



**SWIFT**  
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**GENERAL**  
**TERMS AND CONDITIONS**

**24 October 2008**

These terms and conditions apply to the provision or use of the SWIFT Services and Products each time the SWIFT Contractual Arrangements refer to these General Terms and Conditions.

These General Terms and Conditions must be read in conjunction with any relevant SWIFT policies, Service Descriptions or other relevant Service Documentation.

The latest version of these General Terms and Conditions is available on [www.swift.com](http://www.swift.com) > About SWIFT > Legal > SWIFT contracts

S.W.I.F.T. SCRL, Limited Liability Cooperative Society ("SWIFT")  
Avenue Adèle, 1 – 1310 La Hulpe – Belgium  
Tel. +32 2 655 31 11 - Telefax +32 2 655 32 26 – BIC SWHQBEBB - Telex 26532 SWBRU B  
RPM Nivelles - VAT BE 0413.330.856  
Bank account: ING 310-1197300-18 – IBAN BE50 31011973 0018 – BIC BBRUBEBB

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## 1. DEFINED TERMS

Unless inconsistent with the context or otherwise specified, capitalised terms have the meaning set out below or in the relevant Service Description:

- 1.1 **“Accompanying Software”** has the meaning given in clause 4.6.8.8;
- 1.2 **“Authorised Third Parties”** has the meaning given in clause 4.6.1;
- 1.3 A **“CUG”** or **“Closed User Group”** is a subset of Customers grouped by their use of SWIFT Services and Products. For example, Users using SWIFT Services and Products to access a Service participate in a market infrastructure CUG or in a member-administered CUG. CUGs can also be used by SWIFT to manage the exchange of specific messages between Users or the subscription to Solutions (for example, Bulk Payments, Funds or Accord);
- 1.4 **“Customer”** is a User, a Partner or a Service Bureau that has subscribed to one or more SWIFT Services and Products. A Service Administrator is also a Customer;
- 1.5 **“Force Majeure”** has the meaning given in clause 8.8;
- 1.6 **“Partner”** means an organisation that has been admitted under the SWIFT Partner Programme to promote use of the SWIFT Services and Products, or to provide applications or services to Users. There are 4 main categories of Partners: regional partner, global partner, solution provider, and registered vendor.
- 1.7 **“Permitted Purpose”** means, in relation to Software, the purpose for which the Customer is permitted to use that Software, as more particularly described in the Service Description;
- 1.8 **“Regulatory Authority”** means any regulatory or governmental authority, body or agency having jurisdiction over SWIFT, a Customer, or the provision or use of any part of the SWIFT Services or Products;
- 1.9 **“Service”** means a third-party application service (for example, clearing and settlement services, or cash management and reporting services), that is accessed by Customers participating in the relevant CUG(s) using FIN, InterAct, FileAct, Browse, or other SWIFT Services and Products;
- 1.10 **“Service Administrator”** the User that approves the participation of the Customers in the relevant CUG(s) to access a Service, and defines the service parameters for the provision of SWIFT Services and Products within such CUG(s);
- 1.11 **“Service Bureau”** means a User or non-User organisation that has been admitted under the Indirect Connectivity Programme as an authorised service bureau to provide services to Users regarding the day-to-day operation of their SWIFT connection. The services offered by Service Bureaux typically include hosting or operating SWIFT connectivity components, logging on, or managing sessions or security for SWIFT users."

- 1.12 **“Service Description”** means the document(s) issued by SWIFT from time to time describing the features and functions of the SWIFT Services and Products;
- 1.13 **“Service Documentation”** means the documents and other publications issued by SWIFT from time to time providing the terms and conditions governing the provision and use of the SWIFT Services and Products. The Service Documentation consists in particular of the SWIFT Contractual Arrangements, these General Terms and Conditions, the Indirect Connectivity Policy, the Data Retrieval Policy and the Personal Data Protection Policy, the Service Descriptions, the SWIFT On-line Support service information on [www.swift.com](http://www.swift.com) and any other document or publication to the extent referred to therein;
- 1.14 **“Software”** means any software, materials and related documentation made available by SWIFT to the Customer from time to time. However, Software does not include any Accompanying Software;
- 1.15 **“SWIFT”** means the Society for Worldwide Interbank Financial Telecommunication SCRL, Avenue Adèle 1, 1310, La Hulpe, Belgium (RPM Nivelles - VAT BE 0413.330.856);
- 1.16 **“SWIFT Contractual Arrangements”** means, when referred to in these General Terms and Conditions, the relevant subscription and order form, undertaking, or other contractual arrangement issued by SWIFT and duly executed by the Customer for the provision and use of the SWIFT Services and Products. The SWIFT Contractual Arrangements include the agreement between SWIFT and the Service Administrator relating to the implementation and operation of SWIFT Services and Products in a Closed User Group to support access to a Service;
- 1.17 **“SWIFT Group”** means SWIFT, its branches and majority-owned subsidiaries world-wide;
- 1.18 **“User”** means an organisation that has been admitted under the SWIFT by-laws as an authorised user of the SWIFT Services or Products;
- 1.19 **“SWIFT Services and Products”** means the SWIFT service(s) or product(s) concerned, as more particularly described in the Service Description;
- 1.20 **“Third-Party Licence Terms”** has the meaning given in clause 4.6.8.7.

## 2. INTERPRETATION

- 2.1 Any reference to a document or form issued by SWIFT relating to the provision of the SWIFT Services and Products shall, unless the context requires otherwise, be construed as a reference to the latest version available of such a document or form.
- 2.2 Any reference to a person shall, unless the context requires otherwise, be construed as a reference to that person and any other person for which he is responsible, including his employees, directors, agents and subcontractors.

