



SWIFTWATCH ANALYSER: TERMS OF USE (August 2005 Version)

ACCESS TO AND USE OF **SWIFTWATCH TRAFFIC ANALYSER** OR **SWIFTWATCH MESSAGE COST ANALYSER** (BOTH REFERRED TO AS "**SWIFTWATCH ANALYSER**") IS LIMITED TO REGISTERED USERS ONLY ("YOU").

BY SUBSCRIBING TO **SWIFTWATCH ANALYSER**, YOU DECLARE TO BE AUTHORIZED BY THE CUSTOMER TO ENTER INTO LEGALLY BINDING AGREEMENTS ON ITS BEHALF.

1. **DEFINITIONS:** In the context of the Terms of Use, the following terms shall have the following meaning:

- "SWIFT" means the SOCIETY FOR WORLDWIDE INTERBANK FINANCIAL TELECOMMUNICATION SCRL, with registered office at Avenue Adèle 1, 1310 La Hulpe, Belgium, VAT BE 0413.330.856, RPM Nivelles;
- "Customer" means the SWIFT User (i.e. a SWIFT Member, Sub-Member or Participant) on whose behalf the User Administrator subscribes to **SWIFTWatch Analyser**;
- "Financial Institution" means all entities registered with SWIFT as belonging to the Customer for the purpose of traffic aggregation as defined in the Pricing and Invoicing section of the SWIFT User Handbook;
- "User Administrator" means a representative authorised by the Customer to subscribe to **SWIFTWatch Analyser** and to manage End-Users on its behalf;
- "Back-Up Administrator" means a representative authorised by the Customer to assume the same responsibilities as the User Administrator. The instructions of the User Administrator will prevail in case of conflicting instructions by the Back-Up Administrator. Any reference in the Terms of Use to the User Administrator shall also refer to the Back-Up Administrator, except when stated otherwise or when the contrary clearly derives from the context;
- "End-User" means an individual within the Financial Institution whose registration to **SWIFTWatch Analyser** is managed by the User Administrator;
- "Aggregated Data" means the data relating to the Customer's BIC destinations. When the Customer is a Financial Institution, it includes the data relating to its entities' BIC destinations;
- "Service Description" means the document issued by SWIFT describing **SWIFTWatch Analyser**, as may be amended from time to time.

2. **CONTRACTUAL FRAMEWORK:** By subscribing to **SWIFTWatch Analyser**, the Ordering Customer accepts and agrees to be bound by these Terms of Use and by the SWIFT Ordering Terms and Conditions. These Terms of Use apply to the administration, access to and/or use of **SWIFTWatch**

The SWIFT Ordering Terms and Conditions apply to the use of SWIFT Ordering.

3. **DESCRIPTION:**

- **SWIFTWatch Traffic Analyser** is a multi-dimensional analysis tool that is designed to enable any SWIFT User to investigate and analyse data relating to its messages (FIN, InterAct & FileAct) exchanged over the SWIFT network, called traffic data. The analyzed data is extracted from the message header. No data is retrieved from the content of the message body (e.g. currency, amount, value date);
- **SWIFTWatch Message Cost Analyser** is a multi-dimensional analysis tool that is designed to enable any SWIFT User to investigate and analyse the traffic billed by SWIFT.

Each SWIFT User has access to its Aggregated Data. The data displayed on **SWIFTWatch Analyser** is updated monthly. The Service Description offers more detailed product information. The Customer is responsible for providing the adequate hardware and software to use **SWIFTWatch Analyser**

4. **PRODUCT SUBSCRIPTION:** The User Administrator subscribes to **SWIFTWatch Analyser**, registers End-Users and manages their subscriptions on behalf of the Customer. At the product subscription, the User Administrator may opt to be registered as an End-User with Unrestricted Access.
5. **END-USER ADMINISTRATION:** The User Administrator has the right to register End-Users to use **SWIFTWatch Analyser**, and to manage their registration. The User Administrator may only register End-Users which are already registered on swift.com and authorised by the Customer to consult the Aggregated Data. The User Administrator has the right to determine and modify the End-User's access level and to terminate the End-User's registration. The User Administrator may grant the End-User access to all ("Unrestricted access") or to a subset ("Restricted access") of Aggregated Data Use.

The User Administrator guarantees having the necessary capacity to grant End-Users the right to access Aggregated Data, and will grant End-Users access to **SWIFTWatch Analyser** under no less stringent conditions than the Terms of The User Administrator guarantees SWIFT he/she can obtain from all SWIFT Users whose data are consolidated in the Aggregated Data the authorisation to make such data available through **SWIFTWatch Analyser**. SWIFT may at any time (typically upon complaint by a SWIFT User whose data is made available by the User Administrator through **SWIFTWatch Analyser**) request the User Administrator to demonstrate having effectively obtained said authorisation(s). Until this is demonstrated to SWIFT's satisfaction, SWIFT has the right to limit the scope of Aggregated Data made available through **SWIFTWatch Analyser** or, at its



Analyser by the User Administrator and the End-Users.

