

## 1 Subject

These General Terms and Conditions (GTC) govern the general aspects of the Parties' business relationship for the acquisition and provision of IT, telecommunications and related services from Swisscom Broadcast Ltd ("Swisscom") to its business customers ("Customer").

## 2 Contractual Relationship

### 2.1 Contractual Structure

- <sup>1</sup> These GTC form an integral part of the contracts between Swisscom and Customer and define the legal basis of their business relationship.
- <sup>2</sup> Individual contracts essentially govern the services to be provided by Swisscom and the fee owed by Customer for them, as well as product-specific features.
- <sup>3</sup> Where these GTC refer to contracts, this refers to the entire contractual relationship between Swisscom and Customer.
- <sup>4</sup> The waiver of these GTC or the inclusion of other contractual conditions to which the customer refers in declarations, namely orders, offers or invitations to offers, shall only apply if Swisscom has explicitly accepted this in text form for the services concerned. The provision of the services by Swisscom does not constitute such (tacit) acceptance.

### 2.2 Conclusion of Individual Contracts

Individual contracts may be concluded in writing or another form (e.g. via online orders). If no written contract is concluded, the contract shall be concluded upon confirmation of the order in text form by Swisscom or upon provision of the service by Swisscom. The order confirmation shall be deemed to be binding contractual content unless Customer objects within 5 days of delivery and demonstrates that a different agreement was made. Swisscom is not obliged to accept orders from Customer and reserves the right to cancel orders (particularly in the event of a negative credit rating).

### 2.3 Contractual Amendments

- <sup>1</sup> Contractual amendments may be proposed by either Party at any time. The same procedure as for the conclusion of individual contracts (Section 2.2) shall normally apply to the formation of contractual amendments.
- <sup>2</sup> Swisscom may make objectively material process or functionality adjustments, as well as amendments to contractual or commercial conditions (including the discontinuation of products) at Customer's expense upon giving at least six months' prior notice. Changes at shorter notice are permitted if unforeseeable changes in circumstances so require (e.g. because of court judgments, sanctions, etc.). In the case of customer-specific solutions, such adjustments also require a legitimate interest of Swisscom (e.g. new standards or regulatory requirements, new technologies, higher third-party costs, supplier changes, changes to licence models, inflation, phase-out of products, etc.). The Customer has the right to terminate the affected services as of the effective date of the adjustments within 30 days after the notification date of the adjustments. Customer shall have no further rights in this regard.
- <sup>3</sup> Swisscom may at any time adapt other processes and functionalities to changes in its operational or business conditions.

### 2.4 Effective Date, Term and Termination

- <sup>1</sup> The effective date, term and the options for ordinary termination of the contracts shall be specified in the individual contracts. If individual contracts are not limited in time, each of them shall be deemed to have been concluded for an indefinite period as regards the continuous obligation contained therein and such contracts, unless otherwise agreed, may be terminated at the end of any calendar year, subject to a notice period of six months. If a minimum contract term has been agreed upon, termination is possible at the earliest at the end of this term.
- <sup>2</sup> The right to terminate the contract without notice for good cause is reserved at all times. 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 contracts unreasonable for the terminating party, including, in particular, the persistent serious breach of material contractual duties by the other Party;
  - b) official publication of the initiation of bankruptcy proceedings or a moratorium on debt enforcement in respect of the other Party;
  - c) incomplete provision of an advance payment or of other contractually owed securities (cf. in particular Section 5 (6)).

- <sup>3</sup> If a breach of contract by Swisscom can be remedied, Customer must warn Swisscom in writing and grant it a period of 60 calendar days to remedy the breach before giving notice of termination.

## 3 Services of Swisscom

- <sup>1</sup> Swisscom shall provide its services in accordance with the provisions of these GTC and the contracts. Swisscom shall provide its services in a professional and diligent manner.
- <sup>2</sup> Unless otherwise agreed, Swisscom shall be responsible for the planning, procurement, operation, maintenance, servicing, oversight, replacement, upgrading and other use of the resources necessary for Swisscom to provide the services. This also applies to hardware and software deployed, except for the resources to be provided by Customer in accordance with the relevant contractual provisions.
- <sup>3</sup> If goods are shipped outside Switzerland, delivery will be DAP (Incoterms® 2020).
- <sup>4</sup> Swisscom may commission auxiliaries (particularly subcontractors) in Switzerland and abroad. Swisscom shall be liable for the conduct of its auxiliaries in the same way as for its own conduct unless reservations are indicated in the individual contract or Customer has requested the involvement of a specific auxiliary.

