



SWIFT

SWIFT Qualified Certificates

Terms and Conditions

The *SWIFT Qualified Certificates Terms and Conditions* constitute the SWIFT standard terms and conditions for the provision and the use of SWIFT's Qualified Certificates offering.

The *SWIFT Qualified Certificates Terms and Conditions* are for Customers that need information about the contractual framework for the provision and the use of the SWIFT Qualified Certificates offering. This document is effective from 01 January 2013.

17 December 2012

Table of Contents

Preface.....	3
SWIFT Qualified Certificates Terms and Conditions.....	5
1 Interpretation.....	5
2 Electronic Signature or Data and Documentation	5
3 Conditions of Use for SWIFT Qualified Certificates	6
4 SWIFT Role and Responsibilities	6
5 Customer Roles and Responsibilities.....	8
6 Intellectual Property Rights Indemnification.....	10
7 Charges and Fees.....	10
8 Liability	11
9 Duration and Termination.....	13
10 Personal Data Protection.....	14
11 Confidentiality.....	14
12 Notices	16
13 Miscellaneous	16
14 Dispute Resolution.....	18
15 Applicable Law.....	18
Explanatory comments.....	19

Preface

Purpose of this document

The *SWIFT Qualified Certificates Terms and Conditions* constitute the main set of SWIFT standard terms and conditions for the provision and use of SWIFT's Qualified Certificates offering. For example, they provide general information about the conditions of use of SWIFT Qualified Certificates, the rights and obligations of SWIFT and its Customers subscribing to SWIFT's Qualified Certificates offering to request or to rely upon SWIFT Qualified Certificates (respectively referred to as 'Subscribers' and "Relying Parties" elsewhere in the Qualified Certificates Agreement, or collectively "Customers" in these *SWIFT Qualified Certificates Terms and Conditions*), including the duration and the conditions to terminate such subscription, their liability, the claim process, or the applicable law and jurisdiction.

If and to the extent that SWIFT's Qualified Certificates offering is used in conjunction with other SWIFT services and products, the *SWIFT Qualified Certificates Terms and Conditions* must be read together with the terms and conditions governing the provision and use of these other SWIFT services and products.

The *SWIFT Qualified Certificates Terms and Conditions* apply each time the form or contract executed by the Customer (i) refers to the provision and use of SWIFT Qualified Certificates and (ii) expressly confirms that these *SWIFT Qualified Certificates Terms and Conditions* apply. If a Relying Party has not executed any such form or contract, it shall be deemed to have tacitly accepted the *SWIFT Qualified Certificates Terms and Conditions* by relying or other acting upon a SWIFT Qualified Certificate.

Intended audience

This document is for the following audience:

- Customers that need information about the contractual framework for the provision and the use of SWIFT Qualified Certificates

Related documentation

The form or contract (if any) executed by the Customer and the *SWIFT Qualified Certificates Terms and Conditions*, together with the *SWIFT Qualified Certificates Certificate Policy* ("CP") and the *SWIFT Qualified Certificates Certification Practice Statement* ("CPS") which are incorporated in the *SWIFT Qualified Certificates Terms and Conditions* by reference, constitute the agreement between SWIFT and the Customer for the provision and use of SWIFT Qualified Certificates (the "Qualified Certificates Agreement").

In addition to the documents constituting the Qualified Certificates Agreement, there are other documents (listed below), which are referred to in the Qualified Certificates Agreement (collectively "Qualified Certificates Documentation") and which Customers must also consider and, as applicable, comply with.

- *SWIFT Qualified Certificates Certificate Administration Guide* ("CAG")
- *SWIFT Qualified Certificates Secure Channel User Guide*
- *Pricing and Invoicing - Ordering, Invoicing, and Payment*
- *SWIFT By-laws*
- *SWIFT Corporate Rules*
- *SWIFT Glossary*
- *SWIFT Personal Data Protection Policy*

Where to find Qualified Certificates documentation

Customers can find the latest version of the *SWIFT Qualified Certificates Terms and Conditions* together with the *SWIFT Qualified Certificates CP* and the *SWIFT Qualified Certificates CPS* at www.swift.com/pkirepository.

SWIFT-defined terms

In the context of SWIFT documentation, certain terms have a specific meaning. These terms are called SWIFT-defined terms. The definitions of SWIFT-defined terms appear in the *SWIFT Glossary*.

Effective Date

This first version of the *SWIFT Qualified Certificates Terms and Conditions* will become effective as of 1 January 2013.

SWIFT Qualified Certificates Terms and Conditions

1 Interpretation

- 1.1 Unless inconsistent with the context, the following reading conventions apply in the *SWIFT Qualified Certificates Terms and Conditions*:
- a) Terms that are capitalised in the text have the specific meaning set out in the *SWIFT Qualified Certificates Terms and Conditions*. Terms that are highlighted in grey in the text have the specific meaning set out in the [SWIFT Glossary](#).
 - b) A reference to a document or form refers to the latest version in force.
 - c) A reference to a person includes any other person for which he is responsible, including his employees, directors, agents, and subcontractors. Without prejudice to the generality of the foregoing, the Customer is responsible for any use of the SWIFT Qualified Certificates and, more generally, SWIFT's Qualified Certificates offering by his employees, directors, agents or subcontractors. The Customer shall ensure each such person is fully aware of those terms and conditions governing the use of the SWIFT Qualified Certificates and, more generally, SWIFT's Qualified Certificates offering that are relevant to it and complies therewith at all times.
- 1.2 General principles or words are not given any restrictive meaning when they are illustrated with examples.
- 1.3 The following order of precedence applies within the Qualified Certificates Agreement:
- 1) the electronic form or contract executed by the Customer to subscribe to SWIFT Qualified Certificates
 - 2) the *SWIFT Qualified Certificates Terms and Conditions*
 - 3) the *SWIFT Qualified Certificates CP*
 - 4) the *SWIFT Qualified Certificates CPS*
 - 5) any other documentation included by reference in the documents listed above
- If any document expressly provides that another document amends or supplements it, that other document prevails.
- 1.4 These *SWIFT Qualified Certificates Terms and Conditions* constitute a legal agreement between SWIFT and its Customers. However, they do not govern any contractual arrangements directly between Customers.
- 1.5 For the avoidance of doubt, the parties accept that any obligations under the Qualified Certificates Agreement referring to a party using efforts must be construed or interpreted as an obligation to apply efforts ("middelenverbintenis" / "obligation de moyens") and not as an obligation to achieve a certain result ("resultaatsverbintenis" / "obligation de resultats").

