

## **A: General Provisions**

### **1 Subject**

These General Terms and Conditions (GTC) govern the general aspects of the Parties' business relationship for the acquisition and provision of IT and telecommunication services from Swisscom's "Enterprise Customers" business area.

The services shall be agreed upon in individual contracts between the Parties.

Reference may be made to these GTC in an individual contract or a base agreement or a corresponding proposal. These GTC are an integral part of these individual contracts and the base agreement.

Any references made hereinafter to "Agreements" relate to individual contracts or base agreements, as the case may be, as well as to these GTC.

Other General Terms and Conditions to which Customer makes reference in declarations, namely, orders, proposals, or requests for proposals, are only valid if Swisscom has expressly accepted them in writing. In this case, as well, such General Terms and Conditions only apply to the respective Agreement.

### **2 Swisscom's Services**

Swisscom shall perform its services in accordance with the provisions of these GTC and the individual contracts and base agreements.

Unless otherwise agreed, Swisscom shall be responsible for the planning, procurement, operation, maintenance, support, oversight, replacement or upgrading, and other use of the resources necessary for providing Swisscom's services. This also applies to hardware and software deployed, except for the resources to be provided by Customer in accordance with the provisions of the Agreement.

In case of delivery of goods outside Switzerland the place of delivery will be mentioned in the individual contracts. Delivery will be DAP (Incoterms 2010).

In order to fulfil its obligations, Swisscom may commission third parties (in particular, subcontractors).

### **3 Customer's Obligations of Cooperation**

Customer must, by all reasonable means, to the extent necessary, and in a timely manner, actively support Swisscom, its employees, and any third parties commissioned by Swisscom for the purpose of performing the

Agreement in the provision of Swisscom's services, cooperate in taking the necessary preparatory and provisioning actions (including the procurement of all requisite rights and authorisations) and provide the necessary access to its premises, systems and resources.

For resources installed in Customer's premises, Customer shall make available the building's wiring system and the premises themselves, including power supply, building wiring, partitioned area (safeguarded against access by third parties) etc. per the manufacturer's specifications, at no charge. Customer shall safeguard these items against unauthorised access and manipulation.

For equipment to be supplied by Customer, Customer is obligated to utilise exclusively current versions/patches, etc. supported by the respective manufacturer. Customer shall conclude suitable maintenance/support contracts for the entire term of performance of Swisscom's services. Exceptions to this provision and modifications to the supplied equipment and the effects thereof shall be agreed upon with Swisscom in advance.

Customer is responsible for safeguarding the components and security features supplied to it by Swisscom for Customer's use (in particular, passwords, tokens, system access information, encryption and safety equipment, authentication methods, etc.). If Customer determines that these items have been lost (including through the disclosure of security features) or that there is good cause to assume that they have been manipulated without authorisation, Customer shall inform Swisscom immediately.

In addition the specific duties to cooperate identified in the individual contracts apply.

Customer alone shall bear all costs incurred by it in the course of fulfilling its obligations of cooperation.

Swisscom shall endeavour to perform its services even if Customer fails to fulfil its obligations to provide support and to cooperate, but Swisscom cannot guarantee performance.

In the event of non-fulfilment or improper fulfilment of Customer's responsibilities or obligations, Customer shall compensate Swisscom for the resulting additional expense at the hourly or daily rates contractually agreed upon in each case or, subsidiary, at Swisscom's standard rates applicable (both hereinafter referred to as "applicable hourly or daily rates"). If Swisscom is jointly responsible, then each of the Parties shall bear its proportional share of the additional expense.

Customer is not authorised to make acquisitions or disbursements or to cause such to be made on behalf or for the account of Swisscom or to represent Swisscom otherwise.

#### **4 Payment and Expenses**

Customer shall make the payments specified in the individual contracts for the services performed by Swisscom.