## 4 Customer's Obligations of Cooperation

- <sup>1</sup> Customer must support Swisscom and its auxiliary agents in a reasonable manner actively and in a timely manner as regards the provision of Swisscom's services, take the necessary preparatory and provisioning actions and grant the necessary access to its premises, systems and resources.
- <sup>2</sup> For resources installed on site at Customer's premises, Customer shall make available the necessary facilities, including electricity, building wiring and cabling, etc. in accordance with the manufacturer's specifications. Customer shall protect these facilities from unauthorised access and manipulation.
- <sup>3</sup> Customer shall use only up-to-date software, etc., supported by the relevant manufacturer, for the resources to be provided. Customer shall conclude suitable maintenance and support contracts for the entire duration of Swisscom's provision of services.
- <sup>4</sup> Customer is responsible for safeguarding the components and security features supplied to it by Swisscom for Customer's use (particularly passwords, tokens, system access information, encryption and security devices, authentication methods, etc.) and shall inform Swisscom immediately if this cannot be guaranteed (e.g. because of disclosure of security features or unauthorised manipulation).
- <sup>5</sup> Customer shall inform Swisscom of the currently valid postal and email address for contractual correspondence and invoicing. Swisscom may duly provide Customer with information relevant to the contract (e.g. invoices, reminders, product or GTC changes, operational information such as maintenance work, etc.) by post or to the last email address provided by the Customer or through other electronic communication channels.
- <sup>6</sup> In addition, the specific cooperation obligations set out in the other contractual components shall apply.
- <sup>7</sup> If Customer fails to comply with its cooperation obligations or fails to do so properly, Swisscom shall endeavour to provide its services but shall to that extent no longer be obligated to do so. Customer shall reimburse Swisscom for the resulting additional expense. The contractually agreed hourly or daily rates shall apply or, in the absence of such an agreement, standard hourly or daily rates (both hereinafter called the "applicable hourly or daily rates") shall apply. If Swisscom is jointly responsible for the additional expense, each of the Parties shall bear its proportional share thereof.

## 5 Fees and Invoicing

- <sup>1</sup> Customer must pay the fees specified in the contracts for the services provided by Swisscom.
- <sup>2</sup> Unless otherwise declared by Swisscom, all prices are exclusive of any taxes, duties and charges. If taxes, duties or charges are included in the prices, Swisscom may adjust the prices accordingly at the time of a change in such taxes, duties or charges without Customer having a special right of termination.
- <sup>3</sup> If any taxes, duties and/or charges, including but not limited to withholding taxes and/or deductions, are levied by or on behalf of foreign governmental authorities on transactions under the contracts, they shall be borne by Customer unless Customer provides evidence of a corresponding exemption. If any such tax or duty must be withheld or deducted from any

payment made under this Contract by Customer, Customer shall increase the payment by this additional amount so that, after the withholding or deduction of this amount, Swisscom shall receive the amount that it would have been paid without such withholding tax or deduction. If additional taxes, duties or fees arise in relation to the provision of services abroad (e.g. due to the deployment of employees or other auxiliary persons of Swisscom at customer locations outside Switzerland), these must also be paid by Customer. Swisscom shall inform Customer of this in advance and shall endeavour to avoid/minimise it accordingly. Customer shall inform Swisscom in advance of any relevant tax changes in relation to its foreign locations that are covered by the scope of services. Swisscom shall be entitled to adjust its prices and services accordingly.

- <sup>4</sup> Swisscom shall demand payments due via invoice. Invoices are payable within 30 calendar days of invoicing.
- <sup>5</sup> Invoices shall be deemed to have been approved by Customer unless Customer objects to them in writing, stating objective reasons for its objections, within 90 days of the invoice date. Any incorrect invoice items shall not entitle Customer to withhold payment of correct invoice items.
- <sup>6</sup> 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 further 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.
- <sup>7</sup> 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.
- <sup>8</sup> Swisscom shall be entitled to charge Customer reminder fees (plus default interest), and fees for printed invoices and cash payments (namely at the post office counter). Swisscom may also involve third parties at any time for collection purposes or may assign claims to such third parties. Customer must pay minimum fees directly to such third party for this purpose and must also compensate it for its individual costs and expenses necessary to collect the debt. The current fee schedule is available at <https://www.swisscom.ch/b2b-legal> (→ "Fees" → "Service fees and collection charges"). Any adjustment to these fees shall not entitle Customer to terminate the Contract early.

