



## SWIFT DEVELOPERS TOOLKIT LICENCE AGREEMENT

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### 1. Definitions

1.1 Unless inconsistent with the context or otherwise specified capitalised terms in this Agreement shall have the meaning set out below:

“ <b>Agreement</b> ”	means the present agreement and any other document to the extent referred to herein, as may be amended from time to time in accordance with the terms of this Agreement;
“ <b>Developer</b> ”	means any third party as identified by the Customer that is permitted to use the Licensed Materials at a Site in accordance with the terms of this Agreement;
“ <b>Charges</b> ”	means SWIFT’s charges from time to time in connection with the supply of the Licensed Materials. The Charges are as set out in the then current version of the SWIFT Price List;
“ <b>Customer Software</b> ”	means any computer program created by or for the Customer using the Developers Toolkit(s) for the Permitted Purpose;
“ <b>Developers Toolkit</b> ”	the SWIFT Developers toolkit product as ordered by the Customer using the SWIFT ordering tool;
“ <b>Embedded Software</b> ”	means any software supplied as part of the Licensed Materials embedded by the Customer in the Customer Software using the Developers Toolkit for the Permitted Purpose in accordance with this Agreement;
“ <b>Licensed Materials</b> ”	means in relation to the Developers Toolkit, any software, materials and documentation made available to the Customer by SWIFT from time to time for the Permitted Purpose pursuant to this Agreement;
“ <b>Permitted Purpose</b> ”	means in relation to the Developers Toolkit, the permitted use as notified by SWIFT to the Customer from time to time;
“ <b>Service Description</b> ”	means in relation to the Developers Toolkit, the then current corresponding service description as issued by SWIFT from time to time;
“ <b>Site</b> ”	means each premises where the Customer uses the Developers Toolkit pursuant to this Agreement, as notified to and permitted by SWIFT;
“ <b>SWIFT Partner</b> ”	means an organization providing applications and services to SWIFT Users in relation to their use of SWIFT Services and Products and who has been approved by SWIFT under the SWIFT Partner Registration Program;
“ <b>SWIFT User</b> ”	means an organization who has been admitted under the SWIFT By-laws as a duly authorized user of the relevant SWIFT service or product.

1.2 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 it is responsible, including but not limited to its employees, directors, agents and subcontractors.

1.3 In the event of any conflict or inconsistency between this Agreement and any other document referred to herein, and unless the context requires otherwise, this Agreement shall prevail.

### 2. Condition Precedent

It is a condition for the performance of this Agreement that the Customer is a person registered with SWIFT as either a SWIFT User or a SWIFT Partner (as the case may be).

**3. Delivery**

- 3.1 SWIFT will make the Licensed Materials available in such form or medium as it deems appropriate from time to time, including by electronic means such as on the Internet. It is the sole and exclusive responsibility of the Customer to access the latest version available of the Licensed Materials, including where appropriate to download the Licensed Materials and to install them.
- 3.2 Where the Licensed Materials are downloaded, SWIFT's obligation to make the Licensed Materials available is discharged when SWIFT posts the Licensed Materials on the relevant site.

**4. Licence**

- 4.1 The Customer is granted a non-exclusive and non-transferable right to (as appropriate) download, possess, install and use at the Site as many copies of the Licensed Materials (including one back up copy for contingency purposes) as reasonably necessary for the Permitted Purpose. Such license is personal to the Customer so that it will not permit third parties to access the Licensed Materials except its employees and other persons under its responsibility who need to do so for the Customer's own business operations.

