

# BX Service Terms and Conditions

(Version 2024-1)

## 1. Definitions

The definitions, used in these BX Service Terms and Conditions, have the following meaning:

**"Account User"** means a User, appointed, and authorized by Customer to authorize Users, activate and deactivate User Accounts and manage rights of Users and BX Subscriptions.

**"Affiliate"** means any entity which directly or indirectly controls, is controlled by, or is under common control with a Party. "Control" for purposes of this definition, means direct or indirect ownership of more than fifty percent (50%) of the voting interests in the entity.

**"Agreement"** means the agreement for a BX Subscription and (optionally) BX Add-On Subscriptions and/or Professional Services, formalized through a BX Order.

**"Backup"** means a copy of the BX Data and Customer Data, stored at a backup location.

**"Bottomline"** means Bottomline R&D B.V.

**"Bottomline Integration"** means an integration (software, connected to the BX API, enabling the exchange of data between BX and Third-Party Systems), created by Bottomline, and offered by Bottomline as a BX Add-On.

**"BX"** means the logistics cloud platform for inventory routing optimization, including mobile apps and BX APIs, as further described in the BX Feature List.

**"BX Add-On(s)"** means a service or services to which the Customer can subscribe in addition to the BX Subscription.

**"BX Add-On Subscription"** means a subscription to a BX Add-On.

**"BX Add-On Subscription Fee"** means the monthly fee for a BX Add-On Subscription.

**"BX API"** means the standard application programming interface between BX and a Bottomline Integration or Customer Integration, enabling the exchange of data between BX and Third-Party Systems.

**"BX Business Intelligence"** means a business intelligence application and connected data warehouse accessible via BX, offered as a BX Add-On.

**"BX Data"** means the output data, generated in BX as a result of the use of BX.

**"BX DPA"** means the BX Data Processing Addendum, constituting an agreement within the meaning of Article 28 of the GDPR, available at [bottomline.eu/bx-dpa](https://bottomline.eu/bx-dpa).

**"BX Documentation"** means the online documentation (as updated from time to time) for BX, the BX API and BX Add-Ons, made available in BX, including the BX Knowledge Base and BX Feature List.

**"BX Feature List"** means the list of applications and features of BX, the BX API and BX Add-Ons, available at [bottomline.eu/bx-feature-list](https://bottomline.eu/bx-feature-list).

**"BX Knowledge Base"** means Frequently Asked Questions (FAQ) and other documentation on the use of BX made available by Bottomline in BX.

**"BX Order"** means the document containing a Subscriptions Order and/or Professional Services Order, stating the core provisions of the Agreement.

**"BX Premium Support"** means access to the BX Knowledge Base and to Help Center Support at (compared to

BX Standard Support) improved, predefined service levels, during and, if a Critical Feature is no longer performed, outside Working Hours, as set forth in the BX Premium Support Terms, offered by Bottomline as a BX Add-On.

**“BX Premium Support Terms”** means the terms and conditions applying to BX Premium Support, available at [bottomline.eu/bx/bx-premium-support-terms](http://bottomline.eu/bx/bx-premium-support-terms).

**“BX Service”** means the service offering BX, Help Center Support and Maintenance.

**“BX Standard Support”** means access to the BX Knowledge Base and to Help Center Support during Working Hours.

**“BX Subscription”** means a subscription to the BX Service.

**“BX Subscription Fee”** means the monthly fee for a BX Subscription.

**“BX Subscription Level”** means the level against which BX can be used under the BX Subscription as further set forth in the BX Feature List.

**“BX Terms of Use”** means the terms of use, applicable to each and every use of BX, available at [bottomline.eu/bx-terms-of-use](http://bottomline.eu/bx-terms-of-use).

**“Controller”** means the party who determines the purposes and means of the Data Processing.

**“Critical Feature”** means any part of BX necessary to complete the primary steps in the process of planning, executing and reconciling trips.

**“Customer”** means the legal entity entering into the Agreement with Bottomline, as stated in the BX Order.

**“Customer Account”** means the account created for and used by Customer to access BX and to create User Accounts.

**“Customer Data”** means all electronic data or information entered in or sent to BX by Users, whether manually or in an automated (using the BX API and a Bottomline Integration or Customer Integration) way.

**“Customer Integration”** means an integration (software, connected to the BX API, enabling the exchange of data between BX and Third-Party Systems) created by Customer.

**“Customer Personal Data”** means the Customer Data that qualify as Personal Data.

**“Data Processing”** means any Processing, performed by Bottomline on behalf of a Controller with regard to Customer Personal Data in the performance of an Agreement.

**“Data Recovery”** means restoration, in full or in part, of the BX Data and/or Customer Data in the event of loss or corruption of such data within or transmission (via the BX API) from BX.

**“Data Subject”** means the identified or identifiable natural person to which the Customer Personal Data relate.

**“Deliverable”** means the result of Professional Services.

**“Expert User”** means a User, appointed, and authorized by Customer to provide First Line Support to other Users and to receive Help Center Support from Bottomline.

**“External Data”** means the third-party datasets processed within BX to generate the BX Data, such as price, weather and traffic data.

**“First Line Support”** means setting data and parameters in BX and answering Users’ tablet-related questions, and any other questions related to the use of and settings in BX and BX Add-Ons.

**“Force Majeure Event”** means any unavailability of Services caused by circumstances beyond Bottomline’s reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, acts of (cyber) crime, strikes or other labor problems (other than those involving Bottomline’s employees), failures or delays of suppliers, or internet service provider failures or delays.

**“GDPR”** means Regulation (EU) 2016/679.

**“Help Center”** means the support application in which Tickets are created and processed.

**“Help Center Support”** means Bottomline’s support team answering questions regarding and resolving issues in BX, either at a standard level (BX Standard Support) or premium level (BX Premium Support).

