Standard Terms and Conditions – C-Series Treasury Subscription

These terms and conditions sets out the terms upon which the Company agrees to provide access to the hosted Software described herein. In these terms and conditions the following words shall have the meanings ascribed to them respectively as follows:

"Agreement" means collectively these terms and conditions and the Order Agreement.

"Company" means Bottomline Technologies Limited whose registered offices are at 115 Chatham Street Reading RG1 7JX.

"Customer" means the legal entity (i.e. registered company, or legally constituted public body or financial institution) specified in the Order Agreement which references these terms and conditions.

"Delivery" means the date upon which the Company has issued to the Customer a unique Customer user id, Customer login(s), and password(s) enabling access to the Software by the Customer.

"Order Agreement" means the document which references these terms and conditions and which specifies the Software subscription being acquired by the Customer.

"Software" means the software instance hosted by the Company on behalf of the Customer and made available for access in accordance with these terms and conditions and as specified in an Order Agreement.

"User Guide" means the reference manual published by the Company from time to time and distributed with the Software in electronic format.

"URL" means Universal Resource Locator.

1. General
These terms and conditions shall apply to the Customer's access to the Software from the Company 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 irrespective of their date. These terms and conditions and the Order Agreement state the entire agreement between the parties on this subject and supersede all prior negotiations, understandings and agreements between the parties with respect thereto. These terms and conditions may be amended by the Company from time to time at its sole discretion.

2. Price
The price for the annual Software subscription provided under the Agreement is exclusive of value added tax and any other applicable taxes or duty relating to the manufacture, transportation, export, import, sale, delivery or provision of the Software (whether initially charged on, or payable by the Company or the Customer). Prices are subject to annual alteration and shall be at the Company's standard rates in effect at the commencement of the annual period for which the Customer is acquiring the Software subscription Prices quoted are in Pounds Sterling unless otherwise agreed in the Order Agreement.

3. Invoicing and Payment
The Company shall upon Delivery and annually thereafter, raise an invoice for the annual Software subscription specified in the Order Agreement ("Charges"). Failure to make any due payment in accordance with the foregoing terms shall entitle the Company to suspend the Software subscription without prejudice to any other rights that the Company may have. If payment is delayed for more than thirty (30) days, unless the Customer has raised an objection to the Charges for reasonable cause in writing to the Company for reasonable cause, the Customer agrees to pay interest at a rate of 2% per annum over the Bank of England base rate from the date payment was first due until payment is received in full.

4. Customer Obligations
4.1 Customer undertakes to ensure: (i) that it uses suitable systems to store and transfer data/files, (ii) that all files uploaded are in the agreed format and contain the correct account details, and (iii) controlled access to the files by authorised users only.

4.2 Customer acknowledges and undertakes that it will: (i) use the Software subscription only for lawful purposes and in accordance with the Agreement; and (ii) comply in every respect with all the instructions which the Company provides concerning the Software subscription, including the requirements set out in the User Guide;

4.3 Customer will not: (i) reproduce, disseminate or otherwise disclose the content of the Software except as expressly set out in the Agreement, (ii) electronically transmit any Software over a network except as necessary for the Customer's licensed use of the Software, (iii) use run-time versions of any third-party products which may be embedded in the Software for any use other than in relation to the Software subscription, (iv) modify, disassemble, decompile, or reverse engineer the Software or any part thereof, except to the extent permitted by law having first given ninety (90) days' prior written notice to the Company, (v) sub-license, or otherwise grant access to, or transfer possession of, any copy of any Software to any third party outside the terms of the Agreement; and (vi) use the Software subscription in any way not expressly provided for by the Agreement.

4.4 The Customer shall established reasonable back up, accuracy checks and security precautions to guard against possible malfunctions, corruption or loss of Customer data and information, or unauthorised access to the Software.

4.5 The Customer is responsible for acquiring and maintaining all licences and permissions necessary in respect of any third party software it may use in connection with the Software. The Customer confirms that any Customer information or other materials provided by the Customer to the Company or utilised by the Customer in connection with the Software will not infringe any Intellectual Property Rights of any third party, will not be obscene or defamatory and will not violate the laws or regulations of any state which may have jurisdiction over such activity.

4.6 The Customer acknowledges that it is solely responsible for its input to and output from the Software and for any use that it or its authorised users make of such input and that the Company has no responsibility or liability for such input or use thereof.

