



SWIFT

# 3SKey Terms and Conditions

These *3SKey Terms and Conditions* govern the provision and use of SWIFT's 3SKey service.

This document is for *3SKey subscribers* and *3SKey users* that need information about the contractual framework for the provision and the use of the 3SKey service.

November 2010

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# Preface

## Purpose of this document

These *3SKey Terms and Conditions* govern the provision and use of SWIFT's 3SKey service.

In particular, these *3SKey Terms and Conditions* provide information about the conditions of use of the 3SKey service, the rights and obligations of the parties, the conditions to terminate the provision or use of the 3SKey service, the liability of the parties, the claim process, and applicable law and jurisdiction.

## Intended audience

This document is for existing or future *3SKey subscribers* and *3SKey users* that need information about the contractual framework for the provision and the use of the 3SKey service. For more information about the *3SKey subscribers*, *3SKey users* and more generally, the 3SKey service, please refer to the [3SKey Service Description](#) available on [www.3skey.com](http://www.3skey.com).

*3SKey subscribers* must accept these *3SKey Terms and Conditions* to subscribe to the 3SKey service and to rely upon 3SKey certificates.

*3SKey subscribers* and *3SKey users* must also confirm acceptance of these *3SKey Terms and Conditions* when accessing the 3SKey portal for the first time to activate their 3SKey Tokens and to access and use the other functions available to them on the 3SKey portal.

If the event that these *3SKey Terms and Conditions* are amended or supplemented from time to time, *3SKey subscribers* and *3SKey users* may be requested to accept a new version of these *3SKey Terms and Conditions* to maintain their access to the 3SKey portal and, more generally, to continue use of the 3SKey service and reliance on 3SKey certificates.

If you do not agree to these *3SKey Terms and Conditions*, do not subscribe to the 3SKey service or, as the case may be, do not access the 3SKey portal and do not use the 3SKey Tokens or the 3SKey service. By subscribing to the 3SKey service, by clicking 'I accept' when accessing the 3SKey portal or just by using a 3SKey Token, you agree to become a party to, and to be bound by, these *3SKey Terms and Conditions* as may be amended or supplemented from time to time.

## Related documentation

- [3SKey Service Description](#)
- *Pricing and Invoicing – Price List*
- *Pricing and Invoicing – Ordering, Invoicing and Payment*
- *3SKey Developer Guide*
- *3SKey Tokens Terms and Conditions*
- *3SKey Developer Toolkit Terms and Conditions*
- *3SKey Portal Online Help*
- *3SKey Best Practices Guide*
- *SWIFT Glossary*
- *3SKey Certificate Policy*
- *3SKey Installation Guide for eToken PRO*
- *3SKey Installation Guide for eToken NG-FLASH*

## **Significant changes**

These *3SKey Terms and Conditions* may change from time to time. Always refer to the latest version available on [www.3skey.com](http://www.3skey.com) and [www.swift.com](http://www.swift.com) > About SWIFT > Legal > SWIFT Contracts.

## **Where to find the 3SKey documentation**

The latest available version of the [3SKey Service Description](#) and other 3SKey documentation is available at [www.3skey.com](http://www.3skey.com).

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# 3SKey Terms and Conditions

## 1 Interpretation and Scope

- 1.1 Unless inconsistent with the context, the following reading conventions apply in these *3SKey Terms and Conditions*:
- a) Terms that are highlighted in grey in the text have the specific meaning set out in the [3SKey Service Description](#) or, by default, in the [SWIFT Glossary](#).
  - b) A reference to a document or form refers to the latest version in force.
  - c) A reference to a person includes any other person for which he is responsible, including his employees, directors, agents, and subcontractors.
- 1.2 General principles or words are not given any restrictive meaning when they are illustrated with examples.
- 1.3 The following order of precedence applies within the 3SKey contractual documentation:
- 1) the 3SKey subscription form executed by the 3SKey subscriber to subscribe to the 3SKey service
  - 2) these *3SKey Terms and Conditions*
  - 3) the [3SKey Service Description](#)
  - 4) any other 3SKey service documentation referred to in the document above
- If any document expressly provides that another document amends or supplements it, that other document prevails.

