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Standard Terms and Conditions – Financial Messaging

These terms and conditions, the Order Agreement (including any subsequent Order Agreements signed pursuant to these terms and conditions), Support Agreement and Professional Services Agreement (collectively the "Agreement**"**) shall apply to the Customer's purchase of the Subscription Services and Infrastructure Services or other services specified on an Order Agreement from the Company. 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 the 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 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. No amendment or modification of this Agreement or part thereof shall be made except in writing and signed by an authorised signatory of each party.

DEFINITIONS

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

"Bacs" means Vocalink Limited whose Head Office is located at Drake House, Three Rivers Court, Homestead, Rickmansworth, Hertfordshire WD13 1FX, United Kingdom.

"BIC" means Bank Identifier Code, which is a unique code identifying the Customer on the SWIFT network.

"Commencement Date" shall mean the date from which the Company has made the Subscription Services and Infrastructure Services available for access and use by the Customer for the processing of data via the SWIFT network or as otherwise provided hereunder and confirmed it in writing.

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

"Company Infrastructure" means those elements of the Company's own hardware, programs and processes utilised by the Company to allow the Customer to use the Subscription Services via the Financial Messaging service.

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

"Customer Infrastructure" means the Customer's own hardware, software and communication lines required to link to the Company Infrastructure in order to access the Financial Messaging service.

"Effective Date" means the last date of signature by either party hereto; and for subsequent Order Agreements signed pursuant to this Agreement it shall mean the last date of signature of such Order Agreement.

"Equipment" means any hardware provided as part of the Infrastructure Services including but not limited to firewalls, routers and any software installed thereon.

"Financial Messaging" means the hosted service provided by the Company to the Customer for the transmission of financial messages in approved format for the Subscription Services.

"Infrastructure Fees" shall mean the annually recurring charges payable by the Customer to the Company in respect of the Infrastructure Services, as set out in an Order Agreement.

"Infrastructure Services" means the Professional Services, any third party licences, connectivity and Company Infrastructure as required for delivery and use of the Subscription Services specified in the Order Agreement and provided to the Customer via the Financial Messaging service pursuant to this Agreement.

"Initial Term" shall mean the period of 60 (sixty) months, commencing on the Effective Date.

"Order Agreement" means the document pursuant to this Agreement and which specifies the Subscription Services, Infrastructure Services and/or other 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.

"Professional Services" means those services including but not limited to consultancy, implementation and training, supplied under this Agreement.

"Professional Services Agreement" means the supplementary terms and conditions available at www.bottomline.co.uk/terms&conditions/ and which form part of this Agreement, under which the Company may provide Professional Services to the Customer.

"Renewal Period" has the meaning set out in clause 1.1.

"SLA" means Annex 1 hereto.

"Subscription Band(s)" means the relevant band (as specified in an Order Agreement and varied from time to time in accordance with these Terms & Conditions) from the table in the SLA which reflects the Customer's Subscription Services usage.

"Subscription Fees" shall mean the annually recurring charges payable by the Customer to the Company in respect of use of the Subscription Services, as set out in an Order Agreement.

"Subscription Services" means the specific subscription based service(s) specified in the Order Agreement and provided to the Customer via the Financial Messaging service pursuant to this Agreement.

"Services Support" means the service desk and associated support provided by the Company to the Customer in connection with the Financial Messaging service.

"SWIFT" means The Society for Worldwide Interbank Financial Telecommunication whose Head Office is located at Avenue Adele 1, B-1310 La Hulpe, Belgium.

"Truing-Up Adjustment" means uplifting the Customers Subscription Band (as set out on the Order Agreement or resulting from a previous Truing- Up Process) and related Subscription Fees on a pro-rated basis for the remainder of the then current year. Such uplift being the result of a Truing- Up Process.

"Truing-Up Process" means the quarterly process of measuring the Customers actual daily usage of the Subscription Services aggregated on a quarterly basis.

1. COMMENCEMENT AND TERM

1.1. This Agreement shall come in to force on the Effective Date. Provision of the Infrastructure Services shall commence 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 Subscription Fees Infrastructure Fees in accordance with clause 4 of this Agreement.

2. RESPONSIBILITIES OF THE COMPANY

2.1. The Company shall provide the Subscription Services and Infrastructure Services required to enable the Customer to access and use the Financial Messaging service in accordance with the terms of this Agreement.

2.2. The Company will take all such action as is reasonably necessary to provide and maintain access to the Financial Messaging service by the Customer in accordance with the SLA.

2.3. The Company shall provide the Customer with connectivity to the Company Infrastructure in accordance with the Order Agreement and the SLA.

2.4. If provisioned within the Subscription Services, the Company shall host the Customer's SWIFT BIC(s) and/or Distinguished Name(s) within the Company Infrastructure and shall provide the Customer with connectivity to the SWIFT network in accordance with the Order Agreement and the SLA.

