

# Special Conditions for Hosting Services

## 1 Scope

The “Special Conditions for Hosting Services” (“Special Conditions”) of Swisscom (Switzerland) Ltd (“Swisscom”) apply in addition to the [General Terms & Conditions for Services of Swisscom](#) (“GTCs”). In the event of conflict, these Special Conditions shall prevail over the GTCs.

These Special Conditions apply to the web hosting, HomepageTool and domain registration (“services or hosting”) services supplied by Swisscom.

If Swisscom provides third-party software, the customer shall be informed of the relevant licence agreement provisions of the respective software rights holder. By using this software, the customer consents to the respective licence agreement provisions.

The following also form an integral part of these Special Conditions:

- [Web Hosting Code of Conduct](#)
- [Code of Conduct Hosting \(“CCH”\) swiss internet industry association \(“simsa”\)](#)
- [Tucows Domain Registration Agreement](#) (English)

All documents are published on <http://www.swisscom.ch/webhosting> and are accepted by the customer on registering for a service or continuing to use a service.

Services are only available to persons whose residence or place of business is registered in Switzerland.

## 2 Swisscom services

### 2.1 Web hosting

The web hosting service provides hosting of a customer’s website on Swisscom's web server at a fixed monthly rate. Details of web hosting packages and other information are available at <http://www.swisscom.ch/webhosting>.

### 2.2 HomepageTool

The HomepageTool service allows the customer to create, design and update their website at a fixed monthly rate. Details of HomepageTool packages and other information are available at <http://www.swisscom.chHomepageTool>.

HomepageTool packages are only available in combination with a web hosting package; they are not available separately.

### 2.3 Domain registration

#### 2.3.1 General

The domain registration service allows the customer to acquire, manage and use domain names under the available top-level domains (including “.ch”, “.li”, “.com”, “.net”, “.org”, “.biz”, “.info”, “.mobi” and “.net”).

If the customer wishes to use the domain registration service, they must conclude a [Domain Registration Agreement](#) with the registrar, Tucows. Swisscom acts as reseller in this case and is also the customer’s direct point of contact.

When applying to register a domain name, the customer must give its assurance that registration is lawful; in other words, they are authorised to register the name, the chosen domain name does not breach any rights or laws (e.g. trademark law, competition law), and the name does not offend public morals. Swisscom is not required to verify the customer’s authority to register a domain name.

If multiple valid registration applications are received for the same domain name, the name will be allocated on a first come, first served basis.

A domain name holder can be a natural or legal person resident in Switzerland.

Prices and further information are available at <http://www.swisscom.ch/webhosting>.

The customer must comply with the domain naming conventions specified by the relevant authorities (in particular [ICANN](#) and [SWITCH](#)) and observe the respective instructions. All regulatory general conditions for the acquired domain names under the available top-level domains (including .ch/ .li/ .com/ .net/ .org/ .biz / .mobi and .info) shall also apply. Customers shall be responsible for apprising themselves of this information.

In case of concrete indications or justified suspicions that the customer is not authorised to register, assign or transfer a domain name, Swisscom reserves the right to deny performance of the respective service from the outset (see also subparagraph 2.3.3).

### **2.3.2 Obligation of truthfulness – obligation of data maintenance**

On availing themselves of the services, the customer shall be bound by the obligation of truthfulness towards Swisscom. A valid application for registering a domain name must contain the current, complete and correct details of the holder, specified contacts and name server. Only the holder, or Swisscom on behalf of the holder, shall be entitled to delete the name server or change the IP address.

The customer shall also be responsible for ensuring that the customer data recorded during order placement (particularly the details of the representative and other contacts) are up to date, complete and accurate for the duration of the registration. Swisscom shall only deem data recorded in the database as authoritative. Should customer data prove to be incomplete, incorrect or not current and the customer fails to remedy this within 10 calendar days after being requested to do so by Swisscom, or if the identity of the customer cannot be determined or Swisscom messages cannot be delivered, Swisscom shall be entitled to cancel the respective domain name of said customer and terminate all associated agreements.

The customer shall pledge to verify the correctness of messages from Swisscom and processed applications within 14 days. If the customer fails to do so, they shall relinquish any claims for liability or other claims against Swisscom in connection with any errors contained in the respective messages.

### **2.3.3 Denial of registration**

Registration shall be denied if the requested domain name is identical to a domain name that has already been registered, a domain name from an earlier domain name application which is still under review or a domain name which is in the transition period. It shall also be denied if the right to the domain name is held by or reserved for a public authority.

Swisscom may also deny registration if

- Required to do so for important technical reasons or compliance with international standards;
- Capacity to pay is questionable; especially if the future holder specified in the application is insolvent, has defaulted on payment of bills for domain names already allocated or does not pay the advance which Swisscom is at liberty to demand in the case of amounts over CHF 500 for the awarding of domain names;
- There is an obvious risk of Swisscom being held legally responsible on account of domain name registration (illegal domain name or breach of trademark rights);
- The applicant cannot be reached to answer queries or does not respond within 10 days.

Denials of domain name registration are generally notified within 10 working days from receipt of the application.

Said application is nullified on denial of registration and the respective domain name is released.

