



SWIFTRef Data Inside Application

June 2017

Preface

These SWIFTRef License Terms and Conditions together with the e-order form, the referenced proposal for SWIFTRef Data Inside Application (hereafter referred to as “Proposal”) and related quotation form together the “Agreement” that governs the licensing by SWIFT of SWIFTRef Data to a Licensee.

The Licensee commercialises an application or service to its customers and wishes to have permission from SWIFT either to make data from a SWIFTRef product available to its customers as part of the Licensee’s **application or service**, as listed in the Proposal or to **host** (meaning the Licensee installs and operates) the Data from a SWIFTRef product, as listed the Proposal, on its systems in order to provide services to its customers.

SWIFT produces SWIFTRef files and commercialises them to its customers for their internal use. Moreover, SWIFT is willing to grant the abovementioned permission to the Licensee under the terms of this Agreement:

1. Definitions

- (a) “License” means the abovementioned permission granted from SWIFT to the Licensee as the same may be varied, amended or replaced from time to time;
- (b) “Transaction” means a payment, an instruction to make a payment or other exchange of data for the intention to transfer of funds, or any other instruction or instrument that carries payment or bank data.
- (c) “Data” means any data contained in SWIFTRef files, such as (but not limited to) the BIC Directory, the BIC Plus Directory and other directories and may include lists such as, but not limited to, of ISO-9362 compliant Business Identifier Codes, names and addresses of the corresponding entities and/or any other data, as detailed in the Proposal.
- (d) “Additional Data” means any additional information that SWIFT may include in the SWIFTRef files, such as participant keywords, service codes, branch qualifiers, currency codes, country codes, holiday information, unless listed in the SWIFT quotation. Only the Data is licensed to the Licensee under the Agreement.
- (d) “Licensee Product” means the application, software or service commercialised by the Licensee to its customers as listed in the Proposal.

- (e) “Authorised User” means an individual authorised by the Licensee to access and use the Data.
- (f) “Outsourcing services provider” means a third party engaged by the Licensee for data processing purposes only.

2. The License

- 2.1 SWIFT grants the Licensee a personal, non-exclusive and non-transferable right to extract and re-utilize the Data and make it available to its customers as per the terms of this Agreement. The Licensee may make the Data available to its customers only when embedded in the Licensee Product.
- 2.2 SWIFT authorises the Licensee to host the Data on its systems in order to provide a validation service to its customers or to allow customers to look-up Data online on a one-by-one query basis.
- 2.3 The Licensee may embed the Data in its application software for its customers (financial institutions or corporations) and/or host the Data in order to provide a service. At the customer’s side, the Data must remain confined to the application or service, meaning the Licensee Product, and must not be accessible for other purposes.

3. Secure access to the SWIFTRef online portal

- 3.1 For the sole purpose of downloading the SWIFTRef files containing the Data, SWIFT may allocate passwords to the Licensee to allow its Authorised Users to access the SWIFTRef online portal. The Licensee agrees to, and will ensure that its Authorised Users keep passwords confidential. Neither the Licensee nor any Authorised User may assign, share, sell, barter, transfer or exchange his/their password. If the Licensee learns or suspects that any password has been revealed to or obtained by any person not authorised by the Licensee to access and use the Data, it must immediately notify SWIFT. The password will be cancelled and, subject to certain conditions, SWIFT may assign a new password. The Licensee must immediately notify SWIFT if any individual Authorised User ceases to be an Authorised User and will use its best efforts to prevent that person from accessing the Data and the portal. The Licensee will not allow any person other than the Authorised Users to use the portal and will ensure that each Authorised User uses only his or her authorised password or identifier. Repeated breaches of this clause on secure access to the portal entitle SWIFT to terminate the Agreement for cause.
- 3.2 The Licensee must alter, or ensure that its Authorised Users alter any affected password. Any attempt to access any part of the portal which requires a password without the required password and/or payment of the fees is unlawful and could result in criminal and/or civil penalties. SWIFT may change passwords upon prior notice to the Licensee or its Authorised Users for security reasons.

4. Non authorised usage

Except as specifically mentioned in the Agreement, any other use of the Data by the Licensee is strictly prohibited. SWIFT and its authorised distributors reserve all rights not granted under this Agreement. In particular, the Licensee may **not**:

- a. integrate the Data into a standalone commercial directory or database product that could be reasonably be expected to serve as a substitute for a subscription to the Data,
- b. make the Data available for download or use separately from the Licensee's Product,
- c. sub-license the right to make the Data available to any third party,
- d. make its application or service (Licensee Products) available free of charge.
- e. provide a copy of the file or a sub-set of the Data, even for evaluation purposes, to any 3rd party other than its own customer.

5. Demos and trials

The Licensee may provide demonstrations of the Licensee Products with the Data embedded therein and/or offer a trial period not exceeding thirty (30) days of these Products before final activation.