**“IP”** means intellectual property rights, anywhere in the world, whether registrable or not, including but not limited to patent rights, domain names, tradenames, copyrights, trademark rights, sui generis data base rights and trade secrets.

**“Maintenance”** means maintenance to (any components of) BX or a BX Add-On and/or to their underlying infrastructure, including the release of Updates and/or New Versions.

**“New Version”** means a successive version of BX, containing features and/or functionality that significantly change(s) or improve(s) the features and/or functionality of the then-current version.

**“Party/Parties”** means Bottomline and/or the Customer.

**“Personal Data”** means information relating to a Data Subject.

**“Processes, Processing”** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**“Professional Services”** means certain professional services, related to the BX Service, e.g. consultancy, onboarding support, training, or software development.

**“Professional Services Fee”** means the fee for the delivery of Professional Services.

**“Professional Services Order”** means the part of the BX Order pertaining to Professional Services.

**“Scheduled Maintenance”** means Maintenance, scheduled in advance by Bottomline or its suppliers.

**“Services”** means the BX Service and/or offering of BX Add-Ons and/or Professional Services, as agreed between the Parties.

**“Subscriptions Order”** means the part of the BX Order pertaining to BX Subscriptions and/or BX Add-On Subscriptions.

**“Subscription Start Date”** means the effective date of a BX Subscription or BX Add-On Subscription, stated in the Subscriptions Order.

**“Subscription Term”** means the initial term of the BX Subscription, stated in the Subscriptions Order.

**“Third-Party Systems”** means Customer’s or a third party’s IT systems, managed by Customer or a third party, from which Customer Data are retrieved to be processed in BX or to which BX Data are transferred from BX.

**“Total BX Subscription Fee”** means, in any month, the total of the BX Subscription Fee and the BX Add-On Subscription Fee.

**“Truck”** means the leading vehicle (identified by its license plate number) of any transport combination which trips are planned using BX.

**“Update”** means a limited change to BX or a BX Add-On to prevent or remedy malfunctions or vulnerabilities or to improve functionality.

**“User Account”** means the account created for and used by a User to access to BX.

**“User”** means Customer’s, Affiliate’s or their business relations’ employee, representative, consultant, contractor, or agent, authorized by Customer to use BX.

**“Working Days”** means Mondays up to and including Fridays with the exception of official public holidays in the Netherlands.

**“Working Hours”** means the hours between 9 AM and 5 PM CE(S)T on Working Days.

**“Writing, Written”** means sent, made up or confirmed in writing or electronically.

## **2. Agreement**

### **2.1 Content of the Agreement**

An Agreement consists of a BX Order, these BX Service Terms and Conditions, the BX DPA and (where applicable, if stated in the BX Order) the BX Premium Support Terms. The BX Premium Support Terms apply only if Customer has purchased a BX Add-On Subscription to BX Premium Support. No terms or conditions stated in Customer’s purchase order or other Customer documentation shall, notwithstanding any language to the contrary in such terms and conditions or documentation, be incorporated into or form a part of the Agreement, and all such terms or conditions shall be deemed rejected and null and void.

### **2.2 Constitution of the Agreement**

An Agreement is constituted on acceptance by Customer of a BX Order. If the acceptance is conditional, the condition in question does not apply until Bottomline has explicitly agreed to it in Writing.

### **2.3 Order of legal prevalence**

To the extent of any conflict or inconsistency between the provisions of the documents constituting the Agreement and subject to the Parties’ explicit Written agreement to the contrary, the order of legal prevalence shall be: (1) the BX Order, (2) the BX DPA, (3) these BX Service Terms and Conditions and (if applicable) the Premium Support Terms. If the BX Premium Support Terms apply, the provisions of the BX Premium Support Terms prevail over the provisions of these BX Service Terms and Conditions in case of any conflict or inconsistency between their provisions.

### **2.4 Amendments**

Subject to any provision to the contrary in these BX Service Terms and Conditions, no modification, amendment, or waiver of any provision of the Agreement shall be effective unless made up in Writing and accepted in Writing by the Party against whom the modification, amendment or waiver is to be asserted.

### **2.5 Amendment to BX Service Terms and Conditions**

Bottomline reserves the right to amend these BX Service Terms and Conditions unilaterally at any time, provided that Bottomline notifies the Customer in Writing of: (i) the date on which the amended terms will take effect and (ii) a summary of the amended terms, at least sixty (60) calendar days before the intended effective date. From the effective date notified the amended terms will apply to the Agreement. If the Customer does not accept the amended terms, Customer has the right to terminate the Agreement against the intended effective date of the amended terms, provided the Customer files its Written termination notice with Bottomline within thirty (30) calendar days prior to the intended effective date of the amended terms.

### **3. Services**

#### **1. BX Subscriptions**

Customer may, under the terms of the Agreement, purchase a BX Subscription for the access to and use of BX. On constitution of the Agreement, Bottomline shall make BX available to Customer for the term of the BX Subscription. In addition to a BX Subscription, Customer may purchase (a) BX Add-On Subscription(s). The effective date of the BX Add-On Subscription shall be as stated in the Subscriptions Order. The term of the BX Add-On Subscriptions shall be equal to the term of the related BX Subscription. The use of BX and/or a BX Add-On may be subject to limitations. Any such limitations are specified in the Subscriptions Order and/or BX Documentation.

#### **2. Delivery of BX**

On conclusion of the Agreement and (authorization for creditcard) payment of the BX Subscription Fee and (if applicable) BX Add-On Subscription Fee and Professional Services Fee, Bottomline's support team will enable Customer to create a Customer Account as further explained in the BX Knowledge Base.