## **6 Receipt and Acceptance**

- <sup>1</sup> Customer shall take delivery of all Swisscom services immediately upon provisioning (receipt).
- <sup>2</sup> After receipt, Customer shall normally carry out an acceptance inspection for one-off services provided under a contract for work and services. An acceptance report shall be drawn up concerning the acceptance inspection and its results. 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.
- <sup>3</sup> Swisscom may request acceptance of partial services, provided this is reasonable for Customer. In this case, any defects may be asserted at the subsequent final acceptance only insofar as they were not and could not be detected during an earlier (partial) acceptance.
- <sup>4</sup> If the acceptance inspection identifies at least one material defect, acceptance shall be deferred. Swisscom shall correct the detected material defects within a reasonable period of time and once again furnish the deliverable in question for approval by Customer.
- <sup>5</sup> If at least one material defect is found during a further acceptance test, Customer shall be entitled to withdraw from the affected portion of the services or, if this is not reasonable, then from the individual contracts concerned. Any recurring services provided by Swisscom during the term of the Contract shall not be affected by the withdrawal and must be paid for by Customer.
- <sup>6</sup> Minor defects do not entitle Customer to withhold acceptance but must be corrected by Swisscom within a reasonable period of time. If this is not possible, Customer shall be entitled to a corresponding price reduction.

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 to have been accepted as soon as Customer uses the deliverables in its operations or business or causes them to be used in such.

## **7 Default by Swisscom**

- <sup>1</sup> 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 to have been met upon provisioning of the service by Swisscom.
- <sup>2</sup> If Swisscom is in default, Customer must set a reasonable grace period in writing for subsequent performance.
- <sup>3</sup> If Swisscom also fails to comply with its performance obligation by the expiry of this period, Customer has the right to withdraw from the affected portion of the service or, if this is not reasonable, then from the individual contracts concerned. Any recurring services provided by Swisscom during the term of the Contract shall not be affected by the withdrawal and must be paid for by Customer.
- <sup>4</sup> Non-compliance with service levels having time specifications does not fall under the provisions on default. The remaining contractual provisions (particularly Warranty) shall apply in this regard.
- <sup>5</sup> In the case of long-term obligations, withdrawal is excluded. The foregoing shall be without prejudice to the right of termination for good cause.

## **8 Warranty**

Swisscom warrants that its services comply with the specifications, representations and characteristics objectively required for the agreed use as stipulated in the contracts. The deadlines and rights as to defects defined below shall be deemed to be final, subject to mandatory statutory provisions.

### **8.1 Warranty for purchase contracts**

Swisscom provides a warranty to Customer in accordance with the terms and conditions attached to the products. In the absence of such attachments, a warranty period of 12 months for hardware and three months for software/licenses shall apply as from delivery.

### **8.2 Warranty for one-off services provided under a contract for work and services**

- <sup>1</sup> The warranty period shall be six (6) months from the date of effective acceptance.
- <sup>2</sup> 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.

### **8.3 Rights as to defects in purchase contracts and in one-off services provided under contracts for work and services**

In case of a defect covered by the warranty, Customer may initially only request correction of the defects free of charge. If the defect cannot be rectified within a reasonable period of time in view of the cause of the defect, Customer shall set a reasonable grace period for rectifying the defect free of charge. Swisscom may, at its discretion, provide a replacement in lieu of repair. If the rectification fails again, Customer may either:

- a) request an appropriate reduction of the price, or
- b) in the event of a material defect, withdraw from the part of the services concerned or, if this is not reasonable, then from the individual contracts concerned. If contracts with recurring services are indirectly affected by the withdrawal (e.g. operation or maintenance of the product), these services may be terminated without notice on exceptional grounds if a factual connection exists and the aforementioned corresponding unreasonableness applies. A fee shall then be due on a pro rata temporis basis.