2 Electronic Signature or Data and Documentation

- 2.1 Each party accepts the validity of an electronic signature or electronic data, and confirms that it has the same force and legal effect as if in writing or paper-based.

Without prejudice to the generality of the foregoing each party agrees that:

- except where the Qualified Certificates Agreement or applicable law would expressly require otherwise, the subscription to SWIFT's Qualified Certificates offering can be concluded by fax, e-mail, eorder or any other electronic communication system;
- fax copies and messages sent by means of fax, e-mail, eorder or any other electronic communication system have the same evidential value as the original documents;
- an electronic signature secured with a SWIFT Qualified Certificate is considered equivalent to a handwritten signature and meets the requirements of article 1322, paragraph 2 of the Belgian Civil Code. It is thus legally binding upon the Customer identified in the certificate used to secure such electronic signature, and it has all other legal consequences ascribed to such electronic signature by Belgian law.

- 2.2 The Customer acknowledges and agrees that SWIFT may amend or supplement the Qualified Certificates Agreement and Qualified Certificates Documentation at any time upon notice to the Customer (typically, by updating the relevant document(s) on www.swift.com/pkirepository).

The Customer must ensure that it always refers to the latest Qualified Certificates Agreement and Qualified Certificates Documentation in effect, and that it is aware of the latest available information relating to the provision or use of SWIFT's Qualified Certificates offering. In particular, Customers must regularly consult the information, documentation available at www.swift.com/pkirepository.

To assist Customers, SWIFT publishes various newsletters. These typically inform Customers by e-mail about the latest news, changes, known issues and solutions, and frequently asked questions. SWIFT encourages Customers to subscribe to all relevant newsletters (available at www.swift.com > Support > Support newsletters).

- 2.3 Only the English version of the Qualified Certificates Agreement and Qualified Certificates Documentation as published by SWIFT (typically, on www.swift.com/pkirepository) is valid.

3 Conditions of Use for SWIFT Qualified Certificates

- 3.1 The Customer must subscribe to its Qualified Certificates offering by duly executing a Qualified Certificates Agreement with SWIFT (typically, by duly completing and executing the Qualified Certificate registration form or any other relevant form or contract with SWIFT). No subscription to SWIFT's Qualified Certificates offering will be effective until finally accepted by SWIFT.

- 3.2 The Customer acknowledges and agrees that the subscription to and/or use of SWIFT's Qualified Certificates offering may be subject to additional conditions (if any) as set out in the Qualified Certificates Agreement or Qualified Certificates Documentation.

Typically, the subscription to and use of SWIFT's Qualified Certificates offering in conjunction with other SWIFT services or products shall be permitted to the extent that Customers are also eligible to subscribe to and use those other services or products.

- 3.3 To the extent permitted under applicable law, SWIFT reserves the right to refuse the Customer's subscription to its Qualified Certificates offering, in which case it will inform the Customer in writing accordingly.

4 SWIFT Role and Responsibilities

- 4.1 Provide SWIFT Qualified Certificates

- 4.1.1 SWIFT provides its Qualified Certificates offering in all material respects as set out in the Qualified Certificates Agreement.

Without prejudice to the generality of the foregoing, the *SWIFT Qualified Certificates CP* documents:

- the SWIFT Qualified Certificates offering, including its intended use and purpose (typically, the permitted use of a SWIFT Qualified Certificate for electronic signatures and non-repudiation purposes only)
 - the mandatory initial registration, including the applicable procedure, the information and documents to be submitted by the Customer and other applicable conditions
 - the process and conditions for the Customer to apply for a SWIFT Qualified Certificate
 - the process and conditions for the issuance by SWIFT of a Qualified Certificate to the Customer, including applicable conditions (typically, the validity period) and possible grounds for refusal
 - the process and conditions for revoking a Qualified Certificate (typically, the time period necessary to process a revocation request). Without prejudice to the generality of the foregoing and other rights and remedies available to SWIFT under the Qualified Certificates Agreement, SWIFT reserves the right to revoke a SWIFT Qualified Certificate if *inter alia* it is notified of the dissolution of the legal entity that is the holder of that certificate
 - data publication and retention by SWIFT, including the safekeeping of a record of the data provided in the registration process, the events relating to the life cycle of the keys linked to the SWIFT Qualified Certificates, the provision of any applicable secure signature creation device, any revocation requests and the identification data and attributes that are included in a SWIFT Qualified Certificate for the period required under applicable law (i.e. 30 years at the date of publication of these *SWIFT Qualified Certificates Terms and Conditions*)
- 4.1.3 When the Customer is responsible for downloading information, data, or materials, SWIFT's obligation to make these available to the Customer is fulfilled by making them available on the relevant site in a downloadable format.
- 4.1.4 When SWIFT is responsible for issuing or revoking SWIFT Qualified Certificates, and subject to the Customer duly and timely meeting its own obligations and other applicable conditions, SWIFT will use all commercially reasonable efforts to issue or, as the case may be, revoke the Qualified Certificate in question by the time specified in the *SWIFT Qualified Certificates CP* or elsewhere in the Qualified Certificates Agreement, or as otherwise agreed with and confirmed between the parties.
- 4.1.5 When SWIFT's Qualified Certificates offering is made available through the internet, SWIFT cannot be held responsible for problems due to or arising in connection with the internet channels used by the Customer.
- 4.2 Suspension and Change
- 4.2.1 The Customer acknowledges and agrees that SWIFT may suspend or change its Qualified Certificates offering, in whole or in part, at any time, giving as much advance notice as reasonable (typically, during announced downtime windows), in any of the following events:
- a) to perform or allow maintenance, or to upgrade or otherwise change its Qualified Certificates offering
 - b) to prevent or mitigate any adverse effect on the security, reliability, or resilience of its Qualified Certificates offering
 - c) to comply with any law, decree, regulation, order or any other act or intervention of a regulatory, governmental, legislative or judicial authority, including a court or arbitral tribunal
 - d) if the Customer has committed a material breach or persistent breaches (whether of the same or of different provisions).

