

Standard Terms and Conditions – SWIFT Access Service

These terms and conditions, the Order Agreement and Professional Services Agreement (collectively “End User Agreement” or “EUA”) shall apply to the Customer's purchase of the Services and/or Professional Services or other services from the Company. This EUA 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 EUA. This EUA 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, the Order Agreement or the professional Services Agreement shall be made except in writing and signed by an authorised signatory of each party.

1 DEFINITIONS

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

“Agreement” shall mean this document together with all annexes hereto.

“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 Services available for access and use by the Customer, for testing purposes and processing of data via the SWIFT network (such processing subject to the SWIFT Agreement, resulting Cutover Date and any other related third party agreements between Customer and such third parties) and confirmed such date in writing to the Customer;

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

“Company Infrastructure” means the infrastructure provided by the Company to the Customer to enable the Customer to access the Services, which may include, but shall not be limited to, computer programs, computer equipment, security equipment and network equipment and the documentation associated therewith;

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

“Customer Infrastructure” means the Customer's own hardware, software and communication lines required to link to the Company Infrastructure in order to access the SWIFT Services;

“Cutover Date” shall mean the date on which the Customer is allowed, by a prior separate contractual SWIFT registration process between the Customer and SWIFT, to connect to SWIFT's secure IP messaging network;

“Disaster Recovery Site” means an alternative site equipped to support delivery of the Services in the event of loss in full or part of normal Services Delivery, as may be notified to the Company by the Customer;

“Implementation Fee” means the initial Professional Services set up fee, as set out in the Order Agreement;

“Incident” means an event which is not part of the standard operation of the Services and which causes or may cause disruption to, or a reduction in the quality of the Services.

“Initial Term” shall mean the period of 36 (thirty-six) months, commencing on the Commencement Date;

“Order Agreement” means the document to which this Agreement is appended and which specifies the Services, Professional Services and/or other services being acquired by the Customer.

“Professional Services” means those services including but not limited to consultancy, implementation and training, supplied under this EUA.

“Professional Services Agreement” means the supplementary terms and conditions available at www.bottomline.co.uk/terms&conditions/, under which the Company may provide Professional Services to the Customer.

“Service Desk” means the Company's organisation and personnel engaged by the Company for the provision of Support Services to the Customer and to receive, log and process all Service Request and Incidents in connection therewith;

“Service Levels” means the service levels set out in the SLA;

“SLA” means Annex 1 to the Agreement which sets out the specific services and service levels that will be provided by the Company;

“Services” means the services specified in the Order Agreement and provided to the Customer pursuant to this Agreement;

“Service Fees” shall mean the charges payable by the Customer to the Company in respect of the Services, as set out in the Order Agreement;

“Service Request” means a request from the Customer for information, advice, a change to, or additional access to the Services.

“Specifications” means the functional and technical requirements regarding the Customer Infrastructure, together with the procedures specified by the Company for electronic communication between the Customer Infrastructure and the Company Infrastructure;

“Operating Hours” means the times during which the Service Desk shall provide Support Services as specified in the SLA;

“Support Services” means those services provided by the Company to the Customer from time to time via the Service Desk in support of the Customer's use of and access to the Services, in accordance with clause 6 of the SLA.

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

“SWIFT Agreement” means the agreement executed between SWIFT and the Customer;

“SWIFT Documentation” means the documentation routinely provided by SWIFT to all SWIFT users;

“SWIFTNet” means the financial services processing service provided by SWIFT to the Customer pursuant to the SWIFT Agreement and described in more detail in the SWIFT Documentation;

“SWIFT Services” shall mean the services provided by SWIFT to the Customer and described in more detail in the SWIFT Documentation.

2 COMMENCEMENT AND TERM

- 2.1 This Agreement shall become effective on the last date of signature by either of the parties. The Services shall commence on the Commencement Date and subject to the provisions for termination in clause 11 of this Agreement, this Agreement and the provision of Services shall remain in force for the Initial Term and thereafter be automatically renewed for successive periods of twelve (12) months, subject to payment of the Implementation Fee and the Service Fees in accordance with clause 5 of the Agreement.