2.5. The Company reserves the right to increase or upgrade the Company Infrastructure, subject to the following:

2.5.1. the Company will inform the Customer of such an upgrade as soon as reasonably practicable prior to the upgrade being carried out; and

2.5.2. the Company will use reasonable endeavours to carry out any such upgrades in such a way as to minimise the impact on the Customer and wherever possible any such upgrades shall be carried out outside of Operating Hours as defined in the SLA.

2.6. If the Company foresees that any such upgrade will have an impact on the Customer, the Company will consult with the Customer to agree what action is necessary to try to ensure that so far as is possible the Company maintains availability of the Financial Messaging service, for this purpose the Customer will provide all reasonable cooperation to the Company.

2.7. The Company shall take all reasonable actions necessary at any time to preserve the security and reliable operation of the Company Infrastructure and the Financial Messaging service, giving Customer as much prior notice of any such action as is practicable.

2.8. The Company shall provide Services Support in accordance with the supplementary terms and conditions available at www.bottomline.co.uk/terms&conditions/ under which the Company may provide "Foundation", "Premier" or "Premier Plus" support (as defined therein) and specified in an Order Agreement to the Customer in relation to the Financial Messaging service.

3. RESPONSIBILITIES OF THE CUSTOMER

3.1. The Customer undertakes to comply with the specific obligations set out in clauses 14 (SWIFT) and 15 (Bacs) as applicable to the Subscription Services.

3.2. The Customer shall:

3.2.1. provide and maintain the Customer Infrastructure;

3.2.2. comply with all reasonable instructions given by the Company which relate to the provision of the Subscription Services and Infrastructure Services and the Financial Messaging service;

3.2.3. obtain and maintain in effect all necessary licences and consents that are required for the Company to access, use, operate, copy and modify the Customer Infrastructure as required by the Company, only so far as may be necessary solely in connection with the performance of the Subscription Services and Infrastructure Services;

3.2.4. ensure that the security features to access the Financial Messaging service remain under its control and to procure that access to the Financial Messaging service is restricted to authorised users only;

3.2.5. at mutually agreeable dates and times provide the Company with such access to the Customer's premises and the Customer Infrastructure as may be reasonably required by the Company for the performance of its obligations under this Agreement;

3.2.6. ensure that the Customer Infrastructure is equipped and updated regularly with current industry-standard virus-scanning software;

3.2.7. use all reasonable endeavours to advise the Company in advance of any known or expected significant increases in Subscription Services usage or daily message traffic volumes, where such increases would result in an uplift in Subscription Band (temporary or otherwise);

3.2.8. advise the Company of any changes in named personnel who have access to the Subscription Services.

3.3. The Customer undertakes to ensure that the Customer, its employees or any authorised third party(ies) shall not abuse or make any fraudulent use of the Financial Messaging service which may include without limitation:

3.3.1. any illegal or unlawful activity;

3.3.2. the collection, development or distribution of malicious code;

3.3.3. hacking, cracking, malicious computer crime or fraud, or to attempt unauthorised breach or attack on any computer systems;

3.3.4. the circumvention of copy-protection mechanisms;

3.3.5. assisting or allowing any third person to do any of the foregoing;

3.3.6. using the service in such a manner as to unreasonably interfere with the use of or access to the Financial Messaging service by any other Customer or authorised person.

3.4. The Customer shall not do or permit anything to be done which will compromise or affect or jeopardise the security of the Company Infrastructure.

4. PAYMENT OF FEES

4.1. Subscription Fees: The Company shall invoice the Customer for the annual Subscription Fees on the Effective Date and on each anniversary thereafter. At the end of each quarter, the Company shall implement the Truing-Up Process to review the Customer's usage against the Subscription Bands set out for the applicable service(s) in Annex 1 hereto. In the event that the Customer has exceeded the expected quarterly volumes from its then current Subscription Band the Company shall apply a Truing-Up Adjustment and shall invoice the Customer for the applicable fee increment, being the difference between the fees due for Customer's correct Subscription Band(s) and the fees previously invoiced at the Customer's then applicable Subscription Band(s).

4.2. No later than thirty (30) days prior to the anniversary of the Effective Date, the parties shall agree the relevant Subscription Band for the Subscription Services for the next twelve (12) months subject to 4.1 above.

4.3. **Infrastructure Fees:** The Company shall invoice Infrastructure Fees on the Effective Date and thereafter annually prior to expiry of each annual period.

4.4. The Company reserves the right to increase its list prices in the ordinary course of its business for Subscription Services and/or Infrastructure Services upon sixty (60) days' notice to the Customer prior to expiry of the Initial Term or any subsequent annual period, but no more than once in any twelve (12) month period.