Where the Licensed Materials include the SWIFTAlliance Access Developers Toolkit, the Customer acknowledges and agrees that it must:

- agree upfront with SWIFT the nature and scope of the Customer Software, the project planning, milestones and deliverables; and
  - use in the Customer Software the unique component name and acronym agreed with SWIFT on a per application basis.
- 4.2 The Customer shall not remove the Licensed Materials from the Site (except to return them to SWIFT) without SWIFT's prior written consent.
- 4.3 The Customer shall only use the Licensed Materials in accordance with this Agreement and the Service Description, any policies or directions in force given by or for SWIFT. Without prejudice to the foregoing, the Customer shall in particular use reasonable care and skill and comply with good industry practice and all relevant laws and regulations and third party rights. Except for the foregoing, the Customer has no other rights with respect to the Licensed Materials. Specifically, but not limited to, the Customer has no right, or right to authorise others, to:
- modify, enhance or otherwise change the Licensed Materials, merge them with another program, or prepare derivative works based upon or derived in whole or part from them (save to the extent necessary for the Permitted Purposes);
  - translate, decompile, disassemble, reverse-engineer or otherwise re-create the Licensed Materials or determine their source code (save to the extent expressly permitted by applicable law);
  - reproduce the Licensed Materials (except as expressly permitted by SWIFT);
  - rent, lease, sell, sub-licence, distribute to or allow access to or otherwise provide or transfer the Licensed Materials or copies thereof to third parties (except as permitted under sub-clause 4.1); or
  - remove, alter, cover, obfuscate or cancel from view any copyright or other proprietary rights notices, marks or legends appearing on the physical medium or contained in the Licensed Materials, (and the Customer will reproduce and include the same on any permitted copy).
- 4.4 Where the Customer Software includes Embedded Software, the Customer shall comply with the following obligations and restrictions in relation to such Embedded Software:
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- the Customer shall be entitled to sub-license the Embedded Software solely to SWIFT Users provided and to the extent that they are bound for the benefit of SWIFT and its licensors by licence terms which are no less stringent than those applicable to provision of the Licensed Materials under this Agreement. Furthermore, such SWIFT Users shall only be entitled to use the Embedded Software or make copies of it as may be reasonably necessary to access or use the SWIFT products and services in accordance with their related documentation;
  - the Customer shall not make any representations or warranties regarding the Embedded Software inconsistent with those representations and warranties made by SWIFT to the Customer in respect of the Licensed Materials.
- 4.5 The Customer acknowledges that the Licensed Materials may include software the intellectual property rights in which may belong to a third party. Such third party software must not be used except as part of the Licensed Materials. With respect to such third party software, SWIFT may require the Customer to comply with additional licence terms imposed by SWIFT licensors from time to time, as notified by or for SWIFT to the Customer. In any event, the download, possession, installation or use (as the case may be) by the Customer of any such third party software shall be deemed to constitute its acknowledgement of and agreement with any such additional license terms which, in case of conflict, will prevail over this Agreement.
- 4.6 The Customer shall comply with the following audit provisions for the benefit of SWIFT and its licensors:
- at SWIFT's request promptly provide written evidence of the number of copies of the Licensed Materials that have been made by or for the Customer and/or the number of copies of Embedded Materials distributed by the Customer; and
  - at SWIFT's request promptly give SWIFT sufficient access to the sites and systems upon which such Licensed Materials and/or Embedded Software have been installed in order to enable SWIFT to verify the written evidence provided in accordance with sub-clause the foregoing.
- The Customer shall provide all reasonable assistance and cooperation to SWIFT in relation to the audit contemplated in this sub-clause 4.5.
- 4.7 The Customer shall indemnify and keep SWIFT and/or its licensors fully and effectively indemnified against any and all actions, liabilities, claims, demands, losses, damages, proceedings, costs or expenses (including legal fees, costs and expenses on a full indemnity basis) suffered or incurred by SWIFT and/or its licensors howsoever caused, arising from or which is related to a failure to comply with its obligations under this clause 4.