6. Outsourcing

If the Licensee enters into an agreement with an Outsourcing services provider, the Licensee may permit access to, and use of, the Data by the Outsourcing services provider at its own risk, provided that the Licensee: (i) makes the Data available to the Outsourcing services provider under no less strict conditions than the ones in this Agreement, (ii) ensures that the Outsourcing services provider's use of the Data does not exceed the limits as specified in this Agreement and (iii) ensures that the Outsourcing services provider is bound by undertakings or obligations which protect the Data to at least the extent that it is protected under this Agreement and that the scope of rights granted to the Outsourcing services provider does not exceed those contracted with SWIFT. Without prejudice to the above, the Licensee shall be fully responsible for the Outsourcing services provider's compliance with this Agreement as well as for the performance and observance by the Outsourcing services provider of any obligations applicable to it. Upon expiry, completion or earlier termination of the services provided to the Licensee by the Outsourcing services provider, the Licensee shall certify in writing to SWIFT that the Outsourcing services provider has uninstalled and/or ceased use of the Data and has destroyed all copies of the Data within thirty (30) days of completion of the Outsourcing services provider's services to the Licensee.

7. No less protective terms

The Licensee will ensure that the Data is made available via the Licensee Product to its customers on no less protective terms than in this Agreement, and will procure that these

terms are duly observed by its customers. At SWIFT's request, the Licensee will provide a copy of the agreement between the Licensee and its end customers or, at SWIFT's discretion, a binding signed statement from the Licensee warranting and representing compliance with the Agreement.

8. Licensee's obligations

The Licensee will (1) refrain from knowingly making any false or misleading statements, claims or representations with respect to SWIFT or the SWIFTRef files, (2) conduct its business in such a way so as not to damage the valuable reputation of SWIFT, (3) require adherence by its customers to the restrictions contained in this Agreement and (4) promptly notify SWIFT when and if the Licensee acquires actual knowledge of any violations of such restrictions by its customers.

9. Proprietary rights

The proprietary rights in the Data belong to SWIFT or its suppliers. Any and all proprietary rights in the Data, including database producer's rights, remain vested in SWIFT or its suppliers. The Licensee will acknowledge SWIFT's rights in the Data by displaying the following notice: "*BIC data used with permission of S.W.I.F.T. SCRL. Database rights reserved YYYY*" (to be updated annually). The Licensee is allowed to use the term "*SWIFTRef Data Inside*" and to use the related SWIFTRef Data Inside logo in accordance with the Trademark Guidelines as published by SWIFT at <https://www.swift.com/about-us/legal/ipr-policies/trademark-guidelines>. The Licensee will not use any other SWIFT trade names, trademarks, or logos without SWIFT's prior written consent.

10. Right to modify

SWIFT reserves the right to modify the scope, format, delivery mode or frequency of updates of the Data upon reasonable advance notice to the Licensee. Delivery of the Data occurs by download of the relevant SWIFTRef flat files.

11. No warranties

Although SWIFT uses reasonable efforts to ensure that the Data is accurate, the latter is provided "as is", and without any warranty that it is error-free, accurate, complete, or up-to-date. SWIFT disclaims all express or implied warranties as to merchantability, title, non-infringement and fitness for a particular purpose of the Data.

12. Reporting and Invoicing

12.1 Two months before the annual anniversary of the License, the Licensee will report to SWIFT the number of ongoing subscriptions, licenses, transactions or end-users per Licensee Product.

12.2 SWIFT will, based on the Licensee's report of clause 12.1, verify the fees due to SWIFT as set forth in the Proposal and send its invoice to the Licensee. The Licensee shall pay to SWIFT the fees figured in the invoice. Invoices are payable within thirty (30) days of receipt, in full and without any deduction, set-off or counter-claim. The invoice number must be quoted in the payment instruction. Any invoice not paid within thirty (30) days from invoice date will bear an interest charge corresponding to the 'European Central Bank reference rate' and rounded at the superior half-point. Fees are net of any taxes, such as VAT. All taxes will be borne by the Licensee. SWIFT reserves the right to modify such fees as appropriate, with reasonable notice to the Licensee.

13. Audit

For the sole purposes of ensuring compliance with the Agreement as well as to verify the use made by the Licensee of the Data, SWIFT has the right to audit the Licensee's use of the Data and relevant documents upon a ten (10) working days' prior notice. SWIFT will maintain in confidence any information gathered during such audit and may perform the audit at the Licensee's premises. The audit will be performed in such a way so as to cause the least business interference. In the event that SWIFT determines that the Licensee does not comply with the License requirements and/or this Agreement, then SWIFT shall request the Licensee to take appropriate corrective action. If the Licensee fails to take such action within thirty (30) days of such notice, then SWIFT may terminate the Agreement. Additionally if the audit reveals that the Licensee has underpaid SWIFT by more than 2%, then the Licensee will bear the cost of the audit.