- 1.4 These *3SKey Terms and Conditions* constitute a legal agreement between SWIFT and the 3SKey subscribers and 3SKey users for the provision and use of the 3SKey service. For the avoidance of any doubt, nothing in these *3SKey Terms and Conditions* shall be interpreted or construed as constituting contractual arrangements between the 3SKey subscribers and 3SKey users directly. It is for the 3SKey subscribers and their 3SKey users to consider any other contractual arrangements that are necessary or desirable amongst themselves directly in connection with their use of the 3SKey service (typically, to define and agree on the terms and conditions governing the registration of the 3SKey user and the reliance on its 3SKey certificates), including the frequency with which the 3SKey subscriber will check the revocation status of the 3SKey certificates of the 3SKey user, their respective information retention obligations or the claim period and applicable claim procedure.

These *3SKey Terms and Conditions* do not apply to the provision or use of the 3SKey Tokens and 3SKey Developer Toolkit, which shall be governed by the *3SKey Tokens Terms and Conditions* and *3SKey Developer Toolkit Terms and Conditions* respectively.

## 2 3SKey Contractual Documentation

- 2.1 Each party accepts the validity of an electronic signature or electronic data, and confirms that it has the same force and legal effect as if in writing or paper based.
- 2.2 The 3SKey subscribers and 3SKey users acknowledge and agree that SWIFT may amend or supplement the 3SKey contractual documentation at any time upon notice to them (typically, by updating the relevant document(s) on [www.3skey.com](http://www.3skey.com) or [www.swift.com](http://www.swift.com)). Each 3SKey subscriber and 3SKey user shall be deemed to have accepted such amendment or supplement if it has not terminated its contractual arrangements with SWIFT for the provision and use of the 3SKey service in accordance with clause 9.4.

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The 3SKey subscribers and 3SKey users must ensure that they always refer to the latest 3SKey contractual documentation in effect, and that they are aware of the latest available information relating to the 3SKey service. In particular, 3SKey subscribers and 3SKey users must regularly consult the 3SKey information available at [www.3skey.com](http://www.3skey.com).

To assist 3SKey subscribers and 3SKey users, SWIFT publishes latest news, changes, known problems and solutions, and frequently asked questions on [www.3skey.com](http://www.3skey.com). It is the responsibility of the 3SKey subscribers and 3SKey users to access the latest information and documentation about the 3SKey service available on [www.3skey.com](http://www.3skey.com).

- 2.3 Only the English version of the *3SKey Terms and Conditions* as published by SWIFT on [www.3skey.com](http://www.3skey.com) or [www.swift.com](http://www.swift.com) is valid.

### **3 Conditions of subscription to and use of the 3SKey service**

The 3SKey subscriber must be a registered SWIFT user (typically, banks) or service bureau. No subscription will be effective until accepted in writing by SWIFT (typically an acceptance email from SWIFT's End-to-end ordering department).

The 3SKey user (typically, corporate clients of banks, or their representatives) is any person that has legally obtained a 3SKey Token (typically, from a 3SKey subscriber) to authenticate and secure communications with one or more 3SKey subscribers and/or their affiliated entities.

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

#### **4.1 Provide the 3SKey service**

- 4.1.1 SWIFT provides the 3SKey service, and complies with applicable service levels (if any), in all material respects as set out in the [3SKey Service Description](#).

- 4.1.2 When the 3SKey subscriber or 3SKey user is responsible for downloading information, documentation and other materials made available to it as an integral part of the provision of the 3SKey service (typically, the 3SKey documentation available on [www.3skey.com](http://www.3skey.com)), SWIFT's obligation to make these available to it is fulfilled by making them available on the relevant site in a downloadable format.

- 4.1.3 When SWIFT is responsible for certain implementation or activation activities, SWIFT will use all commercially reasonable efforts to complete these activities by the date notified to the 3SKey subscriber or 3SKey user, or any other date agreed in writing with it.

