

**Partner End User Licence Agreement – CFRM****Definitions**

If the following words are utilised in this Agreement they shall have these meanings ascribed to them respectively as follows:

“Agreement” means this “Partner End User Licence Agreement – CFRM”.

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

“Company” means Bottomline Technologies Pte Ltd whose registered offices are 60 Robinson Road, #15-01 BEA Building, Singapore 068982.

“Customer” means the legal entity (i.e. registered company, or legally constituted public body or financial institution) specified in the contract executed between the Partner and the Customer which will incorporate as a minimum the Order and this Agreement.

“Customer Group Company(ies)” means any company belonging to the same group of companies to which the Customer belongs, where such company controls, is controlled by, or is under common control with the Customer (where “control” means having more than fifty percent (50%) voting securities in a company); and any third party where the Customer has a binding contractual relationship with such third party.

“Monitored User” means an individual Customer employee or other authorised user of the customer’s systems, monitored using the Company Software licenced hereunder.

“Named User” means a specific named individual registered on a single installed Software instance, 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.

“Order” means the document to which this Agreement is appended with any other Partner terms and conditions and which specifies the Software and type of licences being acquired by the Customer, as applicable.

“Partner” means the Company’s authorised and appointed distributor of the Software in the territory in which the Customer is domiciled.

“Software” means the software products and modules designed to monitor and/or implement controls over security, including without limitation user behaviour monitoring, web payment fraud, insider fraud and accounts payable fraud, specified in an Order and that are licensed under this Agreement including, but not limited to, any related application programming interfaces, associated media, printed materials, online or electronic documentation; and any Updates and/or Upgrades made available thereto.

“Updates” means error corrections and maintenance releases to the Software which are made generally available from time to time by the Company subject to a current Software subscription licence contract with the Partner.

“Upgrades” means Software enhancements that may accomplish incidental, structural, functional and/or performance improvements which are made generally available from time to time by the Company subject to a current Software subscription licence contract with the Partner.

**1 General**

This Agreement shall apply to the Customer’s purchase of Software licences, from the Partner. In the event of a conflict between this Agreement and any licence agreement supplied with the Software, or other terms and conditions supplied by the Partner, then this Agreement shall take precedence and shall apply to the exclusion of all oral representations and all other terms and conditions printed on any purchase order or other document(s) prepared by Customer or the Partner irrespective of their date. The parties agree that they have not relied upon any other representations, terms or conditions in entering into this Agreement. No amendment or modification of this Agreement shall be made except in writing and signed by the Company.

**2 Ownership**

Customer acknowledges that the Software is licensed 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 property of the Company or its related entities or third party suppliers. 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 Term and Use**

3.1 Subject to the terms and conditions contained in this Agreement and Customer’s payment of applicable Software subscription fees to the Partner, 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 the Software for a minimum licence term of three (3) years renewing thereafter for not less than one (1) year periods unless terminated in accordance with clause 11; and according to the licence restrictions set forth in the related Order in accordance with this clause 3.

3.1.1 Customer acknowledges and agrees that the Software licensed under this Agreement shall only be used for the benefit of the Customer.

3.1.2 Customer acknowledges and agrees that it shall be liable for all acts and omissions of any Customer Group Company.

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

3.1.4 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.

3.2 Additional licence parameters dependent upon which Software product is licensed in accordance with the Company’s then current price list are as follows:

3.2.1 The specified number of Monitored Users.

3.2.2 The specified number of Named Users

3.2.3 Where no specific licence parameter is specified in the Order then the Software shall be deemed licensed by the quantity indicated therein for each respective Software component listed.

- 3.3 **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.
- 3.4 **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.
- 3.5 Unless expressly stated otherwise in the Order, the Customer is responsible for procuring, supporting and maintaining all third-party software, including without limitation, the database software, specified in the documentation supplied with the Software.

#### **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.

4.2 The Customer's sole and exclusive remedy in the event of breach of the above warranty 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 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 90 days of shipment of the defective Software.

4.3 The Company does not warrant that the Software will correctly detect and/or identify all security threats; and the foregoing disclaimer will apply even if any warranty provided under this Agreement fails of its essential purpose.

#### **5 Prerequisites**

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.

