



SWIFT

## SWIFT Qualified Certificates for Electronic Seals

### Terms and Conditions

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

The *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* are for customers (typically, Subscribers and Relying Parties as defined in the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy*) that need information about the contractual framework for the provision and the use of SWIFT's Qualified Certificates for Electronic Seals offering. This document is effective as of 08 August 2022.

08 August 2022

# Table of Contents

Preface .....	3
<b>SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions.....</b>	<b>5</b>
<b>1 Interpretation.....</b>	<b>5</b>
<b>2 Electronic Signature/Seal or Data and Documentation .....</b>	<b>5</b>
<b>3 Conditions of Use for SWIFT Qualified Certificates for Electronic Seals .....</b>	<b>6</b>
<b>4 SWIFT Role and Responsibilities .....</b>	<b>6</b>
<b>5 Customer Roles and Responsibilities.....</b>	<b>8</b>
<b>6 Intellectual Property Rights .....</b>	<b>10</b>
<b>7 Charges and Fees .....</b>	<b>11</b>
<b>8 Liability .....</b>	<b>11</b>
<b>9 Duration and Termination .....</b>	<b>13</b>
<b>10 Personal Data Protection .....</b>	<b>14</b>
<b>11 Confidentiality .....</b>	<b>15</b>
<b>12 Notices.....</b>	<b>16</b>
<b>13 Miscellaneous .....</b>	<b>17</b>
<b>14 Dispute Resolution .....</b>	<b>18</b>
<b>15 Applicable Law.....</b>	<b>19</b>
<b>Explanatory Comments .....</b>	<b>20</b>
<b>Legal Notices .....</b>	<b>22</b>

# Preface

## Purpose of this document

The *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* constitute the main set of SWIFT standard terms and conditions for the provision and use of SWIFT's Qualified Certificates for Electronic Seals offering. For example, they provide general information about the conditions of use of SWIFT Qualified Certificates for Electronic Seals, the rights and obligations of SWIFT and its Customers subscribing to SWIFT's Qualified Certificates for Electronic Seals offering to request or to rely upon SWIFT Qualified Certificates for Electronic Seals (respectively referred to as Subscribers and Relying Parties' as defined in Parties as defined in the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy*, and individually or collectively "Customer(s)" in these *SWIFT Qualified Certificates for Electronic Seals – 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 for Electronic Seals offering is used in conjunction with other SWIFT services and products, the *SWIFT Qualified Certificates for Electronic Seals – 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 for Electronic Seals – Terms and Conditions* apply to *Qualified Certificates for Electronic Seals – Customer Identification and Subscription Form* or other relevant contractual arrangements executed by the Subscriber to subscribe to SWIFT's Qualified Certificates for Electronic Seals offering. If a Relying Party has not executed any such form or contractual arrangement, it shall be deemed to have tacitly accepted the *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* by relying or otherwise acting upon a SWIFT Qualified Certificate for Electronic Seals. The integrity of the *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* posted online is assured by electronic signature. Both the current version, as well as previous versions, are made available.

## Intended audience

This document is for the following audience:

- Customers (typically Subscribers and Relying Parties as defined in the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy*) that need information about the contractual framework for the provision and the use of the SWIFT Qualified Certificates for Electronic Seals.

## Related documentation

The *Qualified Certificates for Electronic Seals – Customer Identification and Subscription Form* or other relevant contractual arrangements executed by the Subscriber to subscribe to SWIFT's Qualified Certificates for Electronic Seals offering, together with the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy* and the *SWIFT Qualified Certificates for Electronic Seals – Certification Practice Statement* which are incorporated in the *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* by reference, constitute the agreement between SWIFT and the Customer for the provision and use of SWIFT Qualified Certificates for Electronic Seals (the "Qualified Certificates for Electronic Seals Agreement").