#### **4.2 Suspension and Change**

- 4.2.1 The 3SKey subscriber and 3SKey user acknowledge and agree that SWIFT may suspend or change the 3SKey service, in whole or in part, at any time, giving as much advance notice as practicable (typically, during announced downtime windows), in any of the following events:

- a) to perform or allow maintenance, or to upgrade or otherwise change the 3SKey service.
- b) to prevent or mitigate any adverse effect on the security, reliability, or resilience of the 3SKey service or, more generally, SWIFT's reputation, brand, or goodwill (typically, if the 3SKey subscriber and 3SKey user would be subject to sanctions such as EU sanctions).
- c) to comply with an order or request from a regulatory or governmental authority, body, or agency.
- d) if the 3SKey subscriber or 3SKey user has committed a material default.

SWIFT informs the 3SKey subscribers and 3SKey users about changes to the 3SKey service (typically, in an update of the 3SKey documentation such as the [3SKey Service Description](#) available on [www.3skey.com](http://www.3skey.com)).

4.2.2 SWIFT limits any suspension of, or changes to, the 3SKey service pursuant to clause 4.2.1 as reasonably practicable in the circumstances. SWIFT typically schedules maintenance, upgrade, and change activities during allowable downtime windows (ADW) as published on [www.3skey.com](http://www.3skey.com).

#### 4.3 SWIFT Responsibilities

4.3.1 SWIFT provides the 3SKey service using care and skill consistent with good industry practice.

4.3.2 SWIFT provides the 3SKey service using competent personnel with appropriate experience.

4.3.3 Unless SWIFT notifies any 3SKey subscriber and 3SKey user concerned otherwise, SWIFT warrants that it is not aware of any bona fide claim that the possession or use of the 3SKey service by that 3SKey subscriber or 3SKey user, as permitted under the 3SKey contractual documentation, infringes the intellectual property rights of any third party.

## 5 **3SKey subscriber and/or 3SKey user Role and Responsibilities**

### 5.1 General Obligations

5.1.1 Each 3SKey subscriber and 3SKey user must comply with all obligations and other mandatory instructions applicable to it in connection with its use of the 3SKey service, as set out in the 3SKey contractual documentation (typically, the [3SKey Service Description](#)) or otherwise notified by SWIFT to it.

5.1.2 Each 3SKey subscriber and 3SKey user is responsible for complying with all operating requirements for its use of 3SKey service (typically, a 3SKey Token and relevant applications properly integrated with the 3SKey service).

5.1.3 Each 3SKey subscriber and 3SKey user must use only valid 3SKey Tokens (typically, a non-revoked and non-expired 3SKey Token issued by the SWIFT CA) and ensure that relevant applications have been integrated with the 3SKey service using the versions, releases, patches, specifications and other documentation of the 3SKey Developer Toolkit that SWIFT currently supports, as specified in the [3SKey Service Description](#) or as otherwise notified by SWIFT (for example, through a notice posted on [www.3skey.com](http://www.3skey.com) or in a release or patch letter).

### 5.2 Security

Each 3SKey subscriber and 3SKey user must protect its private key(s), related password(s) and security code(s), at all times, against loss, disclosure to any unauthorised person, change and unauthorised use, and must maintain the confidentiality and integrity of its private key(s), related password(s) and security code(s), at all times. Each 3SKey subscriber and 3SKey user must immediately revoke its 3SKey certificate if related private key, password(s) or security code(s) is (are) compromised. 3SKey users should also abide by any relevant conditions governing their use of the 3SKey service and, more particularly, reliance on their 3SKey certificates (typically the obligation to notify the 3SKey subscriber(s) directly of the revocation) as agreed with the 3SKey subscriber(s) from time to time.

Furthermore, each 3SKey subscriber and 3SKey user must protect and maintain the confidentiality, integrity and availability of all systems relevant to their use of the 3SKey service at all times. In particular, each 3SKey subscriber and 3SKey user must ensure the following:

- a) Ensure authorised persons only are granted physical and logical access to all such systems.
- b) Use of up-to-date and state-of-the-art virus scanning, firewall and account protection software.
- c) Operate backup procedures and handles backup media according to best security practices.
- d) Ensure that all such systems have been configured for increased resilience in order to minimise any downtime in the event of a failure.

