SWIFT'S SOLUTION FOR CREST – TERMS AND CONDITIONS

The following terms and conditions govern the provision and use of Swift's Solution for CREST and shall take effect from the Commencement Date:

1. **INTERPRETATION**

    1.1   In this document the following definitions will apply:

    "**Agreement**" means this document thereto, the Service Description and the CREST Documentation, as may be amended from time to time in accordance with the terms hereof.

    "**Alliance Access for CREST**" means the gateway software in object code form, developed by Swift and licensed to the Customer under this Agreement for the CREST Service, as well as any updates and new releases provided to the Customer by Swift as described in the Service Description and other CREST Documentation.

    "**Commencement Date**" means the latest of the following dates:

    a)   The date of acceptance by Swift of Customer e-order or any other form provided by Swift to subscribe to Swift's Solution for CREST, as applicable; and

    b)   The date on which the conditions precedent in clause 2 of this Agreement are satisfied.

    "**Communications Server**" means the system developed by Swift and installed at the Site, which interfaces with the CREST System and the Swift Network.

    "**CREST Documentation**" means the price list, policies, Software Specification, and any other documentation relating and applicable to Swift's Solution for CREST and the Software provided by Swift to the Customer, in any form or medium, as the same may be modified or expanded from time to time by Swift.

    "**CREST Service**" means the computer-based system and associated clerical procedures established by Euroclear UKI to facilitate the transfer of securities.

    "**CREST Software**" means the software developed or acquired by Euroclear UKI and licensed by Euroclear UKI to the Customer under a separate agreement, comprising the Graphical User Interface, the Secure Message Definition File and Client Services Layer.

    "**CREST System**" means the CREST core system developed and operated by Euroclear UKI which effects the electronic holding and settlement of securities and certain other related transactions, including the CREST connection from the CREST core system to the Point of exit at the Communications Server.

    "**CREST User**" means a person who is entitled to use the CREST System by virtue of a membership agreement with Euroclear UKI.

    "**Customer**" means a duly registered Swift User and a CREST User that has duly subscribed to Swift's Solution for CREST.

"**Customer Host**" means the Customer back-office systems, local area networks ("LAN") and other networks and facilities, which send and receive Messages to and from Alliance Access for CREST.

"**Euroclear UKI**" means Euroclear UK & International Limited of 33 Canon Street, London EC4M 5SB (registered number 2878738).

"**Intellectual Property rights**" means any and all rights in inventions, patents, copyrights, design rights, trademarks and trade names, service marks, trade secrets, know-how and other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world.

"**Location**" means the installation address of the Customer's Alliance Access for CREST.

"**Messages**" means any communication by means of the Swift's Solution for CREST, whether transmitted interactively or by file transfer.

"**Message Authentication Procedures**" means the procedures issued by Swift for the authentication of messages, as set out in the Customer Application Integration Guide available on www.swift.com.

"**Message Dispute Procedures**" means the procedures issued by Euroclear UKI for the resolution of disputes concerning Messages, as amended from time to time.

"**Party**" means Swift or the Customer individually, as applicable, and collectively, the "**Parties**".

"**Point of exit at the Communications Server**" means the connection point at the Communications Server through which a Message leaves the Communications Server to the CREST System, or enters the Communications Server from the CREST System, as applicable, as evidenced by the audit trail of the Communications Server.

"**Regulations**" means the Uncertificated Securities Regulations 2001(SI 2001 No. 3755) as amended or replaced from time to time (and all rules made pursuant to any such regulations).

"**Regulatory Authority**" means the Bank of England, UK Prudential Regulation Authority, UK Financial Conduct Authority, any emergency services organisation, any other UK or other regulatory, governmental, legislative or judicial authority, body or agency, including court or arbitral tribunal, having jurisdiction over or in relation to Swift, S.W.I.F.T. SC or Euroclear UKI and/or any part of the Swift Network, Swift's Solution for CREST or the CREST System.

"**Service Description**" means the description of Swift's Solution for CREST as the same may be amended from time to time in accordance with the terms of this Agreement.

"**Site**" means the locations of the Communications Servers.

"**Software**" means the software (including, but not limited to, Alliance Access for CREST, CRnet, CRMI, CRPI, CRFI and the Network Security Layer), materials, and CREST Documentation relating to the Software or any part of it, provided by or for Swift, in any form or medium, as the same may be modified or expanded from time to time by Swift and excluding the CREST Software.

"**Software Specifications**" means the functional specifications relating to the Software as describe in the relevant service description available on swift.com, as the same may be amended from time to time by Swift according to the terms of this Agreement.

"**Swift**" means S.W.I.F.T. UK and Ireland Limited, a limited liability company organised under the laws of England and Wales (company number 3116915), having its office at The Corn Exchange, 6th Floor, 55 Mark Lane, London, EC3R 7NE, Great Britain, a wholly owned subsidiary of S.W.I.F.T. SC, Belgium.