All prices are exclusive of any taxes, duties and charges. All taxes, duties and/or charges, including but not limited to withholding taxes and/or deductions, imposed under or by any governmental authority upon transactions under these GTC will be borne by Customer, unless Customer supplies exemption documentation. If any such tax or duty has to be withheld or deducted from any payment under the contract by Customer, Customer will increase payment by such amount and shall ensure that after such withholding or deduction Swisscom shall have received an amount equal to the payment otherwise required. Additional taxes, duties and/or charges may apply if Swisscom personnel are required to perform services outside their normal tax jurisdiction. As practical, Swisscom will work to mitigate such tax, duty and/or charge and will inform Customer in advance if these additional taxes, duties and/or charges apply and are payable by Customer.

Compensation shall be due in accordance with the agreed payment schedule. In the absence of such schedule, one-time payments shall be made in advance, and recurring payments shall be made monthly in arrears. Swisscom shall demand payments due via invoice. Invoices are payable net within 30 calendar days.

Any incorrect invoice items shall not entitle Customer to withhold payment of correct invoice items.

For voice and data services covered by telecommunications law, invoice items billed on the basis of traffic data shall be deemed approved, unless Customer has objected to them in writing, stating the reasons for its objections, within six months of the invoice date.

Customer shall be in default upon expiry of the payment period. The statutory rate of default interest shall apply. If Customer defaults on a payment, Swisscom may make its performance of other services under the individual contracts contingent on payment in full of all outstanding invoices and, at its discretion, on prepayments or other types of security as well.

Where no special agreement on prices has been made for services requested by Customer, Customer shall be charged at actual cost using the applicable hourly or daily rates.

Unless otherwise agreed, travel, food, and lodging expenses shall be paid by Customer and charged separately.

#### **5 Obligation to Provide Information**

Except as prohibited by statutory or contractual confidentiality obligations, each of the Parties shall inform the other of developments, incidents, and findings that may be relevant to the other Party in connection with the performance of the Agreements or to the contractual relationship as a whole.

#### **6 Ownership, Proprietary, and Usage Rights**

##### **6.1 Ownership of goods**

Unless otherwise expressly agreed in writing, the Agreements do not provide for any transfer of ownership.

##### **6.2 Proprietary and usage rights**

Swisscom grants to Customer, for use by Customer itself, a non-transferrable, non-exclusive right to use the services of Swisscom specified in the Agreements. The content and scope of this right are indicated in the Agreements. In the case of services that, in accordance with the respective individual contract, are only to be performed for a specific period of time, this right is restricted to the duration of the individual contract.

If products that Customer can identify as third-party products are part of the services provided by Swisscom, Customer also acknowledges the use and licence terms of these third parties associated with these products.

All rights to intellectual property existing or arising at the time of performance of the Agreement (copyrights, patent rights, know-how, etc.) relating to services of Swisscom shall be retained by Swisscom or the third party holding the same. Neither is restricted in otherwise exploiting or using this intellectual property, nor is either under any duty to Customer in respect of the same. If the Parties have developed intellectual property jointly, they authorise each other permanently to use and exploit these rights independently of one another without restriction, subject to confidentiality obligations. In the case of software, unless otherwise agreed in writing, Customer has no right to the source code and shall not use or acquire the same. Customer acknowledges the legal validity of the intellectual property rights of Swisscom and of any third parties regarding the services performed by Swisscom and shall take no actions that might impair the value of the same. Customer shall take all actions within its means to prevent any unauthorised use. This paragraph shall survive the termination of the Agreements.

## **7 Default by Swisscom**

Unless otherwise agreed in writing, Swisscom shall be in default after the expiry of a reasonable grace period set by Customer in a written reminder. Deadlines shall be deemed met upon provisioning of the service by Swisscom.

If Swisscom is in default, Customer must set an appropriate grace period for subsequent performance. If Swisscom fails to fulfil its performance obligation by the expiry of this period, Customer has the right to withdraw from the respective individual contract. Services (or parts thereof) that have already been provided substantially in accordance with the Agreement and can be used by Customer as such in an objectively reasonable manner must be paid for in full. Any withdrawal from the Agreement shall not affect these services; they shall remain subject to the respective provisions of the Agreement. In the event of withdrawal from the Agreement, the provisions of section 14 must furthermore be observed.

In the event of a missed deadline in connection with continuous obligations, such as, in particular, in the case of non-compliance with service levels, only the relevant consequences specified in the individual contract shall apply.

