

1 SCOPE OF APPLICATION

1.1 These Terms and Conditions govern the relationship between Swisscom (Schweiz) AG (hereinafter referred to as "Swisscom") and the Provider of Telecommunications Services (PTS), hereinafter jointly referred to as "the Parties".

2 GENERAL PROVISIONS

- 2.1 The Parties shall act in their own name and work for their own benefit and at their own risk. Through the Contract, the Parties enter into neither a partnership nor any business relationship resembling a legal partnership in which one Party serves as the agent of the other. The relationship between the Parties consists solely of the agreed exchange of services.
- 2.2 The provisions of the Contract do not confer any exclusive rights to either Party, neither with regard to a particular field, other providers of telecommunications services, in terms of time nor third parties. The Contract does not grant the Parties any exclusive right to use the agreed services.
- 2.3 The Contract shall not give either Party any rights in rem to the infrastructures, installations or equipment of the other Party. All infrastructure, equipment and installations made available or additionally provided by Swisscom shall remain the property of Swisscom.
- 2.4 The Parties shall conclude a separate agreement governing the provision of new infrastructures, installations and equipment and the share of the costs to be borne by the PTS.
- 2.5 Swisscom shall not be liable for the content of information which the PTS or any third party accountable to it transmits to Swisscom or which the PTS let proceed through Swisscom. Liability for the content shall be based exclusively on the applicable legal regulations.

3 CONTACTS

3.1 The points of contact for the Parties shall be documented in an electronic or written Contacts List which forms a part of the Contract. This list shall first be drawn up when the Contract is signed. The Parties shall notify each other without delay of any changes made to the contacts.

4 OPERATION AND MAINTENANCE

- 4.1 Each Party shall be responsible for the equipment and installations in their areas which are required for the purpose of providing or receiving the service. This shall apply in particular to the operation and maintenance of said installations and equipment.
- 4.2 Only parts, components, installations and equipment approved by Swisscom may be used.
- 4.3 The Parties shall be free to structure their respective networks in accordance with their own economic requirements. In particular, Swisscom is entitled to mod-

ify parts of the network it has provided. The PTS shall bear any costs incurred by it as a result.

4.4 The PTS shall avoid disrupting Swisscom's infrastructure and operations. It undertakes to use the installations and equipment of Swisscom with due care and only for the agreed purpose. For technical reasons, Swisscom may require the PTS to remove parts, components, installations and equipment from the network and to refrain from reconnecting it.

5 DATA PROTECTION

- 5.1 The transmitted data may only be used by the Parties for their own operational purposes, e.g. call registration, network management, billing or determining abusive connections or unfair mass advertising.
- 5.2 The Parties shall, in particular, comply with the provisions set out by data protection legislation, the provisions of the Swiss Civil Code (ZGB) on the protection of privacy and the Telecommunications Act.

6 CONFIDENTIALITY

- 6.1 The Parties shall treat all information, facts and documents (in paper form or stored electronically), that are neither publicly known nor generally accessible and concern a production or business transaction, as confidential. Specifically, all information, facts and documents shall be deemed confidential if the recipient must assume that the protected Party does not want said information, facts or documents to be disclosed to a third party. In particular, these shall include business activities and structures, strategies, obligations, telecommunications know-how, products, internal processes, scientific, financial or commercial data, network topology and planning, marketing data and projects as well as project information relating to new products or company names. If in doubt, these must be treated as confidential.
- 6.2 Confidential information, facts and documents may only be used for the purpose for which they were provided.
- 6.3 Confidential information, facts and documents may only be disclosed to those persons who require them for performance of the Contract. The Parties shall ensure that these persons (specifically employees involved in the project, contractors, consultants, branch offices, subsidiaries and other companies with which the Parties are linked contractually or otherwise or on whom they are dependent or controlled by) are subject to the obligations set out in this document.
- 6.4 The duty of confidentiality shall not apply if the information
- was already known to the recipient prior to disclosure by the protected Party;
 - is generally known or has become known through no fault of the recipient;

- was legally passed on to the recipient by a third party without any confidentiality obligations or
 - was developed by the recipient itself without using or referring to any confidential information from the protected Party.
- 6.5 All legal obligations to disclose information shall apply. In the event that such information, facts or documents must be used as evidence by authorities or courts, this shall be marked with the reference that they constitute commercial secrets. In such a case, the Parties undertake to notify the protected Party immediately.
- 6.6 This confidentiality obligation shall apply from the start of negotiations and continue to apply for a period of three years following expiry of the contractual relationship.
- 6.7 The Parties undertake to return or destroy all documents, samples, information media, copies etc. provided by the protected Party at its request upon expiry of the Contract. The same shall apply if the Contract has been fulfilled.
- 6.8 If either Party infringes any of the provisions listed in Section 6, the infringing Party shall pay the protected Party a contract penalty unless it is able to prove that it was not at fault. The amount payable in respect of each infringement shall be CHF 50,000. Any payment of a contract penalty shall not release the infringing Party from its duties of confidentiality. The contractual penalty shall be offset against any payable damages in respect of the breach of confidentiality but shall be payable notwithstanding any award of damages by a court of competent jurisdiction.

