Bottomline Technologies®

End User Licence Agreement (EULA)

Definitions

If the following words are utilised in these End User Licence Agreement terms and conditions they shall have these meanings ascribed to them respectively as follows:

"Agreement" means these End User Licence Agreement terms and conditions.

"Company" means Bottomline Technologies (Aust) Pty Ltd whose registered offices are at Suite B, Level 2, 492 St Kilda Rd Melbourne, VIC 3004.

"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) licensed to use the Software.

"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.

"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 document to which this Agreement is appended and which specifies the Software and type of licences being acquired by the Customer, as applicable.

"Processor Cores" means two or more processors contained within a single CPU integrated circuit where each processor has its own cache and controller.

"Software" means the software products, modules and/or devices that are licensed under this Agreement, including, but not limited to, any related application programming interfaces, associated media, printed materials, online or electronic documentation.

"Software Licence Key" means, where applicable, a serial number or other unique identifier issued by the Company to activate the Software.

"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.

"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. Virtualization technology may not be used to circumvent other licensing terms and conditions and related restrictions.

1. General

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 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 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.

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 and Use

3.1 Subject to the terms and conditions contained in this Agreement and Customer's payment of applicable Software licence fees, the Company hereby grants to the Customer a non-exclusive, non-transferable, irrevocable and perpetual licence (unless otherwise specified at time of purchase in an Order), without rights to sublicense, to use the Software for the purpose as set forth in the applicable documentation for the Software; and according to the licence restrictions set forth at time of purchase in accordance with this Clause 3.

3.1.1 Customer acknowledges and agrees that it shall only use the Software licensed under this Agreement for its own benefit and where licensed on an Enterprise basis, for the benefit of those Customer Group Companies permitted to access the Software.

3.1.2 Should the Customer make back-up copies of its Software environments, such backup copies may not be utilised at the same time as the live Software environment and may only be used in event of a failure of the live Software environment. Where a back-up copy of the Software is installed, the original instance of the Software shall no longer be licensed for use and must be permanently deleted without delay. For the avoidance of doubt backup copies of the Software may not be used for temporary or permanent testing, disaster recovery provision or any other purposes.

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.

3.2 The Software is licensed in accordance with the relevant Order on either a "Corporate" or "Enterprise" basis as defined below; and with one or more of the additional licence parameters also specified below and reflected in an Order.

3.2.1 Where neither a Corporate, or Enterprise licence type is specified, then for the purposes of this Agreement the Software shall be deemed to be licensed on a Corporate basis.

3.2.2 **Transform®** Software shall always be licensed on an Enterprise 3 basis (irrespective of whether this is specified or not) for the use and benefit of an unlimited number of Legal Entities, but specifically excluding processing on behalf of any third parties.

3.2.3 **Corporate Licence** means the Software may only be used for the internal business purposes of the Customer and the Customer shall not permit access to the Software, nor use of the Software for the benefit of any Customer Group Company, affiliated legal entity or third party.

3.2.4 **Enterprise Licence** means the Software may only be used for the internal business purposes of the Customer and/or Customer Group Companies (collectively "Legal Entities") for which an Enterprise 1 licence, Enterprise 2 licence, or Enterprise 3 licence has been specified in the Order in accordance with the following:

Enterprise 1:   One to three Legal Entities.
Enterprise 2:   Four to nine Legal Entities.
Enterprise 3:   Ten or more Legal Entities.

3.3 **Additional licence parameters** dependent upon which Software product is licensed in accordance with the Company's then current price list:

3.3.1 The specified number of Servers (for the purposes of this Agreement Virtual Machines, Guest Operating Systems or Non-Human Devices shall be deemed to be Servers), operating in conjunction with a single instance of the Software on a single database instance.

3.3.2 The specified number of Concurrent users.

3.3.4 The specified number of Named Users.

3.3.5 The specified number of Processing Cores.

3.3.6 Where Software is specified as being licensed on a "seat" or "user" basis, for the purposes of this Agreement such licences shall be deemed to be Named Users.

3.3.7 Where Software is specified as being licensed on an "LPU" basis, for the purposes of this Agreement such licences shall be deemed to be Processor Cores.

3.3.8 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.

3.4 **Disaster Recovery Licence**
Should the customer require disaster recovery ("DR") licence rights, then DR Software licence(s) for the appropriate Software product must be purchased in accordance with this Clause 3.4.