### **8.4 Warranty and rights as to defects for operating, maintenance and support services**

- <sup>1</sup> Swisscom warrants that it will comply with the service levels agreed in the contracts.
- <sup>2</sup> Services for which no other service level has been agreed upon shall be provided on a best-effort basis. "Best effort" means that Swisscom shall strive in a manner that is appropriate and economically reasonable, using the resources available to it, to provide the services and/or troubleshooting, without, however, guaranteeing any higher quality or that any time specifications shall be met.
- <sup>3</sup> If Swisscom breaches the same warranted service levels more than twice within six months in a serious way, this shall constitute good cause for termination by Customer.

### 8.5 Warranty of title

- <sup>1</sup> Swisscom warrants that its services do not infringe any proprietary rights held by third parties in Switzerland (hereinafter “proprietary rights”).
- <sup>2</sup> 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 and reasonable support by Customer, Swisscom shall, at its own discretion and expense: a) modify their services (including software) so that they do not infringe (any longer) the proprietary rights of the third party while nevertheless fulfilling all material contractual requirements, or b) provide Customer with a licence from the third party. If both options are impossible or disproportionate for Swisscom, it may terminate the affected service components or contracts on extraordinary grounds. Customer shall have a corresponding right of termination if the option chosen by Swisscom is objectively unreasonable for it. In both cases, Customer shall be entitled to compensation for damages, subject to the limitation of liability set out in Section 10.
- <sup>3</sup> 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, to the extent permissible and possible under the applicable rules of procedure. Subject to the foregoing preconditions, the costs of litigation (including reasonable attorney’s fees) and the damages claims of the entitled third party (including court and legal costs) attributable to such claim and finally imposed on Customer in such proceedings or a settlement approved by Swisscom shall be deemed direct damages of Customer. In all other respects, Section 10 of these GTC shall apply.

### 8.6 Exclusions from warranty

- <sup>1</sup> Any warranty shall be excluded in the event of defects for which Swisscom or any auxiliary agents engaged by it are not responsible (e.g. interventions by other third parties or Customer, force majeure). Furthermore, the contractual warranties do not apply to resources provided by Customer (including software licenses of third party providers), even if these were procured by Swisscom on behalf of Customer.
- <sup>2</sup> Swisscom makes no warranty that work developed or delivered by it (particularly customised software) and IT systems operated by it can be used uninterruptedly and flawlessly in all combinations desired by Customer, with any given data, hardware or software.
- <sup>3</sup> If Customer or any auxiliary persons engaged by it have authorisations that enable it to intervene in Swisscom’s operational responsibility (particularly admin/root rights), the service levels affected by the possibility of intervention shall be suspended. Swisscom reserves the right to establish the technical and organisational parameters for such authorisations.
- <sup>4</sup> If Swisscom provides services in relation to the analysis or remediation of alleged or actual defects that are not covered by Swisscom’s warranty, Customer must pay for such services based on time and material at the applicable hourly or daily rates.

## 9 Ownership, Proprietary and Usage Rights

### 9.1 Ownership of goods

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

### 9.2 Proprietary and Usage rights

- <sup>1</sup> Swisscom grants to Customer, for use by Customer itself, a non-transferable, non-exclusive right to use the services of Swisscom specified in the contracts. The content and scope of this right are indicated in the contracts. In the case of services to be provided under the contract for a specified period of time only, this right shall be limited to the duration of the relevant contract.
- <sup>2</sup> If, in the course of receiving the service, Customer uses products it recognises as third-party products, Customer shall also acknowledge the manufacturer’s terms and conditions associated with these products (particularly licensing terms, security requirements, etc.).
- <sup>3</sup> All rights to intellectual property existing or arising at the time of performance of the contract (copyright, patent rights, trademark rights, etc.) relating to services of Swisscom shall be retained by Swisscom or the third-party rights holder. 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 each other 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.

- <sup>4</sup> Each Party acknowledges the validity of the intellectual property of the other Party and of any third parties and shall not take any action that may impair its value. Each Party shall take all actions within its means to prevent any unauthorised use.