#### **2.3.4 Cancellation of registration**

Swisscom may cancel domain name registration if:

- The holder breaches the applicable law;
- The holder breaches the contractual relationship with Swisscom and fails to remedy the breach within a period of grace set by Swisscom;
- Prices are not paid according to the agreement;
- The holder breaches their duty to keep personal data up-to-date;
- There is an obvious risk of Swisscom being held legally responsible on account of the registration and/or use of the domain name;
- The holder is deceased or has been deleted from the commercial registry due to bankruptcy or liquidation;
- It is required to do so for other important reasons.

On cancellation, the domain name will be deleted from the respective databases and released for renewed registration after a transition period.

#### **2.3.5 SSL certificates**

One or several SSL certificates will be included depending on the service package (see Product descriptions [Webhosting/HomepageTool](#)). These certificates enable the customer to encrypt their websites. They are called Secure Sockets Layer ("SSL") certificates and are hybrid encryption protocols for secure data transmission in the Internet.

#### **2.3.6 WHOIS privacy service**

Depending on the top-level domain and provided that certain requirements are met, the customer may, for an appropriate fee, conceal the contact information published in connection with the domain.

#### **2.3.7 Transfer and assignment**

Following registration, the customer is entitled at any time to request transfer to another registrar or directly to the registry operator and a change of holder, provided due amounts are paid in full. Pro rata repayment of the annual fee is not possible under any circumstances.

Swisscom shall also assign a holder's domain name to a third party if presented with an order from a court, a court of arbitration, a decision by a Swiss law enforcement, administrative or regulatory agency, an expert decision by a mandatory dispute settlement service or completed court or out-of-court settlement for one of the two parties or a writ according to which Swisscom is directly instructed, without Swisscom being party to the respective proceedings, to assign the domain name to the third party, or which contains the holder's required consent for assignment or which replaces said consent. Should said instruction in one of the aforementioned documents cite deletion by cancellation instead of assignment, this shall be enforced. In any case, the third party must submit confirmation of the enforceability of the decision.

On presentation of the document referred to in the above section, Swisscom shall also be entitled to temporarily block transfer of a domain name, that is to at least block for the time being transfer of a domain name to a new holder, without Swisscom being party to the respective proceedings.

In addition to or instead of blocking, the specified authorities may also instruct deletion of the name server allocations for the said domain name. All authorities reserve the right to take further steps.

### **2.3.8 Authorisation of recourse to a third party for the amendment of details for the (gTL) domain owner**

Swisscom also instructs its registrar Tucows to act as an agent in the processing of amendments regarding information about the (gTL) domain owner. This agent shall process the customer's change requests according to the new ICANN regulations. The customer consents to the agent automatically confirming amendments on each entry of an amendment to information about the domain owner.

After each amendment of information about the domain owner, assignment, transfer or passing on of the said (gTL) domain shall not be possible for a period of 60 days for security reasons, provided the transfer block was not previously deactivated.

## **2.4 Domain parking**

The domain parking service allows the customer to retain all domains registered via Swisscom without acquiring a service according to subparagraphs 2.1 – 2.2. If the customer cancels a hosting service, the domain registration shall continue at the annual fee. Automatic annual renewal ensures that the customer does not lose domains, but must explicitly cancel or transfer them to another registrar.

## **2.5 Technical support**

### **2.5.1 Help desk**

The Swisscom help desk is available 24/7 to provide customers with technical support in German, English, French and Italian on the toll-free telephone number 0800 888 500 and also at [webhosting.tech@swisscom.com](mailto:webhosting.tech@swisscom.com).

### **2.5.2 Support times**

<i>Administrative support</i>	8 am – 6 pm (Mon - Fri)
<i>Technical support</i>	Help desk 24/7 (Mon - Sun) Faults rectification: 7 am – 10 pm (Mon - Sun)

### **2.5.3 Maintenance window**

If possible, Swisscom shall duly notify customers of service interruptions necessary for clearing faults, periodic maintenance work, launching new technologies etc. Swisscom shall endeavour to keep interruptions brief and to schedule them during off-peak times.

### **2.5.4 Data recovery**

Swisscom services do not include data recovery in the event of data loss. The customer is solely responsible for backing up all their data (including e-mails). If data are still available at Swisscom, the customer may request data recovery in the event of data loss and will be charged for the effective work involved. HomepageTool data are excepted, which the customer always backs up in the HomepageTool and can thus also restore.

### **2.5.5 Malware and security vulnerabilities**

Swisscom checks scripts for malware such as viruses, trojans and worms. If Swisscom detects malware, it will be quarantined, and the customer will be informed. The malware will be deleted automatically by Swisscom after 14 days unless it is removed by the customer.

On its homepage, Swisscom publishes a list of standard software it checks for security vulnerabilities. If Swisscom identifies a security vulnerability in the standard software used by the customer, Swisscom will take suitable measures to rectify this wherever possible (usually by means of a software update). The customer may reverse a software update through the web hosting control panel (<https://login.hostcenter.com>) by resetting the upgrade performed.

Swisscom gives no guarantee that all malware and security vulnerabilities will be detected.

