

## **A: Definitions**

### **1 Scope of application**

These Terms and Conditions of Use apply to any Swisscom services for which the applicable contract documents (including but not limited to Agreements, Annexes or Service Descriptions) provide that these Terms and Conditions shall apply.

### **2 Definitions**

#### **Connection**

The access point necessary for the purpose of transferring information via Swisscom networks.

#### **Acceptance of Fault Reports**

Faults may be reported to the designated Service Desk number 24 hours a day. Customer-specific Support Times and Response Times for faults are defined in the Agreement and the Annexes thereto for each component.

#### **Coordinated Maintenance Window (CMW)**

The Coordinated Maintenance Window is the time period during which Swisscom carries out maintenance work on the network platform. As a general rule, a Coordinated Maintenance Window shall be the period between 2:00 a.m. and 6:00 a.m. on Sundays. Services may (but need not necessarily) be affected during such maintenance work. The Customer shall be given advance notice of any planned interruptions within the Coordinated Maintenance Window which are expected to last longer than the times specified for the services in question (3 to 15 minutes), as well as notice of any special Maintenance Windows. No Trouble Tickets will be recorded in the event of interruptions within the Coordinated Maintenance Windows. Swisscom reserves the right to change the Coordinated Maintenance Window at any time subject to advance notice.

#### **CPE / Customer Premises Equipment**

See "Service Elements"

#### **Managed Objects (MOs)**

Managed Objects are the Service Elements operated by Swisscom. The Managed Objects pertaining to the individual services are defined in service-specific documents.

#### **Managed Object Classes**

MOs are divided into classes featuring different availability levels and related guarantees.

#### **Ready-For-Service Date (RFS)**

The RFS Date is the date, as confirmed by Swisscom, on which the contractually agreed service is ready for operation.

## **Terms and Conditions of Use**

### **Remote Access**

Remote Access to the Customer's components (hardware and/or software) is required for specific services and installations. Remote Access enables Swisscom to localise faults and initiate appropriate measures.

Access to components (hardware and/or software) shall be provided over a suitable network.

Swisscom shall lease to the Customer such equipment as may be required to facilitate access to a suitable network (router). If the router is not permanently activated, the Customer shall enable Remote Access for Swisscom immediately upon opening the Trouble Ticket and ensure that access is enabled at least until such time as the Trouble Ticket is closed by Swisscom.

### **Remote Diagnosis**

Remote Diagnosis is aimed at localising faults pursuant to the Maintenance Contract. Remote Diagnosis may either be performed by telephone by asking questions and eliciting responses from the Customer or by Remote Access. As a general rule, Remote Diagnosis shall take a maximum of one hour. The fault repair process shall be initiated once the fault has been detected.

### **Response Times**

The Response Times that are defined in the Contract for the Customer specifies the time the Customer will have to wait following Remote Diagnosis before on-site technical intervention or remote intervention commences. Response Times shall apply during the contractually agreed Support Times.

### **Service Access Point (SAP)**

The SAP is the logical and/or physical interface between the Customer's areas of responsibility and those of Swisscom. The contractually agreed services of Swisscom are made available to the Customer at the SAP.

### **Service Elements**

Service Elements are single physical (hardware) or logical components (software) or combinations thereof, which are the property of Swisscom or any of its subcontractors.

### **Standby Times**

See "Support Times".

### **Support**

Support means the service-specific support services provided by Swisscom during the Support Times.

### **Support Times**

Faults shall be rectified as part of the basic service during the defined Support Times (Support Level). Times outside these Support Times (Support Level) are deemed to be "suspended time".

### **Trouble Ticket**

A fault report that has been duly entered into Swisscom's systems.

## **B: Implementation**

### **3 Process services Implementation**

3.1 The process services Implementation (realisation) are defined in the service-specific documents.

3.2 Deadlines for delivery and start-up shall be interpreted as target deadlines and are subject to change, including at short notice.

3.3 If it is not possible to meet an agreed Ready-For-Service Date through no fault of the parties, Swisscom shall postpone the Ready-For-Service Date and the commencement date of the minimum contract term commensurately.

3.4 If it is not possible to meet an agreed Ready-For-Service Date or the Ready-For-Service Date is delayed due to any circumstance for which the Customer is responsible,

- the minimum contract term and the Customer's payment obligation shall commence on the agreed Ready-For-Service Date, and
- the Customer shall pay any additional costs incurred by Swisscom as a result of the delay, and
- Swisscom may terminate the Contract at any time prior to the Ready-For-Service Date with immediate effect. Swiss statutory provisions shall also apply.

## **C: Maintenance and managed services**

### **4 Intervention/maintenance process services**

4.1 The general "Intervention" and "Maintenance" process services described in this section shall only apply if the Contract or any Annex thereto pertaining to the service in question expressly provides for such "Intervention" or "Maintenance" services.

#### **4.2 Basic fault repair service**

4.2.1 Faults shall be repaired during the defined Support Times for any equipment covered by the Intervention/Maintenance service as stipulated in the Contract. If the repair of a fault extends beyond the Support Times, work may be suspended and resumed during the Support Times on the next working day.

4.2.2 The repair of faults includes:

- The opening of a Trouble Ticket by Swisscom. This may occur

- once the management system has identified any fault or failure during active component monitoring. A corresponding report shall be submitted to the Customer's designated point of contact.

- as soon as the Customer has reported a fault to the Service Desk in relation to components that are not actively monitored. Any report submitted by the Customer must include a precise description of the fault and any information that may be required in order to rectify the fault (e.g. location, components, component description, etc.)