SWIFT informs the Customer about changes to its Qualified Certificates offering (typically, in a release or patch letter, its support section at www.swift.com > Support or an update of the Qualified Certificates Agreement).

- 4.2.2 SWIFT limits any suspension of, or changes to, its services and products pursuant to clause 4.2.1 as reasonably practicable in the circumstances. SWIFT typically schedules maintenance, upgrade, and change activities during allowable downtime windows as published at www.swift.com > Support > Operational status.
- 4.2.3 For the avoidance of doubt, SWIFT shall have no liability whatsoever to the Customer, and the Customer shall not be entitled to any compensation, in relation to or in connection with any suspension or change performed pursuant to this clause 4.2.
- 4.3 SWIFT Responsibilities
- 4.3.1 SWIFT provides its Qualified Certificates offering using care and skill consistent with good industry practice.
- 4.3.2 SWIFT provides its Qualified Certificates offering using competent personnel with appropriate experience.
- 4.3.3 Unless SWIFT notifies the Customer otherwise, and provided SWIFT is permitted and in a position to do so using commercially reasonable efforts, SWIFT warrants that it is not aware of any bona fide claim that the possession or use of its Qualified Certificates offering by the Customer, as permitted under the Qualified Certificates Agreement, infringes the intellectual property rights of any third party.

5 Customer Roles and Responsibilities

5.1 General Obligations

- 5.1.1 The Customer must comply with all obligations and other mandatory instructions applicable to it in connection with its subscription to or use of SWIFT's Qualified Certificates offering, as set out in the Qualified Certificates Agreement or otherwise notified by SWIFT to the Customer.

Without prejudice to the generality of the foregoing, the Customer must fully abide by the following:

- provide and maintain current, accurate and complete information and authorised representatives as may be required by SWIFT from time to time in connection with the provision or use of SWIFT's Qualified Certificates offering. When designating authorised representatives, the Customer shall in particular ensure these persons are and remain aware of and able to perform their role and responsibilities, including any changes to such roles and responsibilities. The Customer acknowledges and agrees that it is fully liable, and SWIFT expressly disclaims any liability, for any damage or loss that may be caused by the provision by the Customer of outdated, incomplete or otherwise incorrect, information and/or documents, or designating representatives without all necessary capacity or authority.
- use the SWIFT Qualified Certificates and, more generally, SWIFT's Qualified Certificates offering for professional purposes only, and as more specifically permitted and described in the *SWIFT Qualified Certificates CP*, the *SWIFT Qualified Certificates CPS* or elsewhere in the Qualified Certificates Agreement
- be at all times aware of the circumstances in which a SWIFT Qualified Certificate must be revoked and as applicable, ensure that certificate is duly and timely revoked, as described in more detail in the *SWIFT Qualified Certificates CP* or *CPS*.

The Customer acknowledges and agrees that SWIFT may publish and/or retain data, documents or materials supplied by or for the Customer to SWIFT (typically, data, documents or materials supplied in support of the registration and/or to be included in a certificate) as set out

in more detail in the registration form, the *SWIFT Qualified Certificates CP*, the *SWIFT Qualified Certificates CPS* or elsewhere in the Qualified Certificate Agreement.

5.1.2 The Customer is responsible for complying at its own risk and expense with all operating requirements for its use of SWIFT's Qualified Certificates offering as defined by SWIFT from time to time in the *SWIFT Qualified Certificates CP*, the *SWIFT Qualified Certificates CPS* or elsewhere in the Qualified Certificates Agreement.

5.1.3 The Customer must use only the releases or patches of SWIFT's Qualified Certificates offering that SWIFT currently supports, as specified in the Qualified Certificates Agreement or as otherwise notified by SWIFT (for example, in a release or patch letter).

5.1.4 Data security

The Customer is responsible at all times for maintaining the confidentiality, integrity, and availability of data on all systems under its responsibility. In particular, the Customer must ensure the following:

- a) It implements appropriate management principles to ensure (i) only authorised users are created and remain on its systems; (ii) users are granted physical or logical access to SWIFT Qualified Certificates and, more generally, SWIFT's Qualified Certificates offering on a need-to-know or need-to-have basis only; (iii) its operations have been duly authorised; (iv) networks, systems, applications are fully segregated based on their criticality.
- b) It implements appropriate and regularly re-assessed controls to avoid that malicious code is exchanged in connection with its use of SWIFT's Qualified Certificates offering (typically, the scanning of messages sent or received with state-of-the-art and up-to-date virus and malware scanning software).
- c) It operates backup procedures and handles backup media according to appropriate security practices.
- d) When it installs and uses third-party software and equipment use in connection with its use of SWIFT's Qualified Certificates offering, it complies at all times with all proper instructions and recommendations regarding their use (typically, the timely installation of all critical updates and patches).

