

**Standard Terms and Conditions – Software Evaluation****Definitions**

If the following words are utilised in these Standard Terms and Conditions they shall have these meanings ascribed to them respectively as follows:

“Agreement” means these Standard Terms and Conditions.

“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.

“Customer User Agreement (CUA)” means collectively the Order Agreement, any subsequent Order Agreement(s) (signed pursuant to this Agreement) and this Agreement.

“Order Agreement” means the document which specifies the evaluation Software licence, being acquired by the Customer subject to this Agreement.

“Software” means the software products, modules and/or devices that are licensed under this Agreement for non-production evaluation purposes, including but not limited to, any related application programming interfaces, associated media, printed materials, online or electronic documentation.

**1. General**

This Agreement shall govern the Customer's acquisition of an evaluation Software licence from the Company. In the event of a conflict between this Agreement and any licence terms 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. The CUA states the entire agreement between the parties on this subject and supersedes all prior negotiations, understandings and agreements between the parties concerning the subject matter. The parties expressly consent and agree that any Order Agreement, this Agreement and any other document forming part of the CUA shall be signed electronically where the facility to do so is made available by the Company. The parties further agree that such electronic signatures appearing on any of the aforementioned documents shall for the purposes of validity, enforceability and admissibility, be treated the same as hand written signatures. No amendment or modification of any individual Order Agreement, this Agreement or the CUA shall be made except in writing and signed (including by electronic means) by an authorised signatory of each party.

**2. Carriage**

2.1 All Software shall be shipped to the premises as indicated on the Order Agreement by electronic means wherever available. Physical media will be shipped only where specifically requested on the Order Agreement, or where electronic means are unavailable. Risk in the Software shall pass when they leave the Company's premises.

2.2 The dates for delivery of the Software are approximate only and time is specifically not of the essence of the CUA. The Company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver the Software. If for any reason the Customer is unable to accept delivery of the Software when they are due and ready for delivery, the Company may store the Software at the Customer's risk and the Customer shall be liable to the Company to pay the reasonable costs of such storage and related insurance.

**3. Security Interest**

3.1 Company retains a security interest in the Software licences until paid for in full. All intellectual property rights in the Software remain vested with the Company and no intellectual property rights to any Software are transferred to Customer.

**4. 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 the CUA 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.

**5. Licence and Use**

5.1 Subject to the terms and conditions contained in this Agreement the Company hereby grants to the Customer a non-exclusive, non-transferable, revocable licence, without rights to sublicense, to use the Software solely for the purpose of evaluation in a non-production environment for a period of thirty (30) days from date of shipment, thereafter such licence shall terminate. Such licence may be renewed prior to termination for up to two (2) further thirty (30) day periods at the sole discretion of the Company, each of which shall thereafter terminate. The Customer will not copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Software, except only when and to the limited extent that applicable law expressly requires such activity, irrespective of the limitations contained herein.

5.2 The Customer warrants that it shall not allow access to the Software by any Customer group companies, or other third parties.

**6. Warranty**

6.1 The Company provides the Software to Customer on an “AS IS” basis and 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. Limits of Liability**

7.1 In no event shall the Company have any liability:

7.1.1 for loss of profits, goodwill, business interruption, delay or failure in provision of the Software, 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

7.1.2 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; and

7.1.3 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.

## **8. Third Party Intellectual Property Infringement**

- 8.1 In the event of any claim against the Customer to the effect that the Software infringes the intellectual property rights of any third party, the Customer shall promptly inform the Company of the claim and give the Company all related information, reasonable assistance and sole authority to defend or settle the claim; and provided that such claim does not arise from the Customer's breach of this CUA, the Company will indemnify the Customer against all costs incurred by and/or damages awarded against the Customer, arising from such claim.
- 8.2 If the Software should become the subject of any claim, or if a court judgment is made that: i) the Software does infringe, or ii) if use of the Software is restricted in any way, the Company may withdraw the Software from use, in which case the Customer acknowledges that it shall have no claim or further rights hereunder to access or use the Software.
- 8.3 This clause 8 states the Customer's entire remedy in respect of any intellectual property right infringement by the Software.

## **9. 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.

## **10. 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 licensor's) ownership of and confidentiality of the Software, including, without limitation: (a) allowing its employees and authorised sub-contractors 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 Agreement including this clause 13; (b) prohibiting the removal or alteration of any copyright or confidentiality labels or notices contained in the Software; (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 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 or in respect of a breach of the confidentiality of the Company's intellectual property by the Customer and its employees.

## **11. Confidentiality**

Each party shall treat as confidential information all information (including Software and the terms of the CUA) obtained from the other pursuant to the CUA and shall not disclose such information to any person (except to such party's own legal advisers, auditors, employees and then only to those employees who have a reasonable 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 11)) 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 CUA, (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), which is trivial or obvious, or is required to be disclosed by law or regulatory body.

## **12. Termination**

- 12.1 The company may terminate this CUA immediately upon written notice if the Customer:

(i) commits any material breach of any term of the CUA and (in the case of a breach capable of being remedied) shall have failed, within 15 days after the receipt of a request in writing so to do; or

(ii) 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;

- 12.2 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.

- 12.3 Following termination for any reason whatsoever, any monies owing from the Customer to the Company shall immediately become due and payable.

## **13. Assignment**

The Customer shall not be entitled to assign, sub-licence or otherwise transfer the rights and obligations granted hereunder, or under the CUA, whether in whole or in part.

## **14. Invalidity**

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

## **15. 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. This condition does not affect any right or remedy of any person which exists or is available otherwise pursuant to the Act.

## **16. Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

The Customer agrees that it has read this Agreement and agrees to be bound by the terms and conditions contained herein.