6. **CHANGES TO THE AGGREGATED DATA:** Unless instructions to the contrary by the User Administrator, SWIFT will adapt the scope of the Aggregated Data to which End-Users have access as follows:
- when SWIFT is informed that a new customer joins the Financial Institution, SWIFT will allow End-Users having Unrestricted access to the Aggregated Data to access the data relating to that new customer,
 - when SWIFT is informed that a new customer joins the Financial Institution, SWIFT will not allow End-Users having Restricted access to access the data relating to that new customer,
 - when SWIFT is informed that a customer ceases to be part of the Financial Institution, SWIFT will no longer allow End-Users to access the data relating to that customer.
7. **TERMINATION OF END-USER REGISTRATION:** The User Administrator guarantees to immediately terminate the registration of End-Users who are no longer authorised by the Customer to consult the Aggregated Data (e.g. because they are no longer employees of the Financial Institution, or because they are employee of a customer that ceases to be part of the Financial Institution). When SWIFT is informed about such events, SWIFT may also terminate such End-Users' registrations in case the User Administrator is late or remains in default to comply with this Section 7.
8. **NON-INFRINGEMENT GUARANTEE:** The Customer guarantees SWIFT may enable End-Users to retrieve and analyse the data made available through **SWIFTWatch Analyser**, and that such retrieval and analysis does not infringe upon any applicable data protection or banking secrecy legislation, nor upon any third party rights, such as the rights of the sender and the receiver of the messages, nor upon the rights of any entity within that Financial Institution, such as their right to request or refuse inclusion in the Aggregated Data made available through **SWIFTWatch Analyser**.
9. **END-USER PASSWORDS:** The Customer agrees that the Section 'Use of Passwords' in the SWIFT Ordering Terms and Conditions applies, *mutatis mutandis*, to the use of the End-Users' passwords.
10. **GRANT OF LICENCE:** SWIFT grants the Customer a non-exclusive and non-transferable right to use its Aggregated Data for its Financial Institution's internal purposes as well as in its commercial and marketing materials. The permission for use in commercial and marketing materials is limited to data relating to its Financial Institution's traffic, and does not extend to the data relating to SWIFT's total traffic. The Customer is not authorised to modify or commercialise its Aggregated Data.
11. **LIMITED WARRANTY:** Although SWIFT uses all reasonable efforts to ensure its accuracy, SWIFT assumes no liability whatsoever for any inadvertent errors or omissions that may appear in the Aggregated Data. To the extent permitted by law, **SWIFTWatch Analyser** is provided on an "as is" basis. SWIFT disclaims all other warranties and conditions, either express or implied, including but not limited to implied warranties of merchantability, title, non-infringement and fitness for a particular purpose.
12. **LIABILITY:** SWIFT shall not be liable for any indirect, special or consequential damages whatsoever related to the use of **SWIFTWatch Analyser**, even if SWIFT has been advised of the possibility of such damages. SWIFT's maximum aggregate liability for direct damages shall not exceed 1000 EURO.
13. **TERMINATION:** Each party may terminate the subscription by giving the other no less than three (3) month prior written notice, or when one party remains in default to remedy a breach to its obligations upon a prior written notice by the other party with the instruction to remedy such breach within thirty (30) days. No notice shall be due when termination is for unauthorised or improper use or disclosure of data. The subscription shall be automatically terminated if the Customer ceases to be an authorised SWIFT User. Upon termination or expiration of the subscription, SWIFT will immediately terminate all End-Users' registrations.
14. **GENERAL:** SWIFT reserves its right to modify any provision of the Terms of Use at any time, subject to a 10 days prior notice on the **SWIFTWatch** homepage. The Customer agrees that nothing in these Terms of Use may be construed as limiting SWIFT's right to suppress **SWIFTWatch Analyser** or to submit the access and use of **SWIFTWatch Analyser** to new conditions, fees or charges. The Customer may not assign the subscription voluntarily, by operation of law, or otherwise.
15. **APPLICABLE LAW AND JURISDICTION:** The Terms of Use shall be governed by and construed in accordance with the laws of Belgium and shall be subject to the exclusive jurisdiction of the Brussels' courts. If any provision of the Terms of Use is declared invalid, illegal, or unenforceable by the Brussels' courts, such provision shall be severed from the Terms of Use and the other provisions shall remain in full force and effect.