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Without prejudice to the foregoing, the 3SKey subscribers and 3SKey users will also comply with all recommendations for secure and resilient operations issued by SWIFT from time to time (typically, in the 3SKey Best Practices Guide).

### 5.3 Industry Practice, Applicable Laws, and Regulations

The 3SKey subscribers and 3SKey users are responsible for their respective use of the 3SKey service, including any data and communications authenticated and secured using the 3SKey service.

In using the 3SKey service and conducting their business, the 3SKey subscribers and 3SKey users must always exercise due diligence and reasonable judgment (typically, before deciding to rely on a 3SKey certificate), and must comply with good industry practice and all relevant laws, regulations, or third-party rights.

In particular, the 3SKey subscribers and 3SKey users must seek all necessary or advisable consents and authorisations in order to ensure that no laws, regulations, or third-party rights are violated in connection with their use of the 3SKey service (including laws and regulations regarding banking, money laundering, terrorist financing, economic sanctions, competition, electronic signature, encryption and data transmission).

The 3SKey subscribers and 3SKey users must also comply with all relevant laws and regulations regarding the export, import, and use of any products, software, technology, or materials (including cryptographic technology and materials) comprised in or relating to the provision and the use of the 3SKey service.

## 6 Intellectual Property Rights Indemnification

- 6.1 Any and all rights (including title, ownership rights, database rights, and any other intellectual property rights) in the 3SKey service, and documentation or other materials developed or supplied in connection with the 3SKey service, including any associated processes or any derivative works, are and will remain the sole and exclusive property of SWIFT or its licensors.

No rights are granted by SWIFT in respect of the 3SKey service other than those expressly granted under these 3SKey Terms and Conditions or other relevant 3SKey contractual documentation.

- 6.2 If a third party makes a bona fide claim that the possession or use of the 3SKey service by a 3SKey subscriber and a 3SKey user as permitted under these 3SKey Terms and Conditions or other relevant 3SKey contractual documentation infringes its intellectual property rights, SWIFT will indemnify it against that claim by paying:

a) any reasonable legal fees incurred by it until control over the defence and settlement of any such claim has been handed over to SWIFT

b) any damages that a court awards against it if any such claim is upheld

provided always that it:

a) notifies SWIFT promptly in writing of any such claim

b) does nothing to jeopardise or prejudice SWIFT's defence and settlement of any such claim

c) promptly hands over to SWIFT control over the defence and settlement of any such claim.

- 6.3 If the 3SKey service, in whole or in part, is held to constitute an infringement of intellectual property rights of third parties, or their provision or use is enjoined or prevented, in whole or in part, by a court order, SWIFT will, in its discretion and at its expense, use all commercially reasonable efforts to achieve one of the following alternatives:

a) procure for the affected 3SKey subscriber or 3SKey user the right to continue using the 3SKey service

- b) modify, replace, or amend the 3SKey service so that it no longer constitutes an infringement. In this case, the 3SKey subscriber or 3SKey user will use such version of the 3SKey service at the earliest opportunity after it has been made available.

If SWIFT is unable to secure either option, then SWIFT will refund any one-time charge paid by the affected 3SKey subscriber for its subscription to the 3SKey service, and the contractual arrangements for the affected 3SKey subscriber or 3SKey user will automatically terminate.

- 6.4 This clause 6 states the sole and exclusive rights and remedies of the 3SKey subscriber or 3SKey user concerning the infringement of rights of third parties, allegations of infringement, or breach of clause 4.3.3. Any right or remedy of the 3SKey subscriber or 3SKey user under this clause 6 is subject to clause 8.

## 7 Charges and Fees

The 3SKey subscriber must pay to SWIFT all charges and fees applicable to it for the provision or use of the 3SKey service.

These charges and fees, and related invoicing and payment terms and conditions, are as notified by SWIFT (typically, through the SWIFT Price List) or otherwise (for example, a specific quotation).

## 8 Liability

### 8.1 SWIFT Liability

- 8.1.1 Subject to the other provisions of this clause 8, SWIFT accepts liability to the 3SKey subscribers or 3SKey users (whether in contract, tort, or otherwise), only for negligence, wilful default, or fraud, or under the indemnity in clause 6.2.