#### **3. BX Subscription Level**

The initial number of UoM's under a BX Subscription or a BX Add-On Subscription will be stated in the Subscriptions Order. Subject to changes in accordance with section 3.4, each BX Subscription entitles the Customer to use such features and functionality of BX as specific to the BX Subscription Level against which the BX Subscription is purchased, as stated in the Subscriptions Order.

#### **4. Changes to subscriptions**

If Customer increases the use of BX or a BX Add-On or changes the BX Subscription level, the relevant BX Subscription or BX Add-On Subscription will automatically be adjusted by Bottomline. Customer explicitly authorizes Bottomline to monitor Customer's, including any User's use of BX and BX Add-On's for this purpose. The BX Subscriptions and BX Add-On Subscriptions will be adjusted according to the following principles:

- (i) the quantity of UoM's under a BX Subscription or BX Add-On Subscription can be increased during the term of the BX Subscription, but not decreased;
- (ii) the BX Subscription Level can be upgraded during the term of the BX Subscription, but not downgraded;
- (iii) BX Add-On Subscriptions can be added during the term of the related BX Subscription, but not terminated;
- (iv) the BX Subscription Fee or (as applicable) BX Add-On Subscription Fee will be adjusted in accordance with the changes described under (i), (ii) and (iii), at the then-current prices (as applicable, in accordance with sections 6.1 and 6.2);
- (v) the difference between the BX Subscription Fee or (as applicable) BX Add-On Subscription Fee before and after the change will be invoiced by means of a correction invoice for the Total BX Subscription Fee;
- (vi) the adjusted BX Subscription Fee and/or BX Add-On Subscription Fee will be valid for the remaining part of the then-current term of the BX Subscription.

#### **3.5 Updates and New Versions**

Updates and/or New Versions are released in accordance with Bottomline's release policy only. Bottomline will inform Users of Updates and/or New Versions by issuing release notes in BX. Customer agrees that any use of BX shall always pertain to the latest version of BX. Bottomline does not warrant that any specific functionality or feature of BX or a BX Add-On will continue to be available after the release of an Update or a New Version, provided that the core functionality and features of BX or a BX Add-On under a BX Subscription will not materially decrease during the term of that BX Subscription.

#### **3.6 Maintenance**

Scheduled Maintenance will always be notified by Bottomline in advance, in BX. When planning Scheduled Maintenance, Bottomline will use commercially reasonable efforts to take local business hours (business hours in the region where the BX Service that is affected by the Scheduled Maintenance is used) into account. Scheduled Maintenance will not exceed a maximum of two (2) hours per calendar week. Bottomline will decide, in its sole opinion, whether a situation occurs, requiring emergency maintenance to be undertaken (e.g. in case of a personal data breach). Bottomline is entitled to perform emergency maintenance if it is (in the sole opinion of Bottomline) necessary and at any time, without incurring liability. Bottomline shall inform Customer and Users of any emergency maintenance actions as soon as possible by a notification in BX.

### **3.7 Help Center Support**

Help Center Support is delivered by Bottomline's support team, to an Expert User only. Bottomline will use commercially reasonable efforts to answer Customer's questions and meet Customer's requests but does not warrant that all questions and/or requests will always be answered or that all malfunctions will always be remedied and reserves the right to deny a request. Customer is responsible for the provision of First Line Support to Users. Customer shall appoint a sufficient number of, and at least one, sufficiently qualified Expert User(s) for this purpose. If Customer has purchased a BX Add-On Subscription to BX Premium Support, it is eligible for BX Premium Support and the BX Premium Support Terms apply.

### **3.8 Professional Services**

The Parties may agree, from time to time, on the performance of Professional Services by Bottomline. The Professional Services Order will confirm the Professional Service, setting forth: (i) a description of the Professional Services to be rendered, (ii) the onboarding plan or development plan (if applicable) and (iii) the Professional Service Fee and any expenses to be paid by Customer. Bottomline is only obligated to perform the Professional Services that are specifically and expressly set forth in the relevant Professional Services Order and, except where expressly stated otherwise in Writing in the Professional Services Order, only on the condition that advance payment of (a part of) the Professional Service Fee as described under section 6.4 has been made. Bottomline will perform Professional Services in a professional manner, in accordance with the specifications described in the Professional Services Order. Bottomline is entitled always to have Professional Services performed by subcontractors, without prejudice to Bottomline's obligations under the Agreement.

### **3.9 Acceptance testing**

Customer is entitled to perform an acceptance test on any Deliverable within 10 (ten) Working Days from delivery by Bottomline. Customer can only refuse a Deliverable if (i) specifications are set in the Professional Services Order and (ii) the Deliverable contains a non-conformity to such specifications. If the Customer is entitled to an acceptance test, the Deliverable will be deemed accepted if (i) Bottomline has not received Customer's Written notice of non-acceptance within 10 (ten) Working Days from delivery of the Deliverable or if (ii) the Customer has taken the Deliverable into use. If Customer does not accept the Deliverable, it will provide a detailed description of the non-conformity in the notice of non-acceptance. Bottomline will resolve the non-conformity in question expeditiously and redeliver the Deliverable for acceptance testing in accordance with the procedure described in this section 3.9.

### **3.10 Delivery dates**

Any delivery dates or timelines for the delivery of Professional Services communicated by Bottomline, in a Professional Services Order or otherwise, are estimates only and not guarantees, provided that Bottomline will use commercially reasonable efforts to meet such dates or timelines. Customer must furnish sufficient trained and experienced personnel and deliver all necessary information and materials in a timely manner. Bottomline will not be responsible for any delays, cost overruns or liability resulting from the foregoing factors.