7 EXCHANGE OF INFORMATION

- 7.1 Each Party shall provide the other Party with all information which is requested in good faith for the purpose of fulfilling the Contract. In order to facilitate capacity planning and provision as well as timely, correct fulfilment, the PTS shall comply with the agreed obligations to cooperate. On request, the PTS shall provide Swisscom with network-related information regarding its infrastructure, installations and equipment, including the technology in use as well as any software connected or which is to be connected to the installations and equipment of Swisscom.
- 7.2 If Swisscom does not receive information that it has legitimately requested, the PTS shall bear any prejudice and costs arising as a result.
- 7.3 If information is provided, this shall be done so at no charge, in the usual quality for such data and with due care.
- 7.4 The recipient may assume that the Party providing the information is authorised to do so, i.e. that this does not infringe upon any third-party rights.
- 7.5 Each Party shall allow the other Party to check, in an appropriate manner, whether it is complying with the

conditions and provisions set out in the Contract. The Parties shall agree on the details of such checks in advance.

8 BILLING, TERMS OF PAYMENT, PRICES

- 8.1 The Parties undertake to make the agreed payments.
- 8.2 All other terms are defined in the Accounting and Billing Manual.

9 CREDITWORTHINESS AND SECURITY DEPOSIT

- 9.1 Swisscom is entitled to request from the PTS or third parties any information related to the PTS's legal capacity and capacity to act which are required for the purpose of assessing its creditworthiness. The PTS undertakes to provide this information to Swisscom at no charge or authorises Swisscom to obtain such information from third parties.
- 9.2 For good cause, particularly in the case of questionable creditworthiness on the part of the PTS, Swisscom is entitled to make service performance dependent upon an appropriate security deposit to be paid by the PTS.
- 9.3 The PTS shall agree to provide a security deposit (e.g. bank guarantee or cash deposit) if requested to do so by Swisscom. This security deposit shall be in the amount of the total payments due for services provided by and/or to be provided by Swisscom for a period of at least three months. No interest shall be paid on the security deposit.
- 9.4 Should the PTS be in arrears with a payment due to Swisscom, Swisscom shall be entitled to settle this claim by setting it off against the security deposit.
- 9.5 Should the amount of the security deposit no longer be equal in value to the amount specified in Section 9.3, Swisscom shall be entitled at any time to demand that the security deposit amount be increased immediately to the required amount.
- 9.6 Should the PTS fail to comply with the duty to provide or increase a security deposit (Sections 9.3 and 9.5), Swisscom is entitled to discontinue service provision in accordance with Section 15 (Suspension) and/or terminate the Contract or individual services with immediate effect (extraordinary termination pursuant to Section 14).

10 LIABILITY

- 10.1 Subject to other contractual agreements or mandatory legal regulations the Parties shall only be liable for wilful breaches of contract, gross negligence and illegal acts; liability for simple negligence shall be waived.
- 10.2 In no event does Swisscom accept liability for indirect damage, consequential damage, damages of third parties, loss of earnings and data losses.
- 10.3 Swisscom accepts no liability for announced interruptions due to operationally necessary maintenance work, measurements or network reroutings/expansions, improper use of services by the PTS or third parties as well

as disruptions caused by the PTS or its contracting partners. In cases such as these, Swisscom shall also not compensate in compliance with the Service Level Agreements.

- 10.4 If deadlines are not met, an appropriate period of grace for subsequent performance shall be set. The Parties shall only be liable for complying with binding deadlines agreed in writing. They shall be liable for damages sustained as a result of non-compliance with the deadline in question only if they are to blame (intentional, gross or simple negligence). Liability in such cases shall be limited to a maximum of CHF 50,000 per incident.
- 10.5 Should agreed service levels fail to be met, any compensation and warranty claims connected to this violation shall be deemed to have been compensated in full upon payment/repayment of the amount agreed for the violation.
- 10.6 The Parties shall be liable for the conduct of their agents (e.g. employees) and subcontractors as for their own conduct.
- 10.7 Liability claims against Swisscom must be pursued before court no later than six months after such claims have arisen.

11 FORCE MAJEURE

- 11.1 If a Party, despite the utmost care, cannot meet its contractual obligations by force majeure, the provision of the service shall be postponed appropriately according to the event. The Party prevented from providing the service by force majeure shall inform the other as soon as possible.
- 11.2 In particular, force majeure shall be deemed to include unforeseeable, extraordinary events not caused by the Parties, specifically acts of war, epidemics, strikes, lock-outs, sabotage, earthquakes, floods, fire, storms, rock avalanches, landslides and other natural disasters of particular intensity.

12 INTELLECTUAL PROPERTY AND INTELLECTUAL PROPERTY RIGHTS

- 12.1 If the use of intellectual property (e.g. know-how and commercial secrets) or intellectual property rights (e.g. copyright, right to a company name, patents, trademarks and designs) belonging to the other Party is required to fulfil the Contract, the scope and effect of using the service concerned shall be governed separately. In signing the Contract, the Parties do not grant any licensing rights to their intellectual property or intellectual property rights nor will any intellectual property or intellectual property rights be transferred.

13 DURATION AND TERMINATION

- 13.1 The Contract shall be valid for a fixed term of one year. Afterwards it shall continue to run for an unspecified term and may be terminated subject to three months' notice to the end of a month.

- 13.2 Following termination of the Contract or individual services, the PTS is required, at its own expense, to restore the premises to their original state, i.e. specifically to remove its installations and equipment. Any installations and equipment delivered by Swisscom shall be returned to Swisscom within ten days in good condition taking into account wear and tear from contractual use. If these are not returned within this period of time, the PTS shall be liable for damages. Any repair work to be performed by the PTS shall be executed professionally and must be completed by the end of the contractual relationship. Swisscom is entitled to make replacements at the expense of the PTS in order to restore the premises to their original state. Swisscom can require the PTS, at the latter's own expense, to reverse structural alterations and other installations.

14 EXTRAORDINARY TERMINATION

- 14.1 Either Party may terminate the Contract or individual services without notice for compelling reasons, particularly if
- the other Party has seriously or repeatedly committed a breach of the contractual obligations,
 - the other party does – with regard to the use of the service - not comply with legal obligations (malfeasance of the other party)
 - the other Party goes bankrupt, is unable to make its payments or has sought a debt moratorium,
 - the other Party fulfils the conditions of Art. 725 of the Swiss Code of Obligations (OR; capital loss, overindebtedness),
 - the PTS fails to comply with the duty to provide or increase a security deposit pursuant to Section 9,
 - the other Party has ceased business activity,
 - the other Party goes into liquidation or
 - Government-imposed restrictions make performance impossible.

15 SUSPENSION (SUSPENSION OF SERVICES PROVIDED BY SWISSCOM)

- 15.1 In the cases listed under Section 14.1 or if the PTS is in arrears with its payment obligations to Swisscom, Swisscom may suspend provision of its services to the PTS.
- 15.2 Swisscom shall provide written notification of the suspension of services and set an appropriate grace period.
- 15.3 Swisscom shall reverse suspension if the reason pertaining to Section 15.1 no longer applies.
- 15.4 Regardless of prior suspension, Swisscom is entitled to terminate the Contract or individual services pursuant to Section 14.

16 AMENDMENTS TO THE CONTRACT

- 16.1 Adjustment of prices
Swisscom is entitled to make price adjustments. The PTS shall be notified of price adjustments in writing at

least 30 days in advance. This price adjustment shall be deemed to have been accepted if the PTS does not object in writing within one month of its receipt of the notification letter. Should the PTS still continue to use the services after it has objected to the price adjustment, use of the service shall constitute acceptance of the new prices and the service shall continue to be provided in accordance with the revised terms.

16.2 Other Contract amendments

Swisscom may amend the Contract. The PTS shall be informed of the amendment in a timely manner so that it has the option of terminating this Contract subject to the notice period. If the PTS fails to terminate the Contract by no later than the date the amendment is to enter into effect, the amendment shall be deemed to have been approved. The PTS shall bear any costs it has incurred as a result of the amendment.

16.3 In deviation from Section 20.3, in the event of changes to Contract elements pursuant to Sections 16.1 and 16.2, such changes shall be entered accordingly into the Annex to the Swisscom Contract and issued however not mutually signed.

16.4 Contract amendments proposed to Swisscom by the PTS shall not be considered as an offer in the legal sense.

17 SEVERABILITY SECTION

17.1 Should any provisions of the Contract be or become fully or partially ineffective because they are unreliable or unenforceable, the validity of the other provisions shall remain unaffected. The unenforceable provision shall be replaced by a new provision which best reflects the intended economic intent of the invalid provision.

18 DISPUTE RESOLUTION

18.1 Both Parties undertake to endeavour to find an amicable solution in the event of any dispute.

19 APPLICABLE LAW, PLACE OF JURISDICTION

19.1 The Contract is governed exclusively by Swiss law. The exclusive place of jurisdiction for all disputes arising in relation to and out of this Contract is Bern.

20 LANGUAGE AND FORM

20.1 The Contract language is English. For practical reasons or technical requirements, the Parties may also partly use German.

20.2 Any translations are purely informative in nature.

20.3 In order to be valid, the Contract, including all integral elements, must be concluded in written form. The same applies to amendments and additions thereto. The same shall apply to cancellation of the written form requirement.

21 ASSIGNMENT

21.1 No Party may transfer the Contract as a whole or rights and obligations therefrom to third parties without the

prior written consent of the other Party. The other Party may only refuse its consent for compelling reasons.
21.2 The right to assign rights and obligations to subsidiaries or other affiliated companies is reserved.