In addition to the documents constituting the Qualified Certificates for Electronic Seals Agreement, there are other documents (listed below), which are referred to in the Qualified Certificates for Electronic Seals Agreement (individually or collectively "Qualified Certificates for Electronic Seals 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](#)
- [SWIFT Data Retrieval Policy](#)

- [SWIFT Privacy Statement](#)
- [SWIFT Customer Testing Policy](#)

## Where to find Qualified Certificates Documentation

Customers can find the latest version of the *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* together with the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy* and the *SWIFT Qualified Certificates for Electronic Seals – Certification Practice Statement* at [www.swift.com/pkirepository](http://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 (for example, SWIFT services and products). The definitions of SWIFT-defined terms appear in the [SWIFT Glossary](#).

## Effective date

This version of the *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* will become effective as of 08 August 2022.

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# SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions

## 1 Interpretation

- 1.1 Unless inconsistent with the context, the following reading conventions apply in the *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions*:
- a) Terms that are capitalised in the text have the specific meaning set out in these SWIFT Qualified Certificates for Electronic Seals – 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 at the time the reference is applied.
  - 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 its SWIFT Qualified Certificates for Electronic Seals and, more generally, SWIFT's Qualified Certificates for Electronic Seals 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 for Electronic Seals and, more generally, SWIFT's Qualified Certificates for Electronic Seals 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. A reference to a clause is not given any restrictive meaning and other provisions may continue to be relevant or apply.
- 1.3 The following order of precedence applies within the Qualified Certificates for Electronic Seals Agreement:
- 1) the *Qualified Certificates for Electronic Seals – Customer Identification and Subscription Form* or other contractual arrangements executed by the Customer to subscribe to SWIFT's Qualified Certificates for Electronic Seals offering
  - 2) the SWIFT standard terms and conditions (such as these *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions*)
  - 3) the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy*
  - 4) the *SWIFT Qualified Certificates for Electronic Seals – Certification Practice Statement*
  - 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 for Electronic Seals – Terms and Conditions* constitute a legal agreement between SWIFT and its Customers. However, they do not govern any contractual arrangements directly between Customers.

## 2 Electronic Signature/Seal or Data and Documentation

- 2.1 Each party accepts the validity of an electronic signature/seal or electronic data, and confirms that it has the same force and legal effect as if in writing or paper based.
- 2.2 The Customer acknowledges and agrees that SWIFT may amend or supplement the Qualified Certificates for Electronic Seals Agreement and Qualified Certificates for Electronic Seals Documentation at any time upon notice to the Customer (typically, by updating the relevant document(s) on [www.swift.com/pkirepository](http://www.swift.com/pkirepository)).
- The Customer must ensure that it always refers to the latest Qualified Certificates for Electronic Seals Agreement and Qualified Certificates for Electronic Seals Documentation in effect, and that it is aware of the latest available information relating to the provision or use of SWIFT's Qualified

Certificates for Electronic Seals offering. In particular, Customers must regularly consult the information, documentation available at [www.swift.com/pkirepository](http://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](http://www.swift.com)).

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

### **3 Conditions of Use for SWIFT Qualified Certificates for Electronic Seals**

- 3.1 To subscribe to SWIFT's Qualified Certificates for Electronic Seals offering the Customer must duly execute a *Qualified Certificates for Electronic Seals – Customer Identification and Subscription Form* or other relevant contractual arrangements with SWIFT. No subscription to SWIFT's Qualified Certificates for Electronic Seals offering will be effective until finally accepted by SWIFT.

- 3.2 SWIFT may set out additional conditions to subscribe to or use SWIFT's Qualified Certificates for Electronic Seals offering in the Qualified Certificates for Electronic Seals Agreement or Qualified Certificates for Electronic Seals Documentation.

Typically, the subscription to and use of SWIFT's Qualified Certificates for Electronic Seals offering in conjunction with other SWIFT services and products shall be permitted if and to the extent that the Customer is also eligible to subscribe to and use those other SWIFT services and products.

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

### **4 SWIFT Role and Responsibilities**

- 4.1 Provide SWIFT Qualified Certificates for Electronic Seals

- 4.1.1 SWIFT provides SWIFT's Qualified Certificates for Electronic Seals offering in all material respects as set out in the Qualified Certificates for Electronic Seals Agreement.