### **3.11 Changes to BX**

Customer acknowledges that only Bottomline has the right to maintain, enhance or otherwise modify BX and BX Add-Ons. Bottomline may, but is not obliged to, at Customer's request and as part of Professional Services, develop or create specific features or additions or modifications to BX. If Bottomline agrees to make such changes, Bottomline is entitled to offer BX including such changes to all of its customers, without Customer being entitled to any compensation whatsoever.

### **3.12 Third parties**

Instead of performing Professional Services and Support itself, Bottomline may refer Customer to third parties, selected by Bottomline, to perform the Professional Services and/or Support. In that case, such third party will not be a subcontractor of Bottomline, but Customer will, for the performance of the Professional Services and/or Support, enter into a separate services agreement with the third party directly. Bottomline excludes all liability for any actions or omissions of such third party.

### **3.13 External Data**

Customer acknowledges that the External Data are obtained from external data sources. Bottomline provides the External Data "as is" and does not guarantee the correctness, availability, or completeness of the External Data. Bottomline excludes any and all liability for damages arising from incorrect, incomplete or otherwise non-conforming External Data. If the use of External Data is subject to the license terms of the third-party data provider, such terms prevail over the terms of the Agreement, in the event of a conflict.

## **4. Use of the services**

### **1. Bottomline's obligations**

Bottomline shall be obliged to:

- (i) provide the Services in accordance with the Agreement; and
- (ii) use commercially reasonable efforts to make the BX available twenty-four (24) hours a day, seven (7) days a week; and
- (iii) provide the Services only in accordance with laws and government regulations, applicable to the Services.

### **2. Exceptions to availability**

Bottomline's obligation stated in section 4.1 under (ii) does not apply if the unavailability is caused by:

- a) the performance of Maintenance;
- b) downtime of services and/or infrastructure of Bottomline's supplier(s);
- c) slowness of or other performance issues with individual features;
- d) issues that are related to (components of) IT systems, owned and/or appointed and/or contracted and/or used by a User;
- e) any products or features identified as pilot, alpha, beta or similar;
- f) external network or equipment problems outside of Bottomline's reasonable control, such as bad routing tables between an external internet service provider (ISP) and Bottomline's server;
- g) a Force Majeure Event; and
- h) other situations in which keeping BX available cannot be reasonably expected from Bottomline.

### **3. Customer's responsibilities**

Customer shall be responsible for:

- (i) Users' compliance with the BX Terms of Use; and
- (ii) the appointment of (a) qualified Account User(s) and (a) Expert User(s), and
- (iii) the accuracy, security, quality, integrity and legality of Customer Data and of the means by which the Customer Data are acquired, including the timely possession of all licenses, permissions, and rights to use Customer Data in relation to the Agreement;
- (iv) the operation, availability and security of Third-Party Systems;
- (v) the choice for, and any actions, products, or services of any third parties, including but not limited to implementors, integrators or consultants, engaged or purchased by Customer in relation to the use of BX.

### **4. BX Terms of Use**

Any User (including an Account User) is provided access to BX only after acceptance by that User of the BX Terms of Use. Users will be requested to accept the BX Terms of Use on their first logon to BX.

## **5. Customer's obligations**

Customer undertakes and is obliged to:

- (i) use BX in accordance with applicable laws and government regulations, the BX Documentation, the BX Knowledge Base and instructions given by Bottomline's support team only;
- (ii) not exceed any limitations to the use of BX as stated in any Subscriptions Order or BX Documentation;
- (iii) not provide access to BX to any party or person that is not authorized based on the Agreement and the applicable Subscriptions Order;
- (iv) not circumvent any technical, physical and organizational security measures implemented by Bottomline to protect the security of BX;
- (v) cause any User to comply with the BX Terms of Use and block the User Account of any User violating the BX Terms of Use immediately on becoming aware of such violation;
- (vi) implement adequate technical, physical and organizational security measures to prevent unauthorized access to or use of BX and/or use in violation of the BX Terms of Use, including but not limited to keeping any login credentials, including API keys, strictly confidential;
- (vii) not (a) make BX available to anyone other than Users, and/or (b) sell, resell, rent or lease the BX Service, and/or (c) store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or store or transmit material in violation of third-party privacy rights in or to BX, and/or (d) store or transmit malware (including but not limited to viruses, worms, time bombs, Trojan horses and other intentionally harmful or malicious code, files, scripts, agents or programs) in or to BX, and/or (e) interfere with or disrupt the integrity or performance of BX or of any third-party data contained therein, and/or (f) attempt to gain unauthorized access to BX or its related systems or networks, and/or (g) access BX for any benchmarking or competitive purposes.
- (viii) in case of i) any unauthorized access to or use of BX or ii) theft, loss or abuse of login credentials, including API keys: immediately report such incident to Bottomline's support team by telephone and change the password used to access BX;
- (ix) report any unavailability or irregularity in the BX Service to Bottomline's support team in the Help Center.

### **4.6 Consequences of non-compliance**

Customer shall indemnify and hold Bottomline harmless against any damages, losses or expenses arising from any non-compliance of a User with the BX Terms of Use. Customer acknowledges that, if a User breaches the BX Terms of Use, Bottomline is entitled, without prejudice to any other remedies available to Bottomline under the Agreement or at law, to suspend or limit that User's access to BX by closing the Customer Account or relevant User Account or otherwise.

## **5. Integrations and Third-Party Systems**

### **5.1 Integrations**

Customer acknowledges that in order to exchange data between BX and a Third-Party System, a Bottomline Integration or Customer Integration is necessary. For this purpose, Customer may (i) purchase a BX Add-On Subscription for a Bottomline Integration or (ii) create and use a Customer Integration. Customer will cause any Customer Integrations to meet the requirements for Customer Integrations as set out in the BX Documentation.