3 RESPONSIBILITIES OF THE COMPANY

- 3.1 The Company shall provide the Company Infrastructure and the Services to enable the Customer to access and use the SWIFT Services in accordance with the Service Levels and subject to the terms of this Agreement.
- 3.2 The Company shall provide the Customer with all the documents, rules, specifications, instructions, procedures, corporate rules, by-laws and handbooks with which the Customer must comply pursuant to the terms of this Agreement, save for such documentation as is provided by SWIFT to SWIFT users.
- 3.3 The Company will take all such action as is reasonably necessary to provide and maintain access to the SWIFT Services by the Customer in accordance with the Service Levels, but shall have no liability for any failure to provide and maintain such access save as expressly provided in this Agreement.
- 3.4 The Company shall use reasonable endeavours to maintain the same level of security standards for message confidentiality, integrity and systems availability of the Services as is provided by SWIFT to its users.
- 3.5 The Company shall host the Customer's BIC within the Company infrastructure and shall provide the Customer with connectivity to the Company infrastructure in accordance with the SLA and the Order Agreement.
- 3.6 The Company reserves the right to amend the Specifications from time to time, which shall become effective upon the Company giving written notice thereof to the Customer. The Company will give the Customer sixty (60) days notice of any such amendments.
- 3.7 The Company shall not sub-contract any of the Company's obligations specified in the relevant SWIFT terms and conditions published from time to time, to any third party without prior written consent of the Customer and, where applicable, SWIFT.
- 3.8 The Company reserves the right to increase or upgrade the Company Infrastructure. The following terms and conditions will apply to such upgrades:
- 3.8.1 the Company will inform the Customer of such an upgrade as soon as reasonably practicable prior to the upgrade being carried out;
- 3.8.2 the Company will use reasonable endeavours to carry out any such upgrades in such a way as to minimise the impact on the Customer, this will mean wherever possible any upgrades are carried outside of Operating Hours;
- 3.8.3 If the Company foresees that any such upgrade will have an impact on the Customer, the Company will consult with the Customer with a view to ascertaining what action is necessary to try to ensure that so far as possible the Customer will have continued access to and use of the Company Infrastructure and for this purpose the Customer will provide full cooperation to the Company.
- 3.9 The Company reserves the right to take all reasonable action necessary at any time to preserve the security and reliable operation of the Company Infrastructure and the Services, giving Customer as much prior notice of any such action as is practicable.

4 RESPONSIBILITIES OF THE CUSTOMER

- 4.1 The Customer undertakes 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.
- 4.2 The Customer shall:
- 4.2.1 acquire and maintain the Customer Infrastructure;
- 4.2.2 comply with all reasonable instructions given by the Company which relate to the Customer Infrastructure and the Company Infrastructure;
- 4.2.3 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 Services;
- 4.2.4 procure that the security features to access the SWIFT system and service remain under its control and to procure that access to the SWIFT system is restricted to authorised users only;
- 4.2.5 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 require by the Company for the performance of its obligations under this Agreement;

4.2.6 procure that its use of and access to the Company Infrastructure, the Services and the Customer Infrastructure is in accordance with the Specifications at all times;

4.2.7 procure that the Customer Infrastructure is equipped and updated regularly with current industry-standard virus-scanning software and at all times meets the Specifications;

4.2.8 use the Service Desk as the single point of contact regarding all operational matters, using the contact information set out in the SLA;

4.2.9 confirm to the Company in writing nominated contact persons for the Customer. 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 the Company in writing as to changes of the nominated contact persons and/or their contact details as described above;

4.2.10 supply the Company with a detailed list of 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

4.3 The Customer hereby agrees that it is solely responsible for and liable in respect of all access to and use of the SWIFT Services through the Customer's login and password and the Customer shall ensure that private login names, passwords and other confidential information remain confidential.

4.4 The Customer shall not abuse or make any fraudulent use of the SWIFT Services, which may include without limitation:

4.4.1 any illegal or unlawful activity;

4.4.2 the collection, development or distribution of malicious code;

4.4.3 hacking or cracking activities;

4.4.4 the circumvention of copy-protection mechanisms;

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

4.4.6 using the SWIFT Services in such a manner as to unreasonably interfere with the use of or access to the SWIFT Services by any other Customer or authorised person.