4.5. The Customer shall pay to the Company all agreed fees as described in an Order Agreement, or as otherwise due under this Agreement, no later than thirty (30) days from the date of the Company's invoice.

4.6. The Company reserves the right to charge the Customer interest on any payment not made by the due date for payment. Interest will be calculated on a daily basis, both before and after any judgement, at the rate of 2% per annum over the Bank of England base rate, for the period from the due date for payment until the date on which such amount is paid.

4.7. Notwithstanding the provisions of clause 4.6 above, in the event that the Customer fails to pay any undisputed Company invoice or part thereof by the due date for payment, the Company may restrict the use of the Subscription Services and Infrastructure Services and initiate the Dispute Resolution process identified in clause 12 of this Agreement, or terminate this Agreement as defined under clause 11 of this document.

4.8. All sums payable hereunder are exclusive of value added tax and any other applicable taxes or duty. Charges shall be made for any taxes, duties or levies which the Company is required by law to collect and any withholding tax will be for the Customer's account unless and until such time that Company is able to reclaim such tax.

5. WARRANTIES

5.1. The Company warrants that in performing the Subscription Services and Infrastructure Services it will use all reasonable care and skill and that the interface used by the Company to access any third party messaging service is qualified and capable of supporting all features of such third party messaging service.

5.2. The Customer warrants that it has full right, power and authority to enter into and perform its obligations under this Agreement and has all licences, permits, authorisations and consents necessary to carry on its business and where applicable to be a SWIFT and/or Bacs user.

5.3. The Customer warrants that it is solely responsible for and liable in respect of all access to and use of the Financial Messaging service through the Customer's login and password and shall ensure that private login names, passwords and other confidential information remain confidential.

5.4. The parties respectively warrant that no information submitted to SWIFT or any other third party via the Subscription Services shall be accessed, interpreted or tampered with by the other party, except with the consent of the submitting party and that such information shall be treated as confidential by the parties and will not be disclosed to any third party, except as required by law or as necessary to provide or receive the Subscription Services and Infrastructure Services.

5.5. The Company warrants that it has acquired and will continue to acquire and maintain, all necessary licences, permits, authorisations and consents required to provide shared connectivity via the Financial Messaging service to any third party messaging service required by the Subscription Services.

5.6. Save as expressly set out 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, its employees, sub-contractors, 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) in respect of the Subscription Services and/or Infrastructure Services and/or the Financial Messaging service and/or Company Infrastructure, are hereby superseded, excluded and disclaimed to the fullest extent permitted by law and the Customer acknowledges that none of the foregoing have induced it to enter into this Agreement.

5.7. Without prejudice to the generality of clause 5.5 above, the Company does not warrant or guarantee that information transmitted or made available to the Customer by way of the Subscription Services, Infrastructure Services and the Financial Messaging service that was not originated by the Company, or information that was originated by the Customer, SWIFT or any other third party, that the Company was contractually required to amend as part of the Subscription Services and Infrastructure Services:

5.7.1. will be suitable for any particular purpose; or

5.7.2. will be free of any inaccuracies of any kind.

6. REMEDIES AND LIMITATION OF LIABILITY

6.1. In this Clause 6 the word “Default” means any act, statement, omission or negligence on the part of the Company in connection with the subject matter of this Agreement and in respect of which the Company is legally liable to the Customer, whether in contract or tort. A number of Defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such Default.

6.2. The Customer shall inform the Company in writing of any Default forthwith on becoming aware of the same and afford it reasonable opportunity to correct the Default.

6.3. Neither party excludes or limits liability to the other party for, a) death or personal injury caused by its negligence or, b) for any matter which it would be illegal for a party to exclude or attempt to exclude its liability or, c) any fraudulently made statement or misrepresentation.

6.4. Subject to Subject to Clause 6.3 the Company’s liability to the Customer in any circumstances, whether in contract, tort or otherwise shall be subject to the financial limits set out in this Clause 6.4:

6.4.1. 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 £1,000,000.

6.4.2. the aggregate liability of the Company under this Agreement for all losses, claims, damages, costs or expenses arising out of or in connection with defaults other than a default governed by Clause 6.4.1 shall in no event exceed £100,000.

6.5. Neither party shall be liable to the other for the following loss or damage however caused and even if foreseeable by a party:

6.5.1. economic loss, which will include loss of profits, business, revenue, goodwill or anticipated savings;

6.5.2. special, indirect or consequential loss or damages (including loss or damage suffered by the respective party as a result of any action brought by a third party) even if the other party has been advised of the possibility of such damages.