4.7 If the Customer is in breach of any of its obligations in this Clause 4, then without prejudice to the other terms and conditions in the Agreement: (i) the Company cannot be held liable for any failure to meet any availability commitments specified in Clause 11 which may arise as a direct or indirect result of such Customer breach, (ii) the Company will be entitled to charge the Customer for staff time engaged on rectifying any resulting problems at the Company's then current standard rates.

4.8 The Customer shall indemnify the Company for any loss, damage or expense suffered as a result of: (i) any unauthorised access to, use or misuse of, the Software by any employee, agent or sub-contractor of the Customer, (ii) any unauthorised access to, or use or misuse of, the Software by any third party if such access, use or misuse was permitted or facilitated by a Customer employee, agent or sub-contractor.

4.9 The Customer acknowledges that it is the Customer's sole responsibility to determine that the Software meets the needs of its business and to satisfy itself that the Software is ready for operational use in its business before it is used.

5. Licence and Service

5.1 Subject to the terms and conditions contained in this Agreement and Customer's payment of applicable annual Software subscription fees hereunder, the Company grants to the Customer a non-exclusive, non-transferable licence to access the Software for the Customer's internal day to day business purposes.

5.2 The Customer may use the Software only in the jurisdiction in which the Customer is registered and only by: (i) accessing the Software in accordance with the procedures set out in the User Guide, (ii) entering, editing, transferring or deleting and moving its input comprising Customer Information, documents, data, files and other content within the Software.

5.3 The Customer is responsible for maintaining validation, error correction, back up and reconstruction of its own or other third party licensed software and Customer Information.

5.4 The licence granted to the Customer in Clause 5.1 is personal to the Customer and the Customer shall not permit access to the Software, nor use or benefit of the Software by any Customer group company, affiliated legal entity or third party. The Customer is not permitted to assign, transfer, sub-license, or otherwise dispose of any of the licensed rights to access or use the Software or any component thereof to any third party. Nothing in the Agreement may be construed as transferring any proprietary rights in the Software from the Company to the Customer.

6. Warranty

6.1 The Company warrants that it is either the sole and exclusive owner or an authorised licensee or user of all Intellectual Property Rights employed in provision of the Software (including any databases, images, 'applets', graphics, animations, video, audio and text incorporated therein) and reserves all of its rights in connection therewith.

6.2 The Company warrants that the Software substantially conforms to its current published description and that they will operate in accordance with the User Guide.

6.3 The Company warrants that it shall use all reasonable endeavours to maintain the Software free of bugs and viruses, but the Company strongly recommends that the Customer installs a proven and effective antivirus program.

6.4 The parties acknowledge and agree that the Company does not supply or control any ISP services, third party web browsers or means of internet connection (collectively "Third Party Systems") which may be used by Customer to access the Software; or the flow of data to or from the Software using such Third Party Systems. Accordingly the Company does not warrant that the Software will be uninterrupted, error-free or entirely secure and disclaims any and all liability resulting from or related to any failure or interruption of access to the Software due to any non performance of Third Party Systems.

6.5 The Customer acknowledges that in connection with the Software the Company does not provide any back-up software or processing facilities covering equipment, data, operating systems or software, unless any are specified in the User Guide and the Customer agrees that in relation thereto the Company will not be held responsible or liable if the Software cannot be provided.

6.6 The Company does not make any other warranties, guarantees or representations concerning the operation or performance or the Software. The Customer is entirely responsible for deciding to select the Software for its own business purposes and the Company accepts no liability for any use to which the Customer puts the Software.

6.7 The Company does not accept any responsibility or any liability for enabling the Customer to link to any site on the World Wide Web, or for the content of any such site, other than the Company's website and then only in so far as is necessary to access the Software.

6.8 Each party represents and warrants to the other that it has obtained, where required by law or regulatory authority, all registrations, permits, licences and approvals necessary in any relevant country for it to perform its obligations hereunder, or alternatively, that it is exempt from obtaining them. Upon request, each party will provide the other with copies of all such registrations, permits, licences and approvals. Each party further warrants and undertakes to the other that in performing its obligations under the terms of the Agreement it will comply with all applicable national and local laws and regulations. The Customer's sole and exclusive remedy in the event of breach of the above warranty, provided that any such breach is notified to the Company within seventy-two (72) hours of such breach occurring, is that the Company will investigate and if necessary (re)perform the action/service. If proven beyond reasonable doubt to be the Company's fault then such (re)performance will be at the Company's own cost.

