



SWIFT
-
GENERAL
TERMS AND CONDITIONS

16 July 2007

The purpose of this document is to set out the terms and conditions that apply to the provision or use of the SWIFT Services and Products to which SWIFT Customers (that is, SWIFT Users, SWIFT Partners and Service Bureaux) subscribe via SWIFT Contractual Arrangements that expressly refer to the SWIFT General Terms and Conditions.

Typically, they govern the use of SWIFTNet messaging services (for example, SWIFTNet InterAct, SWIFTNet FileAct, SWIFTNet Browse, SWIFTNet FIN, SWIFTNet FINCopy, and SWIFTNet FINInform), and related services and products such as SWIFTNet PKI, SWIFTNet Integration Software, access to the SWIFT Secure IP Network (SIPN) and the SWIFTNet Link and SWIFTAlliance Software.

SWIFT Customers that consider subscribing to the SWIFT Services and Products or, more generally, needing to assess the contractual framework governing their use of the SWIFT Services and Products, must read the SWIFT General Terms and Conditions.

The SWIFT General Terms and Conditions should be read in conjunction with any more specific terms and conditions relating to the provision of the SWIFT Services or Products as specified elsewhere in the Service Documentation.

Please verify that you are reading the latest available version of the SWIFT General Terms and Conditions by accessing www.swift.com > About SWIFT > Legal > SWIFT offering

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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 4.5.8.8;
- 1.2 **“Authorised Third Parties”** has the meaning given in clause 4.5.1;
- 1.3 A **“CUG”** or **“Closed User Group”** is a subset of Customers grouped by their use of SWIFT Services and Products to access a Service;
- 1.4 **“Customer”** is a SWIFT User, a SWIFT Partner or a Service Bureau that has subscribed to one or more SWIFT Services and Products. For the avoidance of any doubt, the Service Administrator is also a Customer;
- 1.5 **“Force Majeure”** has the meaning given in clause 8.8;
- 1.6 **“Liability”** has the meaning given in clause 4.5.9.
- 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 (including a Service Administrator) or Service Provider, or the provision or use of any part of the SWIFT Services or Products;
- 1.9 **“Service”** means any value-added service provided by SWIFT (such as the FIN or the Accord service, or the SWIFTSolutions) or by or for a Service Provider (such as a ‘Real Time Gross Settlement’ or a ‘Cash Reporting’ service), that is accessed by participating Customers using SWIFT Services and Products;
- 1.10 **“Service Administrator”** means in relation to a Service not provided by SWIFT the organisation that approves the participation of the Customers in the related CUG(s) and defines the service parameters for the provision of SWIFT Services and Products;
- 1.11 **“Service Bureau”** means a non-SWIFT User organisation that provides SWIFT Users with services regarding the day-to-day operation of their SWIFT connection, such as hosting or operating SWIFT connectivity components, logging in, or managing sessions or security for SWIFT Users. For more information about Service Bureau, see the SWIFT Service Bureau Policy;
- 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 (whether in paper or electronic format) providing specific terms and conditions and other details relating to the provision and use of SWIFT Services and Products issued by SWIFT. The Service Documentation consists in particular of the SWIFT Contractual

Arrangements, these General Terms and Conditions, the Service Bureau Policy and the Data Retrieval Policy, the Service Descriptions, the SWIFT On-line Support service information on www.swift.com and any other document or publication to the extent referred to therein;