Without prejudice to the generality of the foregoing, the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy* sets out:

- the SWIFT Qualified Certificates for Electronic Seals offering, including its intended use and purpose;
- 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 for Electronic Seals;
- the process and conditions for the issuance by SWIFT of a SWIFT Qualified Certificate for Electronic Seals to the Customer, including applicable conditions (typically, the validity period) and possible grounds for refusal;
- the process and conditions for revoking a Qualified Certificate for Electronic Seals (typically, the time period necessary to process a revocation request);
- 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 for Electronic Seals, the provision of any applicable secure seal creation device, any revocation requests and the identification data and attributes that are included in a SWIFT Qualified Certificate for Electronic Seals for the period specified in the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy* (that is, 13 years at

the date of publication of these *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions*).

- 4.1.2 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.
- 4.1.3 When SWIFT is responsible for issuing or revoking SWIFT Qualified Certificates for Electronic Seals, 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 for Electronic Seals in question by the time specified in the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy* or elsewhere in the Qualified Certificates for Electronic Seals Agreement, or as otherwise agreed with and confirmed between the parties.
- 4.1.4 When SWIFT's Qualified Certificates for Electronic Seals 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.

#### 4.2 Suspension and Change

- 4.2.1 The Customer acknowledges and agrees that SWIFT may suspend or change SWIFT's Qualified Certificates for Electronic Seals offering, in whole or in part, at any time and without prior court intervention, by written notice issued in advance if and as appropriate in the circumstances, if in the reasonable opinion of SWIFT any of the following events occurs:

- a) to perform or allow maintenance, or to upgrade or otherwise change SWIFT's Qualified Certificates for Electronic Seals offering (typically, during announced downtime windows)
- b) to prevent, mitigate or resolve any adverse effect on the security, reliability, resilience or proper performance of SWIFT's Qualified Certificates for Electronic Seals 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, in the reasonable opinion of SWIFT, a material breach or repeated breaches of the Qualified Certificates for Electronic Seals Agreement or Qualified Certificates for Electronic Seals Documentation (whether of the same or of different provisions) or of any instruction given by SWIFT in accordance therewith, or of any other contractual arrangements with SWIFT, or of any laws and regulations.

SWIFT informs the Customer about changes to SWIFT's Qualified Certificates for Electronic Seals offering (typically, in a release letter, or an update of the Qualified Certificates for Electronic Seals Agreement or Qualified Certificates for Electronic Seals Documentation).

- 4.2.2 SWIFT limits any suspension of, or changes to, SWIFT's Qualified Certificates for Electronic Seals offering pursuant to clause 4.2.1 as reasonably practicable or prudent in the circumstances. SWIFT typically schedules maintenance, upgrade, and change activities during announced downtime windows.

#### 4.3 SWIFT Responsibilities

- 4.3.1 SWIFT provides SWIFT's Qualified Certificates for Electronic Seals offering using care and skill consistent with good industry practice.
- 4.3.2 SWIFT provides SWIFT's Qualified Certificates for Electronic Seals 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 SWIFT's Qualified Certificates for Electronic Seals offering by the Customer, as permitted under the Qualified Certificates for Electronic Seals Agreement, infringes the intellectual property rights of any third party.
- 4.3.4 SWIFT has controls in place that are designed to provide adequate assurance regarding the security of SWIFT's Qualified Certificates for Electronic Seals offering. Its corporate security policy and standards are based on principles of ISO/IEC 27000 standards series (a series of Information-Security Management Systems standards). SWIFT's service commitments regarding data

obtained from Customers as part of their use of SWIFT's Qualified Certificates for Electronic Seals offering, which include security commitments in terms of confidentiality, integrity, and availability of such data, are as described in the Qualified Certificates for Electronic Seals Agreement or Qualified Certificates for Electronic Seals Documentation.

