMLINE, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF THIRD-PARTY RIGHTS.

b. Indemnification by Customer. Customer agrees to indemnify, defend, at its expense, and hold Bottomline harmless, against any claim, and to pay any settlement, or any damages in any such suit, that is based upon or arising as a result of Customer's negligent or intentional misuse of the Products and Services, or Customer's violation of any applicable law or regulation.

c. Indemnification Procedure. The indemnification obligations of each party (the "Indemnifying Party") under this section are subject to the following conditions: (i) the party seeking indemnification (the "Indemnified Party") shall give the Indemnifying Party timely written notice of any claim for which indemnification is sought; (ii) the Indemnifying Party shall have the authority to control the defense and settlement of the claim (provided that the Indemnified Party shall have the right, but not the obligation, to participate at its own expense in the defense of such claim); and (iii) the Indemnified Party shall give reasonable assistance to the Indemnifying Party to enable the Indemnifying Party to defend the claim. The Indemnifying Party shall not settle or compromise any claim without the prior written consent of the Indemnified Party, not to be unreasonably withheld, if such settlement or compromise in any manner indicates that the Indemnified Party contributed to or was responsible for such claim, or if such settlement or compromise imposes any obligations upon the Indemnified Party or requires the Indemnified Party to take any action.

11. Injunctive Relief. The parties acknowledge that breach of these Terms may cause a party irreparable damage which cannot be remedied in monetary awards in an action at law and, in the event of any such breach, the non-breaching party may seek injunctive relief. Nothing contained in this section shall limit either party's right to any remedies at law or in equity.

12. Limitation of Liability. FOR PURPOSES OF THIS SECTION, BOTTOMLINE SHALL MEAN BOTTOMLINE, ITS AFFILIATES, SUBSIDIARIES AND THIRD-PARTY SERVICE PROVIDERS. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY DAMAGES OR OTHER INDIRECT DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, LOSS OF USE, LOSS OF DATA OR LOSS OF GOODWILL OR REPUTATION) WITH



RESPECT TO ANY CLAIMS ARISING FROM OR RELATING TO THESE TERMS OR THE PRODUCTS AND SERVICES, WHETHER BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY), REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. BOTTOMLINE'S LIABILITY FOR DAMAGES OF ANY KIND WITH RESPECT TO ANY CLAIMS ARISING FROM OR RELATING TO THESE TERMS OR THE PRODUCTS AND SERVICES, WHETHER BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE FOR THE SPECIFIC PRODUCT OR SERVICE GIVING RISE TO THE CLAIM BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH SUCH LIABILITY AROSE. BOTTOMLINE'S THIRD PARTY SERVICE PROVIDERS SHALL BE INTENDED THIRD PARTY BENEFICIARIES OF THESE TERMS. THE FOREGOING LIMITATIONS WILL APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. THE REMEDIES SET FORTH IN THESE TERMS SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER THESE TERMS. CUSTOMER ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION ARE AN ESSENTIAL TERM OF THESE TERMS BUT FOR WHICH BOTTOMLINE WOULD NOT PROVIDE THE PRODUCTS AND SERVICES. THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO CUSTOMER'S OBLIGATION TO PAY FEES.

13. Audits. Customer acknowledges and agrees Bottomline shall have the right to audit Customer records upon reasonable written notice in order to ensure compliance with the Terms. Audits may be conducted by Bottomline personnel or by an independent third-party auditor appointed by Bottomline. Customer shall grant Bottomline or its independent third-party auditor reasonable access to its personnel, records and facilities during normal business hours for such audit. In the event that results of the audit indicate that Customer has underpaid any Fees, Bottomline will deliver to Customer an invoice representing the Fees owed to Bottomline as a result of the audit and Customer agrees to pay any such invoice within thirty (30) days of receipt.

14. Force Majeure. Except for Customer's obligation to pay amounts due or as otherwise expressly set forth in these Terms, neither party shall be liable to the other for any failure or delay in performing its obligations hereunder (or any resulting loss or damage) if such failure or delay is due to circumstances beyond its reasonable control, including, but not limited to: (a) Internet network failures or Internet capacity limitations; (b) compliance with regulations, orders or instructions of any federal, state or municipal government or any department or agent thereof that delay or restrict performance hereunder; (c) third-party providers failure to deliver services; or (d) acts of God, acts of third parties including terrorist acts, unauthorized system access or intrusions, acts of civil or military authority, fires, embargoes, epidemics, war or riots.