### **5.2 Disclaimer**

If Customer makes use of (a) Bottomline Integration(s), Bottomline's sole obligation is to make the relevant Bottomline Integration(s) available in accordance with the BX Documentation. Bottomline does not accept any liability for the quality and/or security of any integration(s) other than Bottomline Integration(s). The (i) use of any integrations other than Bottomline Integrations and (ii) the (successful) transmission of the Customer Data respectively BX Data from the BX API to the Third-Party Systems and vice versa is always at Customer's own risk. Customer acknowledges that the security and validity of the transmission, from the BX API to the Third-Party Systems and vice versa, is Customer's responsibility.



### **5.3 Third-Party Systems**

Where Customer uses Third-Party Systems to use BX, Customer acknowledges that those Third-Party Systems may have access to BX Data and/or Customer Data. Bottomline shall not be responsible or liable for any disclosure, modification, or deletion of BX Data and/or Customer Data resulting from the use of such Third-Party Systems.

### **5.4 Third-party implementors, integrators, and services providers**

In connection with Customer's use of the Services, Customer may engage third party implementors, integrators or consultants, or use the Services with certain other third-party services and products. Customer acknowledges and agrees, with regard to such third party implementors, integrators or consultants, that (i) those third parties are not Bottomline's agents or employees; and that (ii) Bottomline is not responsible or liable in any way for their actions, omissions or services. Further, Customer acknowledges and agrees with regard to such third-party services and products that (i) Bottomline is not responsible or liable in any way for the consequences of the use of such services and products, and that (ii) Customer is exclusively responsible for the selection and quality of those third party services and products.

## **6. Prices, fees and payment**

### **1. Prices BX Subscriptions and BX Add-On Subscriptions**

The BX Subscriptions and BX Add-On Subscriptions are charged at the price, specified in the Subscriptions Order(s). Subject to section 6.2, the price for a BX Subscription and BX Add-On Subscription is fixed during the Subscription Term or any extended term.

### **2. Price adjustment**

If the Subscription Term or any extended term is renewed (in accordance with section 13.2) Bottomline has the right to adjust the prices for BX Subscriptions and BX Add-On Subscriptions, for the next term, to the then-current BX list prices. In case of a Subscription Term of one (1) month, Bottomline will notify the price change by Written notice, observing a notice period of one (1) month. In case of a Subscription Term of one (1) or three (3) years, Bottomline will notify the price change in the Written renewal notice referred to in section 13.2.

### **3. Subscription fees**

Bottomline will invoice and Customer shall pay the Total BX Subscription Fee in advance, on a monthly, quarterly, or yearly basis, as stated in the Subscription Order. In case of a subscription term of one month, the Total BX Subscription Fee will be collected as set forth in section 6.5. In case of a subscription term of one (1) or three (3) years, the BX Subscription Fee will be paid by bank transfer within the term stated in the invoice. The payment term will be as stated in the Subscription Order.

### **6.4 Professional Services Fees and expenses**

In relation to the Professional Services, Customer shall pay the Professional Services Fee that is stated in the relevant Professional Services Order plus (if applicable) reasonably related expenses (such as costs of transportation and parking). Where the Professional Services are training or go-live support, the Professional Services Order states the estimated Professional Services Fee. If the actual time spent on such services exceeds the estimated Professional Services Fee, the extra time will be charged additionally. The Professional Services Fee will be invoiced as stated in the Professional Services Order. Additional charges and expenses will be invoiced in the month following the month in which the time was spent, or expenses were incurred.

### **6.5 Payment by credit card**

In case of a Subscription Term of one month, Customer shall pay the Total BX Subscription Fee by credit card. As a precondition to the Agreement, Customer shall provide the details of a valid and commonly accepted credit card as requested by Bottomline and authorize Bottomline as required for the credit card used to charge the credit card for the BX Subscription Fee due under the Agreement. Customer is responsible for timely

updating its credit card information to prevent the occurrence of any interruptions to collection of the BX Subscription Fee due.

## **6.6 Overdue fees**

If payment is not made timely, such fees accrue late interest at the EURIBOR rate plus 2% and Customer shall be obliged to pay reasonable attorney fees and other costs incurred by Bottomline to collect any such overdue fees or charges. In case of payment by credit card payment is deemed not to be made timely if Bottomline is not able to collect the BX Subscription Fee, despite at least two attempts to charge Customer's credit card with an interval of ten (10) calendar days.

## **6.7 Consequences of payment failure**

If payment of any amount owed by Customer under the Agreement or under any other agreement between Customer and Bottomline is thirty (30) or more days overdue, all amounts payable under the Agreement and any such other agreement become immediately due and payable and Bottomline is entitled to suspend the performance of any of its obligations under the Agreement until such amounts are paid in full, or terminate the Agreement without incurring any liability.

## **6.8 Payment disputes**

Bottomline will not exercise its rights under section 6.7 if the applicable charges are under reasonable and good-faith dispute and Customer is cooperating diligently to promptly resolve the dispute.

# **7. Proprietary rights**

## **1. Reservation of rights**

Bottomline and its licensors reserve all rights, title, and interest, including all IP, in and to (all components of) BX, the BX Add-Ons, the BX Documentation, the BX Knowledge Base, Deliverables and all enhancements, customizations and modifications to any of the foregoing ("**Proprietary works**"). No IP rights are granted to Customer or any other party under the Agreement.

## **7.2 License**

Customer will be granted a temporary, limited, non-exclusive right to use BX in accordance with the Agreement, subject to payment of the Total BX Subscription Fee and compliance with the restrictions in section 7.3.