The Customer must also ensure that its operational environment has been configured for increased resilience in order to minimise any downtime in the event of a failure of its primary systems or connection.

5.2 Industry Practice, Applicable Laws, and Regulations

The Customer is responsible for its use of SWIFT's Qualified Certificates offering, and any use of SWIFT's Qualified Certificates offering by the Customer will be considered as emanating from the Customer.

In using SWIFT's Qualified Certificates offering and conducting its business, the Customer must always exercise due diligence and reasonable judgment, and must comply with good industry practice and all relevant laws, regulations, or third-party rights, even if this restricts its usage entitlement under SWIFT's governance.

Without prejudice to the generality of the foregoing, the Customer must:

- seek all necessary or advisable consents and authorisations and enter into all necessary contractual arrangements in order to ensure that no laws, regulations, or third-party rights are violated (including laws and regulations regarding banking, money transmission, securities, money laundering, terrorist financing, economic sanctions, competition, outsourcing and data transmission);

- comply with all relevant laws and regulations regarding the export, re-export, import, and use of any products, software, technology, or materials (including cryptographic technology and materials) comprised in or relating to the provision and the use of SWIFT's Qualified Certificates offering.

6 Intellectual Property Rights Indemnification

6.1 Any and all rights (including title, ownership rights, database rights, and any other intellectual property rights) in SWIFT's Qualified Certificates offering, and documentation or other materials developed or supplied in connection with that offering, including any associated processes or any derivative works, are and will remain the sole and exclusive property of SWIFT or its licensors.

No rights are granted by SWIFT in respect of SWIFT's Qualified Certificates offering other than those expressly granted under the Qualified Certificates Agreement.

6.2 If a third party makes a bona fide claim that the possession or use of SWIFT's Qualified Certificates offering by the Customer as permitted under the Qualified Certificates Agreement infringes its intellectual property rights, SWIFT will indemnify the Customer against that claim by paying:

- a) any reasonable legal fees incurred by the Customer until control over the defence and settlement of any such claim has been handed over to SWIFT
- b) any damages that a court or arbitral tribunal awards, in a final and enforceable court decision against which no appeal or recourse is open, against the Customer if any such claim is upheld

provided that the Customer :

- a) notifies SWIFT promptly in writing of any such claim
- b) does nothing to jeopardise or prejudice SWIFT's defence and settlement of any such claim
- c) promptly hands over to SWIFT control over the defence and settlement of any such claim.

6.3 If SWIFT's Qualified Certificates offering, in whole or in part, is held to constitute an infringement of intellectual property rights of third parties, or its provision or use is enjoined or prevented, in whole or in part, by a court or arbitral tribunal order, SWIFT may, in its discretion and at its expense, use all commercially reasonable efforts to achieve one of the following alternatives:

- a) procure for the Customer the right to continue using SWIFT's Qualified Certificates offering
- b) modify, replace, or amend the affected SWIFT's Qualified Certificates offering so that they no longer constitute an infringement. In this case, the Customer will substitute such version of SWIFT's Qualified Certificates offering at the earliest opportunity after it has been made available.

If SWIFT does not secure either option, then SWIFT will refund any one-time charge(s) paid for the subscription to or use of SWIFT's Qualified Certificates offering, and the Qualified Certificates Agreement will automatically terminate.

6.4 This clause 6 states the sole and exclusive rights and remedies of the Customer concerning the infringement of rights of third parties, allegations of infringement, or breach of clause 4.3.3. 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 (if any) applicable to it for the provision or use of SWIFT's Qualified Certificates offering.

These charges and fees, and related invoicing and payment terms and conditions, are as notified by SWIFT to the Customer through SWIFT standard pricing documentation, or otherwise (for example, a specific quotation for the Customer or a statement in SWIFT invoices).

8 Liability

8.1 SWIFT Liability

8.1.1 SWIFT accepts liability (if any) to the Customer (whether in contract, tort, or otherwise), only for negligence, wilful default, or fraud, or under the indemnity in clause 6.2, and always subject to the other provisions of this clause 8.

The provisions governing SWIFT's liability under the Qualified Certificates Agreement or other applicable SWIFT contractual documentation (typically, the limitation and exclusions of SWIFT's liability) apply whether the Customer claims in contract, tort, or otherwise.

The limitation and exclusions of SWIFT's liability set out in in Qualified Certificates Agreement or other relevant SWIFT contractual documentation do not apply in case of fraud, wilful default or, more generally, to the extent not permitted under article 14 of the Belgian Act on electronic signatures and certification services dated 9 July 2001 or, more generally, applicable law.

8.1.2 Any liability of SWIFT is subject to the following limitations:

- a) SWIFT's total aggregate liability to any and all Customers for any and all claims notified to SWIFT (in accordance with clauses 12 and 14.1) in any one calendar year will not exceed 1 million Euro.
- b) SWIFT will have no obligation to pay any compensation in respect of any claim until:
 - (i) SWIFT has accepted its liability and the amount of the compensation; or
 - (ii) a court order, judgment or an arbitral award has been rendered in respect of SWIFT's liability that can no longer be challenged and that is final and binding upon the parties (each of (i) and (ii) being referred to in this clause 8.1.2 as an "Established Claim"),

it being understood that SWIFT will only pay compensation within 90 days following the date that each and every claim in the same claims category notified to SWIFT in a particular calendar year has become an Established Claim or has been dismissed in a court order, judgment or an arbitral award that can no longer be challenged and that is final and binding upon all parties concerned.