## **8 Receipt, Acceptance, and Notification of Defects**

Customer is obligated to take delivery of all services of Swisscom immediately upon provisioning (receipt).

Services under a contract for work and services shall additionally require Customer's acceptance.

Prior to acceptance, Customer shall usually conduct an acceptance inspection. A written record of the acceptance inspection shall be prepared and signed by both Parties. Swisscom has the right to a written declaration of acceptance. If no acceptance inspection has been agreed upon or Customer waives the same, Customer must notify Swisscom in writing of any defects within 20 calendar days of provisioning.

Swisscom may request acceptance of partial services, provided this is reasonable for Customer. In this case, any defects may be asserted at the next final acceptance only insofar as they were not and could not be detected during an earlier (partial) acceptance.

Minor defects do not entitle Customer to withhold acceptance but must be corrected by Swisscom within a reasonable period of time. If material defects are detected, acceptance shall be postponed. Swisscom shall correct the detected defects within a reasonable period of time and once again furnish the deliverable in question for approval by Customer.

If Customer withholds acceptance based on material defects after having given Swisscom at least two opportunities for proper delivery for each deliverable, Customer may withdraw from the respective individual contract. Services (or parts thereof) that have already been provided substantially in accordance with the Agreement and can be used by Customer as such in an objectively reasonable manner must be paid for in full. Any withdrawal from the Agreement shall not affect these services; they shall remain subject to the respective provisions of the Agreement. In the event of withdrawal from the Agreement, the provisions of section 14 must furthermore be observed.

Unless Customer states in writing that it is withholding acceptance and identifies material defects within 20 days of provisioning of the services, the services shall automatically be deemed accepted. Services shall also automatically be deemed accepted as soon as Customer uses the deliverables in its operations or business or causes them to be used in such.

Further details concerning the acceptance procedure may be agreed upon in the respective individual contract.

## **9 Warranty of Swisscom**

### **9.1 General provisions**

Swisscom shall provide its services in a professional and diligent manner. A service is only owed under a contract for work and services if the individual contract expressly specifies this.

### **9.2 Warranty of quality for operational, maintenance and support services**

Swisscom warrants that it will comply with the service levels specified in the individual contracts.

However, Swisscom cannot warrant a completely error free, undisturbed, or uninterrupted operation.

Swisscom shall assess its compliance with the service levels and provide Customer with a report in this regard. This report shall be deemed correct in the absence of evidence to the contrary. Customer may ask to inspect the assessment results and records concerning Customer. In case of non-compliance with the service levels, only the relevant consequences specified in the individual contract shall apply.

Services for which no service levels have been agreed upon shall be performed on a best effort basis. "Best effort" means that Swisscom shall strive in a manner that is appropriate and customary in the industry to perform the services and/or troubleshooting using the resources at its disposal but offers no assurances in this respect.

### **9.3 Warranty of quality for one-time services to be performed under a contract for work and services**

Swisscom warrants that its services comply with the specifications, representations, and characteristics specified in the individual contracts.

The warranty period shall be six (6) months from the date of effective acceptance.

If, following successful acceptance, the work is operated, maintained, or supported by Swisscom, defects shall be corrected solely in accordance with the provisions and processes specified in the respective individual contract for operational, maintenance, or support services.

In case of a defect covered by the warranty, Customer may initially only request remedying of the defects free of charge. If the defect cannot be rectified within a reasonable period of time considering the cause of the defect, Customer shall set a reasonable grace period for rectification of the defect. If the remedying fails conclusively, Customer may:

- a) request an appropriate reduction of the price, or
- b) in the case of a material defect that prevents Customer from using the work as a whole, withdraw from the respective individual contract, provided Customer has given Swisscom a written warning of its withdrawal from the Agreement and granted a reasonable final grace period, and Swisscom fails to successfully rectify the defect by the expiry of this final period. Services (or parts thereof) that have already been provided substantially in accordance with the Agreement and can be used by Customer as such in an objectively reasonable manner must be paid for in full. Any withdrawal from the Agreement shall not affect these services; they shall remain subject to the respective provisions of the Agreement. In the event of withdrawal from the Agreement, the provisions of section 14 must furthermore be observed.