6.6. The Company shall not be liable to the Customer for the following loss or damage however caused and even if foreseeable arising from:

6.6.1. the Customer’s failure to fulfil its responsibilities or any matter under the control of the Customer including any liability (including breach of warranty) which arises as a result of the misuse of the Subscription Services and/or Infrastructure Services and/or Equipment supplied hereunder, the data transmitted 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;

6.6.2. any downtime, outage, interruption in or unavailability of the Company Infrastructure or the Subscription Services or Infrastructure Services as result of or attributable to any of the following causes:

6.6.2.1. any breakdown of whatever nature and howsoever arising in any of the services provided by other service providers (except for services specifically subcontracted by the Company to a third party) or in any international services, remote mail services or remote mail servers; and

6.6.2.2. the non-performance or unavailability, of whatever nature and howsoever arising, of external communications networks, other than a failure of the connectivity between the Company Infrastructure and the network provider’s network;

6.6.3. the non-performance or unavailability of the Subscription Services or Infrastructure Services due to the unavailability or any failures within the world-wide web;

6.6.4. any breach of security by any third party or any breach of confidentiality by a third party or otherwise arising from any access howsoever obtained by a third party to the Customer’s information, data, or messages or other traffic, other than where such breach or access occurs within the environment under the control of the Company or its contractors due to negligence or breach of this Agreement by the Company or its contractors;

6.6.5. any damage, contamination or corruption of any kind of the Customer’s data, material information, messages or other traffic howsoever occasioned, provided that any such damage, contamination or corruption occurs outside of the environment under the control of the Company or its contractors. For the avoidance of doubt, the Company shall be liable for damage, contamination or corruption of any kind of the Customer’s data, material information, messages or other traffic within the environment under the control of the Company or its contractors due to its negligence or breach of this Agreement;

6.6.6. the service, repairs maintenance, upgrades, modification, alterations or replacement of the Customer’s equipment or hardware forming part of the Customer’s equipment of whatever nature and whether carried out by the Customer or any third party except for the Company’s sub-contractors.

6.6.7. any illegal or unauthorised access to, or release of any Customer data from, any device whatsoever not under its control or that of its contractors connecting to the Subscription Services, Infrastructure Services or Financial Messaging service, 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.

6.7. The Customer shall be liable and shall indemnify the Company in full and on demand, against all claims, loss and damage caused by a message sent or passing through a SWIFT or other third party interface at the Company that originates from the Customer.

6.8. Except in the case of any liability referred to in sub-clause 6.3, neither party may bring an action under or in connection with this Agreement whether in contract or in tort more than six (6) years after it first becomes (or should reasonably have become) aware of the facts constituting the cause of action.

7. EQUIPMENT OF THE COMPANY

7.1. Any Equipment provided by the Company to the Customer at the Customer's premises in connection with the provision of the Infrastructure Services, shall be and remain the property of the Company.

7.2. The Customer shall use the Equipment strictly in accordance with any instructions for use provided by the Company.

7.3. The Customer shall notify in writing any persons who may be entitled to a charge, security or any other right over the property of the Customer that the Equipment is not the property of the Customer.

7.4. The Customer shall be responsible for ensuring that the Equipment is adequately insured whilst located on its premises.

7.5. The Company shall be responsible only for the direct costs of routine maintenance of the Equipment and any costs of repair or maintenance other than routine maintenance shall be for the account of the Customer, who shall pay the same to the Company on demand.

7.6. The Company shall be allowed all reasonable access required by the Company to deliver, install, inspect and maintain the Equipment.

7.7. The Company shall upon termination or cancellation of this Agreement, for any reason, be entitled forthwith to remove the Equipment from the premises of the Customer and the Customer shall provide all reasonable access necessary to do so.

8. CONFIDENTIAL INFORMATION

8.1. Each of the parties hereby undertakes to hold in trust and confidence and not to use or disclose to any other party, during and after the termination of this Agreement, any information disclosed to it orally, visually, or which is in writing or other tangible form, supplied to one another directly or indirectly or to any of their subsidiaries, directors, employees, agents, brokers or advisers regarding the business practices of the other party, including but not limited to, this Agreement, pricing, services, transactional data, client information, payments, ideas, concepts, methods, processes, computer programs, any electronic information which is transmitted across the technical Company Infrastructure (the "Information").

8.2. Each party agrees:

8.2.1. to take all reasonable steps to maintain the confidentiality of the Information, it being agreed that such Information is a valuable asset of the disclosing party which would be severely prejudiced and which would suffer damages in the event of such Information being disclosed to any third party or used by such third party for whatever purpose; and

8.2.2. to restrict the use of the Information exclusively for the contemplated purposes at the time of the disclosure thereof and will only make the Information available to such of its directors and senior employees who need access to the Information; and

8.2.3. not to make copies of or reproduce in any form the Information; and

8.2.4. to keep the Information secure and in such a way as to prevent unauthorised access by any third party, and will apply to the Information the same degree of care with which it treats and protects its own proprietary information against public disclosure.