14. Non-disclosure

The parties may disclose the existence of the Agreement, but its specific terms, including, but not limited, to the fees shall remain confidential and shall survive the termination or expiry of the Agreement. No party will make any communications or issue any press releases relating to this Agreement without the prior written approval of the other party.

15. Duration

Unless otherwise provided in the Agreement, SWIFT grants the License to the Licensee for an indefinite period.

16. Termination for convenience

Each party may terminate the Agreement for convenience with a three (3) months' prior notice to the other party.

17. Termination for cause

If the Licensee fails to remedy a breach of the Agreement within thirty (30) days' notice given by SWIFT to the Licensee, then SWIFT may terminate the Agreement with immediate effect.

Notwithstanding the above, either party may terminate the Agreement immediately in the event that:

- a. the Licensee or SWIFT commits a material breach of any material obligation hereunder, which breach is not remedied to the reasonable satisfaction of the other party within thirty (30) days after receipt of written notice specifying such breach;
- b. either party engages in a course of conduct that has injured or is likely, in the opinion of the other party, to injure the reputation of such party, or their products as the case may be, and such party does not discontinue said conduct, or cause it to be discontinued, within ten (10) days after receipt of written notice thereof;
- c. either party ceases to function as a going concern, or to conduct its operations in the normal course of business; or
- d. receivership, bankruptcy or insolvency proceedings are commenced by or against either of the parties hereto, or an assignment for the benefit of creditors occurs, or upon the voluntary winding up or liquidation of its business by either of the parties hereto, whether or not with the aid and assistance of any court.

18. Consequences of termination

Upon expiration or termination of the Agreement, whether for convenience or for cause, in whole or in part, unless otherwise specifically agreed between SWIFT and the Licensee, the Licensee will immediately and permanently remove and delete all Data used in its Licensee Product, and, if requested by SWIFT, certify the deletion in writing. Notwithstanding the foregoing, the Licensee may retain an archival record of the Data to the extent required by applicable law or regulation.

19. Force Majeure

Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, governmental acts, laws or regulations.

20. Liability

- 20.1 To the maximum extent permitted by law and notwithstanding anything else contained herein, in no event shall SWIFT be liable for any indirect, special or consequential damages whatsoever, even if SWIFT has been advised of the possibility of such damages.
- 20.2 To the maximum extent permitted by law and notwithstanding anything else contained herein, in no event shall the total maximum liability of SWIFT for any and all causes (whether in tort, contract, indemnity or otherwise) for direct damages exceed the invoice paid by the Licensee in the last 12 months or if no amount has been paid, then One Thousand (1,000) Euros.

21. Indemnification

The Licensee shall indemnify and hold SWIFT harmless from and against any and all costs, losses, damages, expenses, suits, actions, claims, penalties, fines, settlement amounts including legal fees, arising out of the Licensee's possession and use of the Data, including integration of SWIFTRef files into the Licensee Product and the sale of such value added products to end-users.

22. Applicable law and jurisdiction

This Agreement is subject to Belgian law and to the exclusive jurisdiction of the competent courts of Brussels.

23. Miscellaneous

- 23.1 The Licensee understands that the SWIFTRef products (including the data provided by third parties) might be subject to export control, sanctions or other regulatory restrictions in effect from time to time. SWIFT aims to comply with all laws and regulations applicable to it and therefore reserves the right to terminate the Agreement and the provided hereunder License based on restrictions arising from any EU, Belgian or US sanctions regulations regimes. By ordering one or more SWIFTRef products the Licensee warrants that it is its sole responsibility to be in compliance with any sanctions and export control regulation that is applicable to them and to the supply and use of the SWIFTRef products. The Licensee also warrants that neither it, its Authorised Users nor its customers are targeted by any EU and/or US sanctions programs nor are designated on any related sanctions lists. SWIFT hereby disclaims all liability for the Licensee's non-compliance with the abovementioned laws and regulations.
- 23.2 This Agreement constitutes the entire agreement of the parties, and supersedes all other oral or written representations, understandings, or agreements relating to the License or the subject matter hereof.

- 23.3 SWIFT may on an annual basis revisit or reconsider the terms (including pricing) of the License, and upon prior written notice to you may change such terms.
- 23.4 Any notice, request, demand, direction, or other communication required or permitted to be given or made under this Agreement or in connection therewith, shall be deemed to have been properly given or made if delivered by registered post, e-mail or fax, when addressed to the contact person identified in the Proposal (or to any other contact person notified in writing to the other party).
- 23.5 Unless expressly agreed otherwise between the parties elsewhere in the Agreement, in the case of discrepancies between these SWIFTRef License Terms and Conditions and the Proposal or any related documents, these SWIFTRef License Terms and Conditions will prevail.