5.2 The Customer:

- 5.2.1 shall ensure that its staff using the Software have sufficient knowledge and skills to use it in compliance with the related documentation; and
- 5.2.2 shall inform the Company in writing in the event of a location change (move) of the Customer's site(s) where the Software is installed; and
- 5.2.3 acknowledges that: (i) re-exportation of certain products wholly or partially originating from the USA is subject to the laws and controls of the USA and Singapore governments in force from time to time; (ii) that it is solely responsible for compliance with all applicable export and import laws and regulations should it choose, at any time to re-export any of the Software to any country outside that to which the Company and/or the Partner originally delivered it; and
- 5.2.4 will indemnify and hold the Company harmless from any cost or liability arising from the Customer's breach of import and export laws and regulations.

#### **6 Limits of Liability**

6.1 The Company's maximum aggregate liability for any breach of its contractual obligations or any tortious act or omission hereunder, shall be limited to the total value of the Software subscription fees paid to the Partner in the annual period preceding any related claim.

6.2 In no event shall the Company have any liability:

- 6.2.1 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
- 6.2.2 (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
- 6.2.3 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.
- 6.2.4 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 Customer acknowledges and agrees that:

- 6.3.1 effective security threat detection and management are dependent on a multi-layered, multi-faceted combination of software and hardware components, deployed and managed in accordance with appropriate policies and procedures consistently applied. No individual element in such a system, including the Software that are the subject of this Agreement, is alone sufficient to detect and prevent all security threats.
- 6.3.2 the Software has or will have been, prior to production use, reviewed and tested by the Customer and meet the Customer's business and operational needs; and
- 6.3.3 the allocation of liability set forth in this Agreement fairly reflects the economic circumstances and risks that the parties are willing to undertake in view of the amounts paid or payable for the Software licences.

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

6.4 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.

## **7 Third Party Intellectual Property Infringement**

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

7.2 Company's obligations under this clause 7 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 shall, 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) terminate the Software licences and via the Partner refund any licence fee received by the Partner from the Customer for any future subscription period beginning on the date that the alleged claim commenced.

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 7 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 7 specifically do not apply to third party software (e.g. software which may be licensed to the Customer by the Company wherein the Company is operating as a distributor for the third-party licensor of such software) and the Customer shall instead benefit from any intellectual property indemnity that may be provided by the third-party licensor, to the Company. Company warrants that to the best of its knowledge, the Customer's use of Equipment or third party software that it supplies in accordance with the terms of this Agreement will not infringe the intellectual property rights of any third party. The Company shall indemnify the Customer against all Losses incurred by the Customer arising out of or in connection with any breach of the warranty contained in this clause 11.6, subject to the Customer using its best endeavours to mitigate such Losses.

## **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 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 9; (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 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/or advisors; 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 Termination**

11.1 Either party may without prejudice to its other rights, terminate the Agreement immediately forthwith on giving written notice to the other:

11.1.1 for convenience upon expiry of either the minimum three (3) year initial term, or any subsequent one (1) year period, specified in clause 3, by giving not less than ninety (90) days' prior written notice to the Partner.

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

11.1.3 if the other party 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 the other shall be unable to pay its debts within the meaning of section 254(2) of the Companies Act, Chapter 50 of Singapore as amended or if a liquidator, judicial manager, receiver, administrator, trustee-in-bankruptcy, custodian 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, dissolution, judicial management or administration of the other party (otherwise than for the purpose of an amalgamation or reconstruction).

11.2 Upon termination of any Software licence, irrespective of cause, the Customer shall return forthwith all copies of the Software subject to the terminated licence without any rights of refund.

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 terminate this Agreement 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: that may have accrued before the termination of this Agreement; or which expressly or by their nature are intended to survive the termination of this Agreement.

## **12 Assignment**

The Customer shall not be entitled to assign, sub-licence or otherwise transfer the rights and obligations granted hereunder, whether in whole or in part unless otherwise agreed in writing by a duly authorised representative of the Company.

## **13 Force Majeure**

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 pre-paid registered post to either Party at its registered address.

Any notice or document shall be deemed served on the date signed for by or on behalf of the recipient.

## **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 this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of this Agreement.

## **17 Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with Singapore law and the parties hereto agree to submit to the exclusive jurisdiction of the ordinary courts of Singapore.