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

- a) For any and all claims notified in one calendar year, SWIFT's liability to any and all affected 3SKey subscribers and 3SKey users will not exceed 1 million Euro.
- b) SWIFT will not be obliged to make any payment until SWIFT's liability in relation to any claim notified in one calendar year has been finally accepted or established and, if such liability exceeds any applicable maximum, proportionally reduced based on SWIFT's final liability to each claimant. SWIFT will then pay within 90 days.

- 8.1.3 Any liability of SWIFT is subject to the following exclusions:

- a) Even if SWIFT has been advised of their possibility, SWIFT excludes any liability for:
- (i) any unforeseeable loss or damage (whether direct or indirect)
  - (ii) any loss of business or profit, revenue, anticipated savings, contracts, loss of or corruption to data, loss of use, loss of goodwill, interruption of business, or other similar pecuniary loss howsoever arising (whether direct or indirect)
  - (iii) any indirect, special, or consequential loss or damage of any kind.
- b) SWIFT is not obliged to perform or has no liability to the extent resulting from the provision or use of services or products not supplied by SWIFT for use in connection with the 3SKey service, or in the circumstances set out in clause 8.3.d or 8.4.
- c) SWIFT's liability for any one event or series of connected events is not cumulative, whether arising under these *3SKey Terms and Conditions* or otherwise.

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

- a) to any liability for death or personal injury

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b) in case of fraud, wilful default or, more generally, to the extent not permitted under applicable law

8.1.5 This clause 8.1 applies before as well as after any termination of the contractual arrangements between SWIFT and the 3SKey subscribers and 3SKey users, and is also for the benefit of any other entities within the SWIFT group.

## 8.2 3SKey subscriber and 3SKey user Liability

Each 3SKey subscriber and 3SKey user will indemnify and keep SWIFT indemnified against any and all actions, liabilities, claims, demands, losses, damages, proceedings, costs, or expenses (including reasonable legal fees, costs, and expenses) suffered or incurred by SWIFT in connection with any third-party claim as a result of any failure to comply with its obligations under these *3SKey Terms and Conditions* or any other 3SKey contractual documentation.

## 8.3 General Principles Governing the Liability of Each Party

a) Each party will use all commercially reasonable efforts to limit any additional loss or damage.

b) Neither party may recover more than once for the same loss.

c) No undue enrichment will ever accrue to any party.

d) Neither party is obliged to perform or will have any liability to the extent resulting from any act, fault or omission of the other party, or of a third party for which it is not responsible.

## 8.4 Force Majeure

If any party is unable to perform its obligations due to causes beyond its reasonable control, then that party will 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 acts of God, governmental acts, acts of authorities, acts of telecommunications operators, facilities management contractors and service providers, natural disasters, wars, fires, floods, strikes or industrial disputes, political disturbances, explosions, bombs or civil disturbances, epidemics and all other circumstances which, against its will, prevent or hinder any party from performing its obligations.

Each party will give notice to the other one as soon as practicable upon becoming aware of such event. If, due to such event, one of the parties remains unable to perform its obligations for more than 60 days, then the other party may terminate the affected contractual arrangements immediately. Neither party will have any liability to the other as a result of such termination, but any such termination will be without prejudice to any rights which may have arisen prior to termination.

## 8.5 No Warranties

Except as expressly provided in these *3SKey Terms and Conditions* and to the extent permitted by applicable laws, SWIFT does not give and specifically excludes and disclaims any warranty of any kind, whether express or implied, statutory or otherwise, with respect to the provision, possession, or use of the 3SKey service, including (without limitation) any warranty as to the condition, quality, performance, non-infringement, merchantability or fitness for a particular purpose.

## 8.6 Liability of SWIFT Licensors, Service Providers, or Vendors

SWIFT's licensors, service providers, or vendors are not liable to the 3SKey subscribers and 3SKey users for any loss or damage of any kind in connection with the provision or use of the 3SKey service, whether arising from contract, tort or otherwise.

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## 9 Duration and Termination

### 9.1 Indefinite Term

SWIFT provides the 3SKey service to the 3SKey subscribers and 3SKey users for an indefinite period.