### **3 Customer's duties of co-operation**

#### **3.1 Data back-up and protective measures**

The customer shall ensure additional separate back-up of their web hosting data. The customer shall ensure additional separate backup of their web hosting data. Subparagraph 4 (section 3) of the General Terms and Conditions specifies the protective measures to be taken by the customer in respect of his/her data and the software used by him/her and the repercussions if these measures are not taken or are insufficient.

#### **3.2 Faults**

The customer must notify the Swisscom help desk immediately of faults using the toll-free telephone number 0800 888 500.

If damage arises for the customer due to breach of the immediate notification obligation, the customer shall bear responsibility in this case; Swisscom shall be excluded from any liability for damage thus incurred.

#### **3.3 Responsibility for content and account**

The customer shall be responsible for all forms of content which they publish on websites hosted by Swisscom. In particular, they must comply with the [Code of Conduct for Hosting Services](#) and the [Code of Conduct Hosting \(CCH\)](#).

Swisscom shall not be required to verify hosted content. However, the customer acknowledges and agrees to Swisscom inspecting hosted content if

- Notified that content hosted by Swisscom is impermissible (notice as per CCH),
- Swisscom is required to do so by a court or authority,
- Swisscom itself is legally responsible or otherwise may be required to bear responsibility or
- Would like to perform a random sample.

Inspection shall be conducted on receipt of a notice pursuant to the notice-and-take-down procedure defined in the CCH.

#### **3.4 Obligation to publish imprint for electronic business traffic**

Customers who advertise offerings (merchandise, works, services) on their publicly accessible websites are obliged to publish a correct imprint on said websites.

Compulsory details of the imprint include:

- Name of the company/organisation
- First and last name of the responsible person
- Full postal address (P.O. Box alone is not sufficient)
- E-mail address (a reply form alone is not sufficient)

Specification of telephone and fax numbers is recommended.

#### **3.5 Absence of domain name owner – customer identity**

If a customer uses a hosting service based on a domain name belonging to a third party (hereinafter referred to as domain name owner), by doing so they affirm that they have been authorised by the domain name owner to use the web hosting service in their own name for the respective domain name.

If the domain name owner verifies that the domain name used by a customer together with the service does not belong to said customer, but to them, and if the domain name owner wishes their domain to be released, on their request Swisscom shall reserve the right to cancel the associated hosting agreement with the customer and to release the domain name again to the domain name owner.

Assignment of the existing web hosting agreement or relevant content of the customer to the domain name owner is not possible. The agreement with the present web hosting service customer shall be dissolved. The present customer shall be solely responsible for backing up content. For their part, the domain name owner shall not be entitled to the content and data of the original web hosting account which was linked to their domain. No data back-up by Swisscom is envisaged, nor migration of content and design of the original web hosting account on other web hosting accounts (e.g. the web hosting account operated by the domain name owner.)

### **3.6 No claims by beneficial owners against Swisscom**

The customer of the services may only be a natural or legal person; bodies of persons who do not constitute a legal person cannot be a collective customer (e.g. group practice). If a customer buys a service in their own name, the contractual relationship only exists between themselves and Swisscom, even if they buy the service on behalf of a body of persons or legal person. The beneficial owners (e.g. bodies of persons, legal persons and societies in particular) shall have no claim to the respective domain, web hosting account or disclosure of the access data for it. Legal persons are therefore recommended to acquire all hosting services in the name and on the account of the legal person.

## **4 Invoicing**

### **4.1 Web hosting/HomepageTool**

Payment obligation shall begin on activation of the respective service by Swisscom. A delay caused by the customer shall not exempt them from their payment obligation. Swisscom shall debit the monthly fee on the customer's next invoice. If the customer pays by credit card, the monthly fee shall be debited immediately and deducted monthly thereafter.

In case of default of payment, Swisscom shall reserve the right, in addition to the provisions of subparagraph 7 of the GTCs, to release all domain names for deletion, provided the latter are registered and charged via Swisscom. In case of temporary freezing of the customer's web hosting account, Swisscom shall levy an account reactivation fee of CHF 10.00. Monthly fees shall continue to be due during the temporary freeze period.

### **4.2 Domain registration**

Swisscom shall invoice the customer in advance for any incurred costs of registration, domain parking, transfer and assignment in accordance with the currently applicable price list.

## **5 Data protection**

### **5.1 General**

Information about how Swisscom processes customer data and which setting options are available to customers can be found at [www.swisscom.ch/legal-information](http://www.swisscom.ch/legal-information) in the "[General Online Privacy Statement](#)" document.

The following additional provisions shall apply:

## **5.2 Access from abroad**

The customer acknowledges that third parties commissioned to operate services by Swisscom from abroad may have access to their name, address, e-mail and IP address. Swisscom shall ensure that third parties commissioned by them observe privacy in the same way as Swisscom itself. Swisscom shall oblige third parties to only process data as it may do itself and shall only pass onto third parties data for processing that is necessary for order fulfilment.

## **5.3 Publication on the Internet**

Swisscom advises customers that, for legal reasons, the following data may be published on the Internet and is thus accessible to third parties:

- Name of the registered domain name;
- Full name of the domain name holder;
- Full address of the holder (incl. e-mail address);
- If the domain name holder is a legal person, general or limited partnership, the name of the natural persons entrusting with representing them;
- Full address of the technical point of contact (usually "Swisscom");
- Authoritative language of the contract for registering a domain name;
- Registration dates of the respective domain name and the last
- Amendment of this registration;
- IP address of the activated DNS server and
- Specification of whether a domain name is secured with DNSSEC or not.