### **9.4 Warranty of title**

Swisscom warrants that its services do not infringe any proprietary rights held by third parties in Switzerland (hereinafter "proprietary rights").

If a third party attempts to prevent Customer from using Swisscom's services according to the contractually agreed terms and conditions of use based on allegedly superior proprietary rights, Customer shall notify Swisscom thereof in writing within five (5) calendar days. Subject to timely notification of Swisscom and reasonable support by Customer, Swisscom shall, at its own discretion, either modify its services (including software) so that they do not infringe proprietary rights, however, fulfilling all material requirements of Customer, or provide Customer with a licence from the third party at Swisscom's own expense, or contest the third-party claim. If the third party files a claim against Customer, Customer shall transfer to Swisscom exclusive control regarding the conduct of the case and take all actions necessary for this purpose. Subject hereto, Swisscom shall assume the costs of conducting the case (including reasonable attorney's fees) and compensate Customer, subject to the limitation of liability specified in section 10, for any direct damages resulting from a final court ruling against Customer. Customer forfeits its claims under this warranty of title if it withdraws control regarding the conduct of the case from Swisscom or fails to transfer such control to Swisscom, particularly if Customer, without Swisscom's express consent, deals with third-party claims by means of settlement or recognition, whether in whole or in part. Swisscom shall not withhold such consent without good cause.

### **9.5 Warranty for third-party services and products**

Swisscom shall be liable for services of third parties commissioned by it in the same manner as for its own services. If the engagement or commissioning of a particular third party is requested or required, e.g., by Customer or system specifications, such as in the case of specific hardware or software manufacturers in particular, Swisscom warrants only the diligent instruction and supervision of these third parties.

Regarding the resale of third-party products (e.g. hardware and software), the scope of Customer's warranty and guarantee claims shall be based exclusively on the specific product documentation of the manufacturer/supplier.

Regarding orders made by Customer via online portals, such as e-Orders, the restrictions indicated on such portals shall apply in addition.

## 9.6 Exclusions of Warranty

The warranty excludes incidents or circumstances, the causes of which are beyond the control of Swisscom and which are attributable in whole or in part to Customer and/or to third parties not commissioned by Swisscom (e.g. modifications of the software or Customer software, faults originating from Customer's network, and improper use), as well as events of force majeure. Furthermore, the contractual warranties do not apply to resources provided by Customer (in particular, software licences), even if these were procured by Swisscom for or on behalf of Customer.

Swisscom makes no warranty that work developed or delivered by it (in particular, customized software) and IT systems operated by it can be used uninterruptedly and flawlessly in all combinations desired by Customer, with any data at will, or with other IT systems or programs.

If Customer requests for itself or for third parties commissioned by it credentials for systems or applications for which Swisscom has operational responsibility, and may contractual breaches potentially be caused by use of these credentials (in particular, through non-compliance with service levels), then Customer shall have the burden to prove that the contractual breach was not caused by Customer or by the third party commissioned by it. Swisscom has the right to establish the technical and organisational parameters for such access.

Fault analyses and recommendations, and remediation of faults that are attributable to Customer or a third party commissioned by it, that are based on defects in resources provided by Customer (including software licences), or that are undertaken because of incompatibilities in the resources provided by Customer in interaction with the infrastructure provided by Swisscom shall be made on a best-effort basis and billed to Customer at actual cost.

## 9.7 Warranty of Customer

In the event of legal claims of third parties or authorities based on data, content, or the resources provided by Customer (in particular, software licences), Customer shall indemnify Swisscom, ensure an appropriate defence against such claims, and cover the costs of such defence.

Should Swisscom have well-founded doubts as to the lawfulness of a planned or actual use of the services provided by Swisscom, including the systems operated or supplied by it, then Swisscom may suspend the affected service or take other suitable measures without owing compensation, even if this conflicts with Swisscom's duty of performance under the individual contracts. In this event, Swisscom shall inform Customer immediately.

## 10 Liability

In cases of contractual breaches, Swisscom shall be liable for proven damages unless it can prove that it is not at fault. Swisscom's liability for damages caused through wrongful intent and gross negligence is unlimited. In case of slight negligence, Swisscom's liability for personal injuries is unlimited; for property losses, it is limited up to the amount of CHF 500,000 per loss event, and for pecuniary losses, up to the amount of CHF 50,000 per loss event. Under no circumstance shall Swisscom be liable for indirect or consequential damages, including but not limited to lost profits, data or reputational losses, and third-party claims.

