

# Terms and Conditions of Use for the Use of the Qualified Timestamp Service of Swisscom (Switzerland) Ltd

## 1 Scope of these Terms and Conditions of Use

These Terms and Conditions of Use shall apply in the relationship between the Customer (UID entity in accordance with the Swiss Federal Act on the Business Identification Number, hereinafter referred to as the "Timestamp Creator") and Swisscom (Switzerland) Ltd, Alte Tiefenastrasse 6, Worblaufen, Switzerland, company ID number CHE-101.654.423 (hereinafter referred to as "Swisscom"), for the use of Swisscom's timestamp service for the creation of qualified electronic timestamps.

## 2 Swisscom's Services

### 2.1 Certification service in general

Swisscom is an accredited provider of certification services in Switzerland for the provision of the timestamp service in accordance with the Swiss Federal Act on Electronic Signatures (ESigA; SR 943.03) and is audited and supervised by the ESigA accreditation authority. In the same technical environment, Swisscom also operates the certification service for its subsidiary Swisscom IT Services Finance S.E. (hereinafter "Swisscom ITSF"), which is recognised in Austria as a certification service provider for the EU. Swisscom thus operates a technical environment for a timestamp service in accordance with the requirements of two certification service providers in two different legal systems. Swisscom ITSF is defined as the only issuer of the Timestamping Unit (TSU), which also means that the Swisscom ITSF certificate appears as the issuer of the timestamp for Swisscom's timestamp service in accordance with these Terms and Conditions of Use. However, the timestamp service of Swisscom ITSF is not the subject of these Terms and Conditions of Use. The timestamp service is provided in accordance with Swisscom's certificate policy in effect at the time. This Certificate Policy ("Certificate Policy (CP/CPS) for the issuance of "Diamond" (qualified) and "Sapphire" (advanced) class certificates") and the Timestamping Policy form an integral part of these Terms and Conditions of Use. The Timestamp Creator may view and download these documents online at [https://www.swisscom.ch/en/business/enterprise/angebot/security/digital\\_certificate\\_service.html](https://www.swisscom.ch/en/business/enterprise/angebot/security/digital_certificate_service.html) (in the "CH" section).

As part of the certification service, Swisscom creates a qualified electronic timestamp containing the current date and time. Swisscom links this timestamp with the file that the Timestamp Creator, acting through its employees or other representatives, wishes to mark with a qualified timestamp (e.g. invoice in PDF format). As a result, third parties can also rely on the information contained in the qualified electronic timestamp.

### 2.2 Issuance of certificates and keys, timestamp creation

Swisscom creates the general digital certificate and the cryptographic key pair for the timestamp process on a special server in a secure signature creation device (Hardware Security Module). The digital certificate is a certificate that assigns the public key of the asymmetric cryptographic key pair to the timestamp certificate.

### 2.3 Verification of the qualified electronic timestamp

The Swisscom certification service makes it possible to verify the validity of the qualified electronic timestamp. Third parties (often referred to as the "relying party") may also verify the validity of the qualified electronic timestamp. The information provided in Section 5 of these Terms and Conditions of Use must be noted concerning the legal effects of the qualified electronic timestamp.

### 2.4 Availability

Swisscom shall endeavour to provide the certification service continuously. However, Swisscom assumes no liability for the permanent availability of the signing service, including for delays or blockages of the network system, the availability of mobile services and internet connections. Swisscom may limit the availability temporarily if this is necessary, for example, with regard to capacity limits, or the safety or integrity of the servers, or to perform technical maintenance or repairs and this is for the purpose of providing the services properly or improving them (maintenance work). Swisscom shall endeavour in this process to take account of the interests of the users of the certification service. The current status regarding the availability of the service can be viewed by the Timestamp Creator at: <https://trustservices.swisscom.com/en/service-status/>.

## 3 Preconditions of use

The Timestamp Creator has an appropriate understanding of digital certificates.

Access to the timestamp service is enabled by a "subscriber application", which generates a hash from the document and transmits it to Swisscom's timestamp service via a secure communication line (TLS connection). The subscriber application receives the timestamped hash and forms the time-stamped document from it.

The subscriber application may be, for example, the Timestamp Creator's accounting software or a third party's internet portal. The party that operates the subscriber application and ensures its connection to the Swisscom certification service is referred to as the "subscriber". The Timestamp Creator itself may also be a subscriber. The linking of the subscriber application to Swisscom's certification service is the subject of a separate agreement between Swisscom and the subscriber (hereinafter the "Signing Service Agreement"):

If the Timestamp Creator itself is also the subscriber, it concludes a Signing Service Agreement itself. If the Timestamp Creator itself is not a subscriber, the use of the certification service in accordance with these Terms and Conditions of Use requires, first, the pre-existence of a Signing Service Agreement of the subscriber and, second, the prior authorisation of the subscriber by the Timestamp Creator to connect the subscriber application.

The terms and conditions of the subscriber application used by the Timestamp Creator may result in limitations on the use of the certification service.

#### 4 Duties of cooperation of the Timestamp Creator

As soon as the subscriber application is connected to the Swisscom certification service by means of access certificates, there is no additional individual authentication for each timestamp creation process, i.e. all hashes transmitted via this interface are marked with a qualified timestamp. The Timestamp Creator undertakes in advance to require the persons to whom it grants access to the certification service via the subscriber application in accordance with these Terms and Conditions of Use to comply with the same, and in particular the following items:

- the manner of operation of the certification service,
- the preconditions of use according to Section 3,
- the cooperation obligations according to Section 4,
- the legal effects according to section 5.

In any event, the Timestamp Creator shall be liable for the conduct of such persons in relation to the use of the trust service in accordance with these Terms and Conditions of Use as if it were its own.

The Timestamp Creator undertakes to check the qualified electronic timestamps after they have been created in accordance with Section 2.3 of these Terms and Conditions of Use and to promptly report any discrepancies in the content of the timestamp to Swisscom.

#### 5 Legal effects of the qualified electronic timestamp

The use of the qualified electronic timestamp is generally intended to ensure the integrity of the content of a file as of a certain point in time. The concept of a qualified electronic timestamp should not be confused with the legal concept of an electronic signature. It is the responsibility of the Timestamp Creator to clarify the legal effects of the qualified electronic timestamp in advance and, if necessary, in consultation with the subscriber. Swisscom assumes no responsibility in this regard.

**Qualified electronic timestamp:** The qualified electronic timestamp created through the signing service meets the characteristics defined in the CP/CPS and Timestamping Policy and the definition laid down in Art. 2 (j) ESigA.

Where Swiss law is not applicable, timestamps may have different effects, which may be more or less far-reaching than is the case under Swiss law.

The use of certain technical algorithms is also subject to statutory restrictions in certain countries. It is the responsibility of the Timestamp Creator to clarify the relevant circumstances in advance.

#### 6 Period of use

The Timestamp Creator may use the certification service in accordance with these Terms and Conditions of Use for the duration of the Signing Service Agreement of the subscriber, provided that the Timestamp Creator complies with these Terms and Conditions of Use and that the subscriber is in possession of a valid access certificate.

#### 7 Handling of the Timestamp Creator's data

##### 7.1 General provisions

Swisscom collects, stores and processes only data which is needed to provide the certification service. The handling of the data shall be governed not only by the applicable laws but also by the Certificate Policy (CP/CPS) referred to in Section 2.1 and the Timestamping Policy (CH).

##### 7.2 Data after completion of timestamp creation

Swisscom shall retain the data provided in the application by the Timestamp Creator and the log data for triggering the timestamp process, which shall include in particular: access data to the Signing Service, hash value of the document on which the electronic timestamp was affixed, time of activation, process number and other process-related data. This ensures that the document marked with a timestamp can still be verified as correct in the years after it is created. Swisscom shall in this process record all relevant information concerning the data issued and received by Swisscom and shall keep it in safekeeping so that it is available, for the purposes of enabling the corresponding evidence to be provided in judicial proceedings in particular and ensuring the continuity of the certification service.

For this purpose, Swisscom shall retain the following data:

- the information provided by the Timestamp Creator in the application in accordance with Section 4
- log files for the timestamp creation process (specifically includes access identification, process number, process-related data)
- hash value of the document on which the electronic timestamp was affixed

Swisscom shall delete the data described in this Section 7.2 from the timestamp after a maximum of 11 years from the specified date.

## 8 Involvement of third parties by Swisscom

Swisscom may engage third parties in order to fulfil its obligations.

## 9 Liability and force majeure

Swisscom must at all times fulfil the requirements which the law and technical standards impose on providers of certification services. Swisscom shall take appropriate state-of-the-art security measures for this purpose. The Timestamp Creator acknowledges that, despite all Swisscom's efforts, the use of modern technology and security standards, and oversight by the accreditation authority with regard to compliance with the statutory requirements, there can be no guarantee that the certification service will be absolutely secure and free of defects.

Unless Swisscom can prove that it is not at fault, it shall be fully liable to the Timestamp Creator for any losses or damages incurred by the latter due to the fact that Swisscom has not complied with its obligations under the ESigA.

Unless Swisscom can prove that it is not at fault, it shall be liable to the Timestamp Creator for proven damages in the case of other contractual breaches as follows:

If the Timestamp Creator and the subscriber are identical and the subscriber has concluded a Signing Service Agreement directly with Swisscom, liability shall be determined in accordance with the terms of this Signing Service Agreement.

For all other scenarios (e.g. the Timestamp Creator and the subscriber are not identical or the Signing Service Agreement of the subscriber was not concluded with Swisscom but with a partner of Swisscom), the following shall apply:

Liability for property damage and financial losses due to ordinary negligence shall be limited to a maximum of CHF 5,000 for the entire contractual term. Swisscom's liability for indirect loss or damage caused due to simple negligence, consequential losses, lost profits, data losses, loss or damage due to downloads, third-party claims, and reputational losses shall be excluded. Swisscom shall at all times be fully liable to the Timestamp Creator for personal injury. Swisscom shall not be liable to the Timestamp Creator for the proper operation of third-party systems, in particular not for the hardware and software used by the Timestamp Creator or for the subscriber application used by the Timestamp Creator for controlling the certification service.

Under no circumstances shall Swisscom be liable to the Timestamp Creator for damages resulting from the non-compliance with or exceeding of the restriction on use pursuant to Section 1.4 of the Timestamping Policy. Swisscom shall likewise not be liable to the Timestamp Creator if, due to force majeure, the performance of the service is occasionally interrupted, restricted in whole or in part, or rendered impossible. The term "force majeure" includes in particular natural phenomena of special intensity (avalanches, flooding, landslides, etc.), acts of war, riots, epidemics, pandemics and unforeseeable official restrictions. If

Swisscom cannot fulfil its contractual obligations, contractual performance or the deadline for contractual performance shall be postponed according to the force majeure event that has occurred. Swisscom shall not be liable for any losses incurred by the Timestamp Creator because of the postponement of performance of the Agreement.

## 10 Amendments to the Terms and Conditions of Use

Swisscom reserves the right to amend and supplement these Terms and Conditions. In particular, in the event of amendments to the Federal Act on Electronic Signatures (ESigA; SR 943.03) and its implementing legislation, and in the case of orders by the ESigA accreditation authority, Swisscom may be forced to adapt both the Certificate Policy referred to in Section 2.1 of these Terms and Conditions of Use, the Timestamping Policy and these Terms and Conditions of Use. In the event of changes, the Timestamp Creator shall be informed by Swisscom at least one month before the effective date of the changes and the time limit for objecting to them. Swisscom will give the subscriber advance notice of any changes to the Terms and Conditions of Use and their effective date in an appropriate manner (e.g. by email). The Timestamp Creator may refuse to accept the new Terms and Conditions of Use by waiving the use of the certification service in accordance with these Terms and Conditions of Use as of the effective date. If the Timestamp Creator continues to use the certification service as of its effective date, this shall be deemed to constitute acceptance of the amended Terms and Conditions of Use.

## 11 Applicable law and jurisdiction

All legal relationships in connection with these Terms and Conditions of Use shall be subject to Swiss law.

In the event of a conflict, Swisscom shall endeavour to resolve the dispute amicably with the Timestamp Creator. Subject to any mandatory jurisdictions, the place of jurisdiction shall lie in Bern, Switzerland.

## 12 How to contact us

In the event of questions concerning the provision of services in accordance with these Terms and Conditions of Use, the Timestamp Creator may contact Swisscom via the following website: <https://trust-services.swisscom.com/en/contact/>.