Customer Licence Agreement - Software Subscription (on premise)

This Agreement shall apply to the Customer's purchase of Software licences from the Company's appointed partner. In the event of a conflict between this Agreement and any licence agreement supplied with the Software, then these terms and conditions ("Agreement") shall take precedence and shall apply to the exclusion of all oral representations and all other terms and conditions printed on any purchase order or other document(s) prepared by the Customer or the Partner (including the Order and any Partner terms referenced therein or attached thereto) irrespective of their date.

The parties agree that they have not relied upon any other representations, terms or conditions in entering into this Agreement. This Agreement may only be added to or amended by the Company.

This Agreement governs Software supplied by the Company pursuant to an Order. It sets out the generic terms and conditions under which the licence is granted. Specific details of the Customer's usage of the Software are detailed in an applicable Order, as these are expected to vary over time.

Definitions

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

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

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

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

"Customer" means the legal entity (i.e. registered company, or legally constituted public body or financial institution) specified in the Order.

"Customer Group Company(ies)" means any company belonging to the same group of companies to which the Customer belongs, where such company controls, is controlled by, or is under common control with the Customer (where "control" means having more than fifty percent (50%) voting securities in a company). For the avoidance of doubt joint ventures, partnerships and any other third parties are specifically excluded under this definition."Guest Operating System" means instances of third-party operating systems licensed by Customer and installed in a Virtual Machine (or otherwise emulated) or hardware system(s) hosting the Software. Virtualisation technology may not be used to circumvent other licensing terms and conditions and related restrictions.

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

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

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

"Order" means the Partner document including any Partner terms referenced therein or attached thereto, issued pursuant to this Agreement which specifies the Subscription Services and any other Partner services and their associated fees being acquired by the Customer and any subsequent combination of the foregoing and their fees, as may be agreed between the parties from time to time.

"Partner" or "Distributor" means the Company's authorised and appointed distributor of the Subscription Services.

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

"Shipment Date" means the date when Customer or Partner as the case may be, has made the Software available for download by the Customer pursuant to an Order, or if the Software is physically delivered, on the date when it leave the Company or the Partner's premises as the case may be.

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

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

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

1. Commencement and Term

This Agreement shall come in to force on the Effective Date. Subject to the provisions for termination in clause 11 of this Agreement, this Agreement shall remain in force for the Initial Term and thereafter be automatically renewed for successive periods of twelve (12) months (each a "Renewal Period"), subject to payment of the fees specified in the Order to the Partner.

2. Ownership

Customer acknowledges that the Software is licensed on a temporary subscription basis, is not sold and that all copyrights, patents, trade secrets and other rights, title and interest therein in whole or in part and all copies thereof, are the sole and exclusive property of the Company or its related entities or third party licensors. Customer shall gain no right, title or interest in the Software by virtue of this Agreement other than the non-exclusive right of use granted herein. Without limiting the foregoing, Customer specifically acknowledges Company's exclusive rights to ownership in any copy, modification, translation, enhancement, adaptation, or derivation of the Software.

3. Licence and Use

3.1 Subject to the terms and conditions contained in this Agreement and Customer's payment of applicable Software subscription fees under the Order, the Company hereby grants to the Customer a non-exclusive, non-transferable, revocable licence, without rights to sublicense, to use the Software for the purpose as set forth in the applicable documentation for so long as this Agreement remains in force; and according to the licence restrictions set forth in the related Order(s) and in accordance with this Clause 3. Customer acknowledges and agrees that the Software licensed under this Agreement shall only be accessed and used by the Customer.

3.1.1 Unless explicitly stated otherwise in the Order, the licence includes the right to install one Production License, one Disaster Recovery License and one Test License for the applicable Software products, and any additional copies shall incur an additional subscription fee.

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

3.1.3 Customer will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Software, except only when and to the limited extent that applicable law expressly permits such activity, irrespective of the limitations contained herein.

3.1.4 Upon request from the Company, the Customer shall permit the Company or its appointed partner, from time to time and at reasonable hours, to check or inspect the installations of the licensed software, to verify that the Customer is complying with the provisions stipulated in Appendices 1 and 2.