7. Limits of Liability

7.1 The Customer acknowledges that it has accepted these terms and conditions in the knowledge that the Company must limit its liability and that the Charges have been calculated accordingly.

7.2 The Company's maximum aggregate liability for any damage to the tangible property of Customer resulting from the negligence of the Company or its employees, agents or sub-contractors shall not exceed £500,000.

7.3 The Company's maximum aggregate liability for any breach of its contractual obligations or any tortious act or omission, except for negligence pursuant to Clause 7.2, shall be limited to the combined total amount paid by Customer for Software subscription hereunder as at the date of any related claim.

7.4 The Company will not be liable to the Customer for loss of data, 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

7.5 The Customer undertakes that if the Company suffers any loss, damage, fine or expense as a result of: (a) any unauthorised access to, use or misuse of, the Software by any employee, agent or subcontractor of the Customer; (b) any unauthorised access to, use or misuse of, the Software by any third party if that access, use or misuse was enabled or permitted by such an employee, agent or sub-contractor; or (c) the ownership, nature or any use made of Customer information, then the Customer will fully indemnify the Company in respect of such loss, damage, fine or expense.

7.6 Nothing in this Clause 7 will be construed as attempting to limit the liability of either party in respect of injury to or the death of any person caused by any wilful or negligent act or omission of either party, or its employees or agents.

7.7 Except as expressly provided in the 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.

8. Intellectual Property

8.1 The Company agrees to defend, at its expense, any suit against Customer based upon a claim that the Software licensed to Customer under the Agreement infringes any patent or copyright and to pay any settlement, or any damages finally awarded in any such suit. At its sole option the 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) terminate the Software subscription and any other software licences.

8.2 The Company's obligations under this section shall not be effective unless Customer notifies the Company in writing of any claim or threatened or actual suit within ten (10) days of its knowledge thereof and Customer gives full control of the defence and settlement, along with Customer's reasonable cooperation in connection therewith.

8.3 The Company shall have no liability for any claim based on: (i) Customer's continued use, after written notification from the Company of a non-current URL, so long as a current URL was made available to Customer without additional charge, (ii) Customer's use of the license other than in accordance with the rights granted under the Agreement, or (iii) intellectual property rights owned by Customer or any of its affiliates.

8.4 This Section 8 states Customer's sole remedy and the Company's exclusive liability in the event that Customer's use of the Software provided under the Agreement infringes on the intellectual property rights of any third party.

8.5 The indemnity provisions of this Section 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). The Company's sole obligation in the event that Customer's use of third party software infringes on the intellectual property rights of any third party is to provide reasonable co-operation and assistance to the Customer, as necessary, for the Customer to benefit from any intellectual property indemnity that may be provided by the third party licensing such software to the Company.

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, 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 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; (c) prohibiting the copying of the Software; and (d) not disclosing the Software to any third party. Customer acknowledges that use or disclosure of the Software in violation of the 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 the Agreement by the Customer, its employees, or third parties in respect of the confidentiality of the Company's intellectual property.

10. Software Service Availability

10.1 Subject to the provisions set out in this clause, the Company will use all reasonable commercial endeavours to make the Software available for access by the Customer twenty-four (24) hours a day three hundred and sixty-five (365) days per year.

10.2 Notwithstanding the provisions of Clauses 10.1 access to the Software and any service levels specified herein may be suspended for so long as is reasonably necessary to: (a) enable either party to comply with an order or request from a governmental, or other competent regulatory body or administrative authority; or (b) enable the Company to carry out work which is necessary in its reasonable opinion to maintain or improve the Software; or (c) carry out maintenance thereof, provided that the Company will use all reasonable endeavours to schedule such activity during hours of low usage of the Software.

10.3 If the Software requires immediate emergency correction to enable it to run effectively or for immediate compliance with a governmental or regulatory requirement, the Company may suspend access to the Software without advance warning for so long as reasonably necessary to implement the correction or to ensure compliance.

10.4 The Company will be entitled at its sole discretion to make changes or upgrades to the Software, access thereto, the related technical environment, or to the User Guide, provided that such changes or upgrades do not cause any material reduction in functionality of the Software. Access to the Software may be suspended for so long as is reasonably necessary, but the Company will use all reasonable endeavours to minimise the period of such suspension. If as a result of such changes Customer's ability to use the Software or the cost to the Customer of using the Software is materially affected, then Customer may terminate the Agreement on seven (7) days prior written notice to the Company.