- c) If the total value of all Established Claims resulting from claims notified to SWIFT in the same calendar year exceeds the maximum amount set out in clause 8.1.2. a, then the amount of each such claim shall be reduced proportionately by:
 - (i) calculating the value of each such Established Claim as a percentage of the total amount of all Established Claims in that calendar year; and then
 - (ii) for each such claim, applying the percentage referred to in (i) to the maximum amount set out in clause 8.1.2. a.

8.1.3 Subject to clause 8.1.4, SWIFT's liability is subject to the following exclusions:

- a) Even if SWIFT has been advised of their possibility, SWIFT excludes any liability for:
 - (i) any loss or damage the occurrence or extent of which is unforeseeable
 - (ii) any loss of business or profit, revenue, anticipated savings, contracts, loss or corruption of data, loss of use, loss of goodwill, interruption of business, or other similar pecuniary loss howsoever arising (whether direct or indirect)
 - (iii) any indirect, special, or consequential loss or damage of any kind

- b) SWIFT is not obliged to perform or has no liability to the extent resulting from the provision or use of services or products not supplied by SWIFT for use in connection with SWIFT's Qualified Certificates offering, or in the circumstances set out in clause 8.3.d or 8.4.
- c) SWIFT's liability for any one event or series of connected events (whether in contract, tort, or otherwise) is not cumulative, whether arising under the Qualified Certificates Agreement or otherwise.

8.1.4 The limitations and exclusions of SWIFT's liability in clauses 8.1.2 and 8.1.3 do not apply:

- a) to the extent expressly provided otherwise elsewhere in the Qualified Certificates Agreement or other applicable SWIFT contractual documentation
- b) to any liability for death or personal injury

8.1.5 This clause 8.1 applies before as well as after any termination of the contractual arrangements between SWIFT and the Customer, and is also for the benefit of any other entities within the SWIFT group (whether their liability is in contract, tort, or otherwise).

8.2 Customer Liability

Except if and to the extent caused by an act or omission of SWIFT, the Customer will hold SWIFT harmless and will indemnify and keep SWIFT indemnified from and against any and all actions, liabilities, claims, fines, demands, losses, damages, proceedings, costs, or expenses (including reasonable legal fees, costs, and expenses) suffered or incurred by SWIFT in connection with any claim (including any claim made by another Customer) related to or in connection with the Customer's access to or use of SWIFT's Qualified Certificates offering including but not limited to:

- the provision by the Customer of incorrect information to be included in a certificate;
- the use of the certificate between after a revocation request;
- any illegal, illicit or other unauthorized access or use or modification of SWIFT's Qualified Certificate offering.

8.3 General Principles Governing the Liability of Each Party

- a) Each party will use all commercially reasonable efforts to limit any loss or damage.
- b) Neither party may recover more than once for the same loss (including under insurance coverage).
- c) No undue enrichment will ever accrue to any party.
- d) Neither party is obliged to perform or will have any liability for any act, fault or omission by that party to the extent resulting from any act, fault or omission of the other party (typically, a failure by that other party, or one of its sub-contractors or agents, to act in accordance with the Qualified Certificates Agreement), or of a third party for which it is not responsible.

8.4 Force Majeure

Neither party shall be liable to the other party for any delay or non-performance of its obligations under the Qualified Certificates Agreement to the extent to which such delay or non-performance arises from any force majeure event.

For the purposes of this clause 8.4, force majeure event means any event or circumstance, or combination of events or circumstances, which is beyond the reasonable control of, and is not attributable to, the affected party (the "Affected Party") resulting in the Affected Party being prevented from performing or being delayed in the performance of any of its obligations under the Qualified Certificates Agreement. Without prejudice to the generality of the foregoing, a force majeure event may include those events or circumstances listed in the Explanatory Comments to these *SWIFT Qualified Certificates Terms and Conditions* provided always such events or

circumstances are beyond the reasonable control of, and are not attributable to the Affected Party.

Subject to the Affected Party notifying the other party in writing, as soon as possible upon becoming aware of such force majeure event, of the force majeure event causing delay or non-performance and the likely duration of the delay or non-performance, and provided the Affected Party uses all commercially reasonable efforts to limit the effect of that delay or non-performance on the other party, the performance of the Affected Party's obligations, to the extent affected by the force majeure event, shall be suspended during the period that the force majeure event persists. If performance is not resumed within 60 days after that notice either party may terminate the Qualified Certificates Agreement immediately by written notice to the other party.

8.5 No Warranties

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED FOR IN THESE QUALIFIED CERTIFICATES TERMS AND CONDITIONS OR ELSEWHERE IN THE QUALIFIED CERTIFICATES AGREEMENT OR OTHER APPLICABLE SWIFT CONTRACTUAL DOCUMENTATION, SWIFT MAKES NO REPRESENTATION OR WARRANTY (I) AS TO THE CONDITION, QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ITS QUALIFIED CERTIFICATES OFFERING; OR (II) THAT THE USE OF SWIFT'S QUALIFIED CERTIFICATES OFFERING WILL BE UNINTERRUPTED OR ERROR-FREE.

8.6 Liability of SWIFT Licensors, Service Providers, or Vendors

Except to the extent they may otherwise agree with the Customer directly, SWIFT's licensors, service providers, or vendors are not liable to the Customer for any loss or damage of any kind in connection with the provision or use of SWIFT's Qualified Certificates offering, whether arising in contract, tort or otherwise

9 Duration and Termination

9.1 Indefinite Term

Unless expressly provided otherwise in writing between the parties, SWIFT provides its Qualified Certificates offering to the Customer for an indefinite period.

