

**Article 1 – General**

Under the following terms and conditions, Swift will supply to the Customer the HSM Token equipment as ordered using Swift's eOrdering service and will grant to the Customer a personal, non-exclusive, limited and non-transferable licence to use any software and algorithm contained therein (together hereinafter called the "Equipment"). The Customer may use the Equipment solely in conjunction with Swift services and products, and the software and algorithm contained therein may be used as an integral part of the use of the Equipment only. It is a condition precedent to these terms and conditions becoming effective that the Customer is a duly registered Swift User, Swift Partner or Service Bureau.

**Article 2- Title, Risks and Acceptance**

- 2.1 Subject to article 2.2 and 6.6 below, title to the Equipment shall pass to the Customer upon full payment of the applicable one-time fee or, if no one-time fee applies, upon delivery.
- 2.2 Any and all rights, including title, ownership rights, copyright, trademarks, patents and any other intellectual property rights of whatever nature in the software and the algorithm contained in the Equipment, including any associated processes or derivative works, shall at all times remain the sole and exclusive property of the Equipment manufacturer or its licensors. No other rights are granted to the Customer in respect of such software and algorithm than those set forth in these terms and conditions. The Customer shall not remove, alter, cover, obscure or cancel from view any copyright or other notices of proprietary rights, marks or legends appearing on or contained in the Equipment.
- 2.3 The Equipment will be shipped from the United States. Unless expressly provided otherwise, delivery of the Equipment shall be DDU. For the avoidance of any doubt, the Customer is then solely responsible for the import of the Equipment. In particular, the Customer must ensure that it fulfils all customs duties and taxes such as VAT reporting and payment obligations according to local customs duties and other applicable tax regulations. The customs duties and other taxes such as VAT obligations are borne by the Customer only. SWIFT may not be in any case liable for any liabilities resulting from the non-respect by the customer of the customs duties and other taxes such as VAT obligations.
- 2.4 Acceptance of the Equipment shall take place ninety (90) days after delivery. If the Customer however demonstrates to the reasonable satisfaction of Swift within that period of time that the Equipment does not conform to the specifications, and if Swift is unable for whatever reason to implement a reasonably satisfactory remedy thereto within a reasonable period of time considering the nature of the problem, the Customer shall be entitled, as its sole and

exclusive right and remedy, to a refund by Swift of all fees and charges paid by the Customer in respect of the defective Equipment.

**Article 3- Price, Invoicing and Payment Conditions**

The Customer must pay to Swift all charges and fees applicable to it for and in connection with the supply and use of the Equipment. These charges and fees are as notified by Swift to the Customer from time to time. Equally, the terms and conditions relating to invoicing by Swift and payment by the Customer are as notified by Swift to the Customer from time to time. For more information about the price, invoicing and payment conditions for the Equipment, see typically the SWIFT price list for HSM equipment.

**Article 4 – Warranties**

- 4.1 Subject to Article 4.2, Swift warrants that it is not aware as at the date of shipment of the Equipment that the use of the Equipment as permitted under these terms and conditions infringes the intellectual property rights of any third party.
- 4.2 If a third party ever makes a bona fide claim that the supply or permitted use of the Equipment, in whole or in part, infringes its intellectual property rights, Swift undertakes to ensure that the Customer shall enjoy the benefit of any right or remedy granted to Swift by the manufacturer of the Equipment or its licensors in respect of any such claim.
- 4.3 This Article 4 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.
- 4.4 WITHOUT PREJUDICE TO THE FOREGOING, AND EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, SWIFT DOES NOT GIVE AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SUPPLY OR USE OF THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO THE CONDITION, QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR PURPOSE OF THE EQUIPMENT.

**Article 5 – Support**

In the event of a problem regarding the supply or use of the Equipment, the Customer must promptly notify one of the regional Customer Support Centres thereof. For more information about how to contact the regional Customer Support Centres and how Swift will handle any such notification, see the then current version of the Swift Support service description.

**Article 6 - Customer Responsibilities**

- 6.1 The Customer must comply with any guidelines or instructions in force given by Swift regarding the use of the Equipment. For more information about how to use the Equipment, the Customer must in particular refer to the relevant service

description and other documentation referred to therein. It is the responsibility of the Customer to access the then current version of the relevant service description and other documentation (whether in paper or electronic format) so as to be aware of and comply with all terms and conditions for the time being applicable to it in connection with the use of the Equipment. To assist customers, Swift publishes various newsletters. These typically inform customers by email about the latest news, changes, known problems and solutions, and frequently asked questions.

6.2 Without prejudice to the other terms and conditions, the selection, installation and use of the Equipment is the sole responsibility of the Customer.

6.3 The Customer shall not re-export the Equipment without Swift's prior agreement. In all cases, the customer must comply with all relevant laws and regulations regarding the export, import, and use of the Equipment.