- 1.14 **“Service Provider”** means an organisation (other than SWIFT) providing a Service;
- 1.15 **“Software”** means, any software, materials and related documentation made available by SWIFT to the Customer from time to time. For the avoidance of any doubt, Software does not include any Accompanying Software;
- 1.16 **“SWIFT”** means the Society for Worldwide Interbank Financial Telecommunication SCRL, Avenue Adèle 1, 1310, La Hulpe, Belgium;
- 1.17 **“SWIFT Contractual Arrangements”** means, when referred to in these General Terms and Conditions, the relevant subscription and order forms or Undertakings issued by SWIFT and duly executed by the Customer for subscription to SWIFT Services and Products, or the service agreement between SWIFT and the Service Administrator relating to the implementation and operation of such SWIFT Services and Products for a specific Service, including the definition of the various service parameters;
- 1.18 **“SWIFT Group”** means SWIFT, its branches and majority-owned subsidiaries world-wide (for more information about the SWIFT Group, consult www.swift.com);
- 1.19 **“SWIFT Partner”** means an organisation 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 relevant SWIFT Partner registration programme;
- 1.20 **“SWIFT User”** means an organisation that has been admitted under the SWIFT by-laws as a duly authorised user of one or more SWIFT Services or Products. There are 3 categories of SWIFT Users, namely Members, Sub-members and Participants;
- 1.21 **“SWIFT Services and Products”** means the SWIFT product or service in question subscribed to by the Customer via the relevant SWIFT Contractual Arrangements as more particularly described in the Service Description. For the avoidance of any doubt, the SWIFT Services and Products include any Software;
- 1.22 **“Third Party”** has the meaning given in clause 4.5.8.7;
- 1.23 **“Third-Party Licence Terms”** has the meaning given in clause 4.5.8.7.

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", "typically", "include" and "including" are to be construed without limitation.
- 2.6 In the event of any conflict or inconsistency between these General Terms and Conditions and other documents which are part of the Service Documentation the following order of precedence shall apply:
- 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 provision or use of the SWIFT Services and Products set out elsewhere in the Service Documentation (typically, installation or, more generally, user guides).

3. SERVICE DOCUMENTATION - ELECTRONIC RECORDS AND SIGNATURES - CHANGES TO THE SWIFT SERVICES AND RELATED PRODUCTS

- 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 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. Each party also 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.
- 3.5 **Changes**
- 3.5.1 SWIFT reserves the right to change the SWIFT Services and Products and the Service Documentation (excluding the SWIFT Contractual Arrangements) with reasonable advance notice. Changes to the SWIFT Services and

Products are typically announced in the SWIFT release timeline.

As a general rule, SWIFT supports mark releases and related dot releases or patches of the Software for a period of 6 months after a subsequent mark release is available, or such later date as notified by SWIFT. However, if SWIFT issues mandatory dot releases or patches of the Software prior to the following mark release, Customers must install it at the earliest opportunity.

- 3.5.2 If the Customer objects to any change, it may (subject to clause 3.5.3) terminate the provision of the affected SWIFT Services and Products as its sole and exclusive right and remedy in accordance with the terms of clause 9. However, the Customer must do so within 1 month after the announcement of that change and, in all cases, demonstrate to the satisfaction of SWIFT that:
- it has a reasonable objection to that change; or
 - that change materially adversely affects the terms and conditions for the provision of the SWIFT Services and Products.
- 3.5.3 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 related 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 3.5.2 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. 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 SWIFT User, a SWIFT Partner or a Service Bureau to subscribe to and use SWIFT Services and Products. The Customer must refer to their SWIFT Contractual Arrangements to ascertain those SWIFT Services and Products which are available to them.

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 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.

To avoid any doubt, 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 **General Customer Responsibilities**

4.5.1 **General Obligations**

The Customer must access the relevant version, release or patch of the SWIFT Services and Products, including, where appropriate, for downloading, installing and operating them. Also, the Customer is 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 on a regular basis. Except as otherwise expressly permitted elsewhere in the Service Documentation, the Customer acknowledges that the right to download, possess, install or use (as the case may be) SWIFT Services and Products is personal, so that the Customer must not allow any third parties access to the SWIFT Services and Products except for:

- members of their 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 elsewhere in the Service Documentation, such as a Service Bureau selected by the Customer in accordance with the SWIFT Service Bureau Policy.

To avoid any doubt, the Customer must cause such third parties ("Authorised Third Parties") to download, possess, install 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.

4.5.2 **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.

4.5.3 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 > About SWIFT > Legal.