9.2 Termination for Convenience

Each party has the right to terminate its Qualified Certificates Agreement with the other party by written notice to that other party 3 months in advance.

9.3 Termination for Cause

Each party has the right to terminate its Qualified Certificates Agreement with the other party immediately upon written notice to that other party in the following events:

- a) That other party committed a material breach of its obligations and such breach is incapable of remedy, or persistent breaches (whether of the same or of different provisions).
- b) That other party committed a material breach of its obligations and such breach is not remedied within 30 days after notice of the breach has been given in writing to the other party.
- c) That other party becomes insolvent or generally fails to pay, or admits its inability to pay, all or a substantial part of its debts as they become due, or applies for or is granted a moratorium.

- d) A receiver, manager, administrator, liquidator, or other similar officer or practitioner is appointed over the whole or any substantial part of that other party's business or assets, or any steps are undertaken to that effect (typically, it becomes the subject of a bankruptcy, insolvency, or other similar proceeding).

SWIFT also has the right to terminate its Qualified Certificates Agreement with the Customer immediately upon written notice to the Customer in the circumstances set out in clauses 4.2.1.b and 4.2.1.c.

For the purposes of clauses 9.3 a and b above, the parties agree that non-compliance with payment obligations, obligations governing confidentiality, obligations regarding intellectual property rights, obligations the provision of identification details or security procedures shall be considered as material obligations under the Qualified Certificates Agreement.

9.4 Termination for Change

If the Customer objects to a change to SWIFT's Qualified Certificates offering or its Qualified Certificates Agreement with SWIFT the Customer may, as its sole and exclusive right and remedy, terminate (without any liability or charge) its Qualified Certificates Agreement with SWIFT upon written notice to SWIFT. The Customer must serve such notice within 1 month of the date on which the Customer becomes aware (or should reasonably have become aware) of such change.

9.5 Consequences of Termination

Termination of the Qualified Certificates Agreement between SWIFT and the Customer for any reason will:

- a) not relieve either party from any obligations under the Qualified Certificates Agreement which may have arisen prior to termination or which expressly or by implication become effective or continue to be effective on or after such termination
- b) be without prejudice to any other rights or remedies either party may have in respect of such termination.

10 **Personal Data Protection**

SWIFT may process personal data (as defined in the [SWIFT Personal Data Protection Policy](#)) collected:

- a) by SWIFT for purposes relating to the provision of SWIFT services and products, including SWIFT's Qualified Certificates offering, or relating to SWIFT governance (for example, contact details of Customer employees or security officers)
- b) by the Customer and supplied to SWIFT as part of the Customer's use of SWIFT services and products, including SWIFT's Qualified Certificates offering (for example, personal data contained in a SWIFT Qualified Certificate that the Customer requests SWIFT to issue).

The rights and obligations of the parties in each case are set out in the [SWIFT Personal Data Protection Policy](#).

Without prejudice to the generality of the forgoing, the Customer warrants having obtained all prior, individual and necessary approvals and authorizations from all persons concerned to allow SWIFT to process all supplied personal data in accordance with the [SWIFT Personal Data Protection Policy](#).

11 **Confidentiality**

11.1 Customer Obligations of Confidentiality

The Customer must keep in confidence all information, data or materials accessed or obtained in connection with the provision of SWIFT's Qualified Certificates offering.

The Customer must only use such information, data or materials as reasonably necessary to use SWIFT's Qualified Certificates offering in accordance with the Qualified Certificates Agreement.

The Customer must only disclose such information, data or materials to its employees, agents, subcontractors, or professional advisors (or those persons of its affiliated entities) on a "need-to-know" basis. Any other use or disclosure requires SWIFT's prior written consent (which will not be unreasonably withheld or delayed).

In each case, the Customer must inform the recipient of the confidential nature of such information, data or materials, and ensure that the recipient is bound by an obligation of confidence no less restrictive than this clause 11.1. The Customer remains responsible for the use of information, data or materials by any such persons.

These confidentiality obligations will survive termination of the Qualified Certificates Agreement of the Customer with SWIFT.

These confidentiality obligations do not apply to information, data or materials that the Customer can demonstrate:

- a) were in the public domain (other than through a breach by the Customer of its obligations)
- b) were lawfully received free of any obligations of confidentiality from a third party who, in the Customer's reasonable opinion, did not owe a duty of confidentiality in respect of such information, data or materials
- c) were developed independently by the Customer without reference to such information, data or materials
- d) were required by law or regulation to be disclosed.

11.2 SWIFT Obligations of Confidentiality

The obligations of confidentiality in clause 11.1 apply mutatis mutandis to SWIFT in respect of all information, data or materials accessed or obtained by SWIFT from the Customer in connection with the provision of SWIFT's Qualified Certificates offering, save to the extent varied by this clause 11.2 or elsewhere in the Qualified Certificates Agreement. For example, the information to be included in a SWIFT Qualified Certificate or revocation records shall not be considered as Confidential Information.

In particular, SWIFT will only use such information, data or materials for purposes relating to the promotion, deployment, provision or support of SWIFT's Qualified Certificates offering or other SWIFT services and products or related services and products of service bureaux or SWIFT partners; SWIFT governance; accounting and records keeping; or Customer relationship management.

For these purposes, SWIFT may also share such information, data or materials within the SWIFT group, or with service bureaux or SWIFT partners (including their respective employees, agents, subcontractors or professional advisors) provided that any such third party complies with obligations of confidence no less restrictive than this clause 11.2.

Furthermore, the Customer acknowledges and agrees that SWIFT may disclose the information, data or materials of the Customer to affiliated entities of the Customer.