"**Swift Network**" means the telecommunication network provided by Swift for the transmission of Messages between the Alliance Access for CREST and the Communications Servers.

"**Swift's Solution for CREST**" (formerly known as 'CREST over SWIFTNet' or 'Network Services') means the messaging services provided by Swift to the Customer under this Agreement, as described in the Service Description, in relation to the transmission of Messages from the time they leave the Customer's Alliance Access for CREST to the Point of exit at the Communications Server (and vice versa) through the Swift Network.

"**Swift User**" means an organisation that S.W.I.F.T. SC has admitted under Swift Corporate Rules as a duly authorised user of Swift services and products.

1.2   Any reference, express or implied, to an enactment includes references to: (a) that enactment as amended, extended, re-enacted or applied by or under any other enactment before or after this Agreement; (b) any enactment which that enactment re-enacts (with or without modification); and (c) any subordinate legislation made (before or after this Agreement) under any enactment, including one within (a) or (b).

1.3   Words importing the singular shall include the plural and vice versa; words denoting persons shall include bodies corporate and unincorporated associations of persons and vice versa.

1.4   Terms defined in the Regulations which are used in this Agreement shall have the meanings given to them in the Regulations.

1.5   Subclauses 1.1 to 1.4 apply unless the contrary intention appears.

1.6   The headings in this Agreement do not affect its interpretation.

1.7   The following order of precedence applies within the Swift's Solution for CREST contractual documentation: 1) these Swift's Solution for CREST Terms and Conditions; 2) the Swift's Solution for CREST Service Description; 3) CREST Documentation; and (4) any other documentation referred to in the documents above. If any document expressly provides that another document amends or supplements it, that other document prevails.

2. CONDITIONS PRECEDENT

2.1   The conditions precedent to the entry into force of this Agreement are the following:

a)   that the Customer has been admitted by Euroclear UKI as a CREST User; and

b)   that the Customer has been admitted by S.W.I.F.T. SC as a Swift User.

3. SWIFT AND CUSTOMER RESPONSIBILITIES

3.1   Swift shall, subject to the terms hereof, provide Swift's Solution for CREST to the Customer using care and skill consistent with good industry practice.

![Swift logo](🌐 Swift)

3.2 The Customer must comply with all obligations and other mandatory instructions applicable to it in connection with its use of Swift's Solution for CREST as set out in the Agreement, user documentation of the applicable Swift products and services or otherwise notified to the Customer by Swift or Euroclear UKI from time to time.

3.3 The Customer acknowledges and agrees that Swift may suspend or change Swift's Solution for CREST, in whole or in part, at any time, and without prior judicial 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 Solution for CREST, or other Swift services and products (typically, as per the SWIFTNet and Alliance Release Policy and during allowed downtime windows)

b) to prevent, mitigate, or resolve any adverse effect on the security, reliability, resilience, or proper performance of the provision or use of Swift's Solution for CREST

c) to comply with any law, decree, regulation, request, requirement, 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 persistent breaches of the Agreement (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

e) The CREST System is suspended for maintenance, upgrading, or any other reason

f) if required for purposes of safety, security, reliability, resilience, or facilitating the performance of Swift's Solution for CREST

g) if required, requested, or agreed by Euroclear UKI or any Regulatory Authority or

h) if reasonably required to reflect any changes in the terms applicable to any part of Swift's Solution for CREST supplied by third parties.

Swift informs the Customer about changes to Swift's Solution for CREST (typically, via the SWIFT Release Timeline, a release letter, or an update of the Agreement). This clause 3.3 applies without prejudice to any other rights or remedies of Swift (typically, termination rights pursuant to clause 10).

3.4 Swift limits any suspension of, or changes to, Swift's Solution for CREST pursuant to clause 3.3 as reasonably practicable or prudent in the circumstances.

4. **SOFTWARE LICENCE**

4.1 Swift grants to the Customer for the duration of this Agreement a non-exclusive, non-transferable and time limited right to use the Software as described in the Service Description and other CREST Documentation for the purpose of accessing and using Swift's Solution for CREST and in accordance with the applicable licence terms set out in this clause 4, the Service Description and elsewhere in the CREST Documentation and to make such copies of the Software as the Customer may reasonably require for back-up and disaster recovery purposes or testing purposes only.

4.2 Additional licences for the Software can be obtained on the same terms and conditions as specified in this Agreement, upon written request from the Customer to Swift and subject to payment of additional licence fees.