4.4 SWIFT's roles and responsibilities under this clause 4 are subject to clause 9.

## 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 for Electronic Seals offering, as set out in the Qualified Certificates for Electronic Seals Agreement, Qualified Certificates for Electronic Seals Documentation 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 fair, 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 for Electronic Seals 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, misleading or deceptive information and/or documents, or designating representatives without all necessary capacity or authority.
- use the SWIFT Qualified Certificates for Electronic Seals and, more generally, SWIFT's Qualified Certificates for Electronic Seals offering for professional purposes only, and as permitted and described in the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy*, the *SWIFT Qualified Certificates for Electronic Seals – Certification Practice Statement* or in the Qualified Certificates for Electronic Seals Documentation.
- be at all times aware of the circumstances in which a SWIFT Qualified Certificate for Electronic Seals must be revoked and, as applicable, ensure the SWIFT Qualified Certificate for Electronic Seals is duly and timely revoked, as described in more detail in the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy* or the *SWIFT Qualified Certificates for Electronic Seals – Certification Practice Statement*.

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 identification and subscription processes and/or to be included in a SWIFT Qualified Certificate for Electronic Seals) as set out in more detail in the *Qualified Certificates for Electronic Seals – Customer Identification and Subscription Form*, the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy*, the *SWIFT Qualified Certificates for Electronic Seals – Certification Practice Statement*, or in the Qualified Certificates for Electronic Seals Documentation.

5.1.2 The Customer is responsible for complying with all technical, operational, security, availability, legal and regulatory requirements applicable to its use of SWIFT's Qualified Certificates for Electronic Seals offering as defined by SWIFT from time to time in the SWIFT Qualified Certificates for Electronic Seals – Certificate Policy, the SWIFT Qualified Certificates for Electronic Seals – Certification Practice Statement, or in the Qualified Certificates for Electronic Seals Documentation.

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.

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



## 5.2 Security

The Customer is and remains responsible at all times for maintaining the confidentiality, integrity, availability and security of data on its systems and infrastructures. More generally, the Customer is and remains responsible at all times for protecting and securing its local environment, including but not limited to all internet-facing systems, against potential compromises and (cyber-)attacks.

SWIFT, as a member-owned cooperative, has developed various security-related initiatives under the SWIFT Customer Security Programme for the collective benefit of its customers community. These initiatives include the SWIFT Customer Security Controls Framework and the SWIFT Customer Security Controls Policy, which are designed to help SWIFT users improve cyber-security and to facilitate cyber-security risk assessments by and amongst users directly, and the SWIFT Information Sharing and Analysis Center (ISAC) which aims to facilitate customers' access to security threat intelligence (typically, malware details such as file hashes and YARA rules, indicators of compromise, and details on the modus operandi used by cyber-criminals) to help Customers to better defend themselves. Furthermore, SWIFT publishes general security guidance relating to specific SWIFT services and products to help Customers protect and secure their use of such SWIFT services and products. Pursuant to clause 2.2, customers must ensure that they regularly check and always refer to the latest available information, data and other materials published by SWIFT. The Customer acknowledges and agrees that nothing in these security-related initiatives constitutes any representation, warranty or guarantee on the part of SWIFT against the occurrence or prevention of compromises or (cyber-)security incidents or other similar events. Furthermore, nothing in such initiatives shall be construed or interpreted as SWIFT taking or accepting any responsibility or liability for Customers' roles and responsibilities and obligations as set out in this clause 5.2 or elsewhere in the Qualified Certificates for Electronic Seals Agreement or Qualified Certificates for Electronic Seals Documentation (typically, the responsibility for each Customer to duly protect and secure its systems, infrastructures and local environment).

Without prejudice to any other roles and responsibilities and obligations under these *Qualified Certificates for Electronic Seals – Terms and Conditions* or elsewhere in the Qualified Certificates for Electronic Seals Agreement or Qualified Certificates for Electronic Seals Documentation, each Customer must at all times timely comply with all security-related obligations applicable to it such as, for SWIFT users, the obligation to self-attest compliance with all mandatory security controls as per the SWIFT Customer Security Controls Policy or, for service bureaux and L2BA application providers, the obligation to meet all mandatory security requirements under their respective certification programme.

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.

## 5.3 Testing

Customers must not conduct any performance or vulnerability tests on or through SWIFT's Qualified Certificates for Electronic Seals offering unless expressly permitted in the SWIFT Customer Testing Policy.

If Customers believe they have identified a potential performance or vulnerability threat, they must immediately inform SWIFT thereof and treat all related information, data or materials as SWIFT confidential information.