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

5 PAYMENT OF CHARGES

5.1 The Company shall invoice the Customer the Implementation Fee upon execution of this Agreement.

5.2 The Company shall invoice the Customer for the annual Service Fees on the Commencement Date and thereafter thirty (30) days prior to the anniversary of the Commencement Date, until this Agreement is terminated in accordance with clause 11. The Company reserves the right to increase the Service Fees at any time upon sixty (60) days prior notice to the Customer but no more than once in any twelve (12) month period, where such increases are required as a result of;

5.2.1 adjustment of the SWIFT Band tier as determined by SWIFT based on the Customer's use of the SWIFT Services; or

5.2.2 any other increases due to changes in service levels e.g. enhancements or upgrades to the Company Infrastructure or other changes to the Services as may be requested by the Customer; or

5.2.3 any change to the Company's standard list prices for the Services in the ordinary course of its business.

5.3 The Customer shall pay to the Company the Implementation Fee and the annual Service Fees as described in the Order Agreement no later than thirty (30) days from the date of the Company's invoice.

5.4 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.

5.5 Notwithstanding the provisions of clause 5.4 above, in the event that the Customer fails to pay any Company invoice by the due date for payment, the Company may restrict the use of the Services and initiate the Dispute Resolution process identified in clause 12 of this Agreement, or terminate the Agreement (including the EUA as a whole) as defined under clause 11 of this document.

5.6 All applicable SWIFT membership charges and SWIFT traffic fees shall be payable by the Customer in accordance with the SWIFT Agreement.

5.7 All sums payable hereunder are exclusive of VAT and all other taxes or duties. Where applicable, such taxes or duties shall be charged in addition to the sums payable hereunder at the rates in force at the time of invoice.

6 WARRANTIES

6.1 The Company warrants that in performing the Services it will use all reasonable care and skill, and that the interface used by the Company to access the SWIFT Services is qualified and capable of supporting all features of the relevant SWIFT Services.

6.2 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 to be a SWIFT user.

- 6.3 The parties warrant that no information submitted to SWIFT Services by either party shall be accessed, interpreted or tampered with by the other party, except with the consent of the submitting party and 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 the Services.
- 6.4 The Company warrants that it has acquired and will continue to acquire, all necessary licences and permissions required to provide shared connectivity to the SWIFT Services.
- 6.5 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 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 Services and/or SWIFT Services 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.
- 6.6 Without prejudice to the generality of clause 6.6 above, the Company does not warrant or guarantee that information transmitted or made available to the Customer by way of the Services and SWIFT Services:
- 6.6.1 will be suitable for any purpose; or
- 6.6.2 will be free of any inaccuracies of any kind.
- 6.7 Without prejudice to the generality of clause 6.6 above, the Company does not warrant or guarantee that it will provide and maintain access to the SWIFT Services without interruption or error nor that service interruptions will be resolved within the specific time frames referred to within the SLA nor that other problems relating to the Services will be attended to within the specific response times referred to within the SLA.

7 REMEDIES AND LIMITATION OF LIABILITY

- 7.1 In this Clause 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.
- 7.2 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.
- 7.3 Notwithstanding any other provisions of this Agreement the Company will accept unlimited liability to the Customer in connection with death or personal injury caused by the negligence of the Company or fraud or wilful misconduct of its employees or sub-contractors.
- 7.4 Subject to sub-clauses 7.6 and 7.7 below, 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.
- 7.5 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 interface at the Company that originates from the Customer.
- 7.6 The Company will not be liable for the following loss or damage however caused and even if foreseeable by the Company:
- 7.6.1 economic loss, which will include loss of profits, business, revenue, goodwill or anticipated savings;
- 7.6.2 special, indirect or consequential 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;
- 7.6.3 loss or damage arising from 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 Services and/or Equipment 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; or
- 7.6.4 loss or damage due to any downtime, outage, interruption in or unavailability of the Company Infrastructure or the Services as result of or attributable to any of the following causes:
- i) software service repairs, maintenance, upgrades, modification, alterations or replacement;
 - ii) system downtime for any reason (including, but not limited to, service repairs, routine maintenance, agreed maintenance, environmental maintenance, upgrades, modifications, alterations, replacement or a relocation of premises);
 - iii) any breakdown of whatever nature and howsoever arising in any of the services provided by other service providers (including, but not limited to, line failure) or in any international services or remote mail services or remote mail servers;
 - iv) the non-performance or unavailability, of whatever nature and howsoever arising, of external communications networks to which the Company Infrastructure is connected;
 - v) 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;
 - vi) any damage, contamination or corruption of any kind of the server or any of the Customer's data, material information, messages or other traffic howsoever occasioned;
 - vii) 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;