## **5. Co-operation & Assistance**

- 5.1 Where SWIFT may deem it necessary or advisable, the Customer shall provide SWIFT access (in person or otherwise) to the Site at all reasonable times to allow the performance by SWIFT of its obligations and the enjoyment of its rights under this Agreement, and the Customer shall also make available any facilities, information, assistance and other services which are reasonably required by SWIFT in connection therewith.
- 5.2 The Customer shall:
- notify SWIFT promptly of any problem relating to the supply and use of the Licensed Materials;
  - co-operate with and assist SWIFT in identifying, investigating and resolving any such problem and, in particular, follow any guidelines or other directions given by or for SWIFT from time to time;
  - promptly correct any problem if it is the Customer's responsibility to do so;
  - respond correctly and promptly to any procedures initiated or actions requested by SWIFT to eliminate a problem relating to the provision of the Licensed Materials; and
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- notify SWIFT promptly if it becomes aware of any breach or attempted breach of security which could affect the integrity of the Licensed Materials or, more generally, the SWIFT products and services in whole or part.
- 5.3 The Customer shall as far as possible co-operate with SWIFT in the evaluation of the Licensed Materials and, at SWIFT's request, shall timely provide complete and accurate evaluation data.
- 5.4 The Customer acknowledges that it is critical that the Customer Software operates properly and is updated regularly so as to remain compatible with the then current version of the SWIFT services and products. The Customer is in particular expected to ensure that the Customer Software is updated no later than one (1) month prior to the corresponding version or release of the relevant SWIFT services and products being made generally available to the SWIFT Users.

SWIFT reserves the right to take reasonable steps (and to require the Customer to take reasonable steps) to enable SWIFT to review the compliance by the Customer with the foregoing. These steps include but are not limited to requiring the Customer to (i) respond to questionnaires or other enquiries from time to time; (ii) keep SWIFT informed of the release cycle of the Customer Software (including reasonable related documentation to permit SWIFT to assess the release); (iii) attend meetings with SWIFT to review matters regarding the proper operation, late update or compatibility of the Customer Software; (iv) as appropriate, timely submit and implement a recovery plan; and (v) in the case of the SWIFT Alliance Access Developer Toolkit, allow SWIFT to review, upon reasonable prior notice, the development and test environment and the design and code of the Customer Software.

## **6. Warranties**

- 6.1 SWIFT warrants that, where the Licensed Materials include software, that software will perform in accordance with the Service Description in all material respects for 90 days following its supply to the Customer.
- 6.2 As the Customer's sole and exclusive remedies and in the event of breach of sub-clause 6.1 SWIFT will use reasonable efforts to correct the fault or defect. If despite reasonable efforts SWIFT cannot 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 to a refund by SWIFT of all Charges that have been paid by the Customer under this Agreement in respect of the faulty or defective software and this Agreement shall then terminate in respect of that faulty or defective software.
- 6.3 Except for the foregoing, SWIFT does not give and specifically excludes and disclaims any express or implied warranty with respect to the Licensed Materials whether as to quality, fitness for purpose or otherwise.

## **7. Support and maintenance**

- 7.1 The Customer acknowledges that only the latest version available of the Licensed Materials will support the latest changes to the SWIFT services and products. The Customer will therefore ensure it continuously subscribes to the appropriate level of service management services so as to ensure Customer Software remains compatible with the then current version or release of the relevant SWIFT services and products.
- 7.2 SWIFT will use reasonable efforts to provide those support and maintenance services for the Licensed Materials set out in the Service Description. Nothing in this Agreement shall oblige SWIFT licensors to themselves provide support or maintenance services directly to the Customer.

## **8. Intellectual Property**

- 8.1 The copyright and all other intellectual property rights of whatever nature in the Licensed Materials and associated processes will remain the exclusive property of or vest in SWIFT or its licensors. This applies equally to any modification, enhancement or other change to the Licensed Materials and, except for the Customer Software other than Embedded Software, any computer program or other materials derived from the Licensed Materials in whole or in part and associated processes.
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In particular, and to the extent the Customer makes suggestions or provides information or materials to SWIFT in connection with the download, possession, installation or use (as the case may be) of the Licensed Materials (other than relating to the Customer Software but excluding Embedded Software) then, unless otherwise agreed in writing between the parties, SWIFT shall have the right to use such information, suggestions or materials without payment to the Customer as it thinks fit and any intellectual property created by or for SWIFT as a result or which subsists in such suggestions or materials shall vest in SWIFT absolutely.