10.5 The Company's provision of access to the Software may be subject to limitations, delays, interrupted service and/or other problems inherent in the use of the Internet and electronic communications and which are outside of the control of the Company. In the event of such limitations, delays, interrupted service and/or other problems, then the provisions of Clause 7.7 shall apply.

11. Confidentiality

Each party shall treat as confidential information all information (including the Software) obtained from the other pursuant to the Agreement and shall not divulge such information to any person (except to such party's own employees and then only in so far as may be necessary in connection with the Agreement) without the other party's prior written consent, provided that this shall not extend to information which was: a) rightfully in the possession of such party prior to the commencement of the Agreement, b) is not subject to any confidentiality undertakings, c) is already public knowledge or becomes so at a future date (otherwise than as a result of a breach), d) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this Clause 11 and ensure that it is observed and performed by them.

12. Data Protection

12.1 The Company undertakes to comply at all times with its obligations under the Data Protection Act 1998 (the "Act") to the extent it processes any personal data on behalf of the Customer. "Personal Data" shall have the meaning given to it in the Act.

12.2 In particular, but without limitation, the Company shall:

12.2.1 only carry out processing of Customer Personal Data in performance of its obligations under the Agreement; and

12.2.2 only disclose it or allow access to its employees or agents who have had appropriate training in data protection and whose use of Customer Personal Data relates to their job function, and

12.2.3 assist Customers with all subject information requests received from data subjects.

12.3 The Company warrants that it has appropriate operational and technical processes in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of Customer's Personal Data. In addition, the Company will provide Customer assurances in respect of the security of any Customer Personal Data processed by the Company as may be reasonably required by the Customer to comply with its obligations under the Act.

12.4 For the avoidance of doubt, the Company does not own any Customer data that the Customer may submit using the Software. The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, suitability and intellectual property ownership or right to use for all Customer data and the Company shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer data. Upon termination for whatever reason, the Company shall have no obligation to maintain or forward any Customer data thereafter.

13. Term & Termination

13.1 This Agreement shall become effective on the last date of signature by the parties of the Order Agreement and shall continue in force for a minimum period following date of Delivery of twelve (12) months ("Initial Term"). Upon expiry of the Initial Term and annually thereafter the Agreement shall automatically renew for subsequent annual periods unless terminated at the expiry of the Initial Term or any annual period, by either party giving to the other not less than ninety (90) days prior written notice to that effect.

13.2 Notwithstanding the provisions of Clause 13.1 either party may terminate the Agreement if;

13.2.1 the other party commits any material breach of any term of the 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

13.2.2 the other party has an interim or bankruptcy order made against it or enters into or becomes subject to a scheme, composition or voluntary arrangement with its creditors or becomes subject to a winding-up, dissolution, administration or receivership proceedings;

13.3 The Company may further without prejudice to its other rights, suspend access to the Software and/or terminate the Agreement and any licences granted to Customer forthwith upon giving notice in writing to the Customer, if Customer fails to pay any amount due in accordance with the payment terms specified in Clause 3.

13.4 Following termination of the Agreement for any reason, any monies whatsoever owing including any unpaid subscriptions contractually due from the Customer to the Company shall immediately become due and payable.

14. Assignment

The Customer shall not be entitled to assign, sub-licence or otherwise transfer the rights and obligations granted hereunder, or under any Software license, 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 work relating to the Agreement without the consent of the Customer or giving notice but shall indemnify the Customer in respect of any liability arising from such sub-contracting of work.

15. Force Majeure

Neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party which include but are not 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; industrial action or lockouts; and failure of the world wide web.

16. Notices

16.1 Any notice or other communication to be given under the Agreement must be in writing and may be delivered or sent by pre-paid first class letter post to the Company at its registered address or by facsimile transmission.

16.2 Any notice or document shall be deemed served: if delivered, at the time of delivery, if posted, 48 hours after posting and if sent by facsimile at the time of delivery.

17. Invalidity

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

18. Third Party Rights

A person who is not a party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement. This condition does not affect any right or remedy of any person which exists or is available otherwise pursuant to the Act.

19. Law and Jurisdiction

The terms of the Agreement shall be governed by and construed in accordance with the Laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts in connection therewith.