



## 1. **Definitions and Interpretation**

Unless inconsistent with the context or otherwise specified capitalised terms in these Terms and Conditions shall have the meaning set out below or in the SWIFT Glossary:

<b>“Charges”</b>	means the fees and charges (if any) applicable to the Customer in connection with the provision or use of the Licensed Materials, as notified by SWIFT to the Customer from time to time (typically, through the then current version of the SWIFT Price List);
<b>“Customer Software”</b>	means any computer program created by or for the Customer using the Developers Toolkit(s) for the Permitted Purpose;
<b>“Embedded Software”</b>	means any software made available by SWIFT to the Customer as part of the Licensed Materials that the Customer embeds in the Customer Software;
<b>“Effective Date”</b>	means the date of acceptance by SWIFT of the Customer’s 3SKey Developer Toolkit order;
<b>“Licensed Materials”</b>	means in relation to the 3SKey Developer Toolkit, any software, specifications, libraries, documentation and other materials made available to the Customer by SWIFT under these Terms and Conditions, as specified in the 3SKey Service Description or otherwise notified by SWIFT to the Customer from time to time;
<b>“Permitted Purpose”</b>	means in relation to the Licensed Materials, the permitted use as notified by SWIFT to the Customer from time to time in related documentation (typically, the 3SKey Developers Guide). The Permitted Purpose at the Effective Date of these Terms and Conditions is the integration of the 3SKey signature in applications for use by a 3SKey subscriber or 3SKey user in connection with the 3SKey service; and
<b>“Terms and Conditions”</b>	means the present Terms and Conditions and any other document to the extent referred to herein, as may be amended from time to time in accordance with these Terms and Conditions.

1.1 Any reference to a person shall, unless the context requires otherwise, be construed as a reference to that person and any other person for which it is responsible, including but not limited to its employees, directors, agents and subcontractors.

1.2 In the event of any conflict or inconsistency between these Terms and Conditions and any other document referred to herein, and unless the context requires otherwise, these Terms and Conditions shall prevail.

## 2. **Scope and Condition Precedent**

2.1. These Terms and Conditions apply to the provision and use of the Licensed Materials. However, they do not apply to the provision and use of any 3SKey supplied together with the 3SKey Developer Toolkit which shall be governed by the 3SKey Terms and Conditions. The latest available version of the 3SKey Developer Toolkit Terms and Conditions and 3SKey Terms and Conditions is available on [www.swift.com](http://www.swift.com) > About SWIFT > Legal > Other Terms and Conditions

- 2.2. To order and use the 3SKey Developer Toolkit, the Customer must be a 3SKey Subscriber, 3SKey User, a SWIFT User or a registered Service Bureau or SWIFT Partner.

### **3. Delivery**

- 3.1 SWIFT will make the Licensed Materials available in such form or medium as it deems appropriate from time to time, including by electronic means such as on the Internet. It is the sole and exclusive responsibility of the Customer to access, install and use the latest version available of the Licensed Materials.
- 3.2 Where the Licensed Materials are downloaded, SWIFT's obligation to make the Licensed Materials available is discharged when SWIFT posts the Licensed Materials on the relevant site.

### **4. Licence**

- 4.1 The Customer is granted a non-exclusive and non-transferable right to (as appropriate) download, possess, install and use as many copies of the Licensed Materials (including one back-up copy for contingency purposes) as reasonably necessary for the Permitted Purpose. Such license is personal to the Customer so that it will not permit third parties to use the Licensed Materials except its employees and other persons under its responsibility who need to do so for the Customer's own business operations.
- 4.2 The Customer shall only use the Licensed Materials in accordance with these Terms and Conditions and the 3SKey Service Description, any policies or directions in force given by or for SWIFT. Except for the foregoing, the Customer has no other rights with respect to the Licensed Materials. Specifically, but not limited to, the Customer has no right, or right to authorise others, to:
- modify, enhance or otherwise change the Licensed Materials, merge them with another program, or prepare derivative works based upon or derived in whole or part from them (save to the extent necessary for the Permitted Purposes);
  - translate, decompile, disassemble, reverse-engineer or otherwise re-create the Licensed Materials or determine their source code (save to the extent expressly permitted by applicable law);
  - reproduce the Licensed Materials (except as expressly permitted by SWIFT);
  - rent, lease, sell, sub-licence, distribute to or allow access to or otherwise provide or transfer the Licensed Materials or copies thereof to third parties (except as permitted under clause 4.1); or
  - remove, alter, cover, obfuscate or cancel from view any copyright or other proprietary rights notices, marks or legends appearing on the physical medium or contained in the Licensed Materials, and the Customer will reproduce and include the same on any permitted copy.
- 4.3 Where the Customer Software includes Embedded Software, the Customer shall comply with the following obligations and restrictions in relation to such Embedded Software:
- the Customer shall not make any representations or warranties regarding the Embedded Software inconsistent with those representations and warranties made by SWIFT to the Customer in respect of the Licensed Materials under these Terms and Conditions;
  - the Customer shall make the Embedded Software available on terms and conditions that are no less stringent than those applicable to provision of the Licensed Materials under these Terms and Conditions; and
  - the Customer shall permit use of the Embedded Software solely in connection with the 3SKey service and, if used to rely on 3SKey signatures for live operations, by 3SKey Subscribers only.
- 4.4 The Customer acknowledges that the Licensed Materials may include software which intellectual property rights may belong to a third party. With respect to such third party software, SWIFT may require the Customer to comply with additional licence terms imposed by SWIFT licensors from time to time, as notified by SWIFT to the Customer. In case of conflict, any such additional license terms will prevail over these Terms and Conditions.