4.3 Except for those rights expressly provided in clause 4.1, the Customer has no other rights with respect to the Software. Without limiting the generality of the foregoing, the Customer must not, nor authorise others to:

   a) modify, enhance or otherwise change the Software, or prepare derivative works based upon the Software

   b) translate, decompile, disassemble, reverse-engineer or otherwise re-create the Software or determine its software model or source code (save to the extent expressly permitted by section 50B of the Copyright, Designs and Patents Act 1988)

   c) rent, lease, sell, sub-license, distribute to, display publicly, allow access to, or otherwise provide or transfer the Software or copies of them to third parties

   d) disclose the Software to third parties, except to members of its staff or other persons under its responsibility, who need to use the Software

   e) merge all or any part of the Software with another program

   f) reproduce the Software (except to the extent necessary for back-up or disaster recovery purposes)

   g) remove, alter, or cancel from view any copyright or other notices of proprietary rights, marks, or legends appearing on the physical medium or contained in the Software. The Customer will reproduce and include the same on any permitted copy

4.4 The Customer undertakes to Swift that it will permit to pass through the Alliance Access for CREST (and related telecommunications equipment at the Location) only Messages which are to be sent to the CREST System or which have been received from the CREST System, except to the extent Swift has otherwise agreed in writing from time to time.

4.5 If the Customer installs any software on the Alliance Access for CREST or the Customer Host (other than the Software licensed under this Agreement or the CREST Software), the Customer undertakes that such software will not in any way interfere with:

   a) the operation of the Software licensed under this Agreement; or

   b) the security of the Alliance Access for CREST or the Customer Host; or

   c) the authentication procedures in operation at Alliance Access for CREST, or the Customer Host; or

   d) the security or operation of the Swift Network.

The Customer agrees to indemnify and keep indemnified Swift against any liabilities whatsoever which Swift might incur as a result of such software being used on the Alliance Access for CREST or the Customer Host.

4.6   Swift shall have no liability to the Customer in respect of any Software problems to the extent such problems result from (i) the CREST Software, CREST System or other third party software, hardware or systems (including without limitation those of Euroclear UKI), (ii) the use of the Software with other software not supplied or approved in writing by Swift, (iii) the Customer's or any third party's act or default; or (iv) any event referred to in clause 15.

5.   INFRINGEMENT CLAIMS

5.1   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 the Software by the Customer, as permitted under the Agreement, infringes the UK intellectual property rights of any third party.

5.2   Clause 5.3 sets out the Customer's exclusive remedy in respect of any breach of clause 5.1.

5.3   Subject to clauses 5.5 and 11, if a third party makes a bona fide claim that the possession or use of the Software by the Customer as permitted under the Agreement infringes its UK Intellectual Property Rights, provided the Customer has complied with the Agreement and any other contractual arrangements, laws and regulations, Swift will defend the Customer and hold the customer harmless against that claim at Swift's expense and pay 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, provided that the Customer (a) notifying Swift promptly in writing of any such claim. Without prejudice to the generality of the foregoing, such notice must be given no later than 45 days after the Customer becomes aware (or should reasonably have become aware) of such claim; (b) promptly handing over to Swift sole control over the defence and settlement of any such claim and proceedings in which case Swift shall assume control and conduct of the defence, settlement, negotiations and investigations of such claim at its discretion; (c) making no admission in relation to the claim; and (d) fully cooperating with Swift and doing nothing to jeopardise or prejudice Swift's defence and settlement of any such claim. No cost or expense shall be incurred for the account of Swift without the prior written consent of Swift.

5.4   If the Software or any part thereof are held to constitute an infringement of UK Intellectual Property Rights of third parties, or their provision or use is enjoined or prevented, in whole or in part, by a court or arbitral tribunal order, Swift may, at its discretion and expense, achieve one of the following alternatives:

a)   procure for the Customer the right to continue using the affected Software; or

b)   modify, replace, or amend the affected Software so that it no longer constitutes an infringement. In this case the Customer will substitute such version of the Software at the earliest opportunity after it has been made available.

If, despite reasonable efforts, Swift is unable to effectively secure either option (a) or (b), then the Customer or Swift may terminate this Agreement upon written notice to the other.

5.5   Swift is not liable to the Customer for any actual or claimed infringement to the extent it is the result of:

a)   the Customer's unauthorised or improper use of the Software; or

b)   use of the Software by the Customer in combination with software or equipment which has not been supplied or approved by Swift and where the Software would not by themselves be infringing; or

c) a Customer's act or default; or

d) any event referred to in clause 15.

THIS CLAUSE 5 STATES SWIFT'S ENTIRE LIABILITY WITH RESPECT TO ANY AND ALL CLAIMS THAT THE SOFTWARE INFRINGES ANY INTELLECTUAL PROPERTY RIGHTS.

6. CHARGES AND FEES

6.1 The Customer must pay to Swift all charges and fees applicable to it for, and in connection with, the provision or use of Swift's Solution for CREST. 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 (typically the Swift's Solution for CREST Price List and the Pricing and Invoicing - Ordering, Invoicing, and Payment) or otherwise (for example, a specific quotation for the Customer or a statement in a Swift invoice).

6.2 For the avoidance of doubt, without prejudice to clause 10.4 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 Swift quotation for the Customer or a statement in a Swift invoice).