## **3. License restrictions**

Customer shall use BX for its and/or its Affiliates' internal business purposes only and not (i) permit any third party to access the Proprietary Works, except as permitted under the Agreement, (ii) create derivative works based on the Proprietary Works or change the Proprietary Works, (iii) copy, frame or mirror any part or content of the Proprietary Works, (iv) reverse engineer the Proprietary Works, or (v) (v) remove any copyright notices, trademarks or tradenames from the Proprietary Works, or (vi) access the Proprietary Works in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Proprietary Works. Further, Customer shall not (i) use any information disclosed by Bottomline relating to the Proprietary Works to contest the validity of Bottomline's IP and (ii) not take any action which may adversely affect or impair Bottomline's rights as set out in section 7.1 and (iii) notify Bottomline in Writing immediately after becoming aware of any possible infringements of such rights by any person or party that comes to its attention.. Any non-compliance with this section 7.3 will constitute a material, non-curable breach of the Agreement, entitling Bottomline to immediately suspend or terminate the Agreement and/or the performance of (a part of) the Services.

## **7.4 Ownership of Customer Data**

For the purpose of the Agreement Customer exclusively owns all rights, title and interest in and to the Customer Data. Customer grants Bottomline a non-exclusive, royalty-free license to use the Customer Data for and in the performance of the Agreement, including the hosting of Customer Data as part of the BX Service. Customer

warrants that it disposes of all necessary rights and authorizations to grant such license to Bottomline.

## **7.5 Suggestions**

Bottomline shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate, into the BX Service, any suggestions, enhancement requests, recommendations or other feedback provided by Customer. All such feedback shall not be considered Customer Confidential Information within the meaning of section 8.1.

## **8. Confidentiality**

### **1. Confidential Information**

As used in these BX Service Terms and Conditions **"Confidential Information"** means all confidential information disclosed by a Party (**"Disclosing Party"**) to the other Party (**"Receiving Party"**), whether orally or in Writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of its disclosure. Customer Confidential Information shall include the Customer Data and BX Data. Bottomline Confidential Information shall include the Proprietary Works. Each Party's Confidential Information shall include all contract documents as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

### **2. Protection of Confidential Information**

Except as otherwise permitted in Writing by the Disclosing Party, the Receiving Party shall (i) protect the Confidential Information of Disclosing Party against unauthorized access, using at least the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care), and (ii) provide access to Confidential Information of the Disclosing Party to only those of its employees, contractors and agents who need such access for purposes consistent with the Agreement and who have signed Written confidentiality agreements with the Receiving Party containing obligations and prohibitions no less stringent than the ones in this section 8.

### **3. Permitted disclosure**

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and shall provide, at the Disclosing Party's cost, reasonable assistance to the Disclosing Party if the Disclosing Party wishes to contest the disclosure. Bottomline may also (i) disclose Confidential Information disclosed by Customer if such disclosure is expressly permitted in Writing by Customer. Notwithstanding any provision to the contrary in this Agreement, Bottomline may access Customer Data to provide the Services or to prevent or address technical problems.

### **4. Agreed disclosure**

By entering into the Agreement, Customer allows Bottomline to reference Customer as a customer of Bottomline using Bottomline's technology, on Bottomline's website and in print copy or marketing material. At Bottomline's request, Customer will provide an approved company logo and testimonial that Bottomline may publish on its website and/or in marketing material to communicate such relationship.

## **9. Personal Data protection and security**

### **9.1 Personal Data protection**

Each Party qualifies as an independent Controller (as defined in section 4 of the GDPR) regarding the processing of the other Party's personal data, where necessary for the execution of the Agreement (such as business contact

details, login data, support requests, monitoring data) and shall process such data in accordance with the GDPR and/or any other data protection legislation that that Party is subject to. Where the Services includes Data Processing, the BX DPA applies.

## **2. Security**

Without limiting the above, Bottomline has taken the organizational, physical, and technical security measures for protection of the availability, confidentiality and integrity of Customer Data and BX Data stored in BX as set forth in the BX Documentation or as notified by Bottomline to Customer on its Written request. Bottomline does not warrant that these security measures will always be effective or meet any specific requirements. Customer confirms that it has assessed these security measures and acknowledges that these security measures meet its requirements.

## **3. Storage, Backup and Data Recovery**

The BX Data and Customer Data stored by Bottomline in BX will date back three (3) years. A Backup is made by Bottomline automatically each 24 hours. Data Recovery will not take place in case of loss or corruption of BX Data or Customer Data from or in Third-Party Systems, save where Bottomline agrees to provide such Data Recovery as Professional Services.

## **10. Warranties and disclaimer**

### **10.1 General**

Each Party represents, warrants, and covenants that: (i) it shall comply with the applicable laws in respect of the performance of its obligations under the Agreement and that (ii) it has obtained all necessary approvals, consents, and authorizations to enter into the Agreement and to perform and carry out its obligations under the Agreement.

### **10.2 Bottomline warranty**

Bottomline warrants that BX shall perform materially in accordance with the specifications in the BX Documentation. In the event of a breach of the foregoing warranty, Bottomline will use reasonable efforts to correct the non-conforming or defective BX. In the event that Bottomline is unable to, using reasonable efforts, correct the non-conforming or defective part of BX within thirty (30) days from receipt of Customer's notice of the same, Customer may elect to terminate the BX Subscription(s) in question and receive a pro-rated refund of the Total BX Subscription Fee that is prepaid for the subscription(s). The obligations and rights stated in this section 10.2 are Bottomline's sole and exclusive liability respectively Customer's sole and exclusive remedy in the event of a breach of the aforementioned warranty and any non-conformity or malfunction in BX.