- 4.5 The Customer shall indemnify and keep SWIFT and/or its licensors fully and effectively indemnified against any and all actions, liabilities, claims, demands, losses, damages, proceedings, costs or expenses (including legal fees, costs and expenses on a full indemnity basis) suffered or incurred by SWIFT and/or its licensors howsoever caused, arising from or which is related to a failure to comply with these Terms and Conditions or any additional licence terms referred to in clause 4.4.

## **5. Co-operation & Assistance**

- 5.1 The Customer shall:

- notify SWIFT promptly of any problem relating to the supply and use of the Licensed Materials;
- co-operate with and assist SWIFT in identifying, investigating and resolving any such problem and, in particular, follow any guidelines or other directions given by or for SWIFT from time to time;
- promptly correct any problem if it is the Customer's responsibility to do so;
- respond correctly and promptly to any procedures initiated or actions requested by SWIFT to eliminate a problem relating to the provision of the Licensed Materials; and
- notify SWIFT promptly if it becomes aware of any breach or attempted breach of security which could affect the integrity of the Licensed Materials or, more generally, the 3SKey service in whole or part.

- 5.2 The Customer acknowledges that it is critical that the Customer Software operates properly and is updated regularly so as to remain compatible with the then current version or release of the 3SKey service. The Customer is in particular expected to ensure that the Customer Software is updated no later than one (1) month prior to the corresponding version or release of the 3SKey service being made generally available to the 3SKey Subscribers or 3SKey Users.

SWIFT reserves the right to take reasonable steps (and to require the Customer to take reasonable steps) to enable SWIFT to review the compliance by the Customer with the foregoing. These steps include but are not limited to requiring the Customer to (i) respond to questionnaires or other enquiries from time to time; (ii) keep SWIFT informed of the release cycle of the Customer Software (including reasonable related documentation to permit SWIFT to assess the release); (iii) attend meetings with SWIFT to review matters regarding the proper operation, update or compatibility of the Customer Software; (iv) as appropriate, timely submit and implement a recovery plan; and (v) allow SWIFT to review, upon reasonable prior notice, the development and test environment and the design and code of the Customer Software.

## **6. Warranties**

- 6.1 SWIFT warrants that, if and to the extent that the Licensed Materials include software, that software will perform in accordance with the 3Skey Service Description in all material respects for ninety (90) days following its supply to the Customer.
- 6.2 As the Customer's sole and exclusive remedies and in the event of breach of clause 6.1, SWIFT will use reasonable efforts to correct the problem. If despite reasonable efforts SWIFT cannot implement a reasonably satisfactory remedy to the problem within a reasonable time period considering the nature of the problem, the Customer shall be entitled to a refund by SWIFT of the one-time Charges paid by the Customer in respect of the faulty or defective Licensed Materials and these Terms and Conditions shall then automatically and immediately terminate in respect of the faulty or defective Licensed Materials.
- 6.3 Except for the foregoing, and to the fullest extent permitted under applicable law, SWIFT does not give and specifically excludes and disclaims any express or implied warranty with respect to the Licensed Materials whether as to quality, fitness for purpose or otherwise.