8.3. The Parties agree that the contents of this Agreement shall be treated as Information and accordingly pursuant to this clause 8 will not be disclosed to any other party, save that this Agreement, in whole or parts, may be disclosed to authorised officers of SWIFT or other third party providers (subject to maintenance of confidentiality) as part of the Company maintaining its accreditation for the provision of fully certified Financial Messaging service.

8.4. Neither party shall have any obligations with respect to any Information which:

8.4.1. is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement; or

8.4.2. is disclosed as required by law or regulation; or

8.4.3. is approved for release by written authorisation from the other party to this Agreement; or

8.4.4. is independently developed by either party or its representatives or advisers.

8.5. All Information remains the property of the party who developed or disclosed the Information and will be returned to the owner on termination of the Agreement.

9. INTELLECTUAL PROPERTY RIGHTS

9.1. The Parties hereby agree that all intellectual property rights arising during the term of this Agreement in respect of alterations modification and enhancements of the Company Infrastructure made by the Company or in respect of any other software or other developments made by or procured by the Company on behalf of the Customer shall belong to the Company (or to its third party licensor) and the Customer undertakes as necessary to assign or procure the assignment of all such intellectual property rights without charge to the Company.

9.2. The Company shall indemnify and hold harmless the Customer against all damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the use by the Customer of any part of the Company Infrastructure or any modifications enhancements or alterations thereto in connection with the provision of the Subscription Services and Infrastructure Services during the term of this Agreement infringes any intellectual property right of the said third party.

9.3. The Customer shall indemnify and hold harmless the Company against all damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the use by the Company of the Customer Infrastructure or any part or any modifications, enhancements or alterations thereto during or after the termination or expiry of this Agreement infringes any intellectual property right of the said third party.

9.4. Each Party's respective obligation under clause 9.2 and 9.3 respectively ("Defending Party"), shall not be effective unless the Customer under clause 9.2 or the Company under clause 9.3 (each the "Claimant"), give to the Defending Party written notice of any claim or threatened or actual action within ten (10) days of knowledge thereof and give full control of the defence and settlement, along with the Claimant's full co-operation, to the Defending Party. The Defending Party may then at its own expense: (i) procure for the Claimant the right to continue to use the Defending Party's infrastructure as defined in clause 9.2 and 9.3 respectively; (ii) make such Defending Party's infrastructure non-infringing; or (iii) where the Customer is the Claimant, the Company may terminate this Agreement and refund a portion of any fees paid which are proportional to any un-used period then remaining under this Agreement.

10. DATA PROTECTION

10.1. The Company shall comply with the provisions of the Data Protection Act 1998 (the "Act") and shall ensure that it is properly registered under the Act for such processing of personal data (as defined in the Act) as may be required in the performance of this Agreement.

10.2. Where as part of the Subscription Services and/or Infrastructure Services the Company processes personal data on behalf of the Customer the Company shall:

10.2.1. act only on instructions from the Customer in relation to such processing; and

10.2.2. take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of or damage to personal data.

10.3. Subject always to clauses 6.4, 6.5 and 6.6, the Company shall indemnify and keep indemnified the Customer from and against all costs and losses arising in connection with any breach of this Clause 10 by the Company.

11. TERMINATION

11.1. 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:

11.1.1. by not less ninety (90) days prior written notice, such notice to expire at the end of the Initial Term or, the end of any Renewal Period thereafter;

11.1.2. by immediate notice if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 as amended 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 123 of the Insolvency Act 1986 as amended or if a trustee receiver administrative receiver administrator 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);

11.1.3. by immediate notice if the other commits a breach of any term of this Agreement and fails to remedy such breach within seven (7) (seven) calendar days after receiving notice from the other party requiring it to do so;

11.1.4. by immediate notice if the Customer fails to comply with sub clause 14.2.1

11.2. In the event that this Agreement is terminated for any reason other than by the Customer in accordance with sub clause 11.1.3 prior to the expiry of the Initial Term or any Renewal Term, the Customer shall pay to the Company immediately on demand all outstanding invoices that have been properly raised or that are due to be raised in accordance with this Agreement and all other amounts in respect of the Initial Term that would have fallen due if this Agreement had not been terminated, including but not limited to any Professional Services delivered up to the date of termination. In the event that such termination is in accordance with sub clause 11.1.4 then in addition to the provisions of this clause, those of clause 11.3 shall also apply.

11.3. In the event that this Agreement is terminated for breach of clause sub clause 11.1.4 above then the Customer shall pay on demand the balance of any Subscription Fees and Infrastructure Fees that the Company would reasonably have expected to charge the Customer for on the unexpired portion of the Initial Term or Renewal Term as applicable. Any amount due shall be calculated on a pro rata basis and in respect of Subscription Fees based on the then lowest published Subscription Band for the Subscription Services subscribed to by the Customer.