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Customer acknowledges that any and all the Intellectual Property Rights (including title, ownership rights, database rights, and any other intellectual property rights) in the Software (and all authorised copies thereof), the Service Description, the CREST Documentation and all other documentation and materials relating to Swift's solution for CREST developed or supplied in connection with it, including any associated processes or any derivative works (including based on malware supplied or made available by customers)(together, "**Swift 's Materials**") are and shall at all times remain the sole and exclusive property of Swift or its licensor. The Customer acknowledges that the Software may include software whose proprietary rights belong to a third party and that the applicable terms of this Agreement apply equally to such software.

7.2 The Customer shall have no right, title or interest in Swift 's Materials, except as expressly set forth in this Agreement.

7.3 The Customer agrees to preserve, and to include on any authorised copy of Swift 's Materials, the copyright or proprietary rights legends contained in the original copy thereof and to add any other reasonable notice requested by Swift.

7.4 The foregoing obligations as to Intellectual Property Rights shall remain in full force and effect notwithstanding any termination of this Agreement.

7.5 The Customer 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. In particular, the Customer 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.

8. CUSTOMER RESPONSIBILITIES

8.1 Notwithstanding anything to the contrary contained in this Agreement, the Customer acknowledges that Swift will from time to time provide any relevant Regulatory Authority or Euroclear UKI with information concerning the Customer, its clients, the Swift's Solution for CREST and this Agreement and agrees with Swift that it will co-operate fully with any requirements imposed on Swift by any Regulatory Authority or Euroclear UKI and that it will provide Swift promptly with all information in the possession or control of the Customer required by any such Regulatory Authority or Euroclear UKI to be supplied to it.

8.2 Swift reserves the right, in its sole discretion, to report (or to require the Customer to report) to regulators, supervisors or other authorities, the Customer's Swift messaging counterparties or other customers involved in a transaction of the Customer (potentially) generated by fraudulent activity, facts and circumstances relating to the security of the Customer's use of Swift's Solution for CREST.

8.3 The Customer shall procure and maintain in force all permissions, licences, waivers, consents, registrations and approvals necessary for or reasonably considered desirable by Swift for the use of Alliance Access for CREST, and the Customer Host. Swift reserves the right to disconnect any or all of the Alliance Access for CREST or the Customer Host if the Customer does not fulfil its obligations under this clause, or if in the reasonable opinion of Swift it is liable to cause the death of, or personal injury to, or damage to the property of Swift or any person engaged in the operation of the Swift Network, or materially to impair the quality of the Swift Network. The Customer authorises Swift to enter into the Location for the purposes of this clause 8.3.

8.4 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 Solution for CREST (such as the number of copies of Software in its possession and their use, or compliance by the Customer with security obligations). 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 8.4.

9. CONFIDENTIALITY

9.1 The Customer must keep in confidence all information, data or materials accessed or obtained in connection with the provision of Swift's Solution for CREST. The Customer must only use such information, data or materials as reasonably necessary to use Swift's Solution for CREST in accordance with the Agreement. 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 9.1. The Customer remains responsible for the use of information, data or materials by any such persons.

These confidentiality obligations will survive termination of this Agreement and shall continue to apply as long as such information, data or materials are used for the provision or use of Swift's Solution for CREST or are protected under obligations of confidentiality applicable to the Customer or by intellectual property or trade secret right.

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, 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.

9.2 The obligations of confidentiality in clause 9.1 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 Solution for CREST, save to the extent varied by this clause 9.2 or other Swift contractual documentation including the SWIFT Personal Data Protection Policy, the SWIFT Data Retrieval Policy and the 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 Solution for CREST or related services and products of service bureaux, application provider 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 and 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 9.2.

Nothing in this clause 9.2 shall be interpreted or construed as preventing Swift to use or disclose confidential information, data or materials of the Customer as Swift deems necessary or desirable to report facts and circumstances relating to the security of the Customer's use of Swift's Solution for CREST pursuant to clause 8.2, provided that, if and to the extent the SWIFT Data Retrieval Policy or the SWIFT Customer Security Controls Policy applies, such disclosure conforms to the SWIFT Data Retrieval Policy or, as the case may be, the SWIFT Customer Security Controls Policy. When disclosing confidential information, data or materials of the Customer pursuant to this provision, Swift shall notify the recipient of the confidential nature thereof and of the importance to protect and preserve the confidentiality of such information, data or materials. Furthermore, the Customer acknowledges and agrees that: a) 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); b) any malware accessed or

obtained by Swift from or through the Customer is not confidential or proprietary information, data or materials of the Customer. More information about the protection of personal data is set out in clause 9.4.

9.3   Nothing in this Agreement (including clause 9.2) shall restrain Swift from:

a)   disclosing any confidential information relating to the Customer, its clients, Swift's Solution for CREST, any Messages, the Software or the Alliance Access for CREST to (i) any Regulatory Authority; (ii) Euroclear UKI; or (iii) any person where or to the extent that Swift is permitted or required to do so by law or by court order; or

b)   using and disclosing any such confidential information in connection with the investigation of any problem raised by the Customer or any third party or any query or other matters concerning the integrity of Messages sent by means of the Swift Network or the CREST System.