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

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

3.3.1 The specified number of Named Users.

3.3.2 The specified number of Concurrent users.

3.3.3 The specified quantity and unit of measure.

3.4 **Virtual Disaster Recovery Licence ("Virtual DR")** means the Customer may make one (1) copy of their installed production Software environment including configuration, on a Virtual Machine for the purposes of recovering the Software and configuration to a new server, in the event of production server failure only. The Customer is not permitted to deploy or use such copy in any production environment where another production environment (virtual or otherwise) is active. Virtualisation technology may not be used to circumvent other licensing terms and conditions and related restrictions.

3.5 **Disaster Recovery Licence ("DR")** means the Software may only be used by the Customer to provide redundancy for the Customer's live or other environments, including but not limited to dedicated powered up, or non-powered up disaster recovery solutions. A Disaster Recovery Licence must be purchased for each separate Software environment used by the Customer to provide any form of disaster recovery; and may only be used in connection with Customer's day to day business in the event that the dedicated live, test or development Software environment becomes unavailable.

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

3.7 The Software and applicable modules for which the licence is granted are detailed in the Order. The Customer shall inform the Company or its appointed Partner in the case of a requirement to use a new Software module. Once the Company or its appointed Partner, as the case may be, and the Customer have agreed the pricing, it shall then issue an Order to cover the new Software module.

4. Warranty

4.1 The Company warrants that in accordance with this Agreement:

4.1.1 it has title to the Software and has the right to grant the Software licence(s) purchased by the Customer; and

4.1.2 the Software supplied materially conforms to and, will operate in all material respects in accordance with its standard specification for a period of 90 days from its Shipment Date.

4.2 The Customer's sole and exclusive remedy in the event of breach of the above warranties in clause 4.1.2 is the correction of any failure by the Company to comply with such warranty provisions. Correction may comprise, at the Company's sole discretion replacing, repairing or adjusting the Software without charge to the Customer or refunding of any relevant portion of paid fees via the Partner. All remedies for any breach of the warranty provisions are available only if such breach is reported to Company in writing within ninety (90) days of shipment of the defective Software.

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

4.4 Except as expressly provided in this Agreement all warranties, conditions, representations, indemnities and guarantees, whether express or implied, arising by law, custom, oral or written statements of the Company or its third-party licensors or otherwise (including, without limitation, any warranties of merchantability, fitness for particular purpose, or of error-free and uninterrupted use) are hereby superseded, excluded and disclaimed to the fullest extent permitted by law.

4.5 The warranties given by the Company in clauses 4.1, 4.2, 4.3 and 4.4 above are made only to the Customer and the Company will have no liability to any third party with respect to the Software, the Software Support and/or the Professional Services as a result of such warranties. Except as provided in this clause 4, the Company does not warrant that Security Monitoring Software will correctly detect and/or identify all security threats. The foregoing disclaimers will apply even if any warranty provided under this Agreement fails of its essential purpose.

5. Pre-requisites

5.1. The Customer shall comply with all prerequisites notified to it from time to time in respect of the Software, including without limitation, supported versions of hardware, operating system and database management software, and neither the Partner nor the Company shall not be obliged to provide support and maintenance for any Customer environment where such prerequisites are not in place.

5.2. The Customer shall not export the Software outside of the country to which the Software is delivered as specified on the Order without the Company's prior written permission. The Customer will indemnify and hold the Company harmless from any cost or liability arising from the Customer's breach of its obligation under this Clause 5.2.

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

6. Limits of Liability

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

6.2 Subject to Clause 6.3 the Company's maximum aggregate liability for all breaches of its contractual obligations or any tortuous act or omission shall be limited to the total amount paid by Customer for Software licences hereunder as at the date of any related claim.

6.3 In no event shall the Company have any liability:

6.3.1 for loss of profits, goodwill, business interruption, delay or failure in provision of services, or any type of special, indirect, consequential or incidental loss or damages (including loss or damage suffered by the Customer as a result of any action brought by a third party even if the Company has been advised of the possibility of such damages); and

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

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

6.3.4 unless the Customer shall have served notice in writing of any facts which may give rise to a claim against the Company hereunder within six years of the date it either became aware of the circumstances giving rise to a claim or the date when it ought reasonably to have become so aware.

6.3.5 The parties acknowledge and agree that neither party will be permitted to recover the same loss resulting from a claim, or series of related claims, on more than one occasion pursuant to this Agreement.