3.4.1 A DR Software licence must be purchased for each separate Software installation which may be used by the Customer to provide any form of disaster recovery related to redundancy within the Customer's live, test, development, or other environments, including but not limited to dedicated powered up or non-powered up disaster recovery solutions.

3.4.2 A DR Software licence may only be used in connection with Customer's day to day business in the event that the live Software environment becomes unavailable.

3.5 **Virtual Disaster Recovery Licence ("Virtual DR")**
A Virtual Disaster Recovery Licence 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.

3.6 **Test Licence**
Should the customer require test ("Test") licence rights, then Test Software licence(s) for the appropriate Software product must be purchased in accordance with this Clause 3.6.

3.5.1 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 environment.

3.5.2 A Test Software licence may only be used for test purposes and may not be used in connection with Customer's day to day business as a live Software environment.

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 licences purchased by the Customer; and

4.1.2 the Software supplied materially conforms to 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 reasonably determined by the Company as a 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. 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.

5. Limits of Liability

5.1 The Company's maximum aggregate liability for any breach 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.

5.2 In no event shall the Company have any liability:

5.2.1 for loss of profits, goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of any action brought by a third party);

5.2.2 (including breach of warranty) which arises 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 of any defect or error in any equipment and/or software not supplied by the Company;

5.2.3 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.

5.2.4 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 (6) 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.

5.3 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.

6. Third Party Intellectual Property Infringement

6.1 Company agrees to defend, at its expense, any suit against Customer based upon a claim that any Software licensed to Customer under this Agreement infringes any patent or copyright, and to pay any settlement, or any damages finally awarded in any such suit.

6.2 Company's obligations under this Clause 6 shall not be effective unless Customer notifies Company in writing of any claim or threatened or actual suit within ten (10) days of knowledge thereof and Customer gives full control of the defence and settlement, along with Customer's full co-operation, to Company.

6.3 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) terminate the Software licences and refund the applicable licence fee (subject to three-year straight line depreciation) received from Customer.

6.4 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; (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.

6.5 This Clause 6 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 on the intellectual property rights of any third party.

6.6 The indemnity provisions of this Clause 6 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). 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 to the Customer, as necessary, for the Customer to benefit from any intellectual property indemnity that may be provided by the third party licensor of such software.

7. Alterations

The Customer hereby undertakes not to alter or modify the whole or any part of any Software supplied 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.

8. 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 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 8; (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 Company in respect of the confidentiality of the Company's intellectual property, and that monetary damages may be difficult to ascertain, and without prejudice to its other available rights and remedies, Company may seek relief by

way of injunction or specific performance in any court of competent jurisdiction (notwithstanding the provisions of clause 16) without having to post a bond of security..

9. Confidentiality

Each party shall treat as confidential information all information (including Software) 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; ; and in the case of the Company to their third party licensors where applicable (all such disclosure subject to each party being made aware of the confidential nature of the information and agreeing to abide by terms no less onerous than those specified in this clause 9)) 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 Order (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.

10. Termination

10.1 Either party may terminate this Agreement if:

(i) 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

(ii) 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;

10.2 The Company may further without prejudice to its other rights, stop Software in transit, suspend further deliveries of Software, and/or terminate the Agreement and any licences granted to Customer forthwith on giving notice in writing to the Customer if Customer fails to pay any invoice in accordance with the applicable payment terms.

10.3 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, unless such termination is made by the Company in accordance with the provisions of Clause 6.3.

11. 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.

12. 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 (to include but not limited: to flood, storm, or other disaster); an act of government; industrial action or lockouts; and failure of the world wide web. 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 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.

13. 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 first class letter post to the Company at its registered address or facsimile transmission or email to an officer of the Company.

Any notice or document shall be deemed served: if delivered electronically by e-mail at the time of delivery; if posted, 48 hours after posting; and if sent by facsimile transmission at the time of delivery.

14. Invalidity

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

15. Third Party Rights

To the extent permitted by law, a person who is not a party to this Agreement shall have no rights including under the Australian Consumer Law and Fair Trading Act 2012 to enforce any term of this Agreement (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 that Act.

16. Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Victoria, Australia and shall (except as provided in clause 8) be subject to the exclusive jurisdiction of the Victorian Courts.