By entering into this Agreement, the Customer expressly consents to the disclosure of such information in the circumstances specified in this clause 9.3 and in clause 9.2.

9.4   As an integral part of the provision of Swift's Solution for CREST to customers, Swift may process personal data (as defined in the SWIFT Personal Data Protection Policy). The respective roles and responsibilities of Swift and customers with regard to the processing of personal data collected in the context of the use of Swift's Solution for CREST are set out in the SWIFT Personal Data Protection Policy, as may be updated from time to time.

The SWIFT Privacy Statement provides transparent information on the way Swift processes an handles personal data as a data controller, for its own purposes related notably to the provision of the Swift services and products or relating to Swift governance.

Swift's Solution for CREST service may involve the transfer of personal data from the European Economic Area (EEA) to the United Kingdom (UK) and conversely. On the date of this Agreement, the EEA and the UK recognise each other as providing adequate personal data protection for data transfer purposes.

10. <u>TERM AND TERMINATION</u>

10.1   Subject to the provisions for earlier termination contained herein, Swift provides Swift's Solution for CREST to the Customer for an indefinite period.

10.2   Each Party has the right to terminate this Agreement for convenience. To do so, the requesting Party must inform the other Party by written notice three (3) months in advance.

10.3   Each Party has the right to terminate this Agreement at any time immediately upon written notice to the other Party and without prior judicial intervention in the following events:

a)   In the reasonable opinion of the terminating Party, the other Party committed a material breach of any of its obligations under this Agreement and such breach is incapable of remedy or persistent breaches (whether of the same or of different provisions); or

b)   In the reasonable opinion of the terminating Party, the other Party committed a material breach of its obligations or applicable laws or regulations and such breach is not remedied within 30 days after notice of the breach has been given in writing to the other Party; or

c) When required by a Regulatory Authority, Euroclear UKI or an authority having jurisdiction over the terminating Party; or

d) any of the following occurs:

(i) the other Party is unable to pay its debts (within the meaning of section 123 or sections 221 to 224 of the Insolvency Act 1986) (as if the words 'it is proven to the satisfaction of the court that' did not appear in those sections, where relevant) or becomes insolvent

(ii) an order is made or a resolution passed or documents are filed with the Court for the administration, winding-up or dissolution of the other Party or the other Party is dissolved (otherwise than for the purposes of a solvent amalgamation or reconstruction) or one or more of the stabilisation powers and/or a mandatory reduction instruction under the Banking Act 2009 are exercised or made in relation to the other Party

(iii) an administrative or other receiver, manager, liquidator (including a provisional liquidator), administrator, trustee, monitor or similar officer is appointed to the other Party or over all or any substantial part of the assets of the other Party

(iv) a moratorium is sought or declared in respect of the other Party or any indebtedness of the other Party

(v) the other Party enters into or proposes any assignment, composition or arrangement with any of its creditors or any class of them (including, without limitation, a company voluntary arrangement, scheme of arrangement or restructuring plan)

(vi) any step is taken in further of, or with a view to, any of the events in the sub-sections (iv) or (v)

(vii) anything analogous to the events in subsections (i) to (vi), or with analogous effect to those events, occurs in any applicable jurisdiction.

e) the Customer ceases to be a CREST User; or

f) the Customer ceases to be a Swift User; or

g) S.W.I.F.T. SC's accreditation as a network provider for the CREST System is revoked or terminated for any reason.

10.4 If the Customer objects to a change to Swift's Solution for CREST, to the Agreement, to a change pursuant to clauses 6 and 19, or to new third-party licence terms governing the use of third-party software embedded in Software, the Customer may, as its sole and exclusive right and remedy, terminate (without any liability or charge) this Agreement upon one (1) month written notice to Swift. The Customer must serve such notice within one (1) month of the date on which the Customer becomes aware (or should reasonably have become aware) of such change or new licence terms.

10.5 Swift also has the right to terminate this Agreement at any time immediately upon written notice to the other Party and without prior judicial intervention in the circumstances set out in clause 3.3 b) or 3.3 c).

10.6 If the Customer must subscribe to maintenance services to keep Swift's Solution for CREST (typically, software) up-to-date, and fails to timely subscribe to, or renew, these maintenance

services as described in the Service Description or any other CREST Documentation, Swift reserves the right to terminate this Agreement upon prior notice to the Customer.

10.7 Any termination of this Agreement (howsoever occasioned): shall: (i) not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after that termination; and (ii) be without prejudice to any other rights or remedies any Party may have in respect of the termination.