Furthermore, Swisscom shall not be liable if due to force majeure the performance of the service is occasionally interrupted, restricted it in whole or in part, or rendered impossible. The term "force majeure" includes in particular natural phenomena of particular intensity (avalanches, flooding, landslides, etc.), acts of war, riots, unforeseeable official restrictions, etc. If Swisscom cannot fulfil its contractual obligations, the performance of the Agreement or the deadline for performing the same shall be postponed according to the force majeure event that has occurred. Swisscom shall not be liable for any losses incurred by customer because of the postponement of performance of the Agreement.

In connection with the hiring of services, Swisscom is only liable for diligently selecting the employees supplied.

If the individual contracts include contractual penalties against Swisscom and these penalties are claimed by Customer, then Customer shall not be entitled to any other claims, including for damages, or any refund of or reduction in price, as the case may be.

Any other provisions concerning Swisscom's liability, even in documents taking precedence over these GTC, shall only apply if they make express reference to the present provision.

The foregoing provisions apply to contractual and extra-contractual claims.

## 11 Data Protection, Secrecy, Compliance with Laws and Regulations

### 11.1 Data protection

Both Parties undertake to comply with the provisions of the Swiss Federal Data Protection Act at all times in the course of processing their internal data and shall cause their employees and other auxiliary persons and engaged third parties to comply with the same. This also includes taking appropriate technical and organisational security



measures. Customer must ensure compliance with the applicable provisions by its employees and third parties who use its offerings and systems. Customer is responsible for informing the affected persons about the processing of the data relating to them and, if necessary, to obtain the consent necessary for this purpose.

Swisscom only collects, stores, and processes data that are required for executing the Agreement and administering and managing the customer relationship, specifically for warranting a high quality of service, for the security of the operation and infrastructure, and for billing.

In connection with concluding and executing the Agreements, Swisscom may obtain information about Customer and disclose data concerning its payment history, use its data for designing and developing its products and services based on its needs and for customised offers, and process its data for the same purposes within the Swisscom Group.

If a service of Swisscom is provided in conjunction with third parties or if Customer procures services of third parties in connection with the Agreements, then Swisscom may disclose Customer data and/or data concerning Customer to such third parties in Switzerland or abroad, provided that this is done in the course of performing the services or is necessary for debt collection or is related to the same.

Additional data protection requirements to be observed, e.g. in the course of contract data processing, such as, in particular, the scope and purpose of the data processing, as well as the services requested by Customer in relation to data security, may be agreed upon in the individual contracts. The procedures and controls allotted for this, as well as the associated costs, shall likewise be agreed upon in the individual contracts.

### **11.2 Confidentiality**

Both Parties undertake to treat confidentially all non-generally known information that they acquire in connection with the performance of their services under the Agreements or with the contractual relationship or concerning the customers and business relationships of the other Party and shall cause their employees and other auxiliary persons and engaged third parties to treat such information confidentially. The Parties undertake to make this information available to third parties only insofar as the Agreements permit them to do so, the other Party expressly permits this, or this is required based on a court order or statutory duty. Swisscom has the right to disclose the information within the Swisscom Group as well as to commissioned third parties in Switzerland and abroad but, in the latter case, only insofar as this is done

in order for the commissioned third parties to fulfil their contractual obligations. Insofar as telecommunication services are provided, Swisscom is subject to telecommunication law and telecommunication secrecy.

Swisscom is authorised to use names and marks of Customer and the agreed services of Swisscom for reference purposes. No other advertising or publication concerning project-specific services may be made without the consent of the other Party.

### **11.3 Compliance with Laws and Regulations in General, Measures against Abuse and Interruptions**

The Parties will comply with laws and regulations applicable to them. This means that Swisscom will comply with laws and regulations applicable to Swisscom generally as a provider of information and communication technology products and services. Customer is responsible for determining and specifying the requirements of laws and regulations applicable to Customer's business, including those relating to products and services that Customer acquires subject to these General Terms and Conditions.