- Localisation of faults through Remote Diagnosis.
- A feedback report sent to the Customer on completion of Remote Diagnosis specifying any further action required to rectify the fault.
- Any action required to eliminate the fault. Depending on the fault repair option agreed (see below) and at Swisscom's discretion, such action shall be carried out in place of or in combination with Remote Access, the repair or replacement of defective system parts or the provision of a workaround solution.

4.2.3 The basic fault repair service shall not include, for example:

- any work performed by Swisscom for the purpose of eliminating faults, which have been caused by the Customer (e.g. due to incorrect use), third parties or equipment not covered by any Maintenance Contract with Swisscom
- the initial population/recovery of Customer data
- the initial set-up of entire software environments (e.g. a CallManager solution) and input of backup data provided by the Customer (e.g. configurations)

4.3 Swisscom shall determine on a case-by-case basis whether the fault can be localised and rectified by Remote Access or on site.

4.4 The ownership of any replaced defective hardware components shall pass to Swisscom upon replacement. If such hardware components are not replaced by Swisscom on site, the Customer shall return the replaced (defective) hardware components to the address provided to it by Swisscom within one calendar week.

4.5 Swisscom shall ensure throughout the term of the Contract, and subject to manufacturer availability, that replacement parts are available for the components covered by the Maintenance Contract. Swisscom reserves the right to replace any defective items with hardware and/or software that offers comparable or improved functionality.

4.6 Where components and products are described in the Annex to the Contract as having an end-of-life date, Swisscom only agrees to provide Support up to this date.

4.7 Option: On-site fault repair

4.7.1 Where this fault repair option has been agreed, the following service options may be specified in addition to the basic service:

4.7.2 Technicians and materials service option:

- Next working day: replacement supplies – and on-site intervention if necessary – will be provided during the agreed Support Times on the next working day.
- Within 4 hours of completing Remote Diagnosis: replacement supplies and on-site intervention if necessary will be provided within 4 hours of Remote Diagnosis. The service may be combined with all Support Times.
- Within 2 hours of completing Remote Diagnosis: replacement supplies and on-site intervention if necessary will be provided within 2 hours of Remote Diagnosis. The service may be combined with all Support Times.

4.7.3 The service options to be provided within a 2 or 4-hour timeframe depend on the location of the Service Elements and these timeframes may not apply throughout Switzerland.

4.8 Option: Replacement supplies by courier service

4.8.1 Where stipulated in the Contract, this fault repair option shall include, in addition to the basic service:

Delivery of replacement hardware components (devices or device parts) by courier (or equivalent dispatch service) during the Support Times within 6 hours of opening the Trouble Ticket.

4.8.2 The defective hardware components are replaced with the new components by the Customer on site.

4.9 Option: Postal maintenance

4.9.1 Where stipulated in the Contract, this fault repair option shall include, in addition to the basic service:

The dispatch of components to replace defective components by post within one working day (Monday to Friday, excluding public holidays) of opening a Trouble Ticket at the latest.

4.9.2 The defective hardware components are replaced with the new components by the Customer on site.

## **D: General provisions**

### **5 General provisions**

#### **5.1 Installations, locations**

5.1.1 The Customer shall take such measures and precautions within its control as may be required in order to protect the property of Swisscom or its subcontractors, and undertakes not to remove any components relating to the services from the specific location at which they have been installed. Any moving of such equipment to another location shall require the prior written consent of Swisscom. Any expenses incurred in connection with the transfer of components without Swisscom's prior consent shall be charged to the Customer.

5.1.2 The Customer may not carry out any modifications, repairs, maintenance work or other interventions to or on components and/or configuration data for the applicable services. In addition, the Customer may only use components for the agreed purposes.

#### **5.2 Copyright royalties**

The Customer agrees to only use protected content belonging to third parties in a lawful manner. He/she shall be responsible for procuring all rights required to import protected music productions (or parts thereof).

#### **5.3 Elimination of risks and external influences**

5.3.1 Swisscom shall be entitled to take any measures that may be required in order to avert or eliminate any risk, danger or disruption caused by the Customer or any third party, and to require the Customer, at its own expense, to implement such measures as may be necessary at its location.

5.3.2 The contact persons authorised by the Customer to submit orders, terminations, modifications (moves, adds, changes), fault reports and operational information shall be designated by the Customer and recorded in cooperation with Swisscom. The Customer shall notify Swisscom of any changes of contact person in writing or in such other form as Swisscom may determine.

5.3.3 Any persons authorised to report faults may also arrange for assistance to be provided outside the agreed Support Times by the contact persons designated by Swisscom, subject to payment of a fee.

5.3.4 The repair of faults may be suspended during any period in which Swisscom is unable to reach the contact person designated by the Customer.

**6 Invoicing and terms of payment**

6.1 The obligation to pay for recurring or ongoing services shall commence on the date on which the service is provided by Swisscom.

6.2 If the Customer is only able to use some of the functions initially, Swisscom shall charge a reduced fee until all the functions become available.

**7 Disclaimer of warranties**

7.1 The Customer acknowledges and agrees that despite every effort by Swisscom and the deployment of the most up-to-date technology and security standards, Swisscom makes no warranty with respect to absolute security or error-free use. All risks associated with such use shall be borne by the Customer unless Swisscom has agreed under the Contract to provide specific services in relation thereto.

7.2 Swisscom offers no assurances and assumes no liability in respect of the accuracy, completeness, topicality, legality, usefulness, availability or timely supply of information accessible via the connection. Swisscom shall not reimburse any fees paid for downloads or accept any liability whatsoever for damages arising from downloads.