10.8 Upon termination of this Agreement for any reason and without prejudice to any other right or remedy of Swift, the Customer shall forthwith:

a) cease to use Swift's Solution for CREST; and

b) cease to use the encryption and authentication equipment supplied by or for Swift group entities and return it to Swift, unless the Customer has the right to use the encryption and the authentication equipment supplied by Swift group entities in connection with other Swift group entities products and services or pursuant to other contractual arrangement with Swift group entities; and

c) at Swift direction, promptly return or destroy all related materials (including any Software) supplied by or for Swift in connection with Swift's Solution for CREST and certify to Swift, within 7 days of such termination, that it has returned or destroyed all materials and copies. The foregoing does not apply to the extent that the Customer (i) has the right to retain such materials pursuant to this Agreement or other contractual arrangements with Swift group entities or (ii) is required by law or regulation to retain such materials; and

d) keep copies of the records and audit trails maintained by the Customer relating to all Messages received by or sent from the Alliance Access for CREST for a period of at least (13) thirteen years from the last date on which a Message was transmitted and provide Swift with any such copies in possession or control of the Customer, on request, even after termination of this Agreement, for a period of (13) thirteen years after such termination.

10.9 For the avoidance of doubt termination under clause 10.3 (g) above shall not give rise to any liability whatsoever on Swift or the Customer.

11. **LIABILITY**

11.1 The Customer acknowledges and agrees that:

a) the undertakings in this Agreement are subject and without prejudice to the limitations on scope of Swift 's obligations to the Customer, and the limitations on, and exemptions from, Swift's liability to the Customer, provided for in this Agreement; and

b) Swift shall not be liable to the Customer for any damages suffered or incurred by the Customer which result from Swift taking any action contemplated by this Agreement or dictated by Euroclear UKI or any Regulatory Authority.

11.2 Subject to clause 11.5, the liability of Swift to the Customer for any loss or damage suffered or incurred by the Customer arising out of the operation or failure of Swift's Solution for CREST, the Software, or otherwise arising out of this Agreement (whether Swift 's liability arises under any

express or implied term of this Agreement, in tort, for misrepresentation, for breach of any other duty imposed by law or in any other way or otherwise howsoever), shall be limited as follows:

a) Swift shall not incur any liability to the Customer save to the extent that such liability results from Swift 's gross negligence in failing to perform its obligations under this Agreement, wilful default or fraud for which it is responsible.

b) Swift shall not incur any liability for any:

   (i)   loss of revenue, loss of contract, loss of business, loss of profit, loss or corruption of data, loss of use, loss of goodwill, loss of savings, loss of reputation, interruption of business (whether direct or indirect)

   (ii)   loss or claims of third parties (including clients of the Customer), or any amounts paid by the Customer to the Customer's clients (whether direct or indirect)

   (iii)   any sanctions, fines and penalties of any kind imposed by any competent authority (whether direct or indirect)

   (iv)   any indirect, special, or consequential loss of any kind,

           which is suffered by the Customer or by any third party, and even if Swift has been advised of the possibility of such losses or damages.

c) Swift's total cumulative and aggregate liability to the Customer and to all other claimants (on a collective basis) for claims in connection with the provision or use of Swift's solution for CREST, and claims relating to clause 5, duly notified to Swift in accordance with this Agreement in any one calendar year will not exceed £40,000,000 (40 million GBP). For the purpose of this sub-clause, and if a claim is followed by one or more claims that relate to the same event or series of connected events, these claims shall be treated as one claim, notified on the date the first claim was notified.

d) 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 sub-clause as an "**Established Claim**"), it being understood that Swift will only pay compensation within 90 days following the date that each and every claim 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.

e) if the total value of all Established Claims from the Customer and all other claimants resulting from claims notified to Swift in the same calendar year exceeds £ 40,000,000 (40 million GBP) (on a collective basis), 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 £ 40,000,000 (40 million GBP). The above total value and calculation pursuant to (i) and (ii) shall be certified by an independent third party who shall keep confidential the particulars and details (including the identity of the claimant) of the relevant claims.

11.3 Swift shall not incur any liability under this Agreement or otherwise unless written notice of the claim has been given to Swift by or on behalf of the Customer within the following time limits:

    a)   for claims about material errors relating to Swift invoices: within thirty (30) days of the date of the invoice; and

    b)   for any other claims: within six (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.

11.4 Nothing in this Agreement shall exclude or restrict Swift's liability for death or personal injury resulting from the negligence of Swift or of its employees while acting in the course of their employment.

11.5 Any liability of Swift to the Customer referred to in clause 11.2 is subject to:

    a)   the Customer having ensured that satisfactory physical and logical security is implemented and maintained at all material times at the Alliance Access for CREST, the Location and the Customer's other premises (including without limitation by complying with the security rules specified in the Service Description, as amended from time to time).

    b)   the loss to the Customer not resulting from:

        (i)   unauthenticated Messages

        (ii)   any act, negligence or other default of the Customer (including without limitation any failure by the Customer to comply with its obligations under this Agreement)

        (iii) any act, negligence or other default of Euroclear UKI or any other third party other than Swift 's agents or subcontractors used in the provision of Swift's Solution for CREST

        (iv) any event referred to in clause 15

        (v)   any fraud caused or facilitated by any employee or agent of the Customer, or Euroclear UKI

    c)   the Customer having not been negligent in relation to the operation or security of Alliance Access for CREST or the use of Swift's Solution for CREST.

    d)   the Customer having promptly taken all steps necessary or desirable to minimise any loss which it may suffer under or in connection with this Agreement.