## **5.4 Access to non-public areas**

In the event of confiscation by an authority or serious grounds for suspicion on the part of Swisscom, the customer's non-public areas of their web hosting account may be accessed.

## **6 Warranty**

In addition to the warranty provisions in subparagraph 11 of the GTCs, the following provisions shall apply. In case of inconsistency, the latter shall prevail over those of the GTCs.

Swisscom shall bear no responsibility for the errors or infallibility of the software used by the customer, nor guarantee that the services function perfectly on the customer's end devices. In case of amendment to name server information (DNS), Swisscom shall not be liable for delays caused by the customer (e.g. belated response to confirmation mails etc.).

Swisscom shall endeavour to have incoming applications registered as soon as possible. Furthermore, Swisscom shall furnish no guarantee for the availability and infallibility of services provided by third parties cooperating with Swisscom (and registry operators in particular).

## **7 Liability**

In addition to, and in partial amendment to the liability provisions in subparagraph 12 of the GTCs, the following provisions shall apply. In case of inconsistency, the latter shall prevail over those of the GTCs.

### **7.1 Swisscom liability**

Liability for damages caused by slight and moderate negligence shall be fully excluded.

Swisscom shall not bear any costs incurred by the customer or for services rendered by third parties commissioned by the customer in connection with containment and/or rectification of any faults in a service. The customer shall also bear the costs of Swisscom services in connection with containment

and/or rectification of any faults in a service if the customer has requested examination and the cause of the fault is due to the customer's behaviour or infrastructure used by them.

Swisscom shall not assume liability for:

- Service disruptions and damage caused by non-observance of a contractual provision by the customer or a contact person;
- Costs and damages incurred by the customer in connection with their compliance with an expert decision in dispute settlement proceedings;
- Damages arising through clerical or transmission message errors and the resultant incorrect registration, transfer and assignment;
- Belated registration, transfer and assignment;
- Unlawful registration, transfer or assignment of the domain name by the customer (in that a domain name breaches trademark law and so forth, for instance.);
- Execution of unauthorised amendments and requests by Swisscom, insofar as unauthorised third parties have gained access to the password due to careless storage and handling or disclosure of the password.

## **7.2 Customer liability**

The customer shall be liable for all costs arising for Swisscom through claims by third parties in connection with content on the hosted customer website or with unlawful registration, use, transfer or assignment of a domain name. This shall also include legal expenses imposed on Swisscom. Swisscom may seek redress from the customer at any time and invoice them for all costs. Costs arising from claims against the customer asserted by third parties shall be borne in full by the customer.

The domain name holder must deem the actions and/or omissions of third parties whom they have commissioned as their own and shall be liable to Swisscom on their account. The customer shall pledge to support Swisscom and the third parties they have commissioned in any proceedings.

## **8 Steps in case of misuse**

The steps which may be taken by Swisscom in case of misuse by the customer are specified in the "[Code of Conduct Hosting](#)".

## **9 Termination**

### **9.1 Termination with notice of web hosting/HomepageTool services**

Each party may terminate services prior to the end of the monthly subscription, at the earliest to the end of the minimum contract period of three (3) months. The customer can perform termination in their account at [www.swisscom.ch/hosting](http://www.swisscom.ch/hosting) / [www.swisscom.ch/homepagetool](http://www.swisscom.ch/homepagetool). Termination of the web hosting service automatically includes termination of the HomepageTool service.

If the customer wishes to continue using the domain, they may transfer it to a new provider (in their hosting control panel). The customer shall be solely responsible for seeking a (new) provider for their domain name and concluding an appropriate agreement directly with the registry operation and duly performing domain transfer (that is before expiry of the registration period with Swisscom) and in observance of specific freeze periods.

If the customer also wishes to cancel the domain name, they must do so explicitly in accordance with the following subparagraph 9.2, in which domain registration shall end at the earliest possible cancellation date in accordance with the contract terms of the respective registry operator.

In case of domains registered by Swisscom on behalf of the customer (including .ch/ .li/ .com/ .net/ .org/ .biz/ .info/ .mobi), the customer may transfer the domain to another registrar within the period until the



expiry date; in this case, the domain is not renewed or registered for a further year. If the domain is not transferred, on expiry of the notice period, the domain will again be released to the public.

## **9.2 Termination of the registration agreement**

The agreement may be terminated in writing by either party independently with notice of 30 days to the end of a one-year subscription term. Without due notice, the agreement shall be automatically renewed by the agreed subscription term. Although transfer to another registrar is possible during the subscription term, fees shall not be refunded on pro rata basis.

## **9.3 Deletion during the subscription term**

If the customer requests deletion of the domain name prior to expiration of the current subscription term, they shall not be entitled to pro rata fee reimbursement. On relinquishment, the domain name shall be deleted from the respective databases and, following a transition period, released for re-registration.

## **9.4 Termination at the request of the domain name owner**

If the domain name owner, who is not also the customer of the web hosting service, asserts their rights to their domain name (subparagraph 3.5), Swisscom shall be entitled at any time to terminate the web hosting service (including the HomepageTool service) for cause with a notice of 15 days.