- 2.3 Headings have been included for convenience only and will not be used in construing any provision.
- 2.4 General principles or words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples.
- 2.5 The words "such as", "in particular", "for example", "typically", "include" and "including" are to be construed without limitation.
- 2.6 Subject to clause 2.7, the following order of precedence shall apply in the event of any conflict or inconsistency between these General Terms and Conditions and other Service Documentation:
- the SWIFT Contractual Arrangements;
  - these General Terms and Conditions;
  - SWIFT policies applicable to the provision or use of the SWIFT Services and Products;
  - the Service Descriptions
  - any other terms and conditions applicable to the provision or use of the SWIFT Services and Products set out in other Service Documentation (typically, in the installation or, more generally, user guides).
- 2.7 To the extent that these General Terms and Conditions expressly allow other Service Documentation to vary these General Terms and Conditions, such other documents shall prevail over any contrary terms and conditions set out in these General Terms and Conditions.
- 2.8 These General Terms and Conditions govern the arrangements between SWIFT and the Customers only. To the extent that the Service Documentation includes provisions that are also intended to govern User-to-User arrangements, these General Terms and Conditions will not apply thereto.

### **3. SERVICE DOCUMENTATION - ELECTRONIC RECORDS AND SIGNATURES**

- 3.1 SWIFT may (or may permit Customers or third parties to) translate the Service Documentation from English into other languages. However, only the official, English-language version of the Service Documentation published by SWIFT is valid.
- 3.2 Neither party will contest the validity of electronic signatures used, or electronic documents exchanged, in connection with the subscription to or use of the SWIFT Services and Products in virtue of the fact that they are in electronic form.
- 3.3 SWIFT reserves the right to make the Service Documentation available to the Customer in such form or medium as it deems appropriate, including through electronic means such as the SWIFT network or Internet.
- 3.4 Neither party will contest the admissibility of documents or records simply because they are in electronic form.

- 3.5 Each party accepts that records and documents in non-paper form will have the same force as paper copies (if any), and that it will be legally bound by them as if in writing.

## **4. SWIFT SERVICES AND PRODUCTS**

### **4.1 General Condition of Use**

The Customer acknowledges that the access to SWIFT Services and Products is subject to certain eligibility criteria and other conditions.

As a general principle, the Customer must be, as the case may be, a User, a Partner, or a Service Bureau to subscribe to and use SWIFT Services and Products.

Also, use of SWIFT messaging or Solutions in a pilot, test-and-training, or live environment is reserved to Users. Partners and Service Bureaux can be activated in the integration testbed environment only.

The Customer must refer to the Service Documentation to ascertain those SWIFT Services and Products which are available to it.

### **4.2 Acceptance of the SWIFT Contractual Arrangements**

No SWIFT Contractual Arrangement shall be binding on SWIFT unless accepted by SWIFT.

Acceptance will be effective upon SWIFT's confirmation of the Customer's subscription to SWIFT Services and Products or upon SWIFT's signature, as applicable.

SWIFT reserves the right to confirm the Customer's subscription to SWIFT Services and Products in such form or medium as it deems appropriate, including through electronic means such as the SWIFT network or Internet.

### **4.3 SWIFT's obligation to provide the SWIFT Services and Products**

SWIFT will use all commercially reasonable efforts to provide the SWIFT Services and Products in all material respects in accordance with the Service Description.

Where the SWIFT Services and Products or the Service Documentation are to be downloaded by the Customer, the Customer acknowledges and agrees that any obligation on SWIFT to make them available to the Customer is discharged once SWIFT has made them available on the relevant site in a downloadable format.

Where the SWIFT Services and Products are to be shipped, SWIFT accepts responsibility for loss or damage to the SWIFT Services and Products until made available to the Customer.

### **4.4 Suspension of the SWIFT Services and Products**

SWIFT may suspend the provision of the SWIFT Services and Products at any time in whole or in part (typically, during announced downtime windows):

- in order to perform or allow routine maintenance of the SWIFT Services and Products; or

- in the event that SWIFT needs to upgrade or otherwise change the provision of the SWIFT Services and Products.

SWIFT may also suspend the provision of the SWIFT Services and Products at any time in whole or in part:

- for purposes of security or proper performance;
- to comply with an order, instruction or request of a Regulatory Authority; or
- in case of a material default of the Customer or the Service Administrator concerned.

SWIFT may further suspend the provision of the SWIFT Services and Products at any time in whole or in part if SWIFT reasonably determines, based on evidence available, that the access to or use of the SWIFT Services and Products by the Customer has adversely affected, or may adversely affect, the security, reliability and/or resiliency of the SWIFT Services and Products or, more generally, SWIFT's reputation, brand, or goodwill.

In case of any such suspension, SWIFT shall give the Customer concerned reasonable advance written notice or, in an emergency, as much advance notice as possible.

For the purposes of this clause, SWIFT may notify the Customer by various means, including a message on the SWIFT website or e-mail.

SWIFT shall limit any suspension of the provision of the SWIFT Services and Products pursuant to this sub-clause as reasonably necessary in the circumstances.

#### 4.5 Changes

4.5.1 SWIFT reserves the right to change the SWIFT Services and Products and the Service Documentation (excluding the SWIFT Contractual Arrangements) with advance notice (typically, as per the SWIFTNet and Alliance Release Policy). Changes to the SWIFT Services and Products are announced in the SWIFT release timeline, or through ad hoc communications to the Customer(s) concerned.

4.5.2 If the Customer objects to any change, it may, subject to clause 4.5.3 and as its sole and exclusive right and remedy, terminate the provision of the affected SWIFT Services and Products in accordance with the terms of clause 9. The Customer must however give SWIFT written notice thereof within 1 month after the announcement of the change. Any such termination is also subject to the Customer demonstrating that the change materially adversely affects the possession or use of the SWIFT Services and Products.

4.5.3 SWIFT shall in any event have the right at any time upon reasonable advance notice (or, in an emergency, as much advance notice as possible) to make changes to the SWIFT Services and Products and the Service Documentation which:

- are required for purposes of security of the SWIFT Services and Products; or

- are required or requested by any Regulatory Authority.