### **10.3 Disclaimer**

Except as expressly provided in this section 10, Bottomline makes no warranties of any kind, whether express, implied, statutory, or otherwise, and Bottomline specifically disclaims all implied warranties, including any warranties of merchantability, fitness for a particular use or purpose or title/non-infringement, to the maximum extent permitted by applicable law.

## **11. Indemnification**

### **11.1 Indemnification by Bottomline**

Subject to the other subsections of this section 11 Bottomline shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of BX as permitted hereunder infringes or misappropriates the IP of a third party ("**Infringement Claim**"), and shall indemnify Customer and hold Customer harmless against any damages finally awarded against Customer by a court of competent jurisdiction, plus reasonable attorney's fees incurred by that Customer in connection with any such Infringement Claim.

## **2. Notification and assistance**

If Customer is aware of an Infringement Claim it shall (a) promptly give Bottomline Written notice of the Infringement Claim; (b) give Bottomline sole control of the defense and settlement of the Infringement Claim (provided that Bottomline may not settle any Infringement Claim unless the settlement unconditionally releases Customer of all liability); and (c) provide to Bottomline all reasonable assistance, at Bottomline's expense.

### **11.3 Mitigating measures**

If an Infringement Claim occurs, or if Bottomline determines that such claim is likely to occur, Bottomline will have the right, at Bottomline's sole discretion, to (i) procure for Customer the right or license to continue to use BX, free of the infringement claim, or (ii) modify BX to make it non-infringing, without loss of material functionality. If neither of these remedies is reasonably available to Bottomline, Bottomline may, at Bottomline's sole discretion, immediately terminate the Agreement repaying to Customer the prorated portion of any pre-paid, unused fees for the relevant BX Subscription(s).

## **4. Excluded Claims**

Notwithstanding the foregoing subsections of this section 11, Bottomline will have no obligation with respect to any Infringement Claim that is based upon or arises out of (i) the use or combination of BX with any hardware, software, products, data, or other materials not provided by Bottomline, (ii) modification or alteration of BX or a BX Add-On by anyone other than Bottomline, (iii) use of BX in excess of the rights granted in the Agreement, or (iv) (the results of) Services performed by Bottomline on an instruction given or requirements set by Customer, or (v) Bottomline's permitted use of Customer Data or other materials furnished by Customer (collectively, the "Excluded Claims").

### **11.5 Indemnification by Customer**

Customer shall defend Bottomline against any Excluded Claim made or brought against Bottomline by a third party and shall indemnify Bottomline and hold Bottomline harmless against any damages, including reasonable attorney's fees, incurred by Bottomline in connection with any Excluded Claim, provided that Bottomline (a) promptly gives Customer Written notice of the Excluded Claim; (b) gives Customer sole control of the defense and settlement of the Excluded Claim (provided that Customer may not settle any Excluded Claim unless the settlement unconditionally release Bottomline of all liability); and (c) provide to Customer all reasonable assistance, at Customer's expense.

### **11.6 Exclusive Remedy**

This section 11 (Indemnification) states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against the other Party for Infringement Claims respectively Excluded Claims.

## **12. Limitation of liability**

### **12.1 Limitation of Liability**

In no event shall Bottomline's aggregate liability arising out of or related to the Agreement, regardless of the legal ground of the claim, exceed, per event or series of related events, the total yearly fee paid by Customer to Bottomline in the twelve (12) months preceding the event (or first of a series of events) causing the damage.

### **12.2 Exclusion of indirect and consequential damages**

In no event shall either Party have any liability to the other Party for any indirect, incidental or consequential damages, including but not limited to loss of profits or revenue, loss of data, third party damages and governmental fines, regardless of whether such damages were foreseeable and of whether the Party has been advised of the possibility of such damages.

### **12.3 Exception**

The limitations stated in sections 12.1 and 12.2 shall not apply to the extent prohibited by applicable law and shall not limit Customer's liability for a breach of section 4.4 ('Customer's obligations'), 7.3 ('License restrictions') or Customer's liability under sections 4.5 ('Consequences of non-compliance') and 12.5 ('Third-party claims').

#### **12.4 Expiration**

Customer's right to claim damages from Bottomline lapses if the claim is not submitted within one (1) calendar year from the date on which the first of the events leading to the damages occurred.

#### **12.5 Third-party claims**

If Customer permits the use of the Services to a third party, including an Affiliate, Customer will indemnify Bottomline and hold Bottomline harmless for any damages, losses or expenses claimed from Bottomline by such third parties in excess of the limitations set forth in this section 12.

#### **12.6 Default notice**

Bottomline's liability for damages arising from a remediable breach of the Agreement shall not arise before (i) receipt by Bottomline of a Written default notice of Customer, requiring the breach to be remedied and (ii) expiry of a reasonable term to remedy the breach of at least thirty (30) calendar days without the breach being remedied.

### **13. Term and termination**

#### **13.1 Term of the Agreement**

The Agreement commences on the date of acceptance by Customer of a BX Order and will continue to be in effect until the date on which the BX Subscription terminates in accordance with section 13.2 or 13.3.

#### **13.2 Subscription Term and renewal**

A BX Subscription or BX Add-On Subscription commences on the Subscription Start Date and continues to be in effect for the Subscription Term. If the Subscription Term is one (1) month, the BX Subscription and (if applicable) BX Add-On Subscription(s) shall automatically renew for one-month terms until terminated by either Party by Written notice, observing a notice period of one (1) month (Customer) or three (3) months (Bottomline). If the Subscription Term is one (1) year or three (3) years, the BX Subscription and (if applicable) BX Add-On Subscription(s) shall terminate automatically on expiry of the Subscription Term or any extended term, except where renewed by Written acceptance by Customer of a Written renewal notice, served by Bottomline to Customer, at least three (3) months before the expiry date of the then-current term. The BX Subscription can be extended by a term of one (1) month, one (1) year or three (3) years.