Each party will comply with applicable export and import laws and regulations, including those of the United States of America.

Upon establishing the existence or reasonable indications of security threats, as well as of any unlawful or improper use or when using equipment that causes disruptions, Swisscom reserves the right, subject to immediate notification of Customer, to take measures to prevent or minimise impending losses. The measures to be taken include, in particular:

- a) requesting Customer to immediately and permanently refrain from or to actually prevent, as the case may be, any unlawful or improper use of resources and to remove any resources that cause interruptions; as well as extraordinary termination for good cause
- b) interrupting on an immediate and temporary basis any affected contractual services (e.g. blocking access services temporarily)

The taking of such measures shall not constitute a breach of contract on the part of Swisscom, provided that the cause of the interruption/threat is not attributable to Swisscom.

## 12 Contractual Amendments

Contractual amendments may be proposed by either Party at any time. All amendments and deviations from the respective Agreements must be made in writing.

Customer shall bear the consequences (in particular, additional expenses, schedule delays, and system interruptions) of contractual amendments proposed or approved by Customer. This applies not only to services provided by Swisscom but also to those provided by Customer itself or by third parties.

Swisscom may, in the course of developing its services, adapt its services and processes at any time, as long as this does not adversely affect Customer's use.

Swisscom may adapt the conditions and make objectively material adaptations of its services and processes to changes in operational and business conditions on 1 January of each year, insofar as the adjustments are consistent with an interest warranting protection (e.g., new standards or regulatory requirements, new technologies, supplier changes, modifications to hardware and software, new or changed services of Customer, changes in licensing models, and inflation) and the resulting adjustments, especially price increases, are reasonable to Customer. Such adjustments shall each be notified in writing to Customer by Swisscom by 15 November of the prior year at the latest. With respect to objectively material adjustments, Customer has the right to terminate the respective Agreements as of the date on which the adjustments take effect. Customer must exercise this right within 30 calendar days after the date of notification of the adjustment. Customer shall have no further rights in this regard.

## 13 Effective Date, Term, Termination

The Agreements shall take effect upon being signed by both Parties. If Agreements are not limited in time, they shall each be deemed to be for an indefinite period as regards the performance of the long-term obligation contained in them. Unless otherwise agreed, the Agreements may be terminated at the end of the calendar year, subject to a notice period of six (6) months. If a minimum duration was agreed upon, the respective Agreement may only be terminated upon expiry of the minimum duration.

The effective date, term, and options for ordinary termination of the individual contracts shall be specified in the individual contracts, subject to the right to extraordinary termination of a continuous obligation for good cause. Good cause shall exist in situations including but not limited to the following:

- a) the occurrence of events or circumstances that make continuing the agreed cooperation under the respective Agreements unreasonable for the terminating party, such as, in particular, the persistent serious breach of material contractual duties;
- b) official publication of the initiation of bankruptcy or composition moratorium of one of the Parties. In these cases, the right of extraordinary termination applies only to the other Party;
- c) incomplete payment of a requested prepayment or of other types of security.

If a contractual breach can be remedied by a Party, the other Party must provide the breaching Party with written notice of the breach and grant the breaching Party a period of 60 calendar days to remedy the breach before declaring the termination.

## 14 Consequences of Termination

### 14.1 General provisions

Materials delivered to the other Party for the duration of the Agreement (e.g., keys, IT and telecommunication equipment, means of identification, and documents), as well as premises provided to the other Party, must be taken back or returned, as the case may be, within 30 calendar days after termination of the respective Agreement.

Unless otherwise specified in an Agreement, Swisscom shall delete the data provided by Customer after termination of the Agreement unless legitimate grounds, in particular the internal archiving required by statute and the securing of evidence, preclude this.

### 14.2 Termination of operational services

At the end of the Agreement, regardless of the reason for its termination, both Parties shall cooperate for the purpose of a proper handover of operations.

Subject to an extraordinary termination for good cause by Swisscom in accordance with section 13, Swisscom undertakes to support Customer in exchange for separate compensation in connection with the necessary termination activities, including any migration preparations in the area of services covered by the present Agreement or the individual contracts, as the case may be.