SWIFT disclaims any liability for any testing performed by customers on or through SWIFT's Qualified Certificates for Electronic Seals offering.

## 5.4 Trademark, Company Names and Trade Names

Customers must at all times respect SWIFT's rights to its trademarks, company names, and trade names, in accordance with the SWIFT Trademark Guidelines available on [www.swift.com](http://www.swift.com). In particular, Customers may not use names or signs identical or similar to SWIFT trademarks in a manner which could cause a likelihood of confusion as to the origin of the products and services offered under those names or signs, nor in a manner which would take unfair advantage of, or be detrimental to, the distinctive character or the reputation of SWIFT trademarks.

## 5.5 Industry Practice, Applicable Laws, and Regulations

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

In using SWIFT's Qualified Certificates for Electronic Seals 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 or the SWIFT Qualified Certificates for Electronic Seals Agreement.

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

- perform due diligence and apply adequate know-your-customer principles to its counterparts;
- ensure not to use, or try to use, SWIFT's Qualified Certificates for Electronic Seals offering for illegal, illicit or fraudulent purposes, and refrain from any practices that might create confusion about the purposes for which SWIFT Qualified Certificates for Electronic Seals are used (typically, practices that would not permit a clear identification of the party responsible for a SWIFT Qualified Certificate for Electronic Seals or practices that would misrepresent the parties effectively responsible for involved in a transaction or the nature of the transaction)
- 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, anti-bribery, 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 for Electronic Seals offering.

## **6 Intellectual Property Rights**

- 6.1 Any and all rights (including title, ownership rights, database rights, and any other intellectual property rights) in SWIFT's Qualified Certificates for Electronic Seals 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 for Electronic Seals offering other than those expressly granted under the Qualified Certificates for Electronic Seals Agreement.

- 6.2 If a third party makes a bona fide claim that the possession or use of SWIFT's Qualified Certificates for Electronic Seals offering by the Customer as permitted under the Qualified Certificates for Electronic Seals Agreement infringes its intellectual property rights, provided the Customer has complied with the Qualified Certificates for Electronic Seals Agreement and any other contractual arrangements with SWIFT, laws and regulations, SWIFT will defend the Customer against that claim and indemnify the Customer 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 effectively awards, in a final and binding decision against the Customer if any such claim is upheld.

Any indemnification by SWIFT is subject to the Customer:

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

- 6.3 If SWIFT's Qualified Certificates for Electronic Seals 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, achieve one of the following alternatives:

- a) procure for the Customer the right to continue using SWIFT's Qualified Certificates for Electronic Seals offering
- b) modify, replace, or amend the affected SWIFT's Qualified Certificates for Electronic Seals offering so that it no longer constitutes an infringement. In this case, the Customer will substitute such version of SWIFT's Qualified Certificates for Electronic Seals 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 charges or fees paid for the subscription to or use of SWIFT's Qualified Certificates for Electronic Seals offering, and the Qualified Certificates for Electronic Seals 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 then current charges and fees (if any) applicable to it for the provision or use of SWIFT's Qualified Certificates for Electronic Seals 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).

For the avoidance of doubt, and unless SWIFT has expressly agreed otherwise in writing with the Customer, charges and fees, and related invoicing and payment terms and conditions, may change at any time upon reasonable prior notice to the Customer (typically, through an update of the SWIFT standard pricing documentation or otherwise such as a new specific quotation for the customer or a statement in a SWIFT invoice).

## 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 for Electronic Seals 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 the Qualified Certificates for Electronic Seals 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 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 for Electronic Seals 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 for Electronic Seals 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 for Electronic Seals 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 for Electronic Seals 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 unauthorised access or use or modification of SWIFT's Qualified Certificate for Electronic Seals 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 for Electronic Seals 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 for Electronic Seals 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 for Electronic Seals 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 for Electronic Seals – 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 for Electronic Seals 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 FOR ELECTRONIC SEALS – TERMS AND CONDITIONS OR ELSEWHERE IN THE QUALIFIED CERTIFICATES FOR ELECTRONIC SEALS AGREEMENT OR OTHER APPLICABLE SWIFT CONTRACTUAL ARRANGEMENTS BETWEEN SWIFT AND THE CUSTOMER, SWIFT MAKES NO REPRESENTATION OR WARRANTY (I) AS TO THE CONDITION, QUALITY, PERFORMANCE, SECURITY, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF SWIFT'S QUALIFIED CERTIFICATES FOR ELECTRONIC SEALS OFFERING; OR (II) THAT THE USE OF SWIFT'S QUALIFIED CERTIFICATES FOR ELECTRONIC SEALS 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 for Electronic Seals 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 SWIFT's Qualified Certificates for Electronic Seals offering to the Customer for an indefinite period.

