

Customer Licence Agreement – Software Subscription (hosted)

These terms and conditions (“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 or the Partner (including the Order and any Partner terms referenced therein or attached thereto) irrespective of their date.

DEFINITIONS

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

“Company” means Bottomline Technologies Sàrl whose registered offices are at 53 Route de Malagnou, Geneva 1208, Switzerland.

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

“Customer Group Company(ies)” means any company belonging to the same group of companies to which the Customer belongs, where such company controls, is controlled by, or is under common control with the Customer (where “control” means having more than fifty percent (50%) voting securities in a company). For the avoidance of doubt joint ventures, partnerships and any other third parties are specifically excluded under this definition.

“Customer Infrastructure” means the Customer’s own hardware, software and communication lines required to link to the Partner Service.

“Effective Date” means the last date of signature by Partner or Customer of the initial Order to which this Agreement is attached; and for subsequent Orders signed pursuant to this Agreement it shall mean the last date of signature of such Order.

“Partner” means the Company’s authorised and appointed distributor of the Subscription Services in the territory in which the Customer is domiciled.

“Partner Service” means the hosted services provided by the Partner to the Customer for the transmission of financial messages in approved format.

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

“Order” means the Partner document including any Partner terms referenced therein or attached thereto, issued pursuant to this Agreement which specifies the Subscription Services and any other Partner 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.

“Renewal Period” has the meaning set out in clause 1.1.

“Security Monitoring Services” means Subscription Services which specifically enable the Customer to monitor and/or implement controls over security in connection with the Partner Service, including without limitation user behaviour monitoring and the Subscription Services marketed by the Company as “Payment Fraud for SWIFT”.

“Subscription Services” means the specific Company owned subscription based service(s) (including any software contained therein) specified in the Order and provided to the Customer via the Partner Service pursuant to this Agreement.

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

1. COMMENCEMENT AND TERM

1.1. This Agreement shall come in to force 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 fees specified in the Order to the Partner.

2. RESPONSIBILITIES OF THE CUSTOMER

2.1. The Customer shall:

2.1.1. provide and maintain the Customer Infrastructure;

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

2.1.3. comply with all reasonable instructions given by the Partner which relate to the provision of the Subscription Services;

2.1.4. ensure that the security features, if any, to access the Subscription Services remain under its control and to procure that access is restricted to authorised users only;

2.2. The Customer undertakes to ensure that its employees or any authorised third party(ies) shall not abuse or make any fraudulent use of the Subscription Services which may include without limitation:

2.2.1. any illegal or unlawful activity;

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

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

2.2.4. the circumvention of copy-protection mechanisms;

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

2.3.6. using the service in such a manner as to unreasonably interfere with the use of or access to the Subscription Services by any other Partner customer or authorised person.

3. WARRANTIES

- 3.1. The Company warrants that the Subscription Services will materially function in accordance with their standard specification.
- 3.2. 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 user.
- 3.3. The Customer warrants that it is solely responsible for and liable in respect of all access to and use of the Subscription Services through the Customer's login and password and shall ensure that private login names, passwords and other confidential information remain confidential.
- 3.6. 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 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.
- 3.7. Without prejudice to the generality of clause 3.6 above, the Company does not warrant or guarantee that (i) information transmitted or made available to the Customer by way of the Subscription Services that was not originated by the Company, or (ii) information that was originated by the Customer, SWIFT or any other third party that the was amended as part of the operation of the Subscription Services:
 - 3.7.1. will be suitable for any particular purpose; or
 - 3.7.2. will be free of any inaccuracies of any kind or operate and be available without interruption.
- 3.8. The warranties given by the Company in this clause 3 are made only to the Customer, and the Company will have no liability to any third party with respect to the Subscription Services as a result of such warranties. Except as provided in this clause 3, the Company provides the Subscription Services "as is". The Company does not warrant that the Subscription Services will correctly detect and/or identify all security threats. The foregoing disclaimers will apply even if any warranty provided under this Agreement fails of its essential purpose.

4. REMEDIES AND LIMITATION OF LIABILITY

- 4.1. In this Clause 4 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.
- 4.2. 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.
- 4.3. 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.
- 4.4. Subject to Clause 4.3, 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 4.4:
 - 4.4.1. 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 US\$1,000,000.
 - 4.4.2. 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 4.4.1 shall in no event exceed US\$100,000.
- 4.5. Neither party shall be liable to the other for the following loss or damage however caused and even if foreseeable by a party:
 - 4.5.1. economic loss, which will include loss of profits, business, revenue, goodwill or anticipated savings;
 - 4.5.2. 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.
- 4.6. The Company shall not be liable to the Customer for the following loss or damage however caused and even if foreseeable arising from:
 - 4.6.1. 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, any data transmitted or processed using the Subscription Services 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;
 - 4.6.2. any downtime, outage, interruption in or unavailability of the Subscription Services or Partner Service as result of or attributable to any of the following causes:
 - 4.6.2.1. any breakdown of whatever nature and howsoever arising in any of the services provided by other service providers or in any international services, remote mail services or remote mail servers; and
 - 4.6.2.2. the non-performance or unavailability, of whatever nature and howsoever arising, of external communications networks;
 - 4.6.3. the non-performance or unavailability of the Subscription Services due to the unavailability or any failures within the world-wide web;
 - 4.6.4. 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 Subscription Services due to gross negligence or breach of this Agreement by the Company;