7. Third Party Intellectual Property Infringement

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

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

7.3 Company may, at its own expense: (i) procure for Customer the right to continue to use the licensed Software; (ii) make the licensed Software non-infringing; or (iii) where the options under (i) and (ii) are not available to the company on commercially reasonable terms, terminate the Software licences and via the Partner refund the applicable licence fee (subject to three-year straight line depreciation) received from Customer.

7.4 Company shall have no liability for any claim based on: (i) Customer's continued use after written notification, of a non-current release of the applicable licensed Software so long as a current release was made available to Customer without additional charge (subject to having purchased current Software Support); (ii) Customer's use of the licensed Software other than in accordance with the rights granted under this Agreement; (iii) Customer's combination of the licensed Software with any other equipment or software not provided by Company, where such infringement would not have occurred but for such combination; or (iv) intellectual property rights owned by Customer or any of its affiliates.

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

7.6 The indemnity provisions of this Clause 11 specifically do not apply to third party software (e.g. software which may be provided to the Customer by the Company wherein the Company is operating as a distributor for the third-party licensor of such software) and the Customer shall instead benefit from any intellectual property indemnity that may be provided by the third-party licensor, to the Company. Company warrants that to the best of its knowledge, the Customer's use of third party software, if any, that it supplies in accordance with the terms of this Agreement will not infringe the intellectual property rights of any third party.

8. Alterations

The Customer hereby undertakes not to alter or modify the whole or any part of any Software supplied hereunder nor, without the prior written consent of the Company, to permit the whole or any part of the Software supplied hereunder to be combined with or become incorporated in any other software.

9. Company Intellectual Property

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

10. **Confidentiality**

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

11. **Term and Termination**

11.1 Without prejudice to any other remedies which the parties may otherwise have under this Agreement:

11.1.1 the Partner and the Customer shall each be entitled to terminate this Agreement and the Subscription Services by written notice to the otherin accordance with the Customer's contract with the Partner. The Partner must promptly inform the Company when this Agreement is terminated.

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

11.2.1 by immediate notice if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if a receiver or liquidator or similar officer is appointed in respect of all or any part of the business or assets of the other party or if notice of intention to appoint an administrator of the other party is given by any person or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise then for the purpose of an amalgamation or reconstruction);

11.2.2 by immediate notice if the other commits a breach of any term of this Agreement and fails to remedy such breach within thirty (30) calendar days after receiving notice from the other party requiring it to do so;

11.3 Without prejudice to any other remedies which the Company may have under this Agreement or at law, the Company shall be entitled to suspend the provision of the Subscription Services or to terminate this Agreement forthwith on written notice to the Customer in the event that the Customer has been or is in breach of any applicable law or regulation or in the event that the Company is required to do so by any law, regulation or regulatory body. Notwithstanding any other term of this Agreement, the Company may terminate without notice, or indefinitely suspend, this Agreement or any contractual provision herein as required to fulfil its obligations to comply with sanctions regulations.

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

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

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

12. **Assignment**

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

13. **Force Majeure**

With the exception of payment of outstanding invoices, neither Party shall be responsible for any delay or failure in performance resulting from acts beyond the control of such party. Such acts shall include but not be limited to: an act of God; an act of war; civil unrest; terrorism; riot; epidemic/pandemic; fire; explosion or accidental damage; extreme weather conditions (including but not limited to: flood, storm, or other disaster); an act of government; and industrial action or lockouts. In the event of such a Force Majeure event, the time for performance or cure shall be extended for a period equal to the greater of the duration of the Force Majeure or three (3) months. The party claiming to be prevented, hindered or delayed in the performance of any of its obligations under the Agreement by reason of a Force Majeure event shall use all reasonable commercial endeavours to mitigate against the effects and consequences of the Force Majeure event. The affected party shall resume performance of its obligations under the Agreement immediately upon the end of the Force Majeure event. Where no performance or cure is possible after the three (3) month period has elapsed, and in the reasonable view of the parties will not be forthcoming or possible within a further one (1) month from that date, the party not affected by the Force Majeure event may decide to terminate the Agreement on service of written notice upon the party so prevented, hindered or delayed, in which case no party shall have any liability or obligation to the other under the Agreement other than the payment of monies due.

14. **Notices**

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

15. **Invalidity**

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

16. **Third Party Rights**

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

17. **Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales (without its conflicts of law principles) and the parties hereto agree to submit to the exclusive jurisdiction of the English courts.