- 8.2 In no event shall the Customer receive any title nor any copyright or any other intellectual property rights of whatever nature in the Licensed Materials, except as expressly set forth herein. SWIFT and its licensors shall be entitled to enforce their proprietary rights against the Customer with respect to the Licensed Materials and, to the extent that the Customer is authorised to grant rights to third parties in respect of the Licensed Materials, against any such third parties.
- 8.3 SWIFT warrants that it is not aware, as at the Effective Date, of any claim that the download, possession, installation or use (as the case may be) of the Licensed Materials by the Customer in accordance with this Agreement will infringe any copyright or other intellectual property rights of a third party.
- 8.4 If a claim is made against the Customer that the download, possession, installation or use (as the case may be) of the Licensed Materials in accordance with the terms of this Agreement infringe the intellectual property rights of a third party, SWIFT will conduct the defence of such claim and will indemnify the Customer against all losses, costs, expenses and proceedings that arise from the claim and which are suffered by the Customer provided that:
- the Customer notifies SWIFT promptly in writing of any such claim;
  - SWIFT has sole discretion over the control over the defence and/or settlement of such claims;
  - the Customer makes no admission in relation to such claim and provides all assistance reasonably requested by SWIFT in connection with such claim; and
  - no cost or expense shall be incurred by the Customer in relation to the claim without the prior written consent of SWIFT.
- 8.5 If the download, possession, installation or use (as the case may be) of the Licensed Materials, in whole or in part, is held to constitute an infringement of intellectual property rights of third parties, or is enjoined or prevented by a court order, in whole or in part, SWIFT will, at its reasonable discretion and expense, use all commercial efforts to either:
- procure for the Customer the right to continue downloading, possessing, installing or using (as the case may be) the Licensed Materials pursuant to the terms of this Agreement; or
  - modify, replace or amend the Licensed Materials so that they are no longer infringing.

If SWIFT is unable despite having used all reasonable efforts to secure either of the above options, SWIFT will have the right to terminate the provision of the infringing Licensed Materials to the Customer without any further liability or charge except that SWIFT shall refund a pro-rata amount of the Charge(s) paid by the Customer in respect of the infringing Licensed Materials based on the unexpired term of (in the case of one-time Charges) its useful life which shall be deemed to be 5 years from its supply or (in the case of recurring Charges) the relevant invoicing period.

- 8.6 The foregoing states the sole and exclusive rights and remedies of the Customer concerning the infringement of intellectual property rights of third parties, or allegations of infringement in respect of the Licensed Materials.

## **9. Payment Terms**

- 9.1 SWIFT will invoice the Customer either in EUR or USD, based on the country in which its registered address or principal offices is located, irrespective of the invoicing address. Customers located in the Americas and in Asia are in principle invoiced in USD. All other Customers are invoiced in EUR.
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Where the Charges are denominated in another currency than the invoicing currency, SWIFT will convert such Charges at the market spot selling rate at 15:00 Belgian time on the last but one working day of the month for which the invoice is issued.