## 10 Liability

- <sup>1</sup> In case of contractual breaches, Swisscom shall be liable for proven damages unless it can prove that it is not at fault. No fault on the part of Swisscom shall be deemed to exist, particularly in the event of:
  - a) fault on the part of Customer or its auxiliaries;
  - b) fault on the part of third parties who are not auxiliaries of Swisscom, as well as in the case of force majeure, provided, in each case, that Swisscom has taken any contractually agreed measures against certain events.
- <sup>2</sup> Swisscom’s liability for damage caused through wrongful intent and gross negligence, as well as for personal injuries, is unlimited. In all other cases, for each contractual year, Swisscom shall be liable for property damage and financial losses up to 100% of the binding annual fee agreed under the relevant individual contract, subject however to a maximum of CHF 50,000 per loss event. Under no circumstance shall Swisscom be liable for indirect or consequential losses, including but not limited to lost profits, data or reputational losses, and third-party claims.
- <sup>3</sup> In connection with the hiring of services, Swisscom is only liable for diligently selecting the employees supplied.
- <sup>4</sup> If contractual penalties are owed by Swisscom for breaches of contract, Customer shall not be entitled to any further claims in this regard, including damages or a refund or reduction, as the case may be.
- <sup>5</sup> Further liability provisions to the detriment of Swisscom, even in documents taking precedence over these GTC, shall only apply if they make express reference to the present provision.
- <sup>6</sup> The foregoing provisions apply to contractual and extra-contractual claims.

## 11 Force Majeure

- <sup>1</sup> The Parties understand force majeure in the context of the contracts particularly, but not exclusively, to refer to the following: Natural phenomena of particular intensity (avalanches, flooding, landslides, etc.), earthquakes, volcanic eruptions, sabotage, DDOS attacks, hacking, malware, ransomware, epidemics, power failures at the energy providers’ facilities, war and acts of war, revolutions, rebellions, terrorism, riots and the measures taken against them, as well as unforeseeable official restrictions.
- <sup>2</sup> If a party is unable to fully perform its contractual obligations due to force majeure, it shall be temporarily released from its obligations to that extent, provided that it has taken any contractually agreed measures against specified events.
- <sup>3</sup> If or as soon as, in such a case, adherence to the contract is no longer reasonable for the other Party, it may terminate the affected services with immediate effect.

## 12 Data Protection and Confidentiality

### 12.1 Data protection

- <sup>1</sup> Each Party shall process personal data relating to employees and other auxiliaries of the other Party in the context of the contractual relationship. These include e.g. name, postal/email/IP address, telephone number, occupation/function, means of identification, copies of ID cards, etc. For purposes of performing the contract and maintaining the contractual relationship (e.g. communication, entry/access control, trouble reports, orders, invoicing, satisfaction analyses, information about new products, invitations to events, etc.), the Parties are jointly responsible for processing these personal data on their own respective systems while using appropriate technical and organisational measures to safeguard the data.
- <sup>2</sup> For purposes of quality assurance, product development and for customised offers, Swisscom shall also process data concerning employees and other auxiliary persons of Customer regarding the use of the services provided by Swisscom. For any other data processing purposes, Swisscom shall inform Customer in advance via its communication channels, e.g. via the Business Portal. In accordance with the requirements of data protection law, Customer has appropriate options for consenting to or rejecting certain types of data processing.

- <sup>3</sup> Each Party shall comply with the Data Protection Act when processing the personal data of employees and other auxiliaries of the other Party (particularly when engaging contract data processors and when transmitting data abroad). Each Party shall inform its employees and other auxiliary persons of the processing by the other Party, shall act as the primary point of contact for their rights as data subjects and shall comply with its reporting and notification duties vis-à-vis the supervisory authority and the persons affected by a breach. The Parties shall inform each other in this regard and shall coordinate with each other. In their internal relationship, the Parties shall only be liable for losses caused by their own acts or omissions.
- <sup>4</sup> Furthermore, depending on the service, Swisscom shall process personal data only on behalf of Customer (e.g. in hosting offers). Swisscom shall process such personal data entrusted by Customer to Swisscom exclusively for the purpose of fulfilling the contractual purpose and in accordance with the Data Processing Agreement concluded with the Customer. The current version of the processing agreement, which is available at <https://www.swisscom.ch/en/business/broadcast/legal-notice.html>, is deemed concluded under the terms set out therein. Specific requirements for data processing agreed upon in the individual contracts (e.g. geographical restrictions, personal security checks, disclosure to third parties) shall apply exclusively in the area of contract data processing.