15. Waiver; Entire Agreement. No course of dealing, course of performance or failure of either party to strictly enforce any term, right or condition of these Terms shall be construed as a waiver of any other term, right or condition. No waiver or breach of any provision of these Terms shall be construed to be a waiver of any subsequent breach of the same or any other provision. These Terms and applicable Order Form(s) constitute the entire agreement and understanding of the parties with respect to the subject

matter herein and supersedes all prior agreements and understandings, whether written or oral, between the parties with respect thereto. The terms and conditions of any purchase order or other document submitted by Customer shall not have any force or effect or govern or amend these Terms in any way. Sections 1(f), 3, 9, 10, 11, 12, 15 and 17 shall survive the expiration or termination of these Terms and remain in full force and effect.

16. Assignment. These Terms and any rights and licenses granted hereunder, may not be transferred or assigned by Customer without Bottomline's prior written consent, and any attempted transfer or assignment will be null and void. Notwithstanding the foregoing, these Terms shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and permitted assigns. If another entity merges with or into or acquires Bottomline, or all or substantially all of Bottomline's assets, stock or business, Customer agrees and consents that Customer Materials and information that Bottomline has collected from Customer, including personally identifiable information, may be securely transferred to such successor or assignee.

17. Compliance and Governing Law; Disputes. The parties shall comply in all materials respects with all applicable laws and regulations. Any claim or dispute arising out of these Terms (a "Claim") is governed by the laws of the State of Delaware without regard to conflict of law provisions. The parties shall attempt to resolve any Claim promptly by negotiation between executives who have authority to settle the Claim. Within thirty (30) days after delivery of a notice of Claim from either party, the executives of both parties shall confer and all such negotiations shall be treated as confidential settlement negotiations for purposes of applicable rules of evidence. Any Claim not resolved pursuant to this paragraph shall be resolved by a Delaware state or federal court, and the parties irrevocably consent to this jurisdiction and those courts for all Claims. In any litigation relating to these Terms, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs, in addition to any other relief awarded.

18. Severability. If any provision of these Terms is invalid or unenforceable under applicable law, then it will be changed, interpreted or severed, as appropriate to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect.

19. Notices. Bottomline's Products and Services may be covered by one or more of the patents listed here. All other legal notices required or permitted under these Terms shall be made in writing and shall be deemed to have been duly given if sent by registered or certified mail (return receipt requested). All notices shall be addressed to Bottomline at 325 Corporate Drive, Portsmouth, NH 03801 attention Contracts, with a copy to [contracts@bottomline.com](mailto:contracts@bottomline.com). All notices for Customer shall be addressed to the contact information provided by Customer to Bottomline in an Order Form.

20. Relationship between Bottomline and Customer. These Terms do not create the relationship of principal and agent, or any similar relationship between Bottomline and Customer, including, but not limited to, that of joint venturers, partners, employees, or associates. Neither party is granted any right or authority to assume or create any obligation or responsibility for, or on behalf of, the other party or to otherwise bind the other party, other than as may be expressly authorized in these Terms.

21. Publicity. Customer agrees that Bottomline may refer to the Customer as a client of Bottomline, and refer to the type of Products and Services that Bottomline has provided Customer, in its marketing material including without limitation, general press releases. With prior written consent from Customer, Bottomline may use any of Customer's trademarks in Bottomline's marketing and publicity materials.

22. Products and Services. Customer agrees to purchase the Products and Services set forth in Order Forms, pursuant to these Bottomline Terms and Conditions, and may include professional services to be provided to Customer as detailed herein or a Statement of Work. Bottomline shall audit Customer's number of monitored and investigation center end users, data channels and transactional volume (collectively, "Usage") on an annual basis. Bottomline will provide Customer with a set of queries which Customer shall execute in its production environment (the "Audit"). Customer shall provide Bottomline with a report of the Audit results. In the event such report reflects excess Usage, Customer agrees to enter into an Order Form that properly reflects Customer's Usage.