In such circumstances the right of termination in clause 4.5.2 shall not apply but SWIFT and the Customer (as the case may be) shall use all commercially reasonable efforts to limit any adverse impact on the overall performance of the SWIFT Services and Products that may be caused by that change.

#### 4.6 General Customer Responsibilities

##### 4.6.1 General Obligations

The Customer must use only those releases or patches of the SWIFT Services and Products currently supported by SWIFT.

For more information, the Customer must consult the letter accompanying the release or patch of the SWIFT Services and Products and, more generally, the SWIFT release timeline.

The Customer is also solely responsible for the use made of the SWIFT Services and Products, such use being at its sole risk.

The Customer must comply with the Service Documentation and any instructions or guidelines in force given by or for SWIFT regarding the provision or use of the SWIFT Services and Products. The Customer must verify that it accesses the latest available version of the Service Documentation and obtains the latest available information relating to the provision and use of the SWIFT Services and Products typically by consulting [www.swift.com](http://www.swift.com) on a regular basis.

Except where expressly provided otherwise in the Service Documentation, the Customer acknowledges that the right to possess or use (as the case may be) SWIFT Services and Products is personal. Consequently, the Customer must not allow any third parties access to the SWIFT Services and Products except for:

- members of its staff or other persons for which it is responsible who need to access the SWIFT Services and Products on behalf of the Customer; or
- any other third parties as may be expressly permitted in the Service Documentation, such as a Service Bureau selected by the Customer in accordance with the Indirect Connectivity Policy.

In all cases, the Customer must cause any such third parties ("Authorised Third Parties") to possess or use (as appropriate) the SWIFT Services and Products only for its own business operations, or those of other Customers sharing the same SWIFT connection.

Furthermore, the Customer must grant Authorised Third Parties no greater rights than are granted to it or, if different, the Customer is permitted to grant to them under the Service Documentation

Finally, the Customer must ensure that Authorised Third Parties only access or use the SWIFT Services and Products in accordance with terms and conditions no less

stringent than those applicable under the Service Documentation to the Customer or, if different, to them.

#### 4.6.2 Obligations in case of Problems

Without prejudice to the generality of the foregoing, the Customer must use all commercially reasonable effort to:

- notify SWIFT's support centre promptly of problems relating to the provision of the SWIFT Services and Products;
- co-operate with and assist SWIFT in identifying, investigating and resolving any such problem and, in particular, follow any guidelines or other directions in force given by or for SWIFT;
- promptly correct any problem if it is the Customer's responsibility to do so, and notify SWIFT when it has been resolved;
- respond correctly and promptly to any recovery/fallback procedures initiated, or actions requested by, SWIFT to eliminate a problem relating to the provision of the SWIFT Services and Products, and revert to normal operation conditions when the problem is resolved;
- notify SWIFT promptly if it becomes aware of any breach or attempted breach of security which could affect the confidentiality, integrity or availability of the SWIFT Services and Products or of any unauthorised use of the SWIFT Services and Products; and
- mitigate any loss or damage that may arise in connection with the provision of the SWIFT Services and Products.

#### 4.6.3 Data Protection Obligations

SWIFT processes personal data collected by SWIFT for purposes relating to the provision of the SWIFT Services and Products or relating to SWIFT governance (for example, contact details of Customer employees or security officers), or collected by the Customer and supplied to SWIFT as part of its use of the SWIFT Services and Products (for example, personal data contained in messages or files that the Customer sends, or in PKI certificates that the Customer requests SWIFT to issue).

The rights and obligations of the Parties in those two contexts are as set out in the SWIFT Personal Data Protection Policy. Customers can find the latest version of this document at [www.swift.com](http://www.swift.com) > About SWIFT > Legal.

#### 4.6.4 Data Security Obligations

The Customer agrees that it must ensure that the confidentiality, integrity and availability of data (such as traffic, message and configuration data) are maintained at all times on its SWIFT systems and on that segment of its SWIFT connection under its responsibility.

In particular, the Customer must ensure that only authorised personnel have physical and logical access to its SWIFT systems and connection, must install state-of-the-art virus scanning software and must operate backup procedures and handle backup media according to security practices no less secure than those applied to its SWIFT systems and connection.

The Customer must also ensure that its operational environment has been configured for increased resilience so as to minimize any downtime in the event of failure of its primary systems or connection, based in particular on recommendations for increased resiliency issued by SWIFT from time to time.

#### 4.6.5 Audit, Access and Assistance Obligations

The Customer must on prior written request by SWIFT promptly provide SWIFT with:

- written evidence of information reasonably requested by SWIFT relating to its use, or that of Authorised Third Parties of the SWIFT Services and Products, including the number of copies of Software made by the Customer and their location together with similar details of all copies distributed to or made by Authorised Third Parties; and
- reasonable access (in person or otherwise) to all relevant locations in order that SWIFT can check its use and any written evidence provided pursuant to the foregoing. While present at any such location, SWIFT shall comply with the Customer's reasonable security policies and use all commercially reasonable efforts to minimize any disruption of Customer's operations. The Customer must also make available any facilities, information, assistance and other services which are reasonably required by SWIFT in this regard.

#### 4.6.6 Compliance with Industry Practice and Applicable Laws and Regulations

In using the SWIFT Services and Products and, more generally, conducting its business, the Customer must always exercise due diligence and reasonable judgement and must comply with good industry practice and all relevant laws and regulations and third-party rights.

In particular, the Customer must seek all necessary or advisable consents and authorisations in order to ensure that no laws, regulations or third-party rights are violated, including banking, money laundering, terrorist financing, competition, and data transmission laws and regulations.

The Customer must also comply with all relevant laws and regulations regarding the export, import and use of any technology or materials (including cryptographic technology and materials) comprised in or relating to the provision and use of the SWIFT Services and Products.