- 7.7 Except for the liabilities accepted by the Company under sub-clause 7.3 above, the Company's maximum aggregate liability for any breach of its contractual obligations or any tortious act or omission hereunder shall be limited to the greater of one hundred thousand pounds (£100,000) or one hundred percent (100%) of the annual Service Fees paid to the Company by the Customer for the year in which the claim is made.
- 7.8 Except in the case of any liability of the Company referred to in sub-clause 7.3, 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.

8 EQUIPMENT OF THE COMPANY

- 8.1 Any equipment and any software installed thereon ("the Equipment") provided by the Company to the Customer at the Customer's premises in connection with the provision of the SWIFT Services, shall be and remain the property of the Company.
- 8.2 The Customer shall use the Company Infrastructure and the Equipment strictly in accordance with any instructions for use provided by the Company, or by SWIFT.
- 8.3 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.
- 8.4 The Customer shall be responsible for ensuring that the Equipment is adequately insured.
- 8.5 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.
- 8.6 The Company shall be allowed all reasonable access required by the Company to deliver, install, inspect and maintain the Equipment.
- 8.7 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 access necessary to do so.

9 CONFIDENTIAL INFORMATION

- 9.1 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 pricing, services, transactional data, client information, payments, ideas, concepts, methods, processes, computer programs, any electronic information which is transmitted across the technical Company Infrastructure or the SWIFT Service, any information relating to the SWIFT Services or the SWIFT operations (including but not limited to the contents of messages passing through the SWIFT Services), SWIFT technical documentation, SWIFT security tokens and SWIFT network information (the "Information").
- 9.2 Each party agrees:
- 9.2.1 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;
- 9.2.2 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;
- 9.2.3 not to make copies of or reproduce in any form the Information;
- 9.2.4 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.
- 9.3 The Parties agree that the contents of this Agreement shall be treated as Information and accordingly pursuant to this clause 9 will not be disclosed to any other party, save that this Agreement, in whole or parts, may be disclosed to authorised officers of SWIFT as part of the Company maintaining their SWIFT accreditation for the provision of fully certified SWIFT Access Service.
- 9.4 Neither party shall have any obligations with respect to any Information which:
- 9.4.1 is or becomes publicly known, otherwise than as a consequence of a breach of the Agreement;
- 9.4.2 is disclosed as required by law or regulation;
- 9.4.3 is approved for release by written authorisation from the other party to this Agreement;
- 9.4.4 is independently developed by either party or its representatives or advisers.
- 9.5 All Information will remain the property of the party who developed or disclosed the Information and will be returned to the owner on termination of this Agreement.

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 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.

- 10.2 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 Services during the term of this Agreement infringes any intellectual property right of the said third party.
- 10.3 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.
- 10.4 Each Party's respective obligation under clause 10.2 and 10.3 respectively ("Defending Party"), shall not be effective unless the Customer under clause 10.2 or the Company under clause 10.3 (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 Claimant's infrastructure as defined in clause 10.2 and 10.3 respectively; (ii) make such Claimant'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.