## **9.5 Domain release – transition period**

When termination of the domain registration service becomes effective, the domain name shall be released for re-registration on expiration of the transition period.

On deletion of a domain name, the latter shall be subject to a transition period according to the guidelines of the respective registry operator during which registration of said domain name by a third party shall not be possible. The original holder may, under certain conditions, re-register said domain name, however they do not enjoy an automatic entitlement to do so.

## **10 Dispute resolution procedure**

Neither the registrar, the respective registry operator nor Swisscom itself will assess, during registration or subsequently, who holds a better right to use of the domain name.

If the parties are unable to agree on entitlement to a domain name or the legitimacy of its use, the respective registry operator shall place at their disposal a mandatory, chargeable dispute resolution service (<https://www.nic.ch/de/terms/disputes/> and [https://www.icann.org/policy#what\\_is\\_policy](https://www.icann.org/policy#what_is_policy)). Any decisions by the responsible dispute resolution service shall be binding for both the customer (holder) and Swisscom even if the customer declined to be party to the dispute resolution procedure.

## **11 Amendment of agreement conditions**

### **11.1 Technical adjustments**

Swisscom endeavours to maintain its infrastructure at the current standard customary in the industry. New technical developments, security requirements and/or amendments in the range of services offered by Swisscom's contractual partners or software used by Swisscom may result in an expansion or limitation of the range of services. This shall not constitute a right of termination on the customer's part provided the aforementioned changes do not represent a substantial disadvantage to the customer and incur no additional costs.

### **11.2 Adjustments in service scope and prices**

Swisscom shall reserve the right to adjust its prices and services at any time. Swisscom shall notify the customer of amendments in an appropriate manner. However, no pro rata fee adjustment shall take place during the current subscription term.

Price adjustments due to amendment of fiscal charges (e.g. increase in value added tax) and price increases by third-party providers (especially registry operators) shall not be deemed as price increases nor constitute grounds for termination.

If Swisscom changes a service to the effect that it substantially disadvantages the customer, the latter may prematurely terminate the relevant service up to the coming into force of the change with no financial consequences. Failure to do so shall be deemed acceptance of the changes.

### **11.3 Amendment of Special Conditions**

Swisscom shall also reserve the right to amend these Special Conditions at any time. Swisscom shall inform the customer in advance of changes in an appropriate manner. If the amendments are disadvantageous to the customer, until the amendment becomes effective they may serve ordinary notice of termination with no financial consequences. Failure to do so shall be deemed acceptance of the changes.

### **12 Assignment**

In addition to subparagraph 16 of the GTCs, Swisscom shall be entitled to assign the rights and obligations resulting from the agreement with the customer without their consent to OFCOM or a third party who shall assume the duties and obligations arising from this agreement.

### **13 Applicable law and place of jurisdiction**

In addition to subparagraph 17 of the GTCs, agreements regarding domain registrations for all .ch and .li domain names shall also be subject to Swiss law.

Agreements for the remaining domain names (including .com/ .net/ .org/ .biz/ .info/ .mobi) shall also be subject to Swiss law unless the provisions of the registrar prescribe a different law.

Berne is the place of jurisdiction. Compulsory places of jurisdiction are reserved.

# Code of conduct for hosting services

The code of conduct shall apply to all services of Swisscom (Switzerland) Ltd (Swisscom) in the hosting sector.

## 1 General

Use of hosting services shall be subject to compliance with the laws applicable in Switzerland and abroad, with the agreements with Swisscom regarding hosting services and with the Code of Conduct.

Swisscom shall not be obliged to supply the customer with legal information regarding content or domain names permissible within the framework of hosting services.

## 2 Duties of cooperation

The customer shall pledge to take suitable precautions to avoid unlawful use of these services and immediately notify Swisscom of everything that is appropriate to preventing misuse of these services. In case of suspicion of misuse of services, the customer can contact [admin.webhosting@swisscom.com](mailto:admin.webhosting@swisscom.com).

## 3 Unlawful content and illegal actions

Illegal, offensive and content prompting unease or personal harassment of third parties may not be published on websites hosted by Swisscom.

The following rules illustrate what is not allowed in the hosting sector:

- Committing an offence (fraud, impermissible games of chance etc.) with the help of a service provided by the customer or third party under the customer's supervision;
- Offering, disseminating or providing access to content that is unlawful under criminal or civil law (e.g. depictions of violence against humans or animals and pornography pursuant to section 197 of the criminal code, slander, violation of personal rights, dissemination of racist ideologies and content and/or racist propaganda and racist propaganda campaigns;
- Offering or providing access to other pornographic content permissible under criminal law (also so-called soft pornography) without effective age control of the consumer group;
- Unauthorised avilment and storage, dissemination or providing access to content that is legally protected (content of all kinds protected by copyright, also content protected under trademark, data protection, design and patent law);
- Unlawful dispatch of mass advertising (see subparagraph 5);
- Use of the Swisscom hosting infrastructure to procure e-mail addresses without the consent of the address owners;
- Any form of network misuse (see subparagraph 8).