11.6 Except as expressly provided in this Agreement, no representation, warranty or condition, express or implied, statutory or otherwise is assumed by Swift with respect to the Software, or Swift's Solution for CREST including but not limited to: the condition, quality, performance, security, non-infringement, or fitness for a particular purpose; the results obtained through use of the Software or Swift's Solution for CREST; that the Software and Swift's Solution for CREST are error-free or bug-free; that any or all failures, defects, bugs or errors will be corrected; that the Software or Swift's Solution for CREST will meet the Customer's requirements or be compatible or work with any software, system or other services; that Swift's Solution for CREST will be uninterrupted. Without limiting the preceding sentence, all open-source components and other third-party materials incorporated in the Software are provided on-an "as-is" basis and any representation or warranty of or concerning any of them is strictly between the Customer and the third-party owner

or distributor of such open-source components and third-party materials. All such representations, warranties and conditions are excluded save to the extent that such exclusion is prohibited by law.

11.7 Nothing in this Agreement shall be construed as limiting in any way the statutory no-fault liability imposed on Euroclear UKI by Regulation 36.

11.8 Except if and to the extent exclusively caused by an act or omission of Swift, the Customer 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, Euroclear UKI or otherwise) related to or in connection with the Customer's possession or use of Swift's Solution for CREST, including for any disclosure or misuse of any keys issued to the Customer or other failure of security of the Customer's operation.

11.9 The general principles governing the liability of each Party are as follows:

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 exclusively 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 this Agreement), or of a third party for which it is not responsible.

12. <u>GOVERNING LAW</u>

12.1 This Agreement is governed by and shall be construed in accordance with English law.

13. <u>DISPUTES</u>

13.1 There are three levels of dispute resolution procedures relating to the Messages:

a) Swift will provide a first level of dispute resolution by handling all notices of claims and disputes relating to a Message according to the following procedure:

(i) The Customer shall notify Swift in writing of any such claim within the time frames specified in clause 11.3

(ii) Swift will acknowledge the notice within fifteen (15) working days of receipt

(iii) The Customer shall supply all information which Swift at its absolute discretion shall require to establish the validity of the claim

(iv) Swift shall accept or dispute a claim within three (3) months after submission of the claim and inform the claimant accordingly

(v)   Swift's internal consideration and any determination by Swift under such procedures shall not prevent the Customer from submitting any claim to the Message Dispute Procedures in accordance with clause 13.1(b).

b)   The Message Dispute Procedures is the second level dispute resolution set up by Euroclear UKI. The Message Dispute Procedure is an independent third-party expert procedure. The Message Dispute Procedures and any determination by an expert under such procedures shall not prevent the Customer from bringing any claim, action or proceedings (in relation to any matter the subject of the procedures) against any person in such courts as may have jurisdiction in accordance with clause 13.1(c).

c)   All disputes between the Parties arising out of or relating to this Agreement that cannot be settled to the satisfaction of both Parties, shall be submitted to the jurisdiction of the courts of England.

13.2   The Customer agrees that it will co-operate fully with Swift and any expert appointed under the Message Dispute Procedures and will promptly provide Swift and such expert with all information which he may request which is in the possession or control of the Customer.

13.3   The Parties accept the properly authenticated Messages as archived on the Communications Server as evidence of the contents of those Messages admissible in any forum referred to in clause 13.1.

13.4   The properly authenticated Messages as archived on the Alliance Access for CREST shall only be admissible as evidence of the contents of those Messages admissible in any forum referred to in clause 13.1, if the Customer can demonstrate that:

a)   he has ensured that satisfactory physical and logical security is implemented and maintained at all material times at the Alliance Access for CREST, the Location and the Customer's other premises; and

b)   that there is no evidence that the audit trails at the Alliance Access for CREST have been modified, altered, interfered or tampered with; and

c)   that there is no evidence that the Alliance Access for CREST has been modified or altered, (except by any person expressly authorised by Swift in connection with the support services), nor interfered or tampered with after delivery to the Customer.

13.5   The Customer shall co-operate with Swift to avoid undue losses by an innocent person. Swift and the Customer will use all reasonable endeavours to ensure that any person having received the benefit of funds as a result of an error shall promptly transfer the funds to the proper person so that no undue enrichment shall accrue to any person.

13.6   If Swift has paid to the Customer an amount in respect of a claim for breach of this Agreement or otherwise, and subsequent to the date of making such payment the Customer recovers from a third party a sum which is referable to that payment, then the Customer shall forthwith repay to Swift so much of the amount paid by the third party as does not exceed the sum paid by Swift to the Customer. The Customer undertakes to use all reasonable endeavours to enforce any rights it has or may reasonably have to recover any such sum and shall only provide services to its customers via the Swift Network on terms which provide for the Customer to recover, or cause the recovery of, the benefit of funds paid to its customer as a result of an error in the provision of such service.