## **7. Support and maintenance**

- 7.1 SWIFT will use reasonable efforts to provide those support and maintenance services for the Licensed Materials set out in the then current version of the SWIFT Support Service Description. Nothing in these Terms and Conditions shall however oblige SWIFT licensors to themselves provide support or maintenance services directly to the Customer.
- 7.2 The Customer acknowledges that only the latest version available of the Licensed Materials will support the latest changes to the 3SKey service. As applicable, the Customer will subscribe to the appropriate level of support and maintenance services so as to continuously have access to the latest version available of the Licensed Materials.

## **8. Intellectual Property**

- 8.1 The copyright and all other intellectual property rights of whatever nature in the Licensed Materials and associated processes will remain the exclusive property of or vest in SWIFT or its licensors. This applies equally to any modifications, enhancements or other changes to the Licensed Materials and, except for the Customer Software other than the Embedded Software, any computer program or other materials derived from the Licensed Materials in whole or in part and associated processes.

If the Customer makes suggestions or provides information or materials to SWIFT in connection with the download, possession, installation or use (as the case may be) of the Licensed Materials (other than relating to the Customer Software but excluding the Embedded Software) then, unless otherwise agreed in writing between the parties, SWIFT shall have the right to use such information, suggestions or materials as it thinks fit without payment to the Customer, and any intellectual property created by or for SWIFT as a result or which subsists in such suggestions or materials shall vest in SWIFT absolutely.

- 8.2 In no event shall the Customer receive any title nor any copyright or any other intellectual property rights of whatever nature in the Licensed Materials, except as expressly set forth herein. SWIFT and its licensors shall be entitled to enforce their proprietary rights against the Customer with respect to the Licensed Materials and, to the extent that the Customer is authorised to grant rights to third parties in respect of the Licensed Materials, against any such third parties.
- 8.3 SWIFT warrants that it is not aware, as at the Effective Date, of any claim that the download, possession, installation or use (as the case may be) of the Licensed Materials by the Customer in accordance with these Terms and Conditions or any additional licence terms referred to in clause 4.4 will infringe any copyright or other intellectual property rights of a third party.
- 8.4 If a claim is made against the Customer that the download, possession, installation or use (as the case may be) of the Licensed Materials in accordance with the terms of these Terms and Conditions infringe the intellectual property rights of a third party, SWIFT will conduct the defence of such claim and will indemnify the Customer against all finally awarded damages by a court of competent jurisdiction that arise from the claim and which are suffered by the Customer provided that:
- the Customer notifies SWIFT promptly in writing of any such claim;
  - SWIFT has sole discretion over the control over the defence and/or settlement of such claims;
  - the Customer makes no admission in relation to such claim and provides all assistance reasonably requested by SWIFT in connection with such claim; and
  - no cost or expense shall be incurred by the Customer in relation to the claim without the prior written consent of SWIFT.
- 8.5 If the download, possession, installation or use (as the case may be) of the Licensed Materials, in whole or in part, is held to constitute an infringement of intellectual property rights of third parties, or is enjoined or prevented by a court order, in whole or in part, SWIFT will, at its reasonable discretion and expense, use all commercial efforts to either:
- procure for the Customer the right to continue downloading, possessing, installing or using (as the case may be) the Licensed Materials pursuant to the terms of these Terms and Conditions; or

- modify, replace or amend the Licensed Materials so that they are no longer infringing.

If SWIFT is unable despite having used reasonable efforts to secure either of the above options, SWIFT will have the right to terminate the provision of the infringing Licensed Materials to the Customer without any further liability or charge except that SWIFT shall refund a pro-rata amount of the Charges paid by the Customer in respect of the infringing Licensed Materials based on the unexpired term of (in the case of one-time Charges) its useful life which shall be deemed to be 3 years from its supply or (in the case of recurring Charges) the relevant invoicing period.

- 8.6 The foregoing states the sole and exclusive rights and remedies of the Customer concerning the infringement of intellectual property rights of third parties, or allegations of infringement in respect of the Licensed Materials.

## **9. Pricing, Invoicing and Payment**

- 9.1 The Customer shall pay the Charges to SWIFT in accordance with the invoicing and payment terms and conditions notified by SWIFT to the Customer from time to time (SWIFT Pricing and Invoicing documentation is available on SWIFT Knowledge Center).

## **10. Termination**

- 10.1 Without prejudice to any other provision for termination set out elsewhere in these Terms and Conditions, either party may terminate these Terms and Conditions for convenience by three (3) months notice in writing to the other party at any time or, with immediate effect, by written notice to the other party in the event of any material breach of these Terms and Conditions by that party which cannot be remedied or remains unremedied for at least thirty (30) days as from the time it was first notified to that party or if that party becomes insolvent or bankrupt or a receiver or liquidator is appointed over all or part of that party's assets or any analogous event occurs in any jurisdiction.
- 10.2 These Terms and Conditions shall automatically and immediately terminate if the Customer ceases to meet the eligibility criteria set out in clause 2.2 for any reason whatsoever.
- 10.3 Upon termination of these Terms and Conditions for any reason whatsoever, and unless the Customer has the right to retain the Licensed Materials pursuant to a subsequent agreement with SWIFT, the Customer shall immediately cease using the Licensed Materials save to the extent necessary to support the continued use of the Customer Software for a maximum period of six (6) months. Furthermore, the Customer will promptly notify its customers of such termination and review with them any impact such termination may have on their access to and use of the 3SKey service.
- 10.4 Termination of these Terms and Conditions for any reason whatsoever shall not release any party from any of its obligations arising under these Terms and Conditions or any additional licence terms referred to in clause 4.4 prior to termination or which expressly or by implication become effective or continue to be effective on or after such termination, and shall be without prejudice to any other rights or remedies it may have in respect of the termination.

## **11. Limitation and Exclusion of Liability**

- 11.1 The Customer acknowledges and agrees that except as expressly provided in these Terms and Conditions, the Licensed Materials are provided "As Is" solely for the Permitted Purpose and their download, possession, installation or use (as the case may be) are under the Customer's sole and exclusive responsibility and at its risk. Without prejudice to the generality of the foregoing, the Customer further acknowledges and agrees that it shall be solely responsible for ensuring data integrity and security can be maintained on its systems, including operating back-up procedures, and insuring against loss or damage which may arise from a loss of or a corruption to data or from unintended access or disclosure.
- 11.2 To the extent not otherwise prohibited by law the Customer further acknowledges and agrees that SWIFT's liability for or in connection with the performance of these Terms and Conditions (whether in contract, tort or otherwise) will be limited or excluded as follows:

- except for fraud or gross negligence, SWIFT's liability will not exceed the total amount of the Charges the Customer has paid to SWIFT under these Terms and Conditions in respect of the Licensed Materials or 10,000 Euro, whichever is higher; and
  - SWIFT bears no liability for any indirect, special or consequential loss of any kind nor for any loss of revenue, loss of profit, loss of data, loss of use, loss of goodwill, loss of savings, interruption of business or third party claims.
- 11.3 SWIFT shall in no circumstances be obliged to perform any obligation or bear any liability whatsoever under these Terms and Conditions or arising under to the extent resulting from:
- any unauthorised or improper download, possession, installation or use (as the case may be) of the Licensed Materials;
  - the use of services or products not supplied by SWIFT for use in connection with the Licensed Materials;
  - the Customer's acts, faults or omissions or those of a third party for which SWIFT is not responsible (including but not limited to any downloading by the Customer of the Licensed Materials); or
  - Force Majeure (as defined in clause 11.5).
- 11.4 In no event shall SWIFT's licensors be liable for any loss or damage of any kind with respect to or in connection with the use of the Licensed Materials whether arising from contract, tort or any other theory of liability.
- 11.5 If any party is unable to perform its obligations (except payment obligations) due to causes beyond its reasonable control then that party shall not be held responsible for any loss or damage which may be incurred by the other party as a result of such inability. Such causes include but are not limited to acts of God, governmental acts, acts of authorities (including Regulatory Authorities), acts of telecommunications operators, facilities management contractors and service providers (but excluding where such acts were caused by the act, fault or omission of SWIFT), catastrophes in nature, war, fire, flood, strike or industrial disputes, political disturbance, explosion, bombs or civil disturbances, epidemics and all other circumstances which prevent or hinder a party against its will from performing its obligations ("Force Majeure").

Each party will give notice to the other as soon as possible upon becoming aware of a Force Majeure. If due to Force Majeure a party remains unable to perform its obligations arising under these Terms and Conditions for more than sixty (60) days, then the other party may terminate these Terms and Conditions immediately. Neither party shall have any liability to the other as a result of such termination, but any such termination shall be without prejudice to any rights, which may have arisen prior to termination.

## **12. Confidentiality**

- 12.1 Unless otherwise expressly permitted, the Customer will keep strictly confidential and not disclose information obtained in connection with the provision or use of the Licensed Materials, including the Licensed Materials and any part or copies thereof, to third parties except to the Customer's employees or other persons under the Customer's responsibility who need to use the Licensed Materials for the Permitted Purpose and who are bound for the benefit of SWIFT and its licensors by no less stringent obligations of confidence than those in these Terms and Conditions or any additional licence terms referred to in clause 4.4. The obligations of confidence in this clause shall not apply to any materials which enter the public domain other than by the Customer's breach of these Terms and Conditions or which are required by law to be disclosed.
- 12.2 The obligations of confidence in this clause shall survive termination for whatever reason of these Terms and Conditions.

## **13. Export Control**

The Customer acknowledge that the Licensed Materials may be subject to export and import restrictions, and agrees to comply with all applicable international and national export and import laws, regulations, orders, and policies that apply to the supply and use of the Licensed Materials, in whole or in part.

The Customer further acknowledges that the supply and use of 3SKey supplied together with the 3SKey Developer Toolkit are subject to U.S. export restrictions and other sanction programmes in effect from time to time. Currently, persons located in or from Cuba, North Korea, Iran, region of Crimea or Syria and persons identified on U.S. government or EU “denied party” or specifically designated nationals lists are not permitted to possess or use the 3SKey. The Customer agrees to comply with all applicable international and national export and import laws, regulations, orders, and policies that apply to the supply and use of the 3SKey.

The Customer shall be responsible for procuring all required permissions (if any) for the initial import and use of the Licensed Materials and/or the 3SKey, and for any subsequent export, import and use thereof.

**14. Public Announcements**

The parties shall, wherever possible, consult with one another before making public announcements in connection with the supply or use of the Licensed Materials pursuant to these Terms and Conditions, excluding SWIFT’s right to publicly announce or advertise at its full discretion any subscription to and use of the Licensed Materials by the Customer or any cessation of any such subscription and use.

**15. Privacy**

In connection with the provision or use of the 3SKey Developer Toolkit, SWIFT may process certain personal data (typically, personal data collected by SWIFT for purposes relating to the provision of the Licensed Materials such as the details of contact persons identified by the Customer to SWIFT). The rights and obligations of the parties regarding the processing of personal data (if any) in connection with the provision or use of the 3SKey Developer Toolkit are set out in the then current version of the [SWIFT Personal Data Protection Policy](#) available on [www.swift.com](http://www.swift.com).

**16. Ancillary Provisions**

- 16.1 ENTIRE AGREEMENT and VARIATIONS: These Terms and Conditions constitute the entire agreement between the parties. Each party confirms that it has not relied upon any representation not recorded in these Terms and Conditions inducing it to order the 3SKey Developer Toolkit. SWIFT shall be entitled to issue revised versions of the 3SKey Service Description at any time. Updates to 3SKey Service Description will be made available on SWIFT Knowledge Center. If the Customer objects to any material revision of the 3SKey Service Description and demonstrates to the reasonable satisfaction of SWIFT such revision materially adversely affects its use of the Licensed Materials, then, as its sole right and remedy, it shall be entitled to terminate these Terms and Conditions upon written notice to SWIFT subject to any Charges due being paid.
- 16.2 SEVERABILITY: These Terms and Conditions are severable and if any part is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder which will continue to be valid and enforceable to the fullest extent permitted by law.
- 16.3 WAIVER: No delay or failure by any party to exercise any of its powers, rights or remedies in enforcing any term will operate as a waiver of such term, nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them.
- 16.4 RELATIONSHIP OF THE PARTIES: The relationship between SWIFT and the Customer is that of independent contractors. Neither party is agent for the other, and neither party has any authority to make any contract, whether expressly or by implication, in the name of the other party, except where the party’s prior written consent has been obtained.

- 16.5 **ASSIGNMENT:** Except where expressly provided otherwise elsewhere in these Terms and Conditions, the Customer may not assign, transfer, sub-licence or sub-contract any rights or obligations arising under these Terms and Conditions without the prior written consent of SWIFT. SWIFT may assign or transfer any of its rights or obligations to any of its majority-owned subsidiaries worldwide. Furthermore SWIFT may delegate or sub-contract its obligations under these Terms and Conditions.
- 16.6 **NOTICES:** Any notice required to be given under these Terms and Conditions by either party must be in writing (and for the purposes of these Terms and Conditions “in writing” includes in readable electronic form such as an email) and may be delivered either personally, by post, by fax or by email to the address of the receiving party as specified on the front of these Terms and Conditions or any subsequent address notified to that party pursuant to this clause. Notices shall be deemed to have been served at the time of their receipt by the receiving party.
- 16.7 **GOVERNING LAW AND JURISDICTION:** These Terms and Conditions are governed by Belgian Law, and the parties submit to the exclusive jurisdiction of the competent court in Brussels, Belgium.