- 9.2 The Customer will pay SWIFT the Charges for the supply and use of the Licensed Materials. All present and future federal, state, local taxes in the form of sales tax and/or value added tax and/or gross receipts tax and/or excise tax and/or customs duties, as well as any fines and/or penalties and/or interest assessed directly or indirectly on such amounts, which may be due on the amount payable for or in connection with the supply of the Licensed Materials, will always (even retroactively) be borne by the Customer.
- 9.3 The one-time Charges are due upon execution of this Agreement. The recurring Charges are due for the first time at the end of the warranty period. However, and when the recurring Charges become due after the commencement of the month, the recurring Charge will apply, pro-rata until the end of the month. Recurring Charges are then subsequently invoiced monthly.
- 9.4 Unless expressly provided for in this Agreement, Charges due will not be reimbursed.
- 9.5 The Charges will be payable within 30 days of the date of receipt of the invoice or an equivalent request for payment, in full and without any deduction, offset or counter-claim whatsoever. The relevant invoice number should always be quoted on the payment. Any amount outstanding on the due date will bear an interest charge at a rate corresponding to the 'ECB reference rate' raised by seven (7) points, and rounded at the superior half-point. For the purposes of this provision, the 'ECB reference rate' means the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question. Furthermore SWIFT also reserves the right to suspend the performance of its obligations arising under this Agreement, in part or in whole, immediately upon notice to the Customer in the event that amounts due have not been paid in full after three (3) reminders in writing.
- 9.6 The recurring Charges may be amended by SWIFT from time to time upon reasonable prior notice to the Customer. Should the Customer feel unable to agree to a material increase of the recurring Charges, the Customer will then be entitled to terminate this Agreement upon written prior notice to SWIFT of its intention to so terminate this Agreement by no later than such date by which the Charges increase first applies.

## **10. Termination**

- 10.1 Without prejudice to any other provision for termination set out elsewhere in this Agreement, either party may terminate this Agreement for convenience by 3 months notice in writing to the other party at any time or, with immediate effect, by written notice to the other party in the event of any material breach of this Agreement by that party which cannot be remedied or remains unremedied for at least 30 days as from the time it was first notified to that party or if that party becomes insolvent or bankrupt or a receiver or liquidator is appointed over all or part of that party's assets or any analogous event occurs in any jurisdiction.
- 10.2 SWIFT shall without prejudice to any other right or remedy be entitled to immediately terminate this Agreement if the Customer ceases to be a SWIFT User or a SWIFT Partner (as the case may be).
- 10.3 Upon the termination of this Agreement for whatever reason the Customer shall immediately cease using the Licensed Materials and, at SWIFT's direction, the Customer shall promptly destroy or return to SWIFT or allow SWIFT (or any third party designated by SWIFT) to collect the Licensed Materials (and any copies) and any materials incorporating all or part of the Licensed Materials, except where the Customer has the right to retain such materials pursuant to a subsequent agreement with SWIFT. Furthermore, the Customer will promptly notify its customers of such termination and review with them any impact such termination may have on their access to and use of the SWIFT services and products such as but not limited to the obligation for such users to use the then currently supported version of the SWIFT services and products.
- 10.4 Termination of this Agreement for whatever reason shall not release any party from any of its obligations arising under this Agreement prior to termination or which expressly or by implication
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become effective or continue to be effective on or after such termination, and shall be without prejudice to any other rights or remedies it may have in respect of the termination.

