

Introduction

- ¹ This Agreement sets forth the obligations of the Parties with regard to the requirements under the Swiss Data Protection Act (DPA) and the EU General Data Protection Regulation (EU GDPR). It shall supplement in this regard the contractual agreements ("Contract") concluded between Swisscom and the Customer. These may be comprised of one or more contracts concluded between the Parties under which Swisscom has the status of a provider of services to the Customer.
- ² The present Agreement shall apply only to the extent that the following preconditions are met:
 - a) The Customer is either a controller or a contracted processor falling within the scope of the DPA and/or the EU GDPR and
 - b) the Customer avails itself of Swisscom under the Contract as a contracted processor or sub-contracted processor for processing personal data that falls within the scope of the DPA and/or the EU GDPR ("Relevant Data").

1 Object, duration and nature of data processing

The object, duration and nature and purpose of the processing shall be stated in the Contract. The categories of the Relevant Data processed, the categories of data subjects and the technical and organisational measures ("TOM") that must be adopted shall be stipulated either in the Contract or in an annex or annexes to this Agreement.

2 Scope and responsibility

- ¹ Swisscom shall process the Relevant Data exclusively for the purposes of the performance of the Contract or for the purposes set forth in the Contract. The Customer shall bear responsibility for the conduct of lawful data processing as such, including the lawful status of contracted (sub-contracted) processing.
- ² The instructions of the Customer shall be documented in this Agreement and the Contract. The Customer shall be entitled at any time to issue further written instructions to Swisscom concerning the processing of the Relevant Data. Swisscom shall comply with these instructions, provided that they are feasible and objectively reasonable for Swisscom having regard to the services agreed to under contract. If such instructions result in Swisscom incurring additional costs or lead to a change in the scope of services, the contractually agreed contract change procedure shall apply.
- ³ Swisscom shall inform the Customer promptly if it is of the view that an instruction contravenes the DPA or the EU GDPR. Swisscom may in this case defer implementing the instruction until it has been confirmed or amended by the Customer. The above shall not apply to instructions by the Customer in connection with the granting of access rights or the surrender of Relevant Data to the Customer itself, and Swisscom may at all times assume that these instructions are legally compliant. It is, however, entitled to request the Customer to provide corresponding written confirmations.

3 Duties of Swisscom

- ¹ Swisscom shall process the Relevant Data exclusively in accordance with the provisions set forth in the Contract and this Agreement. The fulfilment of Swisscom's statutory, regulatory or administrative obligations remains reserved.
- ² Swisscom shall take the technical and organisational measures specified in the Contract and the Annexes to this Agreement to protect the Relevant Data. Swisscom shall be entitled to adapt the agreed TOM at any time provided the agreed level of protection is maintained. Swisscom shall also review the agreed TOM with reference to the current state of the art on an ongoing basis and shall, where appropriate, propose to the Customer that additional measures be implemented, which may be agreed upon by way of a contractual addendum.
- ³ Swisscom undertakes in relation to the Relevant Data to keep a record of processing activities in accordance with Article 12(1) DPA and Article 30(2) EU GDPR. Swisscom shall allow the Customer to view such parts of this record that concern the provision of services to him/her by Swisscom at any time upon request.
- ⁴ Swisscom shall ensure that the employees charged with processing the Relevant Data of the Customer and other employees and other auxiliary agents of Swisscom are prohibited from processing the Relevant Data for any purposes other than those set out in the Contract and in any manner that departs from this Agreement. Swisscom shall further ensure that the persons who are authorised to process the Relevant Data have subjected themselves to a duty of confidentiality and/or are subject to a reasonable

statutory duty of non-disclosure. The duty of confidentiality / non-disclosure shall continue to apply after termination of the Contract.

- ⁵ Swisscom shall inform the Customer promptly should it become aware of any breaches of the protection of the Relevant Data within its area of responsibility or that of one of its sub-contracted processors (data breach). Swisscom shall inform the Customer appropriately in writing (email is sufficient) of the nature and extent of the breach and of possible remedial measures. In such an eventuality, the Parties shall take the necessary steps in order to ensure that the Relevant Data is protected and to reduce any potential adverse consequences for both the data subjects and the Parties, which steps they shall discuss promptly with each other.
- ⁶ Swisscom shall designate a contact person for the Customer concerning data protection issues arising in relation to the Contract and, where required pursuant to Article 37 EU GDPR, a data protection officer.
- ⁷ Swisscom undertakes to support the Customer upon request as far as it is able, for a separate fee agreed in advance, to fulfil the rights of the data subjects in relation to the Customer in accordance with Chapter 4 of the DPA or Chapter III of the EU GDPR. In addition, Swisscom may offer further support to the Customer in return for separate remuneration, e.g. in connection with a data protection impact assessment, supervisory authority consultation or reports etc.
- ⁸ Relevant Data shall be surrendered or deleted upon termination of the Contract in accordance with the contractual terms. Swisscom shall use standard procedures in the IT sector for deleting Relevant Data.