## 4 Use of photo material in the HomepageTool

The HomepageTool service provides photo material from third-party suppliers. This is included in the HomepageTool service, the obligations regarding use thereof are set out in the documents below, the content of which customers must apprise themselves:

- <https://de.fotolia.com/Info/Agreements/TermsAndConditions>
- <https://de.fotolia.com/Info/Agreements/ExtendedLicense>

## 5 Spam policy

### 5.1 Summary

The following rules shall apply to sending mails via the Swisscom web hosting mail server to several recipients for the purpose of dispatching newsletters, advertising and so forth ("mass advertising"):

- Recipients must have supplied their consent in the double opt-in procedure for them to be contacted in this manner.
- The correct sender must be specified.
- Several recipients may not be inserted in the "To" line. Recipients must not see who receives the advertising e-mail. Addresses must be inserted in the "BBC:" field.
- Recipients must be able to easily opt out from receiving further advertising e-mails free of charge.
- An e-mail may only be sent to a limited number of recipients. Otherwise, the Swisscom mail server will advise of the excessive number of recipients and reject the entire dispatch.

### 5.2 Requirements

Dispatch of mass advertising is only permissible where no relationship exists between customer and e-mail recipient if availability data (e.g. e-mail address) have been collected in the so-called "doubt opt-in procedure".

Persons wishing advertising from a specific company/organisation must first register themselves for the relevant type of advertising e-mail (e.g. Newsletter) with the company/organisation (1<sup>st</sup> opt-in).

Following registration, the company/organisation must then send the registered person a confirmation e-mail, requesting them to confirm their wish to receive the respective mass advertising (2<sup>nd</sup> opt-in). If this confirmation does not take place within a certain period (usually by clicking a link in the e-mail), the e-mail address of this person may not be used (neither for inclusion in the database, nor for the dispatch of mass advertising).

Despite the "double opt-in", the recipient must be able to deregister at any time from receiving advertising e-mails (so-called "opt-out") – usually via the included link leading to a "Deregistration form" on the respective website.

Cleaning up current address databases is recommended. To do so, an advertising-free e-mail is sent to all e-mail addresses not yet captured in the "doubt opt-in" procedure. In it, recipients are notified that they should reply to the e-mail within a certain period if they wish to continue receiving the sender's advertising e-mails or newsletters. If no interest in receiving mails is evinced within this period, the address must be removed from the address database.

If persons have to enter their e-mail in connection with the purchase of goods, works or services, they should be informed that they may refuse to receive subsequent mass advertising for similar goods, works or services.

If interested parties are able to enter their e-mail address on a website, the website must also explain what will be done with this address. If the address is to be used for advertising purposes later on, the interested parties must explicitly consent to this (via the "double opt-in").

E-mail addresses may not be sold. Purchase and use of e-mail addresses conflicts with the statutory "opt-in" principle.

## **6 Fair use policy**

In case of business customers, use of services is intended for normal business customer use only; in case of residential customers, for normal residential customer use only. Use of hosting services for the purpose of data storage does not fall within normal use for business or residential customers.

Furthermore, the customer shall not be entitled to make a service they have purchased available to third parties (either for free or for a fee).

Pursuant to subparagraph 9, Swisscom shall reserve the right to adopt one of the appropriate measures listed below if there are grounds for assuming that the customer is using the service for the purpose of storing large volumes of data or is using programs that require an unusually high level of processing capacity (in connection with live applications, content management systems for websites, e-mail forwarding functions that require an unusually high amount of capacity, for instance).

## **7 Domain pointers**

Domain pointers are for the purpose of directing multiple domain names to the same website and not for using an account for several websites. A domain pointer may not refer to a subdirectory of an existing website that is already hosted by Swisscom or another service provider. The use of domain pointers as a substitute for individual web server accounts is prohibited.

## **8 Breach of system and network security**

Breaches of system and network security shall constitute a contractual contravention and, under certain conditions, may result in a customer being held criminally liable. Swisscom shall reserve the right to file charges with the prosecuting authorities.

The following are prohibited in particular:

- Scanning system or network competence for vulnerability without prior consultation with Swisscom;
- Attempting to circumvent security and authorisation measures without prior written consent of the party concerned;
- Performing other processes (installing peer-to-peer software, executing brute force programs, scripts or applications or terminal emulations and so forth, for instance) or
- Reselling or providing access to installed CGI script functions.

This list is not exhaustive.

## **9 Steps in case of misuse**

Swisscom reserves the right to adopt suitable measures as it sees fit:

- In case of concrete indications or justified suspicions of unlawful, punishable or unethical conduct (based, among other, on random tests),
- In case of a breach of the agreement or Code of Conduct,
- In case of any other misuse of the websites,
- In case of presence of the prerequisites of the Code of Conduct Hosting ("CCH") or
- In case of presence of a court or official order.

Depending on the circumstances, and with or without prior warning, Swisscom shall be entitled to

- Require the customer to restore a lawful state of affairs or conduct themselves in a lawful manner,
- Fully or partially block access to the customer's website,
- Delete the name-server assignment for a domain name and block the latter for a certain period,
- Fully or partially suspend or discontinue hosting services,
- Terminate the agreement without notice or compensation,
- Perform the notice-and-take-down procedure in accordance with the CCH,
- Disclose the customer's identity by order of the courts or authorities to them or other third parties,
- In case of the criminally relevant conduct on the part of the customer or third party supervised by them, to inform the prosecuting authorities and/or the Swiss Cybercrime Coordination Unit (CYCO) of said conduct and the identity of the customer and third party supervised by them,
- Where appropriate, to demand compensation for damages and/or
- Take other action, as appropriate.