Customer, in turn, undertakes to inform Swisscom of its anticipated need for assistance in good time before the end of the Agreement, in order to enable the corresponding resource planning by Swisscom. The Parties shall agree in writing in good time as regards the services to be provided by Swisscom.

If Swisscom provides services beyond the termination date, Swisscom may collect market-based surcharges on the conditions granted under the then current version of the individual contracts. Services that are not covered by the individual contracts or that go beyond the same shall be offered by Swisscom at the standard rates of Swisscom in effect at the time.

#### **14.3 Customer's obligation to provide compensation**

In the event of the premature termination of recurring services, Customer must pay to Swisscom the remainder for any one-time services included in the recurring services, regardless of the reason for termination.

Additional obligations to provide compensation may be specified in the individual contracts.

#### **15 Miscellaneous Provisions**

Each of the Agreements (including these GTC) shall supersede all respective earlier arrangements, correspondence, declarations, negotiations, or undertakings of the Parties concerning the subject of the respective Agreements, unless the respective Agreements expressly make reference to the same. This also applies to offers, requests for tenders, and specifications.

The validity of the Agreements is subject to the condition that the official approvals required for implementing the respective Agreements are issued.

Unless the Parties have agreed in writing on another procedure, all amendments to and deviations from the respective Agreements must be made in writing.

Customer shall not offset claims except with the written consent of Swisscom.

The rights and obligations under the respective Agreements shall not be assigned or transferred to third parties except with the written consent of the other Party. However, Swisscom may assign and transfer the rights and duties to another member company of the Swisscom Group, thus discharging its obligations under such Agreements.

The Parties agree that they are not forming a simple partnership (Art. 530 ff. CO) through the Agreements. If, contrary to expectations, a simple partnership is adopted by the Parties, then the termination of the Agreement with

which the simple partnership is associated shall result in the termination of the simple partnership at the same time.

If any part of an Agreement proves invalid or void, this shall not affect the validity of the remaining provisions or the existence of the respective individual contracts and other individual contracts. The invalid or void provision shall be replaced by a valid provision that is as consistent as possible with the economic intent of the Parties.

#### **16 Applicable Law and Jurisdiction**

The Parties' contractual relationship, including these GTC and all individual contracts and base agreements concluded under the same, is subject to Swiss law exclusively. The Parties waive the conflict rules of international private law and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.

The Parties agree that the courts at Swisscom's place of registered office shall have exclusive jurisdiction over any and all disputes arising from or in connection with the Parties' present contractual relationship, i.e. the legal relationship based on the individual contracts and base agreements, including these GTC. However, Swisscom may take legal action against Customer at the latter's place of registered office. The foregoing is also subject to each of the Parties' right to file a third-party action against the other Party in the court having jurisdiction over the main action, but only if this court is located in Switzerland.

#### **B: Terms and Conditions of Use for Voice and Data Services Covered by Telecommunications Law**

#### **17 General Terms and Conditions of Use**

Swisscom shall enable Customer to make calls and/or exchange data over the telecommunication networks available via Swisscom's connections, these being networks of Swisscom and providers with whom Swisscom has made a corresponding interconnection agreement. When using suitable communication equipment (mobile telephone, modem/router, data terminal, etc.), the foregoing hereinafter being referred to collectively as "end devices"), Customer may subsequently receive access to information retrieval systems, the Internet and thus related services.

Customer is responsible for ensuring that Customer's connections are used in accordance with the law and with the Agreement, even by third parties.



Customer is responsible for the content of the information (language, data in any form) that it causes to be transmitted or processed by Swisscom or that Customer makes available to third parties, if applicable. Swisscom is not liable for any information that Customer obtains over the telecommunication networks or that third parties distribute or otherwise make available over the same.

Swisscom accepts no liability and makes no warranty for third-party services obtained or ordered via Customer's connections (e.g. by way of value-added telephone services), even if Swisscom performs the collection of third-party claims against Customer. Customer's contractual partner is exclusively the corresponding service provider.