4 Duties and responsibilities of the Customer

- ¹ The Customer shall independently take reasonable technical and organisational steps to protect the Relevant Data within its area of responsibility (e.g. in its own systems, buildings, applications/environments for which it is operationally responsible).
- ² The Customer shall inform Swisscom promptly if it finds any breaches of data protection provisions in the service provided by Swisscom.
- ³ The Customer shall designate a contact person for Swisscom concerning data protection issues arising in relation to the Contract and, where required pursuant to Article 37 EU GDPR, a data protection officer

5 Queries by data subjects

In the event that a data subject contacts Swisscom directly with requests for rectification, deletion, information or other claims relating to Relevant Data, Swisscom shall refer the data subject to the Customer where it is possible to associate the data subject with the Customer according to the information provided by him/her. The support provided to the Customer by Swisscom for queries from data subjects shall be governed by section 3.

6 Forms of evidence, reports and audits

- ¹ Swisscom must provide the Customer upon request with information to document compliance with the duties set forth in this Agreement.
- ² The Parties agree that compliance with this obligation shall be evidenced in principle by the fact that Swisscom has ISO 27001 certification or by Swisscom providing the Customer, in respect of certain areas, with ISAE 3402 or ISAE 3000 reports or similar audit reports prepared by an independent third party or confirmations concerning certifications etc. that are specially referred to in the Contract. The above shall not exclude any audit rights specified in the Contract and any audit rights of the Customer or its supervisory authorities which are mandated by law. The principle of proportionality shall be adhered to in all cases in such audits and reasonable account must be taken of the legitimate interests of Swisscom (namely to confidentiality). Unless otherwise provided, the Customer shall be responsible for all costs of such audits (including proven internal costs incurred by Swisscom in cooperating in the audit).
- ³ In the event that any breaches of this Agreement or deficient compliance by Swisscom with its duties are ascertained following the presentation of evidence or reports or in relation to an audit, Swisscom shall take appropriate corrective action promptly and at no charge.

7 Involvement of sub-contracted processors

- ¹ Where the Contract contains no broader restrictions on the engagement of third parties, Swisscom shall be authorised to engage sub-contracted processors but must inform the Customer beforehand if, after this Agreement comes into force, it engages new sub-contracted processors or changes existing sub-contracted processors. If there is good cause under data protection law, the Customer may within a period of 30 days file a written

objection against the engagement of a new or the change of an existing contracted processor/sub-contracted processor. If there is good cause under data protection law, and where the Parties cannot agree on an amicable solution, the Customer shall be granted a termination right in relation to the service affected hereby.

- ² Swisscom shall reach agreements with its sub-contracted processors as necessary to ensure that the obligations specified in this Agreement are complied with.

8 Cross-border disclosure

Any disclosure of Relevant Data by Swisscom to a third country or to an international organisation shall only be permitted if Swisscom complies with the provisions of Articles 16 et seq. DPA or Chapter V EU GDPR. Where, on the other hand, such a disclosure of Relevant Data is desired by the Customer or occurs on his/her behalf, the Customer alone shall be responsible for compliance with the corresponding provisions.

9 Concluding provisions

- ¹ The article numbers for the DPA refer to the revised version of the DPA (Federal Gazette 2020 7639 [German language version]). The terms agreed to herein shall apply mutatis mutandis until its entry into force. The term of this Agreement shall coincide with the term of all contracts concluded between Swisscom and the Customer under which Swisscom processes Relevant Data for the Customer, unless the obligations provided for under this Agreement extend beyond such periods.
- ² By way of derogation from any written form requirements in the Contract, the present Agreement may also be agreed or amended electronically between the Parties.
- ³ The obligations under this Agreement shall apply by way of supplementing, rather than limiting, the obligations stipulated in the Contract. In relation to the TOM stipulated generically in an Annex to this Agreement, the provisions of the Contract shall prevail in the event of inconsistency. The Contract provisions shall continue to apply unchanged in all other respects.