## **10 Liability for damages**

The customer shall be obliged to compensate Swisscom for damage incurred for Swisscom arising from the customer's misconduct. Swisscom may demand provision of security to cover said damage as a precautionary measure. If said security is not paid, Swisscom may discontinue the service.

Swisscom shall be entitled to invoice the customer for expenses incurred in connection with application of the CCH.

# CODE OF CONDUCT HOSTING (CCH)

## Notice-and-Takedown

### PREAMBEL

simsa (the Swiss Internet Industry Association) has adopted the present Hosting Code of Conduct ("HCC") in order to lay down technologically relevant principles of conduct for Swiss hosting providers in relation to illegal content, to establish these principles as an industry standard, to strengthen legal security and to make it easier for people affected by illegal content to instigate legal proceedings against those responsible.

The notice and take down procedure laid down by simsa in the HCC contains principles of conduct that are already incorporated in self-regulatory instruments adopted by European and international associations of Internet Service Providers (ISPs) and hosting providers. When drawing up the HCC, simsa also took note of regulatory requirements, particularly in the USA and the European Union and its member states, applicable to so-called notice and take down procedures and related limitations of liability for hosting providers; it also took into account the fact that the regulatory framework in the European Union is different from that in Switzerland.

By adopting this HCC, simsa also recognises the efforts of the Council of Europe and its Committee of Experts on New Media to encourage the inclusion of ISPs in regulatory planning in order to meet national regulatory objectives on the Internet and thereby acknowledge and promote ISPs' ability to organise and regulate themselves. In this connection, it also consulted the Human Rights Guidelines for Internet Service Providers drawn up by the Council of Europe in cooperation with the European Internet Service Providers Association (EuroISPA) and welcomes their recognition of the importance of Internet self-regulation.

Hosting providers play an important role as intermediaries on the Internet. Without them, Internet communication would be impossible. In order to support the economic, social and cultural potential of their services, they agree to uphold the following principles of conduct.

### 1 OBJECT AND LEGAL NATURE

The HCC is a set of guidelines on how to deal with reports of possible illegal content. It is a document of voluntary self-regulation.

### 2 ADDRESSEES AND AREA OF VALIDITY

The HCC is aimed at companies and individuals that operate hosting services and are subject to Swiss law. Hosting services are services that enable operators of websites and applications to store and process content and make it publicly available to third parties.

Any services offered by hosting providers that are not purely hosting services are excluded from the scope of the HCC. In particular, Internet access services and services for storing and processing content and making it available to third parties in an area that is not publicly accessible (e.g. cloud services) are not included.

### **3 SIMSA "SWISS QUALITY HOSTING" STAMP OF QUALITY**

The HCC is designed to help all hosting providers, whether they are simsa members or not, to conduct themselves in accordance with the law. Providers who carry the simsa "Swiss Quality Hosting" stamp of quality must respect the HCC in accordance with the stamp of quality regulations. For other hosting providers, the HCC is a tool that can be used voluntarily.

### **4 DEFINITIONS**

#### **4.1 Illegal content**

Content that infringes the rights of third parties, particularly intellectual property rights in the broad sense (e.g. copyright or trademark rights), or personality rights, or that constitutes a criminal offence (particularly in the areas of pornography, the portrayal of violence, racism and libel).

#### **4.2 Customer**

Customer of the hosting provider, who has signed a contract concerning hosting services.

#### **4.3 Notice**

Communication from a person affected by allegedly illegal content made publicly available by the customer. The sender must be affected by the alleged infringement to a greater extent than a third party or the general public: for personality right infringements and offences that must be reported, this must be the injured party (or their representative), while for intellectual property right infringements it must be the holder of ownership or licensing rights for the content concerned (or their representative). For offences for which proceedings are brought directly by the public prosecutor's office, the sender does not need to be particularly affected.

A notice must at least meet the following formal and content-related requirements: (a) name and address of the sender; (b) explanation of why the sender is particularly affected (except offences for which proceedings are brought directly by the public prosecutor's office); (c) URL of the offending web page or sub-page; (d) precise description of the allegedly illegal content; (e) reason why the content is illegal.

### **5 NO MONITORING OBLIGATION**

Hosting providers, as intermediaries on the Internet, provide an infrastructure that enables operators of websites and applications to store and process content and make it publicly available to third parties. Hosting providers have no knowledge of the content stored, processed and made available by their customers. Neither are they obliged to actively monitor that content. The customer alone is responsible for content that it stores, processes or makes accessible to third parties using the hosting services.

The hosting provider's obligations defined in the HCC are designed to make it easier for people affected by illegal content to instigate legal proceedings against those responsible.



## **6 NOTICE AND NOTICE**

**6.1** The hosting provider checks that any notices received meet the formal and content-related requirements laid down in paragraph 4.3. When assessing these requirements, the hosting provider applies the benchmark of a legal layman.