14. ASSIGNMENT AND SUB-CONTRACTING

14.1 The Customer may not assign, sub-license, transfer or otherwise dispose of any of its rights or sub-contract, transfer or otherwise dispose of any of its obligations under this Agreement without the prior written consent of Swift, which shall not be unreasonably withheld or delayed.

14.2 Swift may sub-contract its rights or obligations under this Agreement to S.W.I.F.T. SC, other Swift group entities or other subcontractors and any subcontracting shall not change Swift's responsibilities and liabilities under this Agreement.

14.3 Swift may, subject to prior notification to the Customer assign, transfer or otherwise dispose of any of its rights or obligations under this Agreement to a parent company or other group entities of Swift.

14.4 Except as set out is this Agreement, Swift may not sub-license, transfer or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of the Customer which shall not be unreasonably withheld or delayed.

15. FORCE MAJEURE

15.1 For the purpose of this clause 15, 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 Agreement. Without prejudice to the generality of the foregoing, a force majeure event may include (without limitation) any of the following, provided always such events or circumstances are beyond the reasonable control of, and are not attributed to the Affected Party:

- An act or intervention of a public authority or court (including any codes of conduct, instructions, guidelines, decisions, 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 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 under this clause.

15.2 Subject to the Affected Party notifying the other Party in writing, as soon as possible upon becoming aware of a 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, and the performance by the other Party of its obligations directly related thereto shall be suspended during the period that the force majeure event persists and neither Party shall be liable to the other Party for such delay or non-performance. If performance is not resumed within 60 days after that notice, either Party may terminate this Agreement immediately by written notice to the other Party and without any liability or charge being due on the basis of such termination.

16. <u>NOTICES</u>

16.1 All notices from one Party to the other will be in English and in writing, whether in paper form (typically, post or courier with acknowledgement of receipt) or in electronic form (typically, e-mail, Swift e-form, Swift e-invoice, statement on Swift's websites or in a Swift release letter, newsletter or magazine, installation notice for Swift services and products, 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 16, or the latest registered or principal office so communicated by the other Party.

16.2 Wherever applicable and notwithstanding clause 16.1, the Customer must notify Swift in electronic form through www.swift.com of its intention to terminate this Agreement for the provision or use of Swift's Solution for CREST.

Notices relating to the termination of this Agreement by Swift, or by the Customer but which cannot be served in electronic form through www.swift.com, and notices by either Party which relate to any claims procedure must be served by email, facsimile transmission, mail, or courier, with evidence of delivery such as a reply by the recipient or a signed or stamped dated receipt.

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

- **Customer**: its registered or principle office, or any other correct and valid address pursuant to clause 16.

- **Swift**: its registered office or to any other address notified in accordance with this clause marked for the attention of End-to-End Ordering or, in the case of a claim made pursuant to this Agreement, of the General Counsel.

16.3 All notices served in accordance with this clause 16 will be deemed effective upon their publication or, if sent to the other Party, delivery to the intended recipient.

17. SEVERAB ILITY

17.1 If any provision of this Agreement becomes or is declared illegal, invalid or unenforceable for any reason whatsoever that provision shall be severable from this Agreement provided that, if any severance substantially affects or alters the commercial basis of this Agreement:

a) the Parties shall negotiate in good faith to amend and modify this Agreement as may be necessary or desirable in the circumstances; and

b) in the absence of agreement on appropriate amendments or modifications within (3) three months after the severance, each Party shall have the right to terminate this Agreement by not less than 30 days written notice to the other.

18. WAIVERS

18.1 Failure or delay by either Party in enforcing any term of this Agreement shall not constitute a waiver of such term.

19. AMENDMENTS

19.1 The Customer acknowledges and agrees that Swift may amend or supplement the Agreement, including but not limited to, this document, the Service Description, the Software, the Software Specification and CREST Documentation, at any time upon reasonable prior notice to the Customer (typically, by updating the relevant document(s) in the Knowledge Centre (www.swift.com > mySWIFT > Knowledge Centre). Subject to exercise of its termination right pursuant to clause 10.4, the Customer is deemed to accept such amendments or supplements. The Customer must ensure that it always refers to the latest Service Description, other CREST Documentation and other service documentation in effect, and that it is aware of the latest available information relating to Swift's Solution for CREST.

20. WHOLE AGREEMENT

20.1 This Agreement and the documents referred to in it contain the whole agreement between the Parties relating to the subject matter of this Agreement and supersede all previous agreements between the Parties relating to that subject matter.

Swift and the Customer each acknowledges that it is entering into this Agreement without reliance on any understanding or representation made by the other which is not expressly contained or referred to in this Agreement, provided that nothing in this clause shall limit or exclude any liability for fraud.

20.2 Each Party accepts the validity of an electronic signature or electronic data and confirms that such signature or data is legally equivalent to a hand-written signature on a paper document.