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, on any anniversary of the Commencement Date 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.
- 11.2 In the event that this Agreement is terminated for any reason prior to the expiry of the Initial Term, the Customer shall pay to the Company immediately on demand all outstanding invoices that have been properly raised in accordance with this Agreement.
- 11.3 Without prejudice to any other remedies which the Company may have under this Agreement or at law, the Company shall be entitled to suspend the provision of the 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.
- 11.4 The termination of this Agreement, for whatever reason, shall not affect the rights of either of the parties:
- 11.4.1 that may have accrued before the termination of this Agreement; or
- 11.4.2 which expressly or by their nature are intended to survive the termination of this Agreement.
- 11.5 Upon termination or expiry of this Agreement the Customer will deliver to the Company all Equipment and Company Infrastructure, 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 SWIFT Access 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 The Customer its written consent and agrees that the Company may refer to the Customer as a client of the Company in any of its marketing material and refer to the type of services that the Company has provided. The Customer may also agree for the Company to publish and circulate any case study describing the Services supplied by the Company to the Customer (for use by the Company as a marketing tool). With prior written consent from the Customer, the Company may use any of the Customer's trademarks in the Company's marketing and publicity materials. The Customer's trademarks shall remain the exclusive property of the Customer and this Agreement does not entitle the Company to acquire any goodwill or other rights in the Customer's trademarks.
- 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 parties section on page 3 of this Agreement (or such other address or number as may have been notified) 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, strikes (of its own or other employees), 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.
- 13.5 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.
- 13.6 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.
- 13.7 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.
- 13.8 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.

14 Bacs

- 14.1 Insofar as any Services provided to Customer operate in conjunction with any application, test, or upgrade of systems associated with Vocalink Limited ("**Bacs**"), Bacs liability to the Customer or any third party shall be limited as follows:
- 14.1.1 Bacs shall have no liability to the Customer 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 or any third party arising from, or in relation to:
- (i) 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
 - (ii) the use of, inability to use, or reliance upon any application or upgrade (whether such application or upgrade becomes Bacs approved software or not).
 - (iii) Bacs granting (or refusing to grant), suspending or terminating an approval for any Bacs approved solution.
- 14.1.2 In addition Bacs shall have no liability to the Customer 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 or any third party arising from or in relation to the use of, or inability to use, or reliance upon:
- (i) the Bacs test environments; or
 - (ii) any Bacs materials in the development and testing of applications.
- 14.1.3 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 Customer or any third party, 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 any year.
- 14.1.4 Bacs shall not be liable to 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 Supplier in excess of the cap provided in Condition 7.7, or for any indirect, consequential or special loss or damage suffered by 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.
- 14.1.5 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.
- 14.1.6 Nothing in this Agreement shall operate to exclude or restrict Bacs liability for death or personal injury resulting from Bacs' negligence or fraud.
- 14.1.7 The Customer and any third party acknowledges and agrees that the limitations on, and exclusions of, Bacs' liability to the Customer and any third party are fair and reasonable in the context of the commercial relationship between the parties.
- 14.2 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.
- 14.3 This Clause 14 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 14.

ANNEX 1: SERVICE LEVEL AGREEMENT (SLA)

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

1 SERVICES AND SERVICE LEVELS

- 1.1 The Company shall provide the Services in accordance with this SLA.

2 SERVICE LEVELS AND REPORTING

- 2.1 The Company shall use all reasonable endeavours to maintain connectivity between the Company and the Customer for 99% of the time during the Operating Hours (as defined in clause 3.1 below). This percentage is to be calculated as an average taken over three (3) month periods.
- 2.2 The Company shall use all reasonable endeavours to maintain the availability of the Services 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.
- 2.3 The Company shall measure and monitor the availability of the Services in accordance with the Company Service Bureau Up-time Policy.
- 2.4 Upon request, the Company shall provide to the Customer a half-yearly report by e-mail, that details the Services interruptions and the extent to which this SLA have been met.

3 OPERATING HOURS

- 3.1 The Company shall use reasonable endeavours to provide connectivity to the Company Infrastructure and Services between the hours of 02.00 and 24.00, Monday to Friday GMT (or BST as applicable) (the "Operating Hours"). The two hour window of non connection will be used by the Company to carry out backup, archiving and general administrative activities related to the Services by Company personnel.
- 3.2 In the event that the Order Agreement specifies access to the Services within Asia/Pacific time zones, then the Company shall use reasonable endeavours to provide connectivity to the Company Infrastructure and Services between the hours of 21.30 and 19.30, Sunday to Friday GMT (or BST as applicable).
- 3.3 The Company shall use reasonable endeavours to provide connectivity to the Company Infrastructure and 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.
- 3.4 The Company may withdraw connectivity for the Services at any time after 18:00, Monday to Friday GMT (or BST as applicable) and 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 to ensure continued provision of the Services to the Customer during Operating Hours.
- 3.5 The Company may withdraw connectivity to the Services for the purposes of disaster recovery testing, which the Company shall use reasonable endeavours to carry-out on four (4) week-ends per year. The Company shall use reasonable endeavours to notify the Customer in advance of such withdrawal of connectivity.