### 9.2 Termination for Convenience

Each party has the right to terminate for convenience its contractual arrangements for the provision and use of the 3SKey service, in whole or in part. To do so, SWIFT or the 3SKey subscriber must serve written notice thereof, in the case of SWIFT, at least 12 months in advance or, in the case of the 3SKey subscriber, at least 3 months in advance. A 3SKey user may terminate its contractual arrangements with SWIFT for the provision and use of the 3SKey service, in whole or in part, at any time, by revoking its 3SKey certificate(s).

### 9.3 Termination for Breach or Insolvency

Each party has the right to terminate its contractual arrangements for the provision and use of the 3SKey service immediately upon written notice to the other party in the following events:

- a) The other party is in material breach of its obligations and such breach either (i) is incapable of remedy or (ii) continues un-remedied for a period of 30 days after notice of the breach has been given in writing to the other party.
- b) The other party becomes insolvent or generally fails to pay, or admits its inability to pay, all or a substantial part of its debts as they become due, or applies for or is granted a moratorium.
- c) A receiver, manager, administrator, liquidator, or other similar officer or practitioner is appointed over the whole or any substantial part of the other party's business or assets, or any steps are undertaken to that effect (typically, it becomes the subject of a bankruptcy, insolvency, or other similar proceeding).

SWIFT also has the right to terminate its contractual arrangements with the 3SKey subscribers and 3SKey users for the provision and use of the 3SKey service immediately upon written notice in the circumstances set out in clause 4.2.1.b.

### 9.4 Termination for Change

If a 3SKey subscriber or a 3SKey user does not accept a change to the 3SKey service, to the 3SKey contractual documentation, it will, as its sole and exclusive right and remedy, terminate (without any liability or charge) its contractual arrangements with SWIFT for the provision and use of the 3SKey service upon written notice to SWIFT. The 3SKey subscriber or 3SKey user must serve such notice within 1 month of the date on which it becomes aware (or should reasonably have become aware) of such change (typically, the publication date on [www.3skey.com](http://www.3skey.com)).

### 9.5 Termination for Loss of SWIFT customer Status

If a 3SKey subscriber loses its status of SWIFT user or service bureau (as the case may be) for any reason, then its contractual arrangements with SWIFT for the provision of the 3SKey service automatically and immediately terminate.

### 9.6 Consequences of Termination

Termination of the contractual arrangements between SWIFT and 3SKey subscribers and 3SKey users for any reason will:

- a) not relieve any party from any obligations under the 3SKey contractual documentation which may have arisen prior to termination or which expressly or by implication become effective or continue to be effective on or after such termination

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- b) be without prejudice to any other rights or remedies any party may have in respect of the termination.

Upon termination of its contractual arrangements with SWIFT for the 3SKey service and without prejudice to any other right or remedy of SWIFT, the 3SKey subscriber or 3SKey user must immediately cease to use the 3SKey service.

## 10 Personal Data Protection

In connection with the provision of the 3SKey service, SWIFT may process certain personal data (typically, personal data collected by SWIFT for purposes relating to the provision of the 3SKey service such as the details of contact persons identified by the 3SKey subscribers or 3SKey users to SWIFT). The rights and obligations of SWIFT, by the 3SKey subscribers or 3SKey users regarding the processing of personal data (if any) in connection with the 3SKey service are set out in the [SWIFT Personal Data Protection Policy](#).

## 11 Confidentiality

### 11.1 The Obligations of Confidentiality of 3SKey subscribers and 3SKey users

Each 3SKey subscriber and 3SKey user must keep in confidence all information, data or materials accessed or obtained in connection with the provision of the 3SKey service.

Each 3SKey subscriber and 3SKey user must only use such information, data or materials as reasonably necessary to use the 3SKey service in accordance with the 3SKey contractual documentation.

Each 3SKey subscriber and 3SKey user 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, each 3SKey subscriber and 3SKey user must inform the recipient of the confidential nature of such information, data or materials, and ensure that the recipient is bound by an obligation of confidence no less restrictive than this clause 11.1. Each 3SKey subscriber and 3SKey user remains responsible for the use of information, data or materials by any such persons.