- 4.6.5. 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 Subscription Services. For the avoidance of doubt, the Company shall not be liable for damage, contamination or corruption of any kind of the Customer's data, material information, messages or other traffic unless due to its gross negligence or breach of this Agreement;
- 4.6.6. 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.
- 4.6.7. 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, 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.
- 4.8. Except in the case of any liability referred to in sub-clause 4.3, 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.
- 4.9 Customer acknowledges and agrees that:
- 4.9.1 effective security threat detection and management are dependent on a multi-layered, multi-faceted combination of software and hardware components, deployed and managed in accordance with appropriate policies and procedures consistently applied. No individual element in such a system, including the Subscription Services that are the subject of this Agreement, is alone sufficient to detect and prevent all security threats.
- 4.9.2 the Subscription Services have or will have been, prior to production use, reviewed and tested by the Customer and meet the Customer's business and operational needs; and
- 4.9.3 the allocation of liability set forth in this Agreement fairly reflects the economic circumstances and risks that the parties are willing to undertake in view of the amounts paid or payable for the Subscription Services specified herein.
- 4.9.4 the Customer shall be solely responsible for any use of the Security Monitoring Services, including any data and other output generated therefrom, and for verifying any data or output resulting from use of the Security Monitoring Services. Customer acknowledges that the quality of such data and output and the result of using the Security Monitoring Services are dependent on the data provided by the Customer. The Customer further acknowledges and agrees that the Security Monitoring Services do not provide advice or recommendations for correct action, but rather solely generate output directly reflecting the data provided by the Customer or arising from the Customer's use of the Services.

5. OWNERSHIP

- 5.1. Customer acknowledges that all copyrights, patents, trade secrets and other rights, title and interest in the Subscription Services in whole or in part and all copies thereof, are the sole property of the Company or its related entities or third party licensors. Customer shall gain no right, title or interest in the Subscription Services by virtue of this Agreement other than the non-exclusive right of use granted herein. Without limiting the foregoing, Customer specifically acknowledges Company's exclusive rights to ownership in any copy, modification, translation, enhancement, adaptation, or derivation of the Subscription Services.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.2. 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 the Subscription Services during the term of this Agreement infringes any intellectual property right of the said third party.
- 6.4. The company's obligation under clause 6.1 shall not be effective unless the Customer gives to the Company 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 Customer's full co-operation, to the Company. The Company may then at its own expense: (i) procure for the Customer the right to continue to use the Subscription Services; (ii) render the Subscription Services non-infringing; or (iii) where (i) or (ii) are not available to the Company on commercially reasonable terms, the Company may terminate this Agreement and via the Partner refund a portion of any fees paid which are proportional to any un-used period then remaining.
- 6.5. Company shall have no liability for any claim based on: (i) Customer's use of the Subscription Services other than in accordance with the rights granted under this Agreement; (ii) Customer's combination of the Subscription Services with any other equipment or software not provided by Company, where such infringement would not have occurred but for such combination; or (iii) intellectual property rights owned by Customer or any of its affiliates.
- 6.6. Subject to the terms and conditions contained in this Agreement and Customer's payment of applicable fees specified in an Order, the Company hereby grants to the Customer a non-exclusive, non-transferable, revocable licence without rights to sublicense, for so long as this Agreement remains in force for the provision of Subscription Services, to use: (i) the Subscription Services for the purpose as set forth in the applicable Company documentation and according to any licence and usage rights and limitations set forth in the related Order in accordance with clauses 6.6 through 6.8.
- 6.7. Customer will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Subscription Services, except only when and to the limited extent that applicable law expressly permits such activity, irrespective of the limitations contained herein.
- 6.8. The Subscription Services are licensed in accordance with the relevant Order and may be used by the Customer for its day to day business purposes which shall include where required by the Customer the provision of services to Customer Group Companies. Notwithstanding the foregoing the Customer warrants that it shall not permit any direct access to the Subscription Services by any Customer Group Companies or other third parties.
- 6.9. This Clause 6 states Customer's sole remedy and Company's exclusive liability in the event that Customer's use of any Subscription Services, provided under this Agreement infringes the intellectual property rights of any third party.

7. TERMINATION

7.1 Without prejudice to any other remedies which the parties may otherwise have under this Agreement:

7.1.1. the Partner shall be entitled to terminate this Agreement by written notice to the Customer 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; and

7.1.2. the Customer shall be entitled to terminate this Agreement and the Subscription Services by written notice to the Partner within 10 days of the commencement of the respective quarterly coverage period (e.g., you must provide notice by July 10, to cancel the Agreement and Subscription Services with effect from July 1) ("Termination Date"). To the extent Customer elects to terminate this Agreement and the Subscription Services for any reason, Partner will refund to Customer any prepaid subscription fees for periods extending beyond the Termination Date.

7.2. 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:

7.2.2. by immediate notice if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if a receiver 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);

7.2.3. by immediate notice if the other commits a breach of any term of this Agreement and fails to remedy such breach within thirty (30) calendar days after receiving notice from the other party requiring it to do so;

7.3. 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 Subscription 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. Notwithstanding any other term of this Agreement, the Company may terminate without notice, or indefinitely suspend, this Agreement or any contractual provision herein as required to fulfil its obligations to comply with sanctions regulations.

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

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

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

8. MISCELLANEOUS

8.1. 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.

8.2. 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.

8.4. Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by registered post to the address of the other party set out in the Order (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 by hand) at the time of delivery (if sent by post) upon signed receipt.

8.5. 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.

8.6. 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.

8.7. 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.

8.8. 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.

8.9. No person who is not a party to this Agreement shall have no rights 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.

8.10. This Agreement shall be governed by and construed in accordance with Swiss law (without its conflicts of law principles) and the parties hereto agree to submit to the exclusive jurisdiction of the ordinary courts of the canton of Geneva.