### 12.2 Confidentiality

- <sup>1</sup> Confidential information entrusted to Swisscom by Customer in relation to the use of the services (namely content data of customer applications that is stored by Swisscom on behalf of Customer) shall be governed by Section 12.1 (4) including the provision in the Data Processing Agreement by analogy even if the information does not constitute personal data.
- <sup>2</sup> In relation to duties of confidentiality applicable to Customer under special statutes, Swisscom and any auxiliary agents engaged by it shall not be deemed to be its auxiliary agents within the meaning of criminal law and shall only be liable for complying with such provisions if this has been expressly agreed.
- <sup>3</sup> Both parties undertake themselves, as well as any auxiliary persons engaged by them in Switzerland and abroad for the purpose of contractual performance, collection, M&A audits, tax audits or similar usual business transactions, to treat as confidential all information of which they become aware in relation to the provision of their services under the contracts or to the contractual relationship or regarding customers and business relationships of the other Party and which is not generally known.
- <sup>4</sup> The Parties undertake not to make this information available to third parties other than their auxiliaries except insofar as the contracts permit them to do so, the other Party expressly permits this, or this is required based on a court order or statutory duty.

### 13 Compliance with Other Laws, Regulations and Requirements

- <sup>1</sup> The Parties shall comply with the laws and regulations applicable to them. This means that Swisscom shall comply particularly with laws and regulations applicable to Swisscom generally as a provider of information and communication technology products and services. Customer shall be responsible for determining and specifying the requirements under those laws and regulations that apply to its business activities. Unless explicitly contractually agreed, Swisscom assumes no responsibility for the suitability of its products and services for compliance with the laws and regulations applicable to Customer or its industry.
- <sup>2</sup> With regard to the goods procured from Swisscom (products, software and technology), Customer shall comply with all applicable export/import control regulations (export, import or transit of goods), particularly those of the USA, including sanctions and embargoes.
- <sup>3</sup> In the event of legal claims of third parties or authorities that relate to data, content, or the resources provided by Customer (particularly software licenses) or the use of the services other than in compliance with the law, Customer shall indemnify Swisscom, ensure an appropriate defence against such claims, and cover the costs of such defence.
- <sup>4</sup> If security threats, unlawful or improper use or use of equipment that cause disruptions are identified or credible evidence of such circumstances exists, Swisscom reserves the right to take measures to prevent or reduce impending damage. Swisscom shall inform Customer promptly and, if possible, in advance. The measures include, in particular:
- requesting Customer to immediately and permanently refrain from or to actually prevent any unlawful or improper use of resources and to remove any resources that cause interruptions; as well as extraordinary termination for good cause;
  - interrupting on an immediate and temporary basis any affected contractual services (e.g. blocking access services temporarily).

The taking of such measures does not constitute a breach of contract on the part of Swisscom unless Swisscom itself is responsible for the cause of the interruption/threat.

### 14 Consequences of Termination

- <sup>1</sup> Both Parties shall ensure the timely return of materials (such as keys, IT and telecommunications devices, means of identification and documents), as well as spaces made available to them by the other Party during the term of this Contract.
- <sup>2</sup> Unless otherwise specified in a contract, Swisscom shall delete the data provided by Customer after termination of the Contract unless legitimate grounds, in particular statutory archiving obligations applicable to Swisscom and the securing of evidence, preclude this.
- <sup>3</sup> In the event of termination of complex operating services, both Parties shall cooperate for the purpose of a proper handover of operations, irrespective of the reason for termination of the contract. In this case, Swisscom shall support Customer, where necessary and for a separate fee, in the necessary termination actions, including any migration preparations in the area of services covered by the Contract. Customer, in turn, undertakes to inform Swisscom of its anticipated need for assistance in good time before the end of the contract in order to enable the corresponding resource planning by Swisscom. The Parties shall agree in good time on the services to be provided by Swisscom in the context of termination of the contract or beyond the same.
- <sup>4</sup> If the Parties have agreed that one-off services already provided in accordance with the contract (such as the purchase of hardware/software, implementation projects, etc.) shall be paid by Customer as part of a recurring fee (e.g. together with maintenance or operating prices), the amounts still outstanding in respect thereof shall fall due immediately upon termination of the contract for recurring services, irrespective of the legal ground for termination.

### 15 Additional Provisions

- <sup>1</sup> Without an explicit agreement, neither Party is entitled to act on behalf of the other Party.
- <sup>2</sup> Neither Party may set-off its claims without the consent of the other Party. Within the scope of the applicable statutory provisions, a set-off by the creditor is possible without the consent of the debtor in the event of bankruptcy.
- <sup>3</sup> The rights and obligations under the respective contracts 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 obligations to another member company of the Swisscom Group domiciled in Switzerland, thus discharging its obligations.
- <sup>4</sup> The Parties agree that they are not forming a simple partnership (Art. 530 ff. CO) through the contracts. If, contrary to expectations, a simple partnership is assumed between the Parties, the termination of the contract to which it relates shall result simultaneously in the dissolution of the simple partnership. In such a case, the Parties are not obligated to pay contributions of any kind or to make any additional contributions. Participation in profits or losses is excluded. Each Party bears its own costs and risks.
- <sup>5</sup> If any part of a contract proves invalid or void, this shall not affect the validity of the remaining provisions or the continued validity of the respective contracts and the other 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 Place of Jurisdiction

- <sup>1</sup> The Parties' contractual relationship, including these GTC and all contracts based thereon, are subject to Swiss law exclusively. The Parties waive any application of the conflict of laws rules of international private law and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.
- <sup>2</sup> The Parties agree that the courts of Bern shall have exclusive jurisdiction over any and all disputes arising from or in relation to the Parties' present contractual relationship, i.e. the legal relationship based on the contracts, including these GTC.

**Annex: Terms and Conditions of Use for Voice and Data Services Governed by Telecommunications Law****1 Scope of Application**

This Annex is an integral part of Swisscom's General Terms and Conditions for Business Customers and applies exclusively to services and service components that include voice and data services governed by telecommunications law.

**2 General Terms and Conditions of Use**

- Swisscom shall enable Customer to make calls and/or exchange data via access to its own radio networks and communications networks and those of third parties via a connection and corresponding end devices of Customer.
- Customer is responsible for ensuring that its connections and networks are used in accordance with the law and with the contract, even by third parties. In particular, Customer may only send bulk advertising to recipients who have expressly consented to this in advance. Customer must immediately upon first request provide proof of the contractually and legally compliant use of the connections and services.
- Swisscom shall not be liable for information which Customer obtains via the radio networks & communications networks or which third parties disseminate or make accessible via these networks. Where third-party services are obtained via Customer's connection, the contract shall be concluded exclusively between Customer and the respective service provider even if Swisscom collects third-party claims against Customer.
- If Customer makes the services procured from Swisscom available to minors, Customer shall be responsible for compliance with the youth protection provisions. Swisscom provides blocking options as far as is technically possible.

**3 Transmitting and Receiving Systems**

- Swisscom shall see to the maintenance of its networks and shall use its best effort to correct during its operating hours any disruptions within its control that come to its attention. In the case of voice or data traffic on third-party networks or using connections pertaining to third parties, Swisscom shall forward telecommunications traffic to the networks or connections of these third parties but makes no other warranty for their services.
- Swisscom reserves the right to carry out maintenance work on its telecommunications networks at any time, which may also result in operational interruptions.
- Customer shall have no right to any specific configuration of the Swisscom infrastructure or to the retention of services accessible via the same; Swisscom shall not grant Customer any investment protection. Any information provided by Swisscom regarding current and planned network supply and technologies shall be without obligation. Customer shall be responsible for the purchase, installation, maintenance, replacement and legal compliance of its end devices. Swisscom is at all times entitled to temporarily suspend or restrict the provision of any service or parts thereof or the operation for the purpose of troubleshooting, performing maintenance work, implementing new technologies, etc.
- The transmission speeds or capacities indicated, particularly for internet, mobile, radio connections, are always the best performance values possible, but in practice they may be significantly lower due to a variety of factors.

**4 Scope of Application of the Wireless LAN (WLAN)**

- For the provision of publicly accessible internet use, Swisscom offers specially designed and professionally operated "Public WLAN" (PWLAN) services, which integrate the prior identification of users required by law and the provision of the corresponding information to the authorities.
- In addition, outside a purely private or internal company use, any provision of internet access in the form of publicly accessible internet use for third parties in connection with WLAN-enabled devices operated or supported by Swisscom (e.g. routers, access points, WLAN repeaters) is prohibited. In the event of any breach, Swisscom shall be entitled to terminate its services effective immediately for good cause.

**5 Remote Access and Means of Access to Radio and Communication Services**

- Swisscom may access the network components provided and/or maintained or operated by it by means of telecommunications technology, examine their functionality and, in order to provide its services, process

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technical information concerning other components connected to the same network.

- Furthermore, Swisscom may transmit and process operational information (namely device and network configuration files, software, eSIM profiles or SIM toolkits) on Customer's devices in the context and for the purpose of providing the services by means of telecommunications technology or deactivate or delete such information upon termination of the contract.

- Swisscom may provide Customer with a means of access (physical or logical, e.g. in the form of a SIM card or an eSIM profile) which Customer installs on its end device to access Swisscom's radio and communication services.

**6 Rate Information for Cross-border Use**

In the event of international use of Customer's connections, Customer waives the automatic notification of roaming prices to users' end devices, as referred to in Art. 10a para. 2 OTS. Customer may order activation for all connections or activate. The roaming prices set out in the automated notification are consistent with Swisscom's standard price list, without taking into account any discounts or customer-specific prices; these prices are only for the information of the respective user and shall have no binding effect on the Parties.

**7 Addressing Elements**

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

**8 Telephone Number Display and Suppression**

The caller's telephone number designated for transmission by means of telecommunications technology 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 or may suppress the telephone number display itself for each call. In some cases, technical reasons make it impossible to display a telephone number or to suppress the telephone number display. The accuracy of this information is not guaranteed, particularly with calls from or to a third-party network and with SMS. With calls to Swisscom's hotlines and in special cases governed by law (particularly emergency calls and the transcription service for the hearing impaired), suppression of the telephone number display is not effective.

**9 Nomadic Use**

- IP telephony may technically enable making calls with the landline number irrespective of location ("nomadic use"). Employees of a company may then use their fixed-line number, e.g. at any company location in Switzerland.
- Nomadic use entails risks, particularly when choosing emergency numbers of the blue light organisations because, depending on a variety of technical factors, the emergency call can be directed not to the emergency call centre closest to the actual location, but to the one designated for the contractually specified location, thereby making rapid assistance more difficult or impossible.
- If the correct location is not communicated expressly and orally, the emergency services will most likely show up at the wrong location. Therefore, with nomadic use of a connection, emergency calls should normally be made using a mobile phone or a non-nomadic fixed-line telephone.

**10 Value-added Services/ Blocking Sets**

Swisscom reserves the right not to provide value-added services that are purchased via the Swisscom network and charged on the Swisscom invoice (particularly 090x numbers and SMS/MMS short codes) for connections of business customers. Insofar as these are provided for the relevant Swisscom connections, Customer may arrange for value-added services to be blocked.

**11 General Usage Risks and Protective Measures**

- <sup>1</sup> Swisscom takes precautions to protect its radio network and communications network from intrusion by third parties. However, it does not guarantee that
- a) the network infrastructure or the components connected thereto are comprehensively protected against unauthorised access, unlawful falsification of data or unauthorised eavesdropping;
  - b) data sent for transmission (e.g. emails) is delivered to the recipient or that data received originates from the supposed sender;
  - c) spamming, malware, spyware, hackers or phishing attacks, etc. do not impede the use of the service and do not damage the Customer's infrastructure (e.g. end devices, PCs) and data or do not otherwise harm the Customer.
- <sup>2</sup> For the exchange of sensitive content via voice and data networks, Customer is responsible for using appropriate encryption technologies and secure authentication procedures.
- <sup>3</sup> Within its sphere of control, Customer shall take at least state-of-the-art measures to prevent its infrastructure or the services provided by Swisscom to it for use by Customer from disseminating illegal or otherwise harmful content (in particular unfair mass advertising (spam), fraudulent messages (phishing mails/SMS), fraudulent internet sites (e.g. fake login pages) and malware (viruses, Trojan horses, worms, etc.)).
- <sup>4</sup> If Customer damages or endangers a service of Swisscom, a third party or systems of Swisscom or third parties by using its connection, or if Swisscom's services are not used by Customer in accordance with the law and the contract, Swisscom may, subject to all other legal remedies available to it, discontinue its provision of services without prior notice and without compensation and disconnect Customer's device from the telecommunications network.
- <sup>5</sup> Swisscom is entitled but not obligated to examine the devices connected to its radio network and communication network for common security defects, to use filters and to take further appropriate protective measures in order to protect itself, customers and third parties from illegal or otherwise harmful attacks or content or to prevent access to unlawful content.