4 CRYPTOGRAPHIC KEYS

- 4.1 The Customer's own personnel shall continue to be the SWIFT registered Security Officers (SOs). The Customer shall notify the Company of their designated Security Officers with full contact details.
- 4.2 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 SWIFT Services.
- 4.3 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.
- 4.4 The Customer's private PKI keys and certificates will be accessible only to authorised the 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.
- 4.5 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").
- 4.6 The initiation, modification, and termination of cryptographic secrets and arrangements by the Company will be performed according to strict procedures defined in the SBCKMP.
- 4.7 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 certificates.

5 SUPPORT SERVICES

- 5.1 In the event that the Customer requires the Company to provide Support Services to the Customer, the Customer shall contact the Company at the address and/or telephone number set out below, or such other address and/or telephone number as may be notified by the Company to the Customer from time to time:

Address: Bramah House
65-71 Bermondsey Street
London SE1 3XF
Telephone: +44 (0) 870 733 4210
Fax: +44 (0) 870 733 4211
E-mail: service.bureau@bottomline.com

5.2 The Company shall provide the Support Services between 08:00 to 18:00 hours GMT (or BST as applicable) Monday to Friday (excluding United Kingdom Bank and Public holidays).

5.3 Support Services shall be provided in accordance with the following:

5.3.1 The Company will log all Service Requests and Incidents placed with the Service Desk and provide a unique identifier number to the Customer.

5.3.2 The Company shall use reasonable endeavours to respond to all Service Requests and Incidents during Operating Hours and in accordance with the Priority Level Table shown below in clause 5.4 and in the case of Service Requests subject to accurate completion and execution by an authorised signatory of the appropriate Company request form by the Customer; and

5.3.3 The Company shall use reasonable endeavours to respond to all Priority Level one (1) Service Requests and Incidents outside of Operating Hours, within one (1) hour of the call being logged.

5.3.4 The Customer shall pay any fees for out of hours Support Services charged at the Company's then current hourly rate or part thereof, for the time during which the Company Service Desk is engaged on the telephone call with the Customer and in the execution of any required action as an outcome of the request.

5.4 The Company will use commercially reasonable endeavours to respond and resolve, or to provide a work around in respect of each Service Request and/or Incident reported by the Customer to the Service Desk during the Operating Hours in accordance with the Service Levels set out below:

Priority Level Table

Priority	Level	Incident Criteria	Response Time	Resolution Target
1	Critical	- Production environment down - Software is unavailable to all users on a continuous or near continuous basis - Problem causes a severe impact on business operations of Customer - Performance severely degraded - Incident management module unavailable to the majority of users	15 (fifteen) Minutes; keep Customer updated on status of the problem and resolution as reasonably practicable under the circumstances or otherwise as reasonably requested by Customer	The Company will continue to work on the problem until it is resolved or a workaround is provided and will use reasonable endeavours to provide a correction within 30 (thirty) minutes
2	High	- Production is impacted - Software is unavailable to several users on a continuous or near continuous or intermittent basis - One or more key tasks are disabled for all users - Problem causes a significant impact on business operations	15 (fifteen) minutes; keep Customer updated on status of the problem and resolution as reasonably practicable under the circumstances or otherwise as reasonably requested by Customer	The Company will use reasonable endeavours to provide: (i) a suitable workaround within 1 (one) hour & (ii) a correction within 1 (one) day .
3	Medium	- Production is impacted - Software is unavailable to a single user - Problem causes a minor impact on business operations of Customer - Workaround may be available	4 (four) hours	The Company will use reasonable endeavours to provide: (i) a suitable workaround within 1 (one) business day , & (ii) a correction within 5 (five) business days .
4	Low	- Causes little or no impact on production environment or business operations of Customer - Operational issue or problem	1 (One) business day	The Company will use reasonable endeavours to resolve problem or provide workaround within 20 (twenty) business days

5.5 In the event that an Incident of Priority Level one (1) cannot be resolved by telephone or email in accordance with the relevant service level specified above, then the Company shall procure that a suitably skilled Company representative attends the Customer's premises as soon as reasonably practicable.