In particular, the Customer must not export or import the SWIFT Services and Products without all appropriate governmental licences (if any) having first been obtained.

Although in providing the SWIFT Services and Products SWIFT may offer facilities that enable the Customer to increase the reliability and security of its operations, such facilities must not be regarded as a substitute for compliance with good industry practice or any obligations or duties that may apply to the Customer in the course of its operations.

#### 4.6.7 Compliance with Operating Requirements – Mandatory Use of Qualified Interface

The Customer must ensure that it complies with all operating requirements for the provision of the SWIFT Services and Products.

In particular, the Customer must acquire, install, configure, use and as appropriate maintain suitable hardware, software and other equipment, facilities and services (whether sourced from SWIFT or a third party) which are necessary or advisable when using the SWIFT Services and Products as specified in the Service Documentation.

Where applicable (typically, in the case of a SWIFTNet FIN interface, SWIFTNet RMA interface or SWIFTNet Communication interface), the Customer must also make sure that it uses a qualified interface (for more information about the SWIFT interface qualification programme and qualified interfaces, whether supplied by SWIFT or a third party, see [www.swift.com](http://www.swift.com) > Solutions > Partner Programme > SWIFTNet Interfaces Qualification).

#### 4.6.8 Software Licence Obligations

Where the SWIFT Services and Products include the provision of Software the following licence terms shall apply:

4.6.8.1 In accordance with these General Terms and Conditions and any specific licence terms set out in the Service Documentation, SWIFT grants to the Customer a non-exclusive and non-transferable right to use the Software (and, where expressly permitted, to distribute it) for the Permitted Purpose.

4.6.8.2 Except to the extent expressly permitted by SWIFT, the Customer must not, nor authorise others to:

- modify, enhance or otherwise change the Software, or prepare derivative works based upon the Software;
- translate, decompile, disassemble, reverse-engineer or otherwise re-create the Software or determine its source code (except to the extent expressly permitted by applicable law);
- rent, lease, sell, sub-license, distribute to or allow access to or otherwise provide or transfer the Software to third parties, except to members of its staff or other persons under its responsibility and control, who need to use the Software on behalf of the Customer or except as otherwise provided under clause 4.6.1;
- merge all or any part of the Software with another program;
- reproduce the Software; or

- remove, alter, cover, obscure or cancel from view any copyright or other notices of proprietary rights, marks or legends appearing on the physical medium or contained in the Software, and the Customer will reproduce and include the same on any permitted copy.

4.6.8.3 Acceptance of the Software shall take place ninety (90) days after delivery.

If the Customer however demonstrates within that period of time that the Software does not perform in all material respects in accordance with the Service Description, and if SWIFT is unable for whatever reason to implement a reasonably satisfactory remedy to the fault or defect within a reasonable time period considering the nature of the fault or defect, the Customer shall be entitled, as its sole and exclusive right and remedy, to a refund by SWIFT of all charges and fees that have been paid by the Customer in respect of the faulty or defective Software and the SWIFT Contractual Arrangements in respect thereof shall then terminate.

4.6.8.4 Unless otherwise agreed with SWIFT, the installation of the Software is the sole responsibility of the Customer. The Customer must only install the Software at the site(s) notified by themselves and agreed with SWIFT. Any change to such site(s) requires SWIFT's prior written consent (which will not be unreasonably withheld nor delayed).

4.6.8.5 Where reasonably necessary or as otherwise expressly provided by applicable law, the Customer may make a copy of the Software for the purposes of back-up and disaster recovery.

4.6.8.6 To ensure that it uses those releases or patches of the Software currently supported by SWIFT, the Customer must in particular:

- subscribe to the support and maintenance services for the Software; and
- install all new releases or patches of the Software, and remove preceding releases or patches of the Software, in due time.

For more information, the Customer must consult the letter accompanying the release or patch of the Software and, more generally, the SWIFT release timeline.

4.6.8.7 The Customer acknowledges that the Software may include software in which the intellectual property rights may belong to a third party, as documented in the Service Description, and which SWIFT is authorised to sub-license to the Customer.

Installation and use of this third-party software may be subject to the Customer agreeing to additional licence terms imposed by the third-party licensor ("Third-Party Licence Terms"), as notified by SWIFT (for example, which are set out in "on-screen" or in "click wrap" terms and conditions available to the Customer).

Whilst SWIFT will use commercially reasonable efforts to ensure that the Third-Party Licence Terms are consistent

with the Service Documentation, in the event of any conflict, the Third-Party Licence Terms shall prevail.

Nothing in the Service Documentation shall oblige a third-party licensor itself to provide support and maintenance to the Customer.

If the Customer objects to any Third Party Licence Terms, it may, as its sole and exclusive right and remedy, terminate the provision of the affected Software in accordance with the terms of clause 9. The Customer must however give SWIFT written notice thereof within 1 month after the notification of the Third-Party Licence Terms. Any such termination is also subject to the Customer demonstrating that the Third-Party Licence Terms materially adversely affect the possession or use of the Software.

4.6.8.8 Without prejudice to clause 4.6.7, SWIFT may supply additional software ("Accompanying Software"), as documented in the Service Description, for use in conjunction with the Software. SWIFT takes no responsibility for the installation or use of the Accompanying Software. Therefore, the Customer must obtain all appropriate licences before installing or using the Accompanying Software.

#### 4.6.9 Indemnity Obligation

The Customer must indemnify and keep SWIFT fully and effectively indemnified against any and all actions, liabilities, claims, demands, losses, damages, proceedings, costs or expenses (including reasonable legal fees, costs and expenses) suffered or incurred by SWIFT as a result of any failure by the Customer to comply with its obligations under this clause 4.6, except to the extent that SWIFT is responsible for such liability.

### 5. WARRANTIES

- 5.1 SWIFT shall provide the SWIFT Services and Products using care and skill consistent with good industry practice.
- 5.2 Subject to clause 6, and unless it has notified the Customer otherwise in writing, SWIFT warrants that it is not aware that the possession or use of any of the SWIFT Services and Products by the Customer as permitted by SWIFT infringes the intellectual property rights of any third party.
- 5.3 Without prejudice to any other provision of these General Terms and Conditions, no warranty is given by SWIFT that the SWIFT Services and Products shall be uninterrupted or error free, or that all defects will be corrected.
- 5.4 Without prejudice to the foregoing, and except to the extent prohibited by applicable law, SWIFT does not give and specifically excludes and disclaims any warranty of any kind, whether express or implied, statutory or otherwise, with respect to the provision of the SWIFT Services and Products, including (without limitation) ANY WARRANTY AS TO THE CONDITION, QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR PURPOSE OF

THE SWIFT SERVICES AND PRODUCTS OR ANY PART OF THEM.

### 6. INTELLECTUAL PROPERTY RIGHTS INDEMNIFICATION

6.1 Any and all rights, including title, ownership rights, copyright, trademarks, patents, and any other intellectual property rights of whatever nature, in the SWIFT Services and Products and any materials developed or supplied in connection with them including any associated processes or any derivative works, will remain the sole and exclusive property of SWIFT or its licensors.

No rights are granted by SWIFT in respect of the SWIFT Services and Products other than those expressly granted in the Service Documentation.

6.2 If a third party ever makes a bona fide claim that the possession or use of any of the SWIFT Services and Products by the Customer as permitted by SWIFT under the SWIFT Contractual Arrangements infringes its patent, copyright, or any similar intellectual property right, SWIFT will indemnify the Customer against that claim at SWIFT's expense by paying:

- any reasonable legal fees incurred by the Customer until control over the defence and settlement of any such claim has been handed over to SWIFT; and
- any damages that a court awards against the Customer if any such claim is upheld;

provided that the Customer (i) notifies SWIFT promptly in writing of any such claim; (ii) does nothing to jeopardise or prejudice SWIFT's defence and settlement of any such claim; and (iii) promptly provides that SWIFT has sole control over the defence and settlement of any such claim.

6.3 If any of the SWIFT Services and Products, in whole or in part, is held to constitute an infringement of intellectual property rights of third parties, or their provision or use is enjoined or prevented, in whole or in part, by a court order, SWIFT may, at its reasonable discretion and expense, use all commercially reasonable efforts either to:

- procure for the Customer the right to continue possessing or using (as the case may be) the SWIFT Services and Products; or
- modify, replace or amend the SWIFT Services and Products so that they no longer constitute an infringement, in which case the Customer shall substitute such version of the SWIFT Services and Products at the earliest opportunity after it has been made available.

6.4 If, despite having used all commercially reasonable efforts, SWIFT is unable to secure either of the above options in clause 6.3, SWIFT will have the right to terminate the provision of the affected SWIFT Services and Products to the Customer without any further liability or charge except that the one-time charge(s) (if any) paid by the Customer for such SWIFT Services and Products shall be refunded.

6.5 This clause 6 states the sole and exclusive rights and remedies of the Customer concerning the infringement of rights of third parties, or allegations of infringement, or breach of clause 5.2. Any right or remedy of the Customer under this clause 6 is subject to clause 8.

## 7. CHARGES AND FEES

The Customer must pay to SWIFT all charges and fees applicable to it for and in connection with the implementation and provision of the SWIFT Services and Products. These charges and fees are as notified by SWIFT to the Customer from time to time. Equally, the terms and conditions relating to invoicing by SWIFT and payment by the Customer are as notified by SWIFT to the Customer from time to time.

## 8. RESPONSIBILITY AND LIABILITY

8.1 Subject to the other provisions of this clause 8, SWIFT accepts liability (whether in contract, tort or otherwise) to the Customer in connection with the provision or use of the SWIFT Services and Products as follows:

- (i) SWIFT shall not incur any liability to Customers save to the extent that such liability results from SWIFT's negligence, wilful default or fraud, or to the extent such liability arises under the indemnity in clause 6.2;
- (ii) except to the extent expressly provided otherwise in the Service Description, SWIFT shall not incur any liability for:
  - any indirect, special or consequential loss or damage of any kind; or
  - any loss of business or profit, revenue, anticipated savings, contracts, loss of or corruption to data, loss of use, loss of goodwill, interruption of business or other similar pecuniary loss howsoever arising, even if SWIFT has been advised of their possibility; and
- (iii) other than in respect of liability for death or personal injury, SWIFT's liability to any and all Customers shall together not exceed, in respect of any and all claims notified to SWIFT in each calendar year:
  - (a) an aggregate maximum of 5 million Euro per calendar year in respect of any and all claims relating to physical damage or loss of the tangible property;
  - (b) an aggregate maximum of 50 million Euro per calendar year in respect of any and all claims relating to clause 5.2 or 6, or to the provision or use of the SWIFT Services and Products in a live environment; and
  - (c) an aggregate maximum of 1 million Euro per calendar year in respect of any and all other claims arising out of, in connection with or relating to these General Terms and Conditions or their subject matter.

SWIFT shall not be obliged to make any payments in relation to any claims notified to SWIFT during one calendar year until the end of that calendar year.

In addition, if the aggregate of all claims notified to SWIFT during one calendar year exceeds the limit of SWIFT liability for such claims, SWIFT shall not make any payments in respect of any such claims until (i) all such claims have been finally settled and, where relevant, proportionally reduced; or (ii) until this aggregate amount has been reduced to that limit as a result of some of these claims having been reduced, dismissed or withdrawn.

8.2 All limits in clause 8.1 apply in respect of any one event or series of connected events.

8.3 When related to or arising out of the same event or series of connected events, the liability of SWIFT to the Customer in respect of the SWIFT Services and Products is not cumulative.

8.4 No undue enrichment shall ever accrue to any party.

8.5 In no event shall any party be entitled to recover more than once for the same loss they have suffered.

8.6 SWIFT shall under no circumstances be obliged to perform any obligation or have any liability to the extent resulting from:

- any unauthorised or improper downloading, possession, installation, access to or use of the SWIFT Services and Products;
- the provision or use of services or products not supplied by SWIFT for use in connection with the SWIFT Services and Products;
- any act, fault or omission of the Customer or a third party for which SWIFT is not responsible (including any downloading by the Customer of any Software); or
- Force Majeure.

8.7 If any party is unable to perform its obligations due to causes beyond its reasonable control then that party shall not be held responsible for any loss or damage which may be incurred by the other party as a result of such inability. Such causes include acts of God, governmental acts, acts of authorities (including Regulatory Authorities), acts of telecommunications operators, facilities management contractors and service providers (but excluding such acts to the extent they were caused by SWIFT's default), natural disasters, wars, fires, floods, strikes or industrial disputes, political disturbances, explosions, bombs or civil disturbances, epidemics and all other circumstances which, against its will, prevent or hinder a party from performing its obligations (each a "Force Majeure").

Each party will give notice to the other as soon as possible upon becoming aware of a Force Majeure. If, due to a Force Majeure, one of the parties remains unable to perform its obligations in respect of the SWIFT Services

and Products for more than 60 days, then the other party may terminate the affected SWIFT Services and Products immediately. Neither party shall have any liability to the other as a result of such termination, but any such termination shall be without prejudice to any rights which may have arisen prior to termination.

- 8.8 The limits and exclusions of liability of the parties in this clause 8 apply after as well as before any termination pursuant to clause 9, and are also for the benefit of other entities within the SWIFT Group and, subject to clause 8.10, all licensors, service providers or vendors of SWIFT.
- 8.9 The limits and exclusions of liability of the parties in this clause 8 shall not apply in case of fraud or gross negligence or, more generally, to the extent not permitted under applicable law.
- 8.10 Except to the extent they may otherwise agree, in no event shall SWIFT's licensors, service providers or vendors be liable to the Customer for any loss or damage of any kind with respect to or in connection with the provision or use of the SWIFT Services and Products, whether arising from contract, tort or any other theory of liability.

## 9. TERMINATION

- 9.1 Subject to the other provisions of these General Terms and Conditions, the SWIFT Services and Products will, unless expressly provided otherwise in the Service Documentation, be provided to the Customer from the date of acceptance by SWIFT of the Customer's SWIFT Contractual Arrangements for an indefinite period.
- 9.2 Except where expressly provided otherwise in these General Terms and Conditions, either SWIFT or the Customer is entitled to terminate the provision of the SWIFT Services and Products. To do so, the requesting party must give the other party 3 months or, in the case of the termination of a Service Administration Agreement, 12 months advance written notice.
- 9.3 The Customer may terminate the provision of the SWIFT Services and Products pursuant to clause 4.5.2 or 4.6.8.7, in which case it must give 1 month's advance written notice to SWIFT.
- 9.4 Either party is also entitled to terminate the provision of the SWIFT Services and Products immediately. To do so, the requesting party must inform the other party by written notice. This entitlement only applies if:
- that other party shall be in material breach of any obligation applicable to it under the Service Documentation and such breach either shall be incapable of remedy or shall continue unremedied for a period of 30 days after notice of the breach thereof shall have been given in writing to that other party;
  - that other party shall become insolvent or generally fail to pay, or admit its inability to pay, all or a substantial part of its debts as they become due, or shall apply for or be granted a moratorium; or

- a receiver, manager, administrator or liquidator is appointed over the whole or any substantial part of that other party's business or assets, or any steps shall be undertaken to that effect.

- 9.5 Where the provision of the SWIFT Services and Products is subject to the approval of a Service Administrator, the Customer (other than the Service Administrator) must notify the Service Administrator concerned of its intention to terminate the provision of those SWIFT Services and Products.

Also, the provision of the SWIFT Services and Products within a CUG to access a Service will automatically and immediately terminate:

- in respect of a specific Customer, upon receipt of a withdrawal request for that Customer from the relevant Service Administrator; or
- in respect of all Customers in the relevant CUGs, in the event of termination of the SWIFT Contractual Arrangements between SWIFT and the Service Administrator for any reason whatsoever.

- 9.6 SWIFT shall, without prejudice to any other right or remedy, be entitled by notice to the Customer to immediately terminate the provision of the SWIFT Services and Products if the Customer ceases to be, as the case may be, a User, a Partner or a Service Bureau.

- 9.7 Termination of the SWIFT Services and Products for any reason shall not relieve any party from any of its obligations under the Service Documentation arising prior to termination or which expressly or by implication becomes effective or continues to be effective on or after such termination.

Termination of the SWIFT Services and Products for any reason shall also be without prejudice to any other rights or remedies any party may have in respect of the termination.

- 9.8 Upon termination of the SWIFT Services and Products and without prejudice to any other right or remedy of SWIFT, the Customer must stop use of and, at SWIFT's direction, promptly return to SWIFT or to its nominee, or allow such persons to collect, or destroy (and certify to SWIFT they have been destroyed) all related materials (where relevant including any Software) supplied by or for SWIFT in connection with the service or product in question.

However, the foregoing shall not apply to the extent that (and only for so long as) the Customer (i) has the right to retain such materials pursuant to the Contractual Arrangements; or (ii) the Customer is required by law or regulation to retain such materials.

## 10. MISCELLANEOUS

### 10.1 Confidentiality

#### 10.1.1 Customer obligations of confidentiality

The Customer must keep all information obtained in connection with the provision of or embodied in the SWIFT

Services and Products (“Information”) in confidence for the benefit of SWIFT and any third parties to whom SWIFT owes an obligation of confidence in relation to the Information. The Customer must only use the Information as may be reasonably necessary to implement, access and use the SWIFT Services and Products as permitted under the Service Documentation. The Customer must:

- only disclose the Information to its employees, agents, subcontractors or professional advisors on a “need to know” basis; and
- not disclose the information otherwise without the prior written consent of SWIFT (which will not be unreasonably withheld nor delayed).

In each case, the Customer must inform the recipient of the confidential nature of the Information and ensure that the recipient is bound by an obligation of confidence no less restrictive than this clause. The Customer shall remain responsible for the use of the Information by any such persons.

These confidentiality obligations shall survive termination of the Customer arrangements with SWIFT for the SWIFT Services and Products. This clause 10.1 will not apply to Information that the Customer can demonstrate:

- was in the public domain at the time of disclosure or subsequently comes into the public domain (other than through a breach of these obligations by the Customer);
- was lawfully received from a third party, who did not owe a duty of confidentiality in respect of such information;
- was known by the Customer prior to its receipt from SWIFT or from any other person in connection with the provision of the SWIFT Services and Products;
- was developed independently by the Customer without reference to any Information; or
- was required by law to be disclosed.

#### 10.1.2 SWIFT obligations of confidentiality

The obligations of confidentiality above shall apply mutatis mutandis to SWIFT in respect of all information disclosed by the Customer to SWIFT in connection with the provision of the SWIFT Services and Products to the extent varied by this sub-clause or other Service Documentation including the Data Retrieval Policy.

In particular, SWIFT shall only use the Information for purposes relating to the provision of the SWIFT Services and Products or SWIFT governance (typically, the promotion, deployment, provision and support of the SWIFT Services and Products or related services and products of Partners, accounting and records keeping or Customer management).

For these purposes, SWIFT may also share the Information with other offices within the SWIFT Group and Partners (including, in all cases, their respective agents, subcontractors or professional advisors) provided that any

such third party complies with obligations of confidence no less restrictive than this sub-clause.

Furthermore, the Customer acknowledges and agrees that SWIFT may disclose the Customer’s Information to any other entities which are registered within the same group of Users as the Customer for the purposes of SWIFT traffic aggregation (for more information about traffic aggregation, refer to the Pricing and Invoicing module of the User Handbook).

#### 10.2 Co-operation

Without prejudice to its other obligations under the Service Documentation, each party must give the other all co-operation and assistance, including access to all relevant locations, as may be reasonably required by that other party in order to comply with any obligation applicable to it under the Service Documentation.

#### 10.3 Public Statements

The Customer must, wherever possible, consult with SWIFT before making public statements concerning the provision or use of the SWIFT Services and Products.

#### 10.4 Amendments

Except where expressly provided otherwise in the Service Documentation, no amendment or modification to the Service Documentation will be effective unless it is in writing and signed by duly authorised representatives of the relevant parties.

#### 10.5 Assignments

10.5.1 Except where expressly provided otherwise in the Service Documentation, the Customer must not assign, transfer, sub-license or sub-contract any rights or obligations in connection with the provision or use of the SWIFT Services and Products without SWIFT’s prior written consent (which will not be unreasonably withheld nor delayed) provided always that it will remain responsible to SWIFT for the performance and observance of all its obligations under the Service Documentation.

10.5.2 SWIFT may assign or transfer, any of its rights or obligations to any other entity within the SWIFT Group.

10.5.3 SWIFT may delegate or sub-contract its obligations.

#### 10.6 Notices

10.6.1 Except as otherwise expressly provided in the Service Documentation, all notices, requests, demands, or other communications, from one party to the other, shall be in writing (in paper or electronic form) and in the English language (“Notices”). All Notices shall be sent to the registered address and designated contact department or person (if any) of the other party or such other address as may be notified to the party serving notice pursuant to the provisions of this clause.

10.6.2 However, all Notices relating to the termination of the SWIFT Services and Products or which relate to any claims procedure may only be served as follows:

- by mail or courier with acknowledgement of receipt; or
- by MT 999.

The address for service of any such Notices will be as follows:

The Customer: its registered office or any other address of which the Customer may have notified SWIFT.

SWIFT: its registered office from time to time and marked for the attention of SWIFT Customer Ordering Services or, in the case of claim made pursuant to sub-clause 12.4, SWIFT Chief Auditor.

All Notices shall be deemed effective upon their receipt by the recipient.

#### 10.7 Severability - No Waiver

10.7.1 The terms and conditions governing the provision and use of the SWIFT Services and Products, including these General Terms and Conditions, are severable and if any part is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder which will continue to be valid and enforceable to the fullest extent permitted by law.

10.7.2 Subject to clause 12, no delay or failure by any party to exercise any of its powers, rights or remedies in enforcing any terms and conditions of the Service Documentation will operate as a waiver of such term, nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them.

#### 10.8 No Fiduciary Relationship

Unless otherwise expressly provided in the Service Documentation, SWIFT is not the agent, fiduciary, trustee or other representative of the Customers. The relationship between SWIFT and the Customers is not that of agent and principal and the Customers do not have the authority to bind SWIFT to any obligations.

#### 10.9 Entire Agreement

10.9.1 The Service Documentation contains the entire agreement and understanding between SWIFT and the Customer relating to the implementation, provision or use of the SWIFT Services and Products and supersedes and cancels all prior negotiations, representations, proposals, statements, agreements and undertakings, written or oral relating to the subject matter of the Service Documentation.

10.9.2 Each of the parties acknowledges and agrees that in entering into the Service Documentation it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding made prior to entering into the Service Documentation, except to the extent that such statement, representation, warranty or understanding is incorporated in the Service Documentation.

10.9.3 Each of the parties acknowledges and agrees that it has not been induced to enter into the Service Documentation by reason of any representation by or on behalf of the other party or any party connected with the other party.

### 11. APPLICABLE LAW

The terms and conditions governing the provision and use of the SWIFT Services and Products, including these General Terms and Conditions, shall be governed by Belgian law.

### 12. DISPUTE RESOLUTION

#### Preliminary

12.1 Before making a claim, the claiming party must ensure that it has duly complied with all applicable roles and responsibilities and other relevant obligations in contract, tort or otherwise, as such relate to the access to or use of the SWIFT Services and Products.

#### Time limit

12.2 To have a valid claim, the claiming Customer must make it in accordance with the applicable claims procedure and SWIFT must receive it within the following time limits:

- in the case of claims relating to invoices, within 30 days of the date of the invoice in contention (for more information, see the Pricing and Invoicing module of the User Handbook);
- in the case of claims relating to messages or files, within 3 months of the date the relevant message or file was (allegedly) acknowledged (FIN messages and SWIFT messages and files flagged with non-repudiation only) or emitted (all other SWIFTNet messages and files); and
- in the case of all other claims, within 3 months of the date on which the claiming Customer becomes aware of (or should reasonably have become aware of) the event giving rise to the claim.

#### Conciliation at business level

12.3 The parties will use all commercially reasonable efforts to resolve at a business level (that is, between the person at SWIFT responsible for the Customer's account or his delegate and the Customer's representative or his delegate) all disputes arising out of or in connection with the provision of the SWIFT Services and Products.

If these representatives fail to reach agreement within 15 days and the Customer intends to submit any outstanding dispute to a court, the Customer agrees, subject to clause 12.4, to submit such dispute to the exclusive jurisdiction of the competent court in Brussels (Belgium).

#### Mediation for certain disputes in a live environment

12.4 In the case of disputes brought against SWIFT by Users regarding the provision or use of SWIFT messaging or Solutions in a live environment, the following claims procedure shall apply:

### Making a Claim

Claims, set out in writing in the English language on the relevant form(s) (if any) available from SWIFT, must be signed by an authorised representative of the claiming User and sent to SWIFT at its registered office in Belgium (attention of the SWIFT Chief Auditor) by mail with acknowledgement of receipt.

SWIFT will acknowledge a valid claim notice by return post within 15 working days following the receipt thereof.

### Investigation

The investigation of claims will cover such matters as, without limitation, the due compliance by SWIFT and the User(s) with their respective roles and responsibilities and other relevant obligations in contract, tort or otherwise.

The claiming User must supply all information which SWIFT reasonably requires to establish the validity of the claim and to review it. This includes all information which is required to identify any acts, faults or omissions of the User(s) or Authorised Third Party(ies) concerned, or any other information maintained by the claiming User.

SWIFT reserves the right to retrieve and use traffic and message data still in its possession as may be reasonably necessary for the investigation of claims and, more generally, the exercise of its obligations, rights and remedies in connection with this claims procedure.

SWIFT will reject, dispute or accept the claim in whole or in part, and give the claiming Users written notice thereof within three (3) months following the receipt of notification of a claim, and pay such sums in relation to the claim to the User as may be appropriate.

### SWIFT Board Committee

Any claiming User who is dissatisfied with SWIFT's determination of the claim must notify the Chairman of the SWIFT Board in writing (c/o SWIFT at its registered office in Belgium) thereof within 1 month of receipt of notification of SWIFT's determination. Failing to do so, the right to further dispute SWIFT's determination of the claim shall be lost, and SWIFT shall bear no further liability whatsoever in relation to the claim. The Chairman of the SWIFT Board will acknowledge receipt of such notice in writing within 15 working days.

The Chairman of the SWIFT Board shall appoint a committee of Directors (the "SWIFT Board Committee") to handle the disputed determination of the claim. The SWIFT Board Committee shall be made up of three Directors; however no two Directors of the SWIFT Board Committee shall be from the same country and, as far as practicable, none of them shall be from the country of the claiming User nor affiliated with or employed by it. The SWIFT Board legal adviser and the SWIFT Chief Executive Officer shall be ex officio non-voting members of the SWIFT Board Committee.

The claiming User and SWIFT may each nominate at their expense an official to present their case to the SWIFT

Board Committee. They must present their cases in writing in English and the SWIFT Board Committee may at its discretion request oral presentations in addition to any written submissions.

The claiming User must supply all information which the SWIFT Board Committee reasonably requires to establish the validity of the claim and to review the disputed determination.

The SWIFT Board Committee will reject, dispute or accept the claim in whole or in part, and give the claiming User written notice thereof within 3 months of receipt of notification of the claim to the Chairman of the SWIFT Board, and SWIFT will pay such sums in relation to the claim to the User as may be appropriate.

### Arbitration

The claiming User who is dissatisfied with the determination of the claim by the SWIFT Board Committee and intends to submit any outstanding dispute to an arbitration tribunal must notify SWIFT (c/o SWIFT Chief Executive Officer at its registered office in Belgium) thereof within 1 month of receipt of notification of the determination by the SWIFT Board Committee.

Any outstanding dispute between the claiming User and SWIFT shall then be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) and, to the extent permitted under said Rules, the following provisions shall apply:

- each party shall appoint an arbitrator, the SWIFT Board Committee being responsible for appointing an arbitrator to represent SWIFT. The arbitrator shall be independent of the party nominating him and, if there is an even number of members of the arbitration tribunal, one additional arbitrator shall be designated by the arbitrators thus appointed. If one of the parties so requests, the additional arbitrator shall be a national of a country other than those of the arbitrators appointed by either of the contending parties; and
- the arbitration shall take place in Brussels, in the English language.

12.5 If any of the final dates for action in this clause 12 fall on a non-working day in Belgium, all periods stated shall expire at the end of the following working day in Belgium.

12.6 Unless otherwise agreed by all parties concerned, nothing in this clause 12 shall be construed as affecting the obligation on the parties to fulfill their respective obligations while the claims procedure is being followed and a claim has not yet been finally settled or awarded.