## **11. Limitation and Exclusion of Liability**

- 11.1 The Customer acknowledges and agrees that except as expressly provided in this Agreement, the Licensed Materials are provided “As Is” solely for the Permitted Purposes and their download, possession, installation or use (as the case may be) are under the Customer’s sole and exclusive responsibility and at its risk. Without prejudice to the generality of the foregoing, the Customer further acknowledges and agrees that it shall be solely responsible for ensuring data integrity and security can be maintained on its systems, including operating back-up procedures, and insuring against loss or damage which may arise from a loss of or a corruption to data or from unintended access or disclosure.
- 11.2 To the extent not otherwise prohibited by law the Customer further acknowledges and agrees that SWIFT’s liability for or in connection with the performance of this Agreement (whether in contract, tort or otherwise) will be limited or excluded as follows:
- except for fraud or gross negligence, SWIFT’s liability will not exceed the total amount of the Charges (if any) the Customer has paid to SWIFT under this Agreement in respect of the Licensed Materials; and/or
  - SWIFT bears no liability for any indirect, special or consequential loss of any kind nor for loss of revenue, loss of profit, loss of data, loss of use, loss of goodwill, loss of savings, interruption of business or third party claims.
- 11.3 SWIFT shall in no circumstances be obliged to perform any obligation or bear any liability whatsoever under this Agreement or arising under to the extent resulting from:
- any unauthorised or improper download, possession, installation or use (as the case may be) of the Licensed Materials;
  - the use of services or products not supplied by SWIFT for use in connection with the Licensed Materials;
  - the Customer’s acts, faults or omissions or those of a third party for which SWIFT is not responsible (including but not limited to any downloading by the Customer of the Licensed Materials); or
  - Force Majeure (as defined in sub-clause 11.5).
- 11.4 In no event shall SWIFT’s licensors be liable for any loss or damage of any kind with respect to or in connection with the use of the Licensed Materials whether arising from contract, tort or any other theory of liability.
- 11.5 If any party is unable to perform its obligations (except payment 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 but are not limited to acts of God, governmental acts, acts of authorities (including Regulatory Authorities), acts of telecommunications operators, facilities management contractors and service providers (but excluding where such acts were caused by the act, fault or omission of SWIFT), catastrophes in nature, war, fire, flood, strike or industrial disputes, political disturbance, explosion, bombs or civil disturbances, epidemics and all other circumstances which prevent or hinder a party against its will from performing its obligations (“Force Majeure”).

Each party will give notice to the other as soon as possible upon becoming aware of a Force Majeure. If due to Force Majeure a party remains unable to perform its obligations arising under this Agreement for more than sixty (60) days, then the other party may terminate this Agreement 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.

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**12. Confidentiality**

- 12.1 Unless otherwise expressly permitted, the Customer will keep strictly confidential and not disclose information obtained in connection with the provision or use of the Licensed Materials, including the Licensed Materials and any part or copies thereof, to third parties except to the Customer's employees or other persons under the Customer's responsibility who need to use the Licensed Materials for the Permitted Purpose and who have agreed to be bound for the benefit of SWIFT and its licensors by no less stringent obligations of confidence, restrictions on download, possession, installation or use (as the case may be) and proprietary rights than those in this Agreement. The obligations of confidence in this clause shall not apply to any materials which enter the public domain other than by the Customer's breach of this Agreement or which are required by law to be disclosed.
- 12.2 The Customer shall hold the Licensed Materials in confidence in particular for the benefit of SWIFT and its licensors.
- 12.3 The obligations of confidence in this clause shall survive termination for whatever reason of this Agreement.

**13. Export Control**

The Licensed Materials may be subject to export and import restrictions. The Customer may not export or import the Licensed Materials (including without limitation by way of downloading the Licensed Materials from SWIFT's web site) without all appropriate government licenses (if any) having been obtained.

**14. Non-competition**

Except to the extent necessary for the Permitted Purposes or otherwise expressly agreed with SWIFT, the Customer shall not download, possess, install or use (as the case may be) the Licensed Materials to develop any computer program or other materials competing directly or indirectly with the SWIFT products and services. This obligation shall terminate 6 months after termination of this Agreement for whatever reason.

**15. Public Announcements**

The parties shall, wherever possible, consult with one another before making public announcements in connection with the supply or use of the Licensed Materials pursuant to this Agreement. However the Customer shall allow SWIFT to publicly announce or advertise any subscription to and use of the Licensed Materials by the Customer or any cessation of any such subscription and use. Publication of quotes from the either party's employees or other persons under its responsibility or its respective customers shall however require its prior written consent (which shall not be unreasonably withheld or delayed).

**16. Privacy**

The Customer acknowledges and agrees that SWIFT may process personal data collected by SWIFT as the data controller (in the sense of the Data Protection Directive 95/46/EC) relating to or supplied by or for the Customer in conjunction with the execution or performance of this Agreement for purposes relating to accounting and records keeping. Customer management, SWIFT customers information, marketing, the provision of the SWIFT services and products in connection with this Agreement and, more generally, the exercise of SWIFT's obligations, rights and remedies. Such personal data include but are not limited to identification and contact details of the Customer or other persons for which the Customer is responsible. The Customer further acknowledges and agrees that, for reasons relating to the nature and organisation of SWIFT operations, the processing of personal data may include the transfer of certain personal data to entities located in countries outside the European Union or the EFTA (which may not necessarily be considered as offering an adequate level of personal data protection in the sense of the Data Protection Directive 95/46/EC). If the personal data are not supplied by the data subject concerned, the Customer shall ensure that (i) the data subject concerned has been duly informed about SWIFT acting as the data controller and

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SWIFT's right to process such personal data as set out herein and (ii) such personal data are collected and supplied in accordance with applicable legislation and without infringing any third party rights (including those of the data subject concerned). Furthermore, the Customer acknowledges (and shall cause any other data subject whose personal data were supplied by or for the Customer to acknowledge) that each data subject has a right to request SWIFT at any time in writing:

- to access its personal data and to modify or remove such data if incorrect or unnecessary for the permitted processing purposes; and
- to stop using its personal data for marketing purposes.

## **17. Developers**

SWIFT acknowledges that the Customer may wish to permit a Developer to (as appropriate) download, possess, install and use the Licensed Materials at a Site and, subject to such Developer being and remaining registered as a SWIFT Partner or Associated Partner of the Customer, confirms that the Customer may do so provided that the Customer advises any such Developer of all terms of this Agreement relating to (as appropriate) the download, possession, installation and use of the Licensed Materials and procures that these terms apply mutatis mutandis to any such Developer. The Customer also agrees to remain jointly and severally responsible to SWIFT for any breach by such Developer of the terms of this Agreement relating to (as appropriate) the download, possession, installation and use of the Licensed Materials.

## **18. Ancillary Provisions**

- 18.1 ENTIRE AGREEMENT and VARIATIONS: This Agreement constitutes the entire agreement between the parties. Each party confirms that it has not relied upon any representation not recorded in this Agreement inducing it to enter into it. No variation of these terms and conditions will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of this Agreement provided always that SWIFT shall be entitled to issue revised versions of the Service Description at any time on notice to the Customer and, if the Customer objects to any material revision of the Service Description and demonstrates to the reasonable satisfaction of SWIFT such revision materially adversely affects its use of the Licensed Materials, then, as its sole right and remedy, it shall be entitled to terminate this Agreement upon written notice to SWIFT subject to any Charges due being paid.
- 18.2 SEVERABILITY: The terms and conditions of this Agreement 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.
- 18.3 WAIVER: No delay or failure by any party to exercise any of its powers, rights or remedies in enforcing any term 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.
- 18.4 RELATIONSHIP OF THE PARTIES: The relationship between SWIFT and the Customer is that of independent contractors. Neither party is agent for the other, and neither party has any authority to make any contract, whether expressly or by implication, in the name of the other party, except where the party's prior written consent has been obtained.
- 18.5 ASSIGNMENT: Except where expressly provided otherwise elsewhere in this Agreement, the Customer may not assign, transfer, sub-licence or sub-contract any rights or obligations arising under this Agreement without the prior written consent of SWIFT. SWIFT may assign or transfer any of its rights or obligations to any of its majority-owned subsidiaries worldwide. Furthermore SWIFT may delegate or sub-contract its obligations under this Agreement.
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- 18.6 NOTICES: Any notice required to be given under this Agreement by either party must be in writing (and for the purposes of this Agreement “in writing” includes in readable electronic form such as an email) and may be delivered either personally, by post, by fax or by email to the address of the receiving party as specified on the front of this Agreement or any subsequent address notified to that party pursuant to this clause. Notices shall be deemed to have been served at the time of their receipt by the receiving party.
- 18.7 GOVERNING LAW AND JURISDICTION: This Agreement is governed by Belgian Law and the parties submit to the exclusive jurisdiction of the competent court in Brussels, Belgium.
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