11.4. 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 and Infrastructure 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.

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

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

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

11.6. Upon termination or expiry of this Agreement the Customer will deliver to the Company all Equipment if any, in the Customer's custody or possession.

12. DISPUTE RESOLUTION

12.1. In the event of any dispute arising out of or relating to this Agreement each party agrees not to commence legal proceedings without first attempting in good faith to resolve the dispute amicably and in a timely manner in accordance with the dispute resolution procedures set out below.

12.2. Any dispute shall be referred in the first instance to the Head of Financial Messaging service for the Company and a duly appointed representative for the Customer.

12.3. If the dispute is not resolved within 14 (fourteen) working days after referral in accordance with clause 12.2 the parties shall meet to consider whether and on what terms they wish to refer the matters in dispute to external mediation, arbitration or assessment by an expert.

12.4. If the matter has not been resolved within 14 (fourteen) days of the parties' meeting as referred to in clause 12.3 this dispute resolution procedure shall be considered at an end as regards the dispute in question and either party may refer the dispute to the English courts and the parties submit to their exclusive jurisdiction for that purpose.

13. MISCELLANEOUS

13.1. If any provision of this Agreement is found or held to be invalid or unenforceable, that provision shall be enforced to the maximum extent possible, and the validity and enforceability of all the other provisions of this Agreement will not be affected thereby.

13.2. This Agreement does not constitute either of the parties a partner, an agent or legal representative of the other, for any purposes whatsoever, and neither of the parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.

13.3. Both parties hereby agree that each will have the right to disclose the relationship created by this Agreement on and in each party's respective website, press releases and other media, specific content to be mutually agreed in writing in advance by the parties. Each party hereby grants to the other party, the right to reproduce and display the other's logos, trademarks, trade name and other similar identifying material including a company description (collectively, the "Marks") on a royalty free, non-exclusive basis for the sole purpose of furthering the relationship contemplated in this Agreement and in accordance with the owner's established trademark usage policies and procedures. Such licenses shall terminate automatically upon the termination of this Agreement. Both parties will agree the terms of use of each other's Marks prior to use in online, offline, video or other written and spoken communications with third parties. Both parties agree the terminology around the partnership in advance and how it will be communicated internally and externally.

13.4. Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class post or by facsimile transmission (such facsimile transmission notice to be confirmed by letter posted within 12 (twelve) hours) to the address or the facsimile number of the other party set out in the Order Agreement (or such other address or number as may have been notified in writing) and any such notice or other documents shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 (forty-eight) hours after posting and (if sent by facsimile transmission) upon the expiration of 12 (twelve) hours after being dispatched.

13.5. With the specific exception of payment obligations hereunder, neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fire, insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority (an "Event of Force Majeure"). Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure. If a default is due to an Event of Force Majeure and shall continue for more than four (4) weeks then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

13.6. No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the parties.

13.7. The Customer shall not be entitled to assign, delegate or transfer any rights, obligations, share or interest acquired under or pursuant to this Agreement, in whole or in part, to any other party or person without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed.

13.8. No waiver on the part of either party to this Agreement of any breach of any provision of this Agreement by the other, will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

13.9. Except for the rights granted to Bacs pursuant to clause 15, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This condition does not affect any right or remedy of any person which exists or is available otherwise pursuant to the Act.

13.10. This Agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the exclusive jurisdiction of the English Courts.

13.11. While this Agreement remains in effect and for one (1) year following the termination of the Agreement, neither party shall directly or indirectly recruit, solicit or hire any employee of the other party, or induce or attempt to induce any employee of a party hereto to terminate his/her employment with the other party; provided that either party shall be permitted to hire any employee of the other party who responds to a general employment advertisement or solicitation.

14. SWIFT

Insofar as any Subscription Services provided to the Customer include connectivity to the SWIFT network:

14.1. The Customer accepts that in addition to the foregoing terms, provision of the Subscription Services and Infrastructure Services and access to the Financial Messaging service is subject to its compliance with this clause 14 in direct relation to SWIFT.

14.2. The Customer agrees:

14.2.1. to have in place a current agreement between SWIFT and the Customer during the term of this Agreement (for the avoidance of doubt failure to maintain such an agreement will be deemed a termination event as set out in clause 11.1.4 above); and

14.2.2. be responsible and liable for all applicable SWIFT membership charges and SWIFT traffic fees in accordance with its SWIFT user agreement; and

14.2.3. to comply with the policies stipulated by SWIFT for SWIFT users whether contained in SWIFT terms and conditions published from time to time or otherwise and shall notify the Company and SWIFT of any non-compliance with such rules and regulations and/or breach of any such conditions; and

14.2.4. to treat as confidential, any information relating to the Subscription Services, Infrastructure Services, Financial Messaging service, or SWIFT operations (including but not limited to the contents of messages passing through the Subscription Services and Infrastructure Services), SWIFT technical documentation, SWIFT security tokens and SWIFT network information.

14.3. Undertakes to ensure that the Customer, its employees or any authorised third party shall not abuse or make any fraudulent use of the SWIFT messaging service, which may include without limitation:

14.3.1. any illegal or unlawful activity;

14.3.2. the collection, development or distribution of malicious code;

14.3.3. hacking or cracking activities;

14.3.4. the circumvention of copy-protection mechanisms;

14.3.5. assisting or allowing any third person to do any of the foregoing.

15. Bacs

Insofar as any Subscription Services provided to Customer operate in conjunction with any application, test, or upgrade of systems associated with Bacs, Bacs' liability to Company, Customer and any third party shall be limited as follows:

15.1. Bacs shall have no liability to the Customer, the Company or any third party, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, for any indirect, consequential or special loss or damage suffered by the Customer, the Company or any such third party arising from, or in relation to:

15.1.1. the re-allocation or cancellation of Bacs tests in respect of any application (or any upgrade or any software as the case may be); or

15.1.2. the use of, inability to use, or reliance upon any application or upgrade (whether such application or upgrade becomes Bacs approved software or not); or

15.1.3. Bacs granting (or refusing to grant), suspending or terminating an approval for any Bacs approved solution.

15.2. In addition Bacs shall have no liability to the Customer, the Company or any third party, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, for any indirect, consequential or special loss or damage suffered by the Customer, the Company or any such third party arising from or in relation to the use of, or inability to use, or reliance upon:

15.2.1. the Bacs test environments; or

15.2.2. any Bacs materials in the development and testing of applications.

15.3. The entire liability of Bacs under or in connection with this Agreement, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, is limited to direct loss and damage to the Company, which shall be capped at a sum equal to £250,000 (two hundred and fifty thousand pounds), in respect of all acts, omissions, facts, circumstances or events occurring in connection with the Company's agreement with Bacs in each annual period commencing on 7th March each year.

15.4. Bacs shall not be liable to the Company, the Customer or any third party, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, for any direct loss and damage to the Company in excess of the cap provided in Clause 15.3, or for any indirect, consequential or special loss or damage suffered by the Company, the Customer or any third party (including, without limitation, any loss of profit, loss of bargain, loss of interest, goodwill, business opportunity, anticipated saving or data) arising out of or in connection with this Agreement.

15.5. For the avoidance of doubt, in no circumstances shall Bacs owe any duty of care, express or implied, to the Customer or any third party, in respect of the performance of Bacs testing or the accuracy, completeness, suitability, or fitness for purpose of applications and upgrades (whether such applications or upgrades become Bacs approved software or not), Bacs materials, the test environments, and/or the technical specification.

15.6. Nothing in this Agreement shall operate to exclude or restrict Bacs liability for death or personal injury resulting from Bacs' negligence or fraud.

15.7. The Customer and the Company each acknowledge and agree that the limitations on, and exclusions of, Bacs' liability to the Company, the Customer and any other third party are fair and reasonable in the context of the commercial relationship between the parties.

15.8. Any approval granted by Bacs for any software does not constitute any warranty, representation, guarantee, term, conditions, undertaking or promise to the Customer or any third party in respect of the software that it will be error free or free from any inaccuracies or defects or will operate in accordance with the Customer's or any third party's requirements.

15.9. This Clause 15 is for the benefit of Bacs and shall be fully enforceable by Bacs and Bacs shall be entitled to assign the benefit of this Clause 15.

ANNEX 1: SERVICE LEVEL AGREEMENT (SLA)

This SLA is subject to and forms part of this Agreement between the Company and the Customer.

1. CONTRACT MANAGEMENT

1.1. To ensure effective performance of this Agreement and SLA the parties shall.

1.2. Confirm in writing nominated contact persons for the Customer and Company as the case may be. This will include at least a primary and secondary contact for both business and technical personnel and should include all relevant contact details such as name, address, email, telephone and fax numbers. Also to update in writing each to the other changes of the nominated contact persons and/or their contact details as described above;

1.3. In addition, the Customer will supply the Company with a minimum of two operational contacts stating their level of authorisation that will be utilised for the authorisation of requests made by the Customer, such as those required to create new users of the service. This list will also include the contacts required if the Company needs to invoke disaster procedures and appropriate replacements or escalation path if the usual contacts are unavailable.

2. SUBSCRIPTION BANDS

	Subscription Services Type									
Subscription Band	**FIN** (messages per day)	**FileAct** (kB volume per day)	**Funds** (messages per day)	**Crest** (kB volume per day)	**Interact** (message per day)	**Browse** (users)	**FMS Bacs** (messages per month)	**FMS FPS** (messages per month)	**GTMatch** (entries per day)	**Reporting/DDA/ Filtering/ Profiling** (daily transactions)
A	≤250	≤500	≤500	≤2500	≤500	1	≤25000	≤2500	≤1000	≤250
B	≤500	≤1000	≤1000	≤5000	≤1000	5	≤50000	≤5000	≤5000	≤500
C	≤1000	≤2000	≤2000	≤10000	≤2000	10	≤150000	≤15000	≤10000	≤1000
D	≤2500	≤5000	≤5000	≤25000	≤5000	20	≤300000	≤30000	≤20000	≤2500
E	≤5000	≤10000	≤10000	≤50000	≤10000	30	≤500000	≤50000	≤50000	≤5000
F	≤10000	≤20000	≤20000	≤100000	≤20000	50	≤750000	≤75000	≤100000	≤10000
G	≤20000	≤40000	≤40000	≤200000	≤40000	-	-	-	-	≤20000
H	≤40000	≤80000	≤80000	≤400000	≤80000	-	-	-	-	≤40000
I	≤60000	≤120000	≤120000	≤600000	≤120000	-	-	-	-	≤60000
J	≤100000	≤200000	≤200000	≤1000000	≤200000	-	-	-	-	≤100000

3. CONNECTIVITY SERVICE LEVELS AND REPORTING

3.1. The Company shall use all reasonable endeavours to maintain the availability of the Financial Messaging service for 99.90% of the time during the Operating Hours. This percentage is to be calculated as an average taken over three (3) month periods.

3.2. The Company shall measure and monitor the availability of the Financial Messaging service in accordance with the Company Service Bureau Up-time Policy.

3.3. Upon request and in accordance with the supplementary terms and conditions for provision of Subscription Services Support in accordance with clause 2.8 of this Agreement, at the frequency specified therein the Company shall provide to the Customer a report by e-mail, detailing the Financial Messaging service availability and the extent to which this SLA has been met.

4. OPERATING HOURS

4.1. The Company shall use reasonable endeavours to provide connectivity to the Subscription Services twenty-four (24) hours a day, Monday to Friday GMT (or BST as applicable) (the "Operating Hours").

4.2. The Company shall use reasonable endeavours to provide connectivity to the Subscription Services on Saturday and Sunday in line with availability of the subscribed services and network infrastructure as supplied by SWIFT or any other relevant third party.

4.3. The Company may withdraw connectivity for the Subscription Services at any time on Saturday and Sunday where the Company, in its sole opinion, deems it necessary or desirable for maintenance purposes. The Company shall notify the Customer in advance of any planned maintenance. The Company shall use reasonable endeavours to notify the Customer in advance of any un-planned maintenance which it deems to be necessary for essential maintenance to ensure the security and continued provision of the Financial Messaging service to the Customer during Operating Hours.

4.4. The Company may withdraw connectivity to the Subscription Services and Financial Messaging service for the purposes of disaster recovery testing, which the Company shall use reasonable endeavours to carry-out on four (4) week-ends per year for connectivity to the SWIFT network and one (1) weekend per year for other Financial Messaging Services. The Company shall use reasonable endeavours to notify the Customer in advance of such withdrawal of connectivity for those services included in the Subscription Services..

5. CRYPTOGRAPHIC KEYS

Insofar as the Subscription Service includes provision by the Company to the Customer of connectivity to the SWIFT network:

5.1. Where applicable to the Subscription Services the Customer's own personnel shall continue to be the SWIFT registered Security Officers (SOs). The Customer shall notify the Company of its designated Security Officers with full contact details.

5.2. The Customer shall delegate the control and operation of the Customer's SO private PKI keys to the Company for the purpose of managing the Customer's certificates and for providing connectivity to the Financial Messaging service.

5.3. The Customer's private PKI keys and certificates will be held securely on the Company Infrastructure in accordance with SWIFT best practice, i.e. HSMs.

5.4. The Customer's private PKI keys and certificates will be accessible only to authorised Company personnel. The Customer may request, at any time, a list of the Company authorised personnel that can access the Customer's private PKI keys and certificates.

5.5. Any disabling, revoking, creation, or usage of the Customer's private PKI keys and certificates; and changes in the user profile (defined in the context of Role Based Access Control (RBAC) by the Company) will be performed according to strict procedures defined in the Company SWIFT Bureau Cryptographic Key Management Procedure ("SBCKMP").

5.6. The initiation, modification, and termination of cryptographic secrets and arrangements by the Company will be performed according to strict procedures defined in the SBCKMP.

5.7. The Customer may request an audit trail of all actions carried out by the Company in relation to the Customer's private PKI keys and certificated.