## **18 Product-specific Terms and Conditions**

### **18.1 Blocking sets**

By using the hotline, Customer may block value-added services offered via 090x numbers or SMS/MMS short codes and other value-added services offered via the Swisscom network and charged on the Swisscom bill. The blocking may apply to all corresponding value-added services or only those related to adult entertainment.

### **18.2 Change of network and provider abroad**

In the event of international use of Customer's connections, Customer waives automatic notification of roaming prices to the end devices of the users in terms of Art. 10a para. 2 OTS. In activating the individual message, users of Customer connections shall receive, after using another network provider's network, only the roaming prices of the standard subscription type used as the basis for calculating an individual rate. Through the Swisscom customer-care unit responsible, the service can be activated/deactivated company-wide for all Swisscom connections or through the code Start RSMS to 444 and the code Stop RSMS to 444. The roaming prices stated in the automated message referred to in Art. 10a para. 2 OTS are solely for informational purposes and shall have no binding effect on the Parties.

### **18.3 SIM Card**

Swisscom shall replace defective SIM cards free of charge for a period of one (1) year. Swisscom has the right to replace the SIM card at any time if this is necessary for technical or operational reasons. Swisscom also has the right to load appropriate data or software on Customer's SIM card at any time for purposes of optimising or expanding Swisscom's services over the mobile network.

### **18.4 Telephone Number Display and Suppression**

The caller's telephone number designated for transmission will normally be displayed to the call recipient regardless of whether or not the caller is entered in a directory. Customer may order permanent telephone number suppression from Swisscom free of charge or may suppress the telephone number display for each call. In certain cases, Swisscom may be unable to guarantee the telephone number display or suppression for technical reasons, particularly with calls from or to a third-party network and with SMS. Suppression of the telephone number display is not possible with calls to Swisscom's hotlines or in special cases governed by law (in particular, emergency calls and the transcription service for the hearing impaired). It is also possible that, because of the use of additional services, a different telephone number will be displayed (e.g. the number of the building's switch-board) than the one of the connection actually being used.

### **18.5 Directory**

At Customer's request, Swisscom or any third party commissioned by it shall enter Customer's information in a directory. Swisscom is under no obligation to verify the correctness of the data provided by Customer for entry. Customer may cause an annotation to be made in the directory to the effect that Customer does not wish to receive any telemarketing calls or advertising messages and that Customer's data are not to be disclosed for commercial purposes. Nevertheless, the possibility that Customer will receive telemarketing calls or advertising messages (e.g. SMS) from third parties cannot be ruled out.

### **18.6 Addressing Elements**

Customer has no right to be assigned or to keep particular addressing elements assigned to Customer by Swisscom for purposes of using telecommunication services (e.g. a particular telephone number). Swisscom may take back or change assigned telephone numbers or other addressing elements assigned by it (e.g. IP addresses) without compensation if official, operational, or technical reasons so require. Except for the porting to another telecommunication provider, the addressing elements assigned by Swisscom shall revert to Swisscom without compensation at the end of the Agreement or upon termination of the connection.

## **19 Announcement of Prices**

Swisscom may also announce prices immediately prior to the use of a particular service (e.g. in connection with WAP services or Internet-based value-added services) or announce them on its website (e.g. roaming prices).

## **20 Transmitting and Receiving Systems**

For voice or data traffic on third-party networks or using connections pertaining to third-party networks and wireless technologies, Swisscom makes no representation or warranty regarding availability, quality, operation, or support.

Swisscom shall see to the maintenance of its networks. It shall accept trouble reports via its hotline. Swisscom shall correct interruptions in its sphere of influence as promptly as possible.

Any statements made by Swisscom as regards the current and planned wireless coverage and technologies shall not be binding. Dead spots are possible even in areas designated as “covered” and particularly inside buildings or vehicles. Outside Switzerland, wireless coverage depends on the roaming partner’s network and the technical and operational capacities of the same.

Electromagnetic fields caused by the transmission and reception equipment of Swisscom or by end devices may disrupt the operation of other devices, such as hearing aids, pacemakers, and household appliances. In order to prevent disruptions, the conditions of safety and use indicated by the manufacturers must be followed and a sufficiently large clearance must be maintained. Customer shall become informed about prohibitions and restrictions of use (e.g. road traffic and air traffic) and shall follow the same.