**6.2** If a received notice does not meet, or only partly meets, the formal and/or content-related requirements of paragraph 4.3, the hosting provider asks the sender of the notice to provide the missing information within two working days of receiving such request. If the sender fails to respond before the deadline or if the additional information supplied also does not meet, or only partly meets, the formal and/or content-related requirements of paragraph 5.3, the hosting provider pays no further attention to the notice.

**6.3** If a received notice fully meets the formal and content-related requirements of paragraph 4.3, the hosting provider writes to the customer and to the sender of the notice, generally within two working days of receiving the notice.

- a) In the letter to the customer, the provider informs the customer that the notice has been received and forwards a copy of the said notice. The provider reminds the customer that the latter bears sole responsibility for content that it stores, processes or makes accessible to third parties using the hosting services. It asks the customer to remove the offending content or to explain why the content is lawful in a letter to the sender of the notice. The hosting provider also informs the customer that it is liable to compensate the hosting provider for expenditure relating to the defence of third-party claims and for any other damage suffered. The hosting provider can demand a surety from the customer as a precautionary payment to cover such damage. In clear cases, the hosting provider can also take direct action in accordance with paragraph 7.
- b) In the letter to the sender of the notice, the hosting provider confirms receipt of the notice and informs it that it has written to the customer. It informs the sender of the notice that the customer bears sole responsibility for content that it stores, processes or makes accessible to third parties using the hosting services. The hosting provider also tells the sender that the hosting provider is not allowed to disclose customer data. Instead, it informs the sender of possible ways in which it can find the identity of the owner of an Internet domain (e.g. via Whois databases available on the Internet) and which state authorities it can contact in order to assert its claims. In clear cases, the hosting provider can also take direct action in accordance with paragraph 7.

## **7 NOTICE AND TAKE DOWN**

**7.1** If a received notice fully meets the formal and content-related requirements of paragraph 4.3 and if it appears very likely that it concerns illegal content, or if the hosting provider itself could be criminally responsible or liable under civil law, the hosting provider can partially or completely block access to the website at its own discretion until the matter has been resolved between the parties concerned or by a court or other authority.

**7.2** Immediately before or after blocking a website, the hosting provider informs the customer that a notice has been received, forwards the notice to it and informs it of the reason for the block. At the same time, the hosting provider informs the sender of the notice about the block and the letter to the customer. The hosting provider decides, at its own discretion, whether to report any criminal offence to the KOBIC (national body coordinating the fight against cybercrime) or to the criminal prosecution authorities.

**7.3** When assessing whether the notice is complete, whether a website should be blocked and whether legal proceedings should be instigated, the hosting provider applies the benchmark of a legal layman.

## **8 CONTRACTUAL SAFEGUARDS VIS-À-VIS THE CUSTOMER**

**8.1** The hosting provider ensures that its agreements with the customer contain at least the following regulations and information:

- a) The customer may only use the hosting services legally. The customer bears sole responsibility for content that it stores, processes or makes accessible to third parties using the hosting services.
- b) The hosting provider is not obliged to monitor the hosted content. However, it will examine content after receiving a notice, as required by the notice and take down procedure, or if ordered to do so by a court or other authority. The hosting provider reserves the right to carry out spot checks, even if a notice has not been received.
- c) The hosting provider is entitled to partially or completely block access to the customer's website and withdraw hosting services i) if the relevant requirements of the notice and take down procedure described in its general terms and conditions or in the HCC, if referred to in its general terms and conditions, are met, or ii) if the hosting provider is ordered to do so by a court or other authority or could in some other way be legally responsible or held liable itself, or iii) if a spot test uncovers content that is very probably illegal in the sense of paragraph 5.1.
- d) The hosting provider describes the notice and take down procedure in its general terms and conditions or refers to the HCC in its general terms and conditions and provides easy access to the HCC on its website. The customer is responsible for finding out about the notice and take down procedure. It notes and acknowledges that the hosting provider can cancel the contract with the customer with immediate effect if the customer fails to follow its instructions according to the notice and take down procedure described in the general terms and conditions and/or the HCC.
- e) If ordered to do so by a court or other authority, the hosting provider is entitled and obliged to reveal the customer's identity to them or to other third parties.
- f) The hosting provider is entitled to bill the customer for any expenditure incurred in relation to a notice. The customer must compensate the hosting provider for any other damage suffered as a result of asserted claims. The hosting provider can demand a surety from the customer as a precautionary payment to cover such damage. If this surety is not paid, the hosting provider can withdraw the service.

## **9 INTERNAL ORGANISATIONAL MEASURES**

The hosting provider takes internal organisational measures in order to respond to notices quickly. It appoints someone as its head of illegal content and makes clear on its website how and to whom notices should be sent as part of the notice and take down procedure, such as via an online form.

## **10 SAMPLE LETTERS**

[simsa](#) provides its members with samples of the letters mentioned in the HCC that they must send to customers and to senders of notices.

## **11 NO LIABILITY FOR SIMSA**

The HCC is a document of voluntary self-regulation. In view of the current legal uncertainty surrounding provider liability, simsa cannot guarantee that hosting providers will be exempt from criminal prosecution or civil liability if they comply with the HCC.

## **12 ENTRY INTO FORCE**

This Hosting Code of Conduct enters into force on 1 February 2013.

simsa, 1 February 2013, public version (without samples) 1.0