#### 9.2 Termination for Convenience

Each party has the right to terminate its Qualified Certificates for Electronic Seals 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 for Electronic Seals 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 repeated 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 for Electronic Seals 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 for Electronic Seals Documentation.

#### 9.4 Termination for Change

If the Customer objects to a change to SWIFT's Qualified Certificates for Electronic Seals offering or its Qualified Certificates for Electronic Seals Agreement with SWIFT the Customer may, as its sole and exclusive right and remedy, terminate (without any liability or charge) its Qualified Certificates for Electronic Seals 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 for Electronic Seals Agreement between SWIFT and the Customer for any reason will:

- a) not relieve either party from any obligations under the Qualified Certificates for Electronic Seals 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 processes 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 for Electronic Seals offering, or relating to SWIFT governance or other purposes set out in the [SWIFT Personal Data Protection Policy](#) (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 for Electronic Seals offering (for example, personal data contained in a SWIFT Qualified Certificate for Electronic Seals that the Customer requested SWIFT to issue).

The rights and obligations of the parties in each case are set out in the [SWIFT Personal Data Protection Policy](#), such as any notification obligation SWIFT may have in case of unauthorised disclosure of personal data contained in messages or files.

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 or use of SWIFT's Qualified Certificates for Electronic Seals offering.

The Customer must only use such information, data or materials as reasonably necessary to use SWIFT's Qualified Certificates for Electronic Seals offering in accordance with the Qualified Certificates for Electronic Seals Agreement and Qualified Certificates for Electronic Seals Documentation. The Customer shall ensure the protection, confidentiality and security of such information, data or materials using the same standard it employs to safeguard its own information, data or materials of like kind, but in no event less than a reasonable standard of care.

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 for Electronic Seals 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 to be disclosed by law, regulation, or pursuant to a binding and enforceable order or legal process of a court, arbitral tribunal, or supervisor, regulator or other governmental authority, in which case the Customer shall, unless prevented to do so by confidentiality or other requirements under applicable law, inform SWIFT thereof with as much advance notice as possible.

### 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 or through the Customer in connection with the provision of SWIFT's Qualified Certificates for Electronic Seals offering, save to the extent varied by this clause 11.2 or elsewhere in the Qualified Certificates for Electronic Seals Agreement or other relevant documentation, including the SWIFT Data Retrieval Policy, SWIFT Personal Data Protection Policy and SWIFT Privacy Statement.

SWIFT will only use confidential information, data or materials of the Customer for purposes relating to the promotion, deployment, provision, security (including forensic investigations), or support of SWIFT's Qualified Certificates for Electronic Seals offering or other SWIFT services and products or related services and products of service bureaux, L2BA application providers or SWIFT registered providers, or in connection with the SWIFT Customer Security Programme; 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, L2BA application providers or SWIFT registered providers, or SWIFT's licensors, service providers, or vendors (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 other customers 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 – Price List for SWIFT Messaging and Solutions).

For the avoidance of any doubt, the information to be included in a SWIFT Qualified Certificate for Electronic Seals or revocation records shall not be considered as Confidential Information.

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

### 11.3 SWIFT Traffic Light Protocol

If SWIFT information, data or materials are marked as subject to the SWIFT Traffic Light Protocol (TLP), the Traffic Light Protocol provisions attached to the Customer Security Programme – Terms and Conditions shall apply and, in the event of inconsistency, shall prevail over the customer confidentiality obligations as set out in clause 11.1.

## 12 Notices

- 12.1 Except when expressly provided otherwise elsewhere in the Qualified Certificates for Electronic Seals Agreement or the Qualified Certificates for Electronic Seals Documentation, all notices 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 in 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 considered correct and valid if they are sent to the latest contact details (if any) notified by the other party for such matters pursuant to the provisions of this clause 12.1, or the latest registered or principal office so communicated by the other party. For example, the Customer can, at any time, request information or raise other questions about SWIFT's Qualified Certificates for Electronic Seals offerings by way of written communication addressed to SWIFT as per the contact details specified in the *SWIFT Qualified Certificates for Electronic Seals – Certificate Policy* or elsewhere in the Qualified Certificates for Electronic Seals Agreement.

- 12.2 Wherever applicable and notwithstanding clause 12.1, the Customer must notify SWIFT in electronic form through [www.swift.com](http://www.swift.com) of its intention to terminate its Qualified Certificates for Electronic Seals Agreement, in whole or in part.

Notices relating to the termination of SWIFT's Qualified Certificates for Electronic Seals offering by SWIFT, or by the Customer but which cannot be served through [www.swift.com](http://www.swift.com), and notices by either party 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 or principal office, or any other correct and 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.

- 12.3 All notices served in accordance with this clause 12 will be deemed effective upon their publication for or, if sent to the other party, delivery to intended recipient.



## 13 Miscellaneous

### 13.1 Assignment and Sub-Contracting

- 13.1.1 The right for the Customer to use SWIFT Qualified Certificates for Electronic Seals and, more generally, SWIFT's Qualified Certificates for Electronic Seals offering is strictly personal. The Customer must not assign, transfer or otherwise dispose of all or part of its rights or obligations under the Qualified Certificates for Electronic Seals Agreement 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 under the Qualified Certificates for Electronic Seals Agreement provided that SWIFT may refuse at its discretion any sub-contracting or delegation of the financial obligations of the Customer.

- 13.1.2 Save to the extent not permitted under applicable law, and upon written notice to the Customer, SWIFT reserves the right to transfer SWIFT's Qualified Certificates for Electronic Seals offering, in whole or in part, to another trust service provider, in which case it shall be permitted without need of obtaining any additional consent to transfer Confidential Information, including personal data, to that trust service provider as may be necessary or desirable in connection with such transfer.

Subject to any restrictions set out in the [SWIFT Personal Data Protection Policy](#) and if and to the extent permitted under applicable law, SWIFT may delegate or sub-contract the exercise of its rights or the performance of its obligations.

- 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 in accordance with this clause 13.1, 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 in accordance with this clause 13.1, 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 for Electronic Seals Agreement.

- 13.2.2 In case of problems relating to SWIFT's Qualified Certificates for Electronic Seals offering (in particular, problems that can affect the confidentiality, integrity, availability or security of or the reliance on SWIFT Qualified Certificates for Electronic Seals), 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 Qualified Certificates for Electronic Seals.

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 for Electronic Seals 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. Upon determination that any term or other provision is invalid, unlawful or unenforceable, the parties shall negotiate in good faith to

modify the Qualified Certificates for Electronic Seals Agreement so as to effect the original intent of the parties as closely as possible in a manner which removes the cause of the invalidity, unlawfulness or unenforceability and ensuring that the economic or legal substance of the transaction contemplated hereby is not affected in any manner materially adverse to either party.

#### 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 for Electronic Seals 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 for Electronic Seals Agreement contains the entire agreement and understanding between SWIFT and the Customer relating to the provision and the use of SWIFT's Qualified Certificates for Electronic Seals 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 for Electronic Seals offering.

#### 13.7 Amendments

Subject to clauses 2.2, 7 and 12, no amendment or modification to the Qualified Certificates for Electronic Seals 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 for Customer claims

If the Customer becomes aware of a matter or circumstance which may give rise to a claim, the Customer must notify its claim to SWIFT specifying the relevant facts (including, without limitation, detailed evidence on which the Customer relies to make the claim, the reference to the relevant provisions of the Qualified Certificates for Electronic Seals Agreement, the amount of the claim and, more generally, all information reasonably available to enable SWIFT to assess the merits of the claim) within the following time limits:

- a) for claims about material errors relating to SWIFT invoices: within 30 days of the date of the invoice;
- b) for claims directly or indirectly relating to messages or files (allegedly) sent or received using SWIFT services and products for the time period during which messages or files can be retrieved as specified in the applicable SWIFT Contractual Documentation; or
- c) for any other claims: within 6 months of the date on which the claiming Customer becomes aware (or should reasonably have become aware) of the event giving rise to the claim.