#### **13.3 Termination for cause**

A Party may immediately terminate the Agreement in whole or in part for cause: (i) if the other Party materially breaches the Agreement and has not remedied the breach within thirty (30) days from the date of a Written default notice, served by the terminating Party, requiring the breach to be remedied or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

#### **13.4 Consequences of termination**

On termination of the Agreement, regardless of its reason, all BX Subscriptions, BX Add-On Subscriptions and Services shall terminate. Upon the legally valid termination for cause by Customer, Bottomline shall refund Customer any prepaid fees covering the remainder of the then-current term of the BX Subscription. Upon the legally valid termination for cause by Bottomline, any outstanding fees shall become immediately due and payable, and Customer shall pay any unpaid fees plus the BX Subscription Fee covering the remainder of the then-current term of the BX Subscription within thirty (30) days from the data of termination. The remedies

referred to in this section 13.4 are without prejudice to any other remedies available to a Party under the Agreement or at law.

### **13.5 Retrieval of BX Data and Customer Data**

Customer can retrieve BX Data and Customer Data stored in BX under a BX Subscription until expiry of a term of thirty (30) calendar days from the effective date of termination of that BX Subscription, either by transmitting the data, using a Bottomline Integration or Customer Integration or by downloading a file of the BX Data and Customer Data in json-format or such other commonly used machine-readable format as notified by Bottomline to Customer. The BX Data and Customer Data thus transmitted or downloaded will date back no longer than the period referred to in section 9.3. After such thirty (30) day period, Bottomline shall have no obligation to keep or provide any of the BX Data or Customer Data and be entitled to permanently remove all of the BX Data and Customer Data processed under the terminated BX Subscription stored in Bottomline's systems, or otherwise in Bottomline's possession or under Bottomline's control.

### **13.6 Surviving Provisions**

Any provision of the Agreement that is deemed, by its nature, to survive termination shall survive termination or expiration of the Agreement for any reason, including but not limited to sections 6 (Prices, Fees and Payment), 7 (Proprietary Rights), 8 (Confidentiality), 10 (Warranties and disclaimer), 11 (Indemnification), 12 (Limitation of Liability), 13 (Term and termination), 14 (Governing Law and Jurisdiction), 15 (Notices) and 16 (General Provisions).

## **14. Governing law and jurisdiction**

### **14.1 Governing law**

The Agreement is construed in accordance with and governed by Dutch law, without regard to its conflict of law rules. The Vienna Convention on Contracts for the International Sale of Goods does not apply to the Agreement.

### **14.2 Dispute resolution**

Any disputes, actions, claims, or causes of action arising out of or in connection with the Agreement shall be subject to the exclusive jurisdiction of the competent court in 's-Hertogenbosch, the Netherlands.

## **15. Notices**

### **15.1 Manner of giving Notice**

All notices, permissions, and approvals regarding the Agreement shall be served by email save where the Agreement provides otherwise. Notices shall be deemed served on the first Working Day after delivery to the receiving Party's mail server.

### **15.2 Addressees**

Notices from Bottomline to Customer that are served by email shall be addressed to the email address registered by Customer in the Customer Account.

Notices from Customer to Bottomline that are served by email shall be addressed to: [bxnotices@bottomline.eu](mailto:bxnotices@bottomline.eu).

## **16. General provisions**

### **16.1 Relationship of the Parties**

The Parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

### **2. Mutual non-disparagement**

In order to preserve the integrity of the Parties' business relationship, neither Party will, and either Party will cause its officers, directors, and employees not to: disparage, misrepresent, or denigrate the other Party's products, or methods or techniques of doing business, including, but not limited to, through any means of social media or other public comment, rating, or review.

### **16.3 No third-party beneficiaries**

There are no third-party beneficiaries to the Agreement. In particular, Customer's Affiliates are not third-party beneficiaries of the Agreement.

### **16.4 No waiver**

No failure or delay by either Party in exercising any right under the Agreement shall constitute a waiver of that right.

### **16.5 Severability**

If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in effect.

### **16.6 Assignment**

Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior Written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign the Agreement in its entirety (including subscriptions), without consent of the other Party, to its Affiliate or to an entity in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, provided that that entity nor any of its affiliates is a direct competitor of the other Party.

### **16.7 Entire Agreement**

These BX Service Terms and Conditions, the BX Orders, the BX DPA and (if applicable) the BX Premium Support Terms constitute the entire agreement between the Parties and supersede all prior and contemporaneous agreements, proposals or representations, Written or oral, concerning its subject matter.

### **16.8 Force Majeure**

Bottomline will not be liable for any failure or delay in performance under the Agreement which is due to a Force Majeure Event. Upon becoming aware of a Force Majeure Event Bottomline will notify Customer of the Force Majeure Event in Writing; and use reasonable endeavors to mitigate the effects of the Force Majeure Event for the Customer and/or Affiliate. If Bottomline is prevented from performing its obligations under the Agreement due to a Force Majeure Event for more than one (1) calendar month either Party will be entitled to terminate the Agreement or, if the performance of the Agreement is partly affected by the Force Majeure Event the part of the Agreement that is affected.

### **16.9 Non-solicit**

During the term of the Agreement and continuing through the second anniversary of the termination of the Agreement, neither Party nor (in case of Customer) Affiliate may solicit any employee of the other Party with whom the Party has had contact in the performance of the Agreement, without the other Party's Written consent.

### **16.10 Headings**

The headings of sections and paragraphs in these BX Service Terms and Conditions are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of the Agreement.