These confidentiality obligations will survive termination of the contractual arrangements of the 3SKey subscriber or 3SKey user with SWIFT.

These confidentiality obligations do not apply to information, data or materials that the 3SKey subscriber or 3SKey user can demonstrate:

- a) were in the public domain (other than through a breach by the 3SKey subscriber or 3SKey user of its obligations)
- b) were lawfully received free of any obligations of confidentiality from a third party who, in the 3SKey subscriber or 3SKey user’s reasonable opinion, did not owe a duty of confidentiality in respect of such information, data or materials
- c) were developed independently by the 3SKey subscriber and 3SKey user without reference to such information, data or materials
- d) were required by law or regulation to be disclosed.

### 11.2 The Obligations of Confidentiality of SWIFT

The obligations of confidentiality above apply mutatis mutandis to SWIFT in respect of all information, data or materials accessed or obtained by SWIFT in connection with the provision

of the 3SKey service, save to the extent varied by this clause 11.2 or other SWIFT contractual documentation.

In particular, SWIFT will only use such information, data or materials for purposes relating to the provision of the 3SKey service or other SWIFT services and products or SWIFT governance (typically, the promotion, deployment, provision, and support of the 3SKey service or other SWIFT services and products or of related services and products of SWIFT partners; accounting and records keeping; or customer management).

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

Furthermore, each 3SKey subscriber and 3SKey user acknowledges and agrees that SWIFT may disclose the information, data or materials of the 3SKey subscriber or 3SKey user to any other affiliated entities within their corporate group.

For the avoidance of any doubt, each 3SKey user acknowledges and agrees that SWIFT may publish and make available to 3SKey subscribers (or, if SWIFT users, their affiliated entities within their corporate group) Certificate Revocation List (CRL) information regarding its 3SKey certificates or information about the creation and expiration date/time or activation state of its 3SKey certificates, as set out in the [3SKey Service Description](#).

## 12 Notices

12.1 Except when expressly provided otherwise in the 3SKey contractual documentation, all notices from one party to the other, will be in writing (in paper or electronic form) and in English.

Such notices will be sent to the registered address and designated contact department or person (if any) of the other party, or such other address as may be notified to the party serving notice pursuant to the provisions of this clause 12.1. SWIFT may also decide to post any such notice on [www.3skey.com](http://www.3skey.com).

12.2 As applicable, the 3SKey subscriber must notify SWIFT of its intention to terminate its contractual arrangements for the provision or use of the 3SKey service in electronic form, through [www.swift.com](http://www.swift.com).

12.3 Notices relating to the termination of the 3SKey service which cannot be served pursuant to clause 12.2 and notices which relate to any claims procedure must be served by mail or courier, with acknowledgement of receipt

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

- 3SKey user: general notices posted by SWIFT on [www.3skey.com](http://www.3skey.com), or its registered office or any other address notified by the 3SKey user to SWIFT
- 3SKey subscriber: its registered office, or any other address notified by the 3SKey subscriber to SWIFT
- SWIFT: its registered office and marked for the attention of End-to-End Ordering or, in the case of a claim made pursuant to clause 14, of the General Counsel.

12.4 All notices served in accordance with this clause 12 will be deemed effective upon their receipt by the recipient.

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## 13 Miscellaneous

### 13.1 Assignment and Sub-Contracting

13.1.1 The right for the 3SKey subscriber and 3SKey user to access or use the 3SKey service is personal (that is, it must support its own business operations). The 3SKey subscriber and 3SKey user must not transfer or assign such right, or related obligations, to any third party without SWIFT's prior written consent.

The 3SKey subscriber and 3SKey user may delegate or sub-contract to a third party the exercise of its rights or the performance of its obligations provided that SWIFT may refuse at its discretion any sub-contracting or delegation of the financial obligations of the 3SKey subscriber and 3SKey user.

13.1.2 The 3SKey subscriber and 3SKey user acknowledges and agrees that SWIFT may assign or transfer any of its rights or obligations to any other entity within the SWIFT group.

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

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

### 13.2 Assistance

13.2.1 Each party will give the other party such assistance as is reasonably required to ensure the smooth performance of the 3SKey contractual documentation.