More information about the protection of personal data is set out in clause 10.

12 Notices

- 12.1 Except when expressly provided otherwise elsewhere in the Qualified Certificates Agreement, all notices, requests or announcements from one party to the other, will be in English and in writing, whether in paper form (typically by post or courier with acknowledgement of receipt) or electronic form (typically, e-mail, SWIFT e-form, SWIFT e-invoice, announcement on SWIFT's websites or in a SWIFT release or patch letter, newsletter or magazine, installation notices, or facsimile transmission).

When sent to the other party, such notices will be made correctly and validly if sent to the latest contact details notified by the other party for such matters pursuant to the provisions of this clause 12.1, or the latest so designated registered address of the other party. For example, the Customer can, at any time, request information or raise other questions about SWIFT's Qualified Certificates offerings by way of written communication addressed to SWIFT as per the contact details specified in the *SWIFT Qualified Certificates CP* or elsewhere in the Qualified Certificates Agreement.

- 12.2 As applicable, the Customer must notify SWIFT in electronic form through www.swift.com of its intention to terminate its Qualified Certificates Agreement, in whole or in part.

- 12.3 Notices relating to the termination of SWIFT's Qualified Certificates offering which cannot be served pursuant to clause 12.2 and notices which relate to any claims procedure must be served in either of the following manners:

- by e-mail, facsimile transmission, mail or courier, with evidence of delivery such as a reply by the recipient or a signed or stamped dated receipt
- by MT 999

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

- Customer: its registered office or any other valid address pursuant to clause 12.1
- SWIFT: its registered office and marked for the attention of End-to-End Ordering or, in the case of a claim made pursuant to clause 14, of the General Counsel.

- 12.4 All notices served in accordance with this clause 12 will be deemed effective upon their publication for or delivery to intended recipient.

13 Miscellaneous

13.1 Assignment and Sub-Contracting

- 13.1.1 The right for the Customer to access or use SWIFT's Qualified Certificates offering is personal. The Customer must not transfer or assign such right, or related obligations, to any third party without SWIFT's prior written consent.

The Customer may delegate or sub-contract to a third party the exercise of its rights or the performance of its obligations provided that SWIFT may refuse at its discretion any sub-contracting or delegation of the financial obligations of the Customer.

- 13.1.2 SWIFT may delegate or sub-contract the exercise of its rights or the performance of its obligations. Upon written notice to the Customer, SWIFT may also transfer its Qualified Certificates offering, in whole or in part, to another services provider, in which case it shall be permitted without need of obtaining any additional consent to transfer Confidential Information, including personal data, to that service provider as may be necessary or desirable in connection with such transfer.

- 13.1.3 If either party delegates or sub-contracts to a third party the exercise of its rights or the performance of its obligations, it does so at its own risk and must ensure that the scope of rights granted to any such third party does not exceed those contracted with the other party. The party

that delegates or sub-contracts to a third party the exercise of its rights or the performance of its obligations also remains fully responsible to the other party for the performance and observance by any such third party of any obligations applicable to it.

13.2 Assistance

13.2.1 Each party will give the other party such assistance as is reasonably required to ensure the smooth performance of the Qualified Certificates Agreement.

13.2.2 In case of problems relating to SWIFT's Qualified Certificates offering (in particular, problems that can affect the confidentiality, integrity, or availability of SWIFT's Qualified Certificates), the Customer must:

- a) notify the SWIFT customer support centre promptly of the problem
- b) assist SWIFT in identifying, investigating, and resolving the problem
- c) promptly correct the problem if it is the Customer's responsibility to do so, and notify SWIFT when it has been resolved
- d) respond correctly and promptly to any actions requested, recovery or fallback procedures initiated, or directions given by SWIFT to mitigate or resolve the problem, and revert to normal operation conditions when the problem is resolved.

13.2.3 Upon prior reasonable written request from SWIFT, the Customer will provide any information, data and other assistance regarding the possession and use by the Customer of SWIFT's Qualified Certificates offering.

The Customer acknowledges and agrees that SWIFT may require that the internal auditors of the Customer confirm, in writing, the accuracy and completeness of any information or data supplied by the Customer pursuant to this clause 13.2.3.

13.3 Severability

If any part of the Qualified Certificates Agreement is found 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.

13.4 No Waiver

Subject to clause 14, no delay or failure by any party to exercise any of its rights or remedies under the Qualified Certificates Agreement will operate as a waiver of such right or remedy.

13.5 No Agency

The relationship between SWIFT and the Customer is not that of agent and principal, and neither party has the authority to bind the other to any obligations.

13.6 Entire Agreement

The Qualified Certificates Agreement contains the entire agreement and understanding between SWIFT and the Customer relating to the provision and the use of SWIFT's Qualified Certificates offering. It supersedes and cancels all prior negotiations, representations, proposals, statements, agreements and undertakings, written or oral, relating to the provision or the use of SWIFT's Qualified Certificates offering.

13.7 Amendments

Subject to clauses 2.2 and 12, no amendment or modification to the Qualified Certificates Agreement will be effective unless it is in writing and signed by duly authorised representatives of the relevant parties

14 Dispute Resolution

14.1 Time Limit

To make a valid claim, the Customer must submit its claim to SWIFT within the following time limits:

- a) for claims relating to SWIFT invoices: within 30 days of the date of the invoice
- b) for claims relating to the use of SWIFT's Qualified Certificates offering in connection with other services in a live SWIFT messaging environment: within 3 months of the date the message or file was acknowledged (for FIN messages, and for SWIFTNet messages and files flagged with non-repudiation) or emitted (for any other SWIFTNet messages and files)
- c) for any other claims: within 6 months of the date on which the Customer becomes aware (or should reasonably have become aware) of the event giving rise to the claim.

14.2 Conciliation

The parties will use all commercially reasonable efforts to resolve at a business level any disputes arising out of or in connection with the provision of SWIFT's Qualified Certificates offering within 1 month.

14.3 Claims Procedure

If the business representatives of the parties fail to reach agreement pursuant to clause 14.2, then the Customer agrees that any outstanding dispute will be finally settled according to the following claims procedure:

- a) If the matter relates to the provision or use of SWIFT's Qualified Certificates offering in connection with other services in a live SWIFT messaging environment, the specific [Claims Procedure for Problems in a Live Environment](#) applies.
- b) For any other matter, the Customer agrees to submit to the exclusive jurisdiction of the competent court in Brussels (Belgium) or, if the claim exceeds 100,000 Euro, to arbitration. In case of arbitration, the arbitral tribunal will be constituted under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) and, to the extent permitted under said Rules, the provisions governing arbitration in the [Claims Procedure for Problems in a Live Environment](#) will apply.

15 Applicable Law

These *SWIFT Qualified Certificates Terms and Conditions* and, more generally, the Qualified Certificates Agreement are governed by and construed in accordance with Belgian law (without giving effect to any conflict of law provision that would cause the application of other laws).

Explanatory comments

These explanatory comments are included for information and illustrative purposes. While designed to provide useful information about certain provisions of the *SWIFT Qualified Certificates Terms and Conditions*, nothing in these explanatory comments shall be interpreted or construed as granting any rights or imposing any obligations in addition to those set out in the commented provisions of the *SWIFT Qualified Certificates Terms and Conditions*.

SWIFT liability – caps and claims reduction (clause 8.1.2)

As per clause 8.1.2, SWIFT's total aggregate liability to any and all Customers for any and all claims notified to SWIFT in any one calendar year will not exceed a specific maximum amount defined in that clause.

If the total value of all claims notified to SWIFT in the same calendar year exceeds any applicable maximum amount, then the amount of each such claim shall be reduced proportionately.

The example below illustrates how this reduction applies.

If, in the same calendar year, Customer A gives notice to SWIFT of a 400,000 Euro claim, and Customer B gives notice to SWIFT of a 800,000 Euro claim, then the total amount of the claims to SWIFT in that calendar year will exceed the annual liability cap of 1 million Euro. Assume that SWIFT fully accepts liability for both claims. Because Customer A filed a claim for 400,000 Euro (i.e. 33% of the total 1,2 million Euro amount or 1/3), Customer A's claim shall be reduced to 333,333 Euro (i.e. 33% of the 1 million Euro cap). Likewise, Customer B's claim is 66% of the total claim (i.e. 66% of the total 1,2 million Euro amount or 2/3), Customer B's claim shall be reduced to 666,666 Euro (i.e. 66% of the 1 million Euro cap).

Force Majeure (clause 8.4)

A force majeure event may include (without limitation) the following:

- An act or intervention of a public authority or court (including any codes of conduct, instructions, guidelines, decisions or rules issued by such public authority or court), or any changes in laws;
- Interruption or unavailability of power supplies, telecommunications networks, telecommunications services or IT-systems;
- Sabotage, terrorism or threats of such acts;
- Fire, flood, atmospheric disturbance, lightning, storm, hurricane, cyclone, typhoon, tornado, earthquake, landslide, perils of the sea, soil erosion, subsidence, washout, drought, exceptionally heavy snow or rain, ice or other acts of God;
- Acts of war or hostilities (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, military or usurped power, embargo, revolution, riot, insurrection, civil disturbance or civil war or rebellion;
- Strikes, lock-outs, or other industrial action or labour disputes (including, without limitation, strikes, lock-outs, or other industrial action or labour disputes that are limited to an enterprise or business unit of the relevant party or any company within its group);
- Epidemic, famine, quarantine or plague;

An act, event or circumstance which primarily affects a person other than the parties and which prevents or delays a party's performance under the Qualified Certificates Agreement provided

that such act, event or circumstance is of a kind of character that, if it had happened to such party, it would have fallen within the definition of a force majeure event in clause 9.4 of the *SWIFT Qualified Certificates Terms and Conditions*.

Personal Use (clause 13.1)

As per clause 13.1, the right for the Customer to access or use SWIFT's Qualified Certificates offering is personal.

For example, the Customer must not permit SWIFT Qualified Certificates to be used to identify a third party (including another Customer), or allow a third party to access or use SWIFT's Qualified Certificates offering except if that third party is acting under its responsibility (typically, as a sub-contractor or agent of the Customer).

In other words, the Customer may not permit a third party (including another Customer) to impersonate the Customer in its use of SWIFT's Qualified Certificates offering, and the Customer may not disclaim any responsibility and liability for the use of its SWIFT Qualified Certificates.

Legal Notices

S.W.I.F.T. SCRL ("SWIFT"), Avenue Adèle 1, 1310 La Hulpe, Belgium.

RPM Nivelles – VAT BE 0413330856

Copyright

SWIFT © 2012. All rights reserved.

You may copy this publication within your organisation. Any such copy must include these legal notices.

Disclaimer

The information in this publication may change from time to time. You must always refer to the latest available version on www.swift.com.

Translations

The English version of SWIFT documentation is the only official and binding version.

Trademarks

SWIFT is the trade name of S.W.I.F.T. SCRL. The following are registered trademarks of SWIFT: SWIFT, the SWIFT logo, the Standards Forum logo, 3SKey, Innotribe, Sibos, SWIFTNet, SWIFTReady, and Accord. Other product, service, or company names in this publication are trade names, trademarks, or registered trademarks of their respective owners.