4.5.4 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 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 their 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 their 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.

4.5.5 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 their use and any written evidence provided pursuant to the foregoing, provided always that SWIFT shall at all times comply with the Customer's reasonable security policies and shall in all cases 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.

4.5.6 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 and money laundering regulations, competition laws, and data transmission laws. 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.

4.5.7 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 elsewhere 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 > Partners > Solution Partners > Interface qualification).

4.5.8 Software Licence Obligations

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

4.5.8.1 In accordance with these General Terms and Conditions and any specific licence terms set out elsewhere 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.

4.5.8.2 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 4.5.1;
- 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.

4.5.8.3 Acceptance of the Software shall take place ninety (90) days after delivery. If the Customer however demonstrates to the reasonable satisfaction of SWIFT 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.

4.5.8.4 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).

4.5.8.5 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.

4.5.8.6 The Customer must use only those releases or patches of the Software currently supported by SWIFT. The Customer must in particular ensure that:

- it subscribes to the support and maintenance services for the Software; and
- all new releases or patches of the Software are installed, and preceding releases or patches of the Software removed, 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.

4.5.8.7 The Customer acknowledges that the Software may include software in which the intellectual property rights may belong to a third party ("Third Party"), as documented in the Service Description, and which SWIFT is authorised to sub-license to the Customer. Installation and use of this software may be subject to the Customer agreeing to additional licence terms imposed by a 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 the Third Party itself to provide support and maintenance to the Customer. Should the Customer object to the Third Party Licence Terms, it may, 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. However, the Customer must do so within 1 month after the notification of the Third-Party Licence Terms. Any termination is also subject to the Customer demonstrating to the satisfaction of SWIFT that:

- it has a reasonable objection to the Third-Party Licence Terms; and
- the Third-Party Licence Terms materially adversely affect the terms and conditions for the provision of the SWIFT Services and Products.

4.5.8.8 Without prejudice to clause 4.5.7, 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.

4.5.9 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) ("Liability") suffered or incurred by SWIFT as a result of:

- any failure by the Customer to comply with its obligations under this clause 4.5; or
- any access to or use of the SWIFT Services and Products by the Customer or by Authorised Third Parties

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 access to 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 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 up to and including handing over of control over the defence and settlement of any such claim to SWIFT and any damages that a court awards against the Customer if any such claim is upheld, provided that the Customer notifies SWIFT promptly in writing of any such claim, does nothing to jeopardise or prejudice SWIFT's defence and settlement of any such claim, and 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 downloading, possessing, installing 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. For the avoidance of doubt, 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 solely for:

- death or personal injury caused by SWIFT's negligence or wilful default;
- physical damage or loss of the Customer's tangible property caused by SWIFT's negligence or wilful default up to the limit of 5 million Euro; and
- except to the extent expressly provided to the contrary in the Service Documentation, other damages or losses arising out of SWIFT's default or under any indemnity up to:
 - (i) the amount of the charges and fees for the SWIFT Services and Products for which SWIFT was in default actually received by SWIFT from the Customer during the twelve-month period immediately preceding the date of the event (or, in the case of a series of connected events, the twelve-month period immediately preceding the date of the first event) or, if no charges or fees were applicable to the Customer, 20,000 Euro;
 - (ii) in the case of claims made by a SWIFT User regarding the provision or use of the SWIFT Services and Products in a live environment, 1 million Euro or the amount specified under (i) (whichever is higher); or
 - (iii) in the case of any liability arising under clause 5.2 or 6, 1 million Euro or the amount specified under (i) (whichever is higher).

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

8.2 The total liability of SWIFT to the Customer and to all other Customers and other claimants (if any) for claims made during any calendar year in connection with the provision or use of the SWIFT Services and Products shall be limited to 10 million Euro. To the extent that the aggregate of all amounts awarded against SWIFT in relation to claims made during any calendar year in respect of the SWIFT Services and Products exceeds that amount, each successful claim shall be reduced proportionally with reference to the proportion that such successful claim bears to the aggregate of all successful claims made against SWIFT during the relevant calendar year in respect of the SWIFT Services and Products.

SWIFT shall not be obliged to make any payments in relation to claims made against it during any calendar year in respect of the SWIFT Services and Products until the end of the relevant calendar year. In addition, should the aggregate of all claims made against SWIFT during the relevant calendar year in respect of the SWIFT Services and Products exceed 10 million Euro, SWIFT shall not

make any payments in respect of any such claims until (i) all such claims have been finalised and, where relevant, proportionally reduced in accordance with the foregoing or (ii) until this aggregate amount has been reduced to less than 10 million Euro as a result of some of these claims having been dismissed or withdrawn.

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 Except to the extent expressly provided otherwise in the Service Documentation, SWIFT shall bear no liability (whether arising under contract, tort or otherwise) for:

- any indirect, special or consequential loss of any kind nor for punitive damages; or
- 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 claims of other parties against the Customer or other similar pecuniary loss howsoever arising, even if SWIFT has been advised of their possibility.

8.8 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.

8.9 Except to the extent expressly provided otherwise in the Service Documentation, the limitations 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, licensors, service providers or vendors of SWIFT.

8.10 Except to the extent they may otherwise agree, in no event shall a Third Party or any other of 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 a Customer acting in its capacity as Service Administrator, 12 months advance written notice.

9.3 The Customer may terminate the provision of the SWIFT Services and Products pursuant to clause 3.5.2, 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. Typically, the Customer will submit its termination notice to SWIFT to the Service Administrator concerned for signature (as acknowledgement).

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 SWIFT User, a SWIFT Partner or a Service Bureau.

9.7 Where the provision of the SWIFT Services and Products is subject to the approval of a Service Administrator, the provision of the SWIFT Services and Products in respect of the Service will automatically and immediately terminate:

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

9.8 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, and shall be without prejudice to any other rights or remedies it may have in respect of the termination.

9.9 Upon termination of the SWIFT Services and Products and without prejudice to any other right or remedy of SWIFT, the Customer must 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, except to the extent that the Customer has the right to retain such materials pursuant to the Contractual Arrangements.

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 bind it by an obligation of confidence no less restrictive than this clause. The Customer shall remain responsible for the use of the Information by 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 relevant 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 SWIFT 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 SWIFT Partners (including, to avoid any doubt, 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

SWIFT 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 SWIFT User Handbook).

10.2 Co-operation

Without prejudice to its other obligations elsewhere 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 elsewhere 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 elsewhere 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 elsewhere 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 10.11.4, 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 sub-clause 10.11.3, 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.

10.10 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.

10.11 Dispute Resolution

Preliminary

10.11.1 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.

Conciliation – Time limit

10.11.2 The parties will use all commercially reasonable efforts to resolve at an operational 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 10.11.4, to submit to the exclusive jurisdiction of the competent court in Brussels (Belgium).

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 SWIFT User Handbook);
- in the case of claims relating to messages or files, within 3 months of the date the message or file in contention 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.

Message Disputes in a live environment

10.11.3 However, in the case of disputes brought against SWIFT by SWIFT Users regarding the provision of the SWIFT Services and Products 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 SWIFT 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 SWIFT User(s) with their respective roles and responsibilities and other relevant obligations in contract, tort or otherwise.

The claiming SWIFT 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 SWIFT User(s) or Authorised Third Party(ies) concerned, or any other information maintained by the claiming SWIFT 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 SWIFT 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 SWIFT User as may be appropriate.

SWIFT Board Committee

Any claiming SWIFT 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 SWIFT 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 SWIFT 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 SWIFT 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 SWIFT 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 SWIFT User as may be appropriate.

Arbitration

The claiming SWIFT 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 SWIFT 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;
- the arbitration shall take place in Brussels, in the English language.

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

10.11.5 For the avoidance of doubt, and unless otherwise agreed by all parties concerned, nothing in this claims procedure 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.