If the Customer fails to make a valid claim in accordance with this clause 14.1, the Customer shall be barred from making any (further) claim, which the Customer shall be deemed to have definitively withdrawn and waived to the benefit of SWIFT, without however affecting any right, claim or counterclaim on the part of SWIFT.

Any claim validly notified in accordance with this clause 14.1 shall (if it has not been previously satisfied, settled or withdrawn) be deemed to be definitively withdrawn, and SWIFT shall have no liability whatsoever, 3 months after the end of the conciliation process pursuant to clause 14.2.a), unless the customer has commenced arbitration proceedings pursuant to clause 14.2.b).

### 14.2 Dispute Resolution

#### a) Conciliation

The parties will use all commercially reasonable efforts to resolve at a business level between the representatives of each party any disputes arising out of or in connection with these *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* or in relation to a non-contractual claim, within 3 months after the claim has been notified to the Customer, or (in the

event of a Customer claim) following a valid notification of claim in accordance with clause 14.1. If the business representatives of the parties are unable to resolve the dispute(s) within such 3 months period, such dispute(s) may be referred to arbitration in accordance with clause 14.2.b).

b) Arbitration proceedings

Any dispute arising out of or in connection with these *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* or in relation to a non-contractual claim arising out of these *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* or in connection with them, shall be referred to and finally resolved by arbitration (the "Arbitration") under the Rules of Arbitration of the International Chamber of Commerce then in force (the "Rules") before three arbitrators appointed in accordance with the Rules.

The place of the Arbitration shall be Brussels, Belgium. The language of the Arbitration shall be English. Unless the Parties agree otherwise, all proceedings are to be held in English and the award shall be based solely on documents and information provided in the English language, including where the original was written in a language other than English.

Notwithstanding the foregoing, SWIFT reserves the right to commence legal proceedings in relation to a claim against a customer before the courts of the jurisdiction in which the customer is established.

## 15 Applicable Law

These *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions* and, more generally, the Qualified Certificates for Electronic Seals Agreement and all contractual and non-contractual obligations arising out of them or in connection with them shall be 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 for Electronic Seals – 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 for Electronic Seals – Terms and Conditions*.

### Testing (clause 5.3)

SWIFT conducts regular tests to probe the availability, integrity and confidentiality of SWIFT services and products. SWIFT typically reports on such tests through SWIFT's third-party assurance framework such as SWIFT's ISAE 3000 type 2 report.

SWIFT understands that, beyond SWIFT's tests, Customers may also wish to conduct certain performance or vulnerability tests on or through SWIFT services and products.

Because such tests might adversely affect SWIFT's operations or be indistinguishable from real threats, Customers must not conduct any such test unless expressly permitted in the SWIFT Customer Testing Policy. This applies to (without limitation) stress tests, throughput tests, intrusion tests or penetration tests.

### 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)

Subject to the conditions of clause 9.4, 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, (financial) sanctions, 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 for Electronic Seals 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 8.4 of the *SWIFT Qualified Certificates for Electronic Seals – Terms and Conditions*.

### **Personal Use (clause 13.1)**

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

For example, the Customer must not permit its SWIFT Qualified Certificates for Electronic Seals to be used to identify a third party (including another Customer), or allow a third party to access or use its SWIFT Qualified Certificates for Electronic Seals 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 Qualified Certificates for Electronic Seals or, more generally, SWIFT's Qualified Certificates for Electronic Seals offering, and the Customer may not disclaim any responsibility and liability for the use of its SWIFT Qualified Certificates for Electronic Seals.

# Legal Notices

S.W.I.F.T. SC (“SWIFT”), Avenue Adèle 1, 1310 La Hulpe, Belgium.  
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## Translations

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