5.6 The Company shall inform the Customer's nominated contact person:

5.6.1 in the event of any interruption to the Services which lasts for more than 30 (thirty) minutes from the time that the Company becomes aware of such interruption; and

5.6.2 in the event that the provision of the Services is to be moved to the Disaster Recovery Site.

6 SERVICE CONTINGENCY

6.1 In the event of disruption to the Services during the Support Service Operating Hours, the Company shall use all reasonable endeavours to resolve such disruption in accordance with the following service levels:

6.1.1 the Company shall use reasonable endeavours to provide the Services through the resilient and redundant Company Infrastructure components not later than fifteen (15) minutes after the disruption to the Services is reported by the Customer to the Company (where the interruption has a major impact for the Customer);

6.1.2 where the Company has failed to resolve the disruption to the Services in accordance with clause 6.1.1 above and save in the event that, in the Company's sole opinion, resolution of the disruption is likely to be made within the following one hundred and twenty (120) minutes, the Company shall commence preparation to switch the provision of the Services to the Disaster Recovery Site no later than 30 (thirty) minutes after the disruption to the Services is reported by the Customer to the Company;

6.1.3 where the Company has failed to resolve the disruption to the Services, the Company will activate the infrastructure at the Disaster Recovery Site not later than 90 (ninety) minutes after the Company starts to prepare to switch over to the Disaster Recovery Site;

6.1.4 the Company will resume the provision of the Services at the Disaster Recovery Site not later than one hundred and twenty (120) minutes after the Company starts to prepare to switch over to the Disaster Recovery Site.

6.1.5 the Company will implement the disaster recovery policy which provides for a separate, remote environment and a "warm standby" service. Production operations will be switched to this environment in the event of a prolonged Services interruption and will require Customer to re-connect to the Disaster Recovery environment.

6.2 In the event of disruption to the Services outside the Support Service Operating Hours, the Company shall use all reasonable endeavours to resolve such disruption in accordance with the following Service Levels:

6.2.1 the Company shall use reasonable endeavours to provide the Services through the resilient and redundant Company Infrastructure components not later than one hundred and thirty-five (135) minutes after the disruption to the Services is reported by the Customer to the Company (where the interruption has a major impact for the Customer);

6.2.2 where the Company has failed to resolve the disruption to the Company Service in accordance with clause 6.2.1 of this SLA, the Company shall: (i) commence preparation to switch the provision of the Services to the Disaster Recovery Site no later than one hundred and fifty (150) minutes after the disruption to the Services is reported by the Customer to the Company;

6.2.3 where the Company has failed to resolve the disruption to the Services, the Company will activate the infrastructure at the Disaster Recovery Site not later than two hundred and ten (210) minutes after the Company starts to prepare to switch over to the Disaster Recovery Site;

6.2.4 the Company will resume the provision of the Services at the Disaster Recovery Site not later than two hundred and forty (240) minutes after the Company starts to prepare to switch over to the Disaster Recovery Site.

6.3 In the event of disruption to the connectivity to Services during the Support Services Operating Hours, the Company shall use reasonable endeavours to resolve such disruption as follows:

6.3.1 monitor connectivity to the Services and alert the Customer of failures in connectivity;

6.3.2 procure that the Customer is able to use the Services by the alternate connection if specified in the Order Agreement;

6.3.3 the Company shall use reasonable endeavours to make available a suitably skilled contact person who has knowledge of the Customer's site and the implementation and use of Services where applicable to the Customer, who shall assist in locating the cause of the disruption.

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

Signed for and on behalf of the Company by the Company's duly authorised representative
Name:
Title:
Signature:
Date:

Signed for and on behalf of the Customer by the Customer's duly authorised representative
Name:
Title:
Signature:
Date: