

## **Subscriber Agreement Timestamping Service**

Version: 2.0

OID: 2.16.756.1.89.1.1.4.1.1

NB: Insofar as the SUBSCRIBER acquires the signature and/or timestamping service through its organisation directly or through a Specialist Retailer, its organisation shall be obliged as a SUBSCRIBER to inform the SUBSCRIBER of this SUBSCRIBER AGREEMENT and to require compliance with the terms hereof.

This document is subject to the SwissSign audit as an accredited certification authority and may not be altered, invalidated or amended by any side agreements.

## Approval and versions

Author	Date	Version	Comments
Ingolf Rauh	2017-07-14	1.0	Creation
Adrian Mueller	2023-01-06	2.0	Update of outdated references; removal of guarantee of free timestamps; deletion of chapter 5 Usage of the signature service, 7 Special duties of the SUBSCRIBERS when using the signature service & 8 Information security in relation to the signature service

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## 1. Scope

In applying for a timestamping service the Subscriber (hereafter SUBSCRIBER) consents to the Subscriber Agreement Timestamping Service (hereafter SUBSCRIBER AGREEMENT).

The SUBSCRIBER AGREEMENT shall govern the contractual relationship between the SUBSCRIBER and SwissSign AG, Sägereistrasse 25, 8152 Glattbrugg, Switzerland (hereafter SWISSSIGN) concerning the use of time stamps of SWISSSIGN and the use of signatures on certificates managed by SWISSSIGN on a fiduciary basis or on certificates made out to SWISSSIGN in order to use signatures for third parties (hereafter "SERVICES").

A SUBSCRIBER also means the recipient of a time stamp. It may be an organisation or an individual end user. The SUBSCRIBER must ensure that the service is used in accordance with the Contract.

Time stamps shall be issued in accordance with the provisions of the SwissSign Signing Services CP and CPS. The CP and CPS may be obtained in their most up-to-date form at <https://repository.swissign.com>.

This SUBSCRIBER AGREEMENT shall be applicable to all SUBSCRIBERS independently of any group relationship between them and the CA. It shall apply as the 'Subscriber Agreement' and the 'Terms of Use Agreement' in accordance with the CA/Browser Forum Baseline Requirements, the ETSI standards and the corresponding programs of the operator of public "Trusted Root Certificate Stores".

Compliance with the commercial contractual terms and conditions, which are a basis for usage by the SUBSCRIBER, is a prerequisite for the usage of the SERVICE. The commercial contractual terms and conditions are not an integral part of this SUBSCRIBER AGREEMENT. They may also be agreed to between third parties (e.g. Specialist Retailer, employer of the SUBSCRIBER etc.).

The SUBSCRIBER acknowledges that no legal claims against SWISSSIGN may arise either under this SUBSCRIBER AGREEMENT or from the usage of the SERVICE, unless SWISSSIGN

contravenes any liability terms and conditions pursuant to section 13 "Liability".

## 2. Compliance with regulatory requirements

Insofar as the issuance and management of certificates is subject to statutory requirements (e.g. in Switzerland the ZertES), SWISSSIGN warrants compliance with the relevant requirements and implementing provisions. SWISSSIGN shall in this regard be subject to oversight by the competent bodies whilst audits and inspections shall be carried out in accordance with the relevant standards applicable to the certificates in question (e.g. ETSI, CA Browser Forum) and statutory requirements.

## 3. Contractual Components

The applicable CP and CPS of the signing, trusted root certificate shall be an integral part of this Subscriber Agreement Certificate Services and shall take precedence in the event of any discrepancies.

The applicable CP and CPS may be obtained in their most up-to-date form at <https://repository.swissign.com>

## 4. Use of the SWISSSIGN time stamp

SWISSSIGN is an accredited provider of time stamps under the ZertES.

SWISSSIGN provides the time stamp service in accordance with Swiss law (ZertES) with the RFC3161 standard interface, which may be used by a large number of applications, such as e.g. Adobe Acrobat products in order to mark codes or documents with a time stamp. For this purpose the application must be configured with a URL address, which will be <http://tsa.swissign.net> or <https://tsa.swissign.net> for qualified time stamps according to the ZertES. SWISSSIGN may in addition operate further time stamps, which may be based on different keys.

The maximum performance guaranteed is limited to a maximum of 5 time stamps per second, or shall otherwise be determined in accordance with the Service Level Agreement concluded for the specific project. In addition, when handling the time stamps, certificates and key material,

SWISSSIGN shall abide by the principles described in the CP and CPS for SWISSSIGN Signing Services CA as listed in 3.

The SUBSCRIBER acknowledges that the maximum time difference compared to UTC time may amount to one second.

In the event that a time stamp certificate is compromised, the time stamp shall be suspended until the certificate is renewed. Should this occur, the SUBSCRIBER should expect downtime in excess of the guaranteed Service Level Agreement.

Identification shall occur through the IP addresses indicated by the SUBSCRIBER, i.e. all requests from these IP addresses that are submitted to this time stamp service shall be allocated to this SUBSCRIBER.

SWISSSIGN undertakes to use the data contained in the request to the timestamping service solely for the timestamping purposes described herein. SWISSSIGN shall not save any content data other than access data and shall not evaluate any document data.

SWISSSIGN shall log each time stamp and reference on the corresponding request (IP address) of the SUBSCRIBER. These logs shall also be made available to the SUBSCRIBER upon request for billing purposes. Log files shall be retained for a minimum of 12 months.

## **5. Duties of the SUBSCRIBER when dealing with time stamps**

The number of time stamps that may be received is not subject to any technical limitation. The SUBSCRIBER undertakes not to exceed the quota announced or ordered or the available quota of time stamps without liaising with SWISSSIGN.

The SUBSCRIBER shall report all IP addresses intended for usage with the time stamp service to SWISSSIGN in the event that it wishes to acquire more than the available quota of time stamps. Changes shall be announced in good time (one month in advance).

The client software of the SUBSCRIBER used shall be deployed in accordance with the recommendations of SWISSSIGN and must feature

secure cryptographic functions. In the event of doubt, SWISSSIGN shall be questioned in advance regarding the deployment of the client software.

The maximum performance guaranteed for retrieval by the SUBSCRIBER shall not be exceeded.

The SUBSCRIBER shall examine the SWISSSIGN revocation list (CRL) in order to ensure that the time stamp certificate has not been revoked.

The SUBSCRIBER must inform all relevant recipients of a timestamped document ("Relying Party") of the time stamp policy and the opportunities to review the time stamp in accordance with Section 7 of this Subscriber Agreement.

## **6. Customer service, helpdesk, support**

SWISSSIGN shall operate a customer service unit ("Helpdesk" or "Support"). See <https://www.swissign.com/en/support/kontakt.html> for ways to reach the customer service.

Any comments and feedback concerning this SUBSCRIBER AGREEMENT may also be submitted in this manner.

If a SERVICE PROVIDER is deployed, it shall provide First Level Support for the CUSTOMER.

## **7. Examinations by Relying Parties**

Before a third party examines a signature or time stamp in order to ensure that it is accurate, it must establish that the time stamp certificate and/or signature certificate has not been revoked. In the event that the time stamp certificate has expired and is being examined after expiration, the indications contained in Annex D to ETSI standard EN 319421 shall be complied with as regards the long-term validation of time stamps.

## **8. Entry into force, duration and termination, effect of termination in general**

The Contract shall take effect upon the conclusion of a service contract or upon the limited free-of-charge retrieval of the time stamp and shall apply

until the time stamp is revoked or the service is terminated.

Time stamps and signatures affixed shall remain valid.

Notice of termination must always be given in writing.

## **9. Claims and discontinuation of the timestamping service in the event of payment default**

The SUBSCRIBER may not offset amounts due to SWISSIGN against any counterclaims.

The following provisions shall apply in the event of non-payment by the Specialist Retailer or SUBSCRIBER in relation to the service:

- a) If the SUBSCRIBER or Specialist Retailer owes the service fee to SWISSIGN, the obligor shall be deemed to be in default at the time a reminder is issued.
- b) If payment is not made within the grace period, in the event that the SERVICE was sold through a Specialist Retailer, SWISSIGN shall inform the SUBSCRIBER of the Specialist Retailer of the default on the part of the Specialist Retailer.
- c) SWISSIGN shall require the SUBSCRIBER directly to make payment of the outstanding services relating to it before a final payment deadline and shall inform it of the impending discontinuation of service in the event of non-payment.

If payment is not made by either a Specialist Retailer or the SUBSCRIBER by the final payment deadline, SWISSIGN shall be entitled to block access to the SERVICE or provide the service on a restricted basis.

## **10. Customer data and data protection**

SWISSIGN undertakes to comply with the data protection legislation applicable to its relevant CA.

As a matter of principle, under the time stamp service the SUBSCRIBER will only transfer a hash of its document data, from which the contents of the document cannot be reconstructed. The IP address shall also be transferred.

The data required to provide the services (IP address) shall be saved and treated as confidential by SWISSIGN. The data collected as part of inspection activity, including particular personal data, may only be used for the purpose and to the extent required to perform and implement the time stamp service. Usage for other purposes or disclosure to any third parties is strictly prohibited. The above shall not apply to disclosure to authorised instructed third parties (e.g. in the event of a control, external registration activity) or in accordance with administrative orders. Authorised instructed third parties shall be subject to data protection rules in the same manner as SWISSIGN.

The security technology used to protect data shall correspond to the state of the art.

In order to ensure compliance with statutory requirements, SWISSIGN must retain all certificate holder data, documentation and audit information for a minimum period of 11 years after expiration of a timestamping certificate.

The data protection level in Switzerland has been confirmed by the European Commission as adequate. The requirement for the lawful transmission of data from member states of the European Union to Switzerland, namely that there must be an adequate level of data protection in the location in the third country where the data is received, has consequently been met.

## **11. Involvement of third parties**

SWISSIGN may engage third parties at any time to perform its services.

## **12. Warranty**

The SUBSCRIBER shall examine the material provided, including in particular the time stamps and signatures provided, following their issuance and report any defects or incorrect and/or incomplete information promptly (within no more than 7 working days), and under all circumstances prior to the first usage. If evident defects are not reported promptly following receipt, and latent defects not promptly after discovery, the rights relating to defects shall be deemed to have been forfeited. The SUBSCRIBER shall bear the burden of proving the time when the defects objected to were discovered and that the report was made promptly.

In the event that a defect is reported, SWISSIGN shall be entitled to choose between rectification and replacement. Defective time stamps and certificates shall be replaced by new time stamps and certificates. Any further rights as to defects are expressly excluded.

SWISSIGN does not provide any warranty regarding the compatibility of the signatures and time stamps provided with non-Swiss law and reserves the right to refuse requests for signatures and time stamps from the SUBSCRIBER where these run contrary to statutory export restrictions or limitations or compliance requirements of SWISSIGN.

### **13. Liability**

SWISSIGN shall bear full liability towards the SUBSCRIBER for any losses occasioned by it to the SUBSCRIBER unless SWISSIGN proves that it was not at fault. Liability for minor negligence is excluded.

The liability provisions of the CP and CPS apply to third parties.

Neither party shall bear liability for the proper functioning of third party systems, including in particular the internet. SWISSIGN shall not be liable for the systems and software used by the SUBSCRIBER.

The SUBSCRIBER shall fully indemnify SWISSIGN from all third parties' claims resulting from use in breach of contract or unlawful or improper use of the time stamping service. The indemnification shall include also the obligation to hold SWISSIGN fully harmless against legal defence costs (e.g. procedural costs and legal fees).

Both Parties shall be liable for the conduct of their auxiliary agents and any third parties who are involved (such as subcontractors and suppliers) in the same manner as for their own.

In the event of personal injury, the Parties shall be liable for any fault. Under no circumstances shall the Parties be liable in particular for indirect or consequential losses, data loss, additional expense or claims by third parties, lost profit or unrealised savings, or losses resulting from late delivery or service provision.

The provisions governing liability set forth in the Swiss Federal Act on Electronic Signatures and in Article 59a of the Swiss Code of Obligations shall apply under all circumstances on a priority basis.

### **14. Export and import, international use of time stamps and signatures**

The SUBSCRIBER acknowledges that the exporting or importing and usage of time stamps and signatures from, to or in countries subject to sanctions and embargoes is prohibited (cf. <https://www.swissign.com/en/support/exportbeschraenkungen.html>).

The SUBSCRIBER acknowledges that the deployment and use of time stamps and signatures and the exchange of digitally signed and/or encrypted data outside Switzerland is subject to foreign jurisdictions and that therefore different effects may result, which may be more or less extensive than is the case under Swiss law. The exchange of encrypted data and the export/import of cryptographic software or cryptographic data storage media are also subject to statutory restrictions in certain foreign countries. Clarification of matters in this respect shall be a matter under all circumstances for the SUBSCRIBER.

### **15. Intellectual property rights**

No intellectual property rights (such as copyright, trademark, design or patent rights etc.) shall be transferred to the SUBSCRIBER by the service. All intellectual property rights over the material provided by SWISSIGN (documentation, devices, software etc.) shall remain the property of SWISSIGN or the third parties with rights thereto. The SUBSCRIBER shall receive a non-exclusive, non-transferable licence to use such material in line with the contractual object, which shall be limited to the contractual term. The SUBSCRIBER shall not have any rights to make changes or further developments.

### **16. Severability**

If individual terms of this SUBSCRIBER AGREEMENT are found to be invalid or unlawful, this shall not affect the validity of the Contract. Should this occur, the relevant term shall be replaced by a valid term that is commercially equivalent as far as possible.

### **17. Amendment of the Subscriber Agreement Timestamping Service**

SWISSSIGN reserves the right to amend this Subscriber Agreement Timestamping Service at any time. The relevant amended version shall be published on the website <https://repository.swissign.com>.

The amended SUBSCRIBER AGREEMENT shall be deemed to have been approved unless the SUBSCRIBER objects in writing within one month. An objection shall be deemed to constitute notice of termination of the Contract and shall automatically result in its dissolution.

### **18. Assignment and transfer of rights and duties**

The SUBSCRIBER may not assign or pledge any claims against SWISSSIGN without the written consent of SWISSSIGN.

The SUBSCRIBER shall not have the right to assign or transfer the rights and obligations pursuant to this Agreement.

### **19. Applicable Law and Place of Jurisdiction**

The legal relationship resulting from this SUBSCRIBER AGREEMENT shall be governed exclusively by Swiss law. The provisions of the UN Convention on Contracts for the International Sale of Goods of April 11, 1980 (Vienna Convention, "CISG") shall not apply.

The courts of Zurich, Switzerland shall have exclusive jurisdiction. For SUBSCRIBERS with a foreign place of residence or registered office, the place of debt enforcement and exclusive jurisdiction for all proceedings shall be Zurich.