13.2.2 In case of problems relating to the 3SKey service (in particular, problems that can affect the confidentiality, integrity, or availability of 3SKey service), the 3SKey subscriber and 3SKey user must:

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

13.2.3 Upon prior reasonable written request from SWIFT, each 3SKey subscriber and 3SKey user will provide any information, data, facilities, and other assistance regarding its access or use of 3SKey service.

Each 3SKey subscriber and 3SKey user acknowledges and agrees that SWIFT may require that the internal auditors of the 3SKey subscriber or 3SKey user confirm, in writing, the accuracy and completeness of any information or data supplied by it pursuant to this clause 13.2.3.

### 13.3 Severability

If any part of the 3SKey contractual documentation, including these *3SKey Terms and Conditions* is found to be invalid, unlawful, or unenforceable, then such part will be severed from the remainder which will continue to be valid and enforceable to the fullest extent permitted by law.

13.4 No Waiver

Subject to clause 14, no delay or failure by any party to exercise any of its rights or remedies under the 3SKey contractual documentation will operate as a waiver of such term.

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### 13.5 No Agency

The relationship between SWIFT and each 3SKey subscriber and 3SKey user is not that of agent and principal, and neither party has the authority to bind the other to any obligations.

### 13.6 Entire Agreement

The 3SKey contractual documentation contains the entire agreement and understanding between SWIFT and each 3SKey subscriber and 3SKey user relating to the provision and the use of the 3SKey service. It supersedes and cancels all prior negotiations, representations, proposals, statements, agreements and undertakings, written or oral, relating to the provision or the use of the 3SKey service.

### 13.7 Amendments

Subject to clause 2.2, no amendment or modification to the 3SKey contractual documentation will be effective unless it is in writing and signed by duly authorised representatives of the relevant parties.

## 14 **Dispute Resolution**

### 14.1 Time Limit

To make a valid claim, the 3SKey subscriber or 3SKey user must submit its claim to SWIFT within the following time limits:

- a) for claims relating to SWIFT invoices: within 30 days of the date of the invoice
- b) for claims relating to 3SKey certificate management requests through the 3SKey portal: up to 6 months after the expiry date of the certificate used
- c) for any other claims: within 12 months of the date on which the claiming 3SKey subscriber or 3SKey user becomes aware (or should reasonably have become aware) of the event giving rise to the claim.

### 14.2 Conciliation

The parties will use all commercially reasonable efforts to resolve at a business level any disputes arising out of or in connection with the provision of the 3SKey service within 1 month.

### 14.3 Claims Procedure

If the business representatives of the parties fail to reach agreement pursuant to clause 14.2, then the claiming 3SKey subscriber or 3SKey user agrees that any outstanding dispute will be finally settled according to the following claims procedure:

- a) If the matter relates to the provision or use of the 3SKey service for live business operations, the specific [Claims Procedure for 3SKey Problems in a Live Environment](#) applies.
- b) For any other matter, each 3SKey subscriber or 3SKey user agrees to submit to the exclusive jurisdiction of the competent court in Brussels (Belgium) or, if the claim exceeds 100,000 Euro, to arbitration. In case of arbitration, the arbitral tribunal will be constituted under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) and, to the extent permitted under said Rules, the provisions governing ICC arbitration in the [Claims Procedure for 3SKey Problems in a Live Environment](#) will apply.

### 14.4 Disputes between 3SKey subscribers and 3SKey users

If a 3SKey subscriber or 3SKey user has questions about its use of the 3SKey service, then it can refer to SWIFT. SWIFT can assist if, for example, a 3SKey subscriber or 3SKey user needs evidence of certain 3SKey certificate management functions performed on the 3SKey portal or evidence of the revocation status of a specific 3SKey certificate, as set out in the [3SKey Service](#)

[Description](#). SWIFT however is not in a position to give advice on, arbitrate, or otherwise decide on disputes between 3SKey subscribers and 3SKey users directly.

## **15 Applicable Law**

These *3SKey Terms and Conditions* and any other 3SKey contractual documentation are governed by and construed in accordance with Belgian law (without giving effect to any conflict of law provision that would cause the application of other laws).

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# Legal Notices

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

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