Without prejudice to the generality of the foregoing, the Customer shall not, under any circumstances, re-export or otherwise transfer or use the Equipment, in whole or in a part, to restricted countries such as Russia, Belarus, Iran, Cuba, Syria, North Korea, and any other countries that can be supplemented from time to time.

Any violation of this clause shall be considered a material breach of these terms and conditions that is incapable of remedy and would cause the automatic and immediate termination of these terms and conditions as per Clause 8.1(i).

This provision constitutes an essential provision of these terms and conditions. In the event of a breach of this provision, and without prejudice to any other rights or remedies available to Swift, the Customer shall pay Swift a penalty equal to either 100% of the charges or fees for the supply of the Equipment or 50% of the contract value, whichever is higher.

6.4 The Customer recognises the confidentiality of the Equipment and its documentation, and agrees not to disclose it, in whole or in part, to a third party without the prior written approval of Swift.

6.5 The Customer must not assign, transfer, sub-license or sub-contract any rights or obligations in connection with the supply of the Equipment without Swift's prior written consent.

6.6 Upon termination of maintenance services (if any) with respect to or use of the Equipment for any reason, the Customer must comply with Swift's instructions regarding disposition of the Equipment. Swift will issue any such instructions within 15 days of the termination of maintenance services or notification that the Customer ceases to use the Equipment. Swift will bear any shipment charges in connection with Swift directed pick-up of the Equipment, assuming the Customer follows Swift's instructions. If the Customer fails to properly and timely follow any such instructions, Swift reserves the right to charge the Customer the then current one-time

fee for the Equipment concerned and the Customer must pay such amount to Swift.

#### Article 7- Damages - Limitation of Liability

7.1 The Customer hereby recognises that the use of the Equipment shall in no way deny or be regarded as a substitute for usual business prudence and practice.

7.2 Subject to the other provisions of Article 7, Swift accepts liability (whether in contract, tort or otherwise) to the Customer in connection with the supply or use of the Equipment solely for direct damages or losses arising out of Swift's default up to the amount paid by the Customer to Swift for the Equipment.

7.3 Swift shall bear no liability for:

- any unforeseeable loss or damage (whether direct or indirect)

- 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), even if Swift has been advised of their possibility; or

- any indirect, special or consequential damage or loss of any kind;

7.4 Swift shall under no circumstances be obliged to perform any obligation or have any liability to the extent resulting from:

- any unauthorised or improper downloading, possession, installation, access to or use of the Equipment;

- the provision or use of services or products not supplied by Swift for use in connection with the Equipment;

- any act, fault or omission of the Customer or a third party for which Swift is not responsible (including any downloading by the Customer of any Software); or

- Force Majeure.

7.5 To have a valid claim, Swift must receive it within 12 months of the date on which the claiming Customer becomes aware of (or should reasonably have become aware of) the event giving rise to the claim.

7.6 Any limitation or exclusion of Swift liability applies except for fraud or gross negligence of Swift, or to the extent prohibited under applicable law.

7.7. Except if and to the extent exclusively caused by an act or omission of Swift, the customer will hold Swift harmless and will indemnify and keep Swift indemnified from and against any and all actions, liabilities, claims, fines, demands, losses, damages, proceedings, costs, or expenses (including reasonable legal fees, costs, and expenses) suffered or incurred by Swift in connection with any claim (including any claim

made by another customer) related to or in connection with the customer's possession or use of the Equipment.

#### **Article 8 - Term and Termination**

- 8.1 These terms and conditions shall be binding on Swift upon Swift's confirmation of acceptance of the Customer's order for the Equipment.

Either party is entitled to terminate these terms and conditions immediately upon written notice to the other party and without prior judicial intervention if:

- i. that other party shall be in material breach of any obligation applicable to it and such breach either shall be incapable of remedy or shall continue unremedied for a period of 30 days after notice of the breach thereof shall have been given in writing to that other party;
- ii. that other party shall become insolvent or generally fail to pay, or admit its inability to pay, all or a substantial part of its debts as they become due, or shall apply for or be granted a moratorium; or
- iii. a receiver, manager, administrator or liquidator is appointed over the whole or any substantial part of that other party's business or assets, or any steps shall be undertaken to that effect.

#### **Article 9 – General**

- 9.1 These terms and conditions together with the information set out on Swift's eOrdering service or other relevant contractual arrangements with Swift constitute the entire contract between the Customer and SWIFT for the supply of the Equipment. Any conflicting conditions in letters or other documents issued by the parties have no bearing thereon.
- 9.2 Any notice or other communication required or permitted under these terms and conditions shall, except as otherwise specified, be in writing and shall be personally delivered or sent by a means evidenced by a delivery receipt. Such notice or communication shall be effective upon receipt.
- 9.3 These terms and conditions shall be governed by Belgian law. Any claim brought by the Customer arising out of or in connection with the supply of the Equipment that cannot be settled by mutual agreement shall be subject to the exclusive jurisdiction of the competent court of Brussels, Belgium.