

## GENERAL TERMS AND CONDITIONS

### DIMOCO Direct Mobile Communications GmbH

#### 1. Scope of Application and Subject Matter of the Agreement

DIMOCO Direct Mobile Communications GmbH (registration number FN 199901y), Liebermannstr A01 405, 2345 Brunn am Gebirge, Austria, ("DIMOCO") has direct or indirect, i.e. via a carrier ("Carrier"), access to messaging gateways ("MGs"), voice/video gateways ("VGs"), and payment gateways ("PGs") of mobile network operators in Austria and other countries as listed on DIMOCO's website ([www.dimoco.at](http://www.dimoco.at)) ("Mobile Network Operators").

- 1.1. The subject matter of this Agreement is the provision of access to the SMS/MMS Center ("SMSC") operated by DIMOCO and to the voice/video and payment platforms ("VP" and "PP") available to DIMOCO vis-à-vis professional service providers ("Service Providers"; i.e. entrepreneurs within the meaning of sec. 1(2) of the Austrian Consumer Protection Act [German acronym "KSchG"]) for the purpose of transmitting and receiving SMS/MMS between the Service Provider and the Subscribers connected to the networks of the Mobile Network Operators. The further subject-matter hereof is the provision of information and premium rate services to customers ("Customers") and such other services as are described in detail in Clauses 12 and 13 hereof.
- 1.2. DIMOCO only enters into agreements with Service Providers on its own terms. General terms and conditions of Service Providers different from the ones used by DIMOCO shall only apply if expressly approved by DIMOCO in writing in advance.

#### 2. Establishment of Contractual Relationship

- 2.1.1. A contractual relationship between the Contracting Parties shall be established if the Service Provider makes an offer using the service application form provided for that purpose or any other (including electronic) application form provided for by DIMOCO and DIMOCO accepts such offer by providing access to the MGs, VGs, and/or PGs of the Mobile Network Operators and/or applications.
- 2.1.2. If DIMOCO accepts the offer made by the Service Provider, a Connection Agreement on the Provision of Messaging Services ("CA-M") is concluded. If the Contracting Parties (also) intend to provide payment services ("P-Services"), they enter into a Connection Agreement on the Provision of Payment Services ("CA-P"), which upon its entry into force shall replace any CA-M already in force at that time.
- 2.1.3. Any use of the access provided by DIMOCO to the MGs of Mobile Network Operators for the purpose of announcing and/or providing services by the Service Provider shall require that the Service Provider fully and truthfully completes the "service application/service change" form provided by DIMOCO for each envisaged service and notifies DIMOCO without delay of any intended changes of services by submitting updated forms. Incomplete or incorrect data provided by the Service Provider when applying for or changing services shall constitute good cause within the meaning of Clause 6.3 and shall entitle DIMOCO to discontinue its services ("Services") with immediate effect and without giving notice and to terminate the CA-M or CA-P (collectively referred to as "CA").
- 2.2. In a download area set up on its website DIMOCO shall grant preliminary electronic access to the CA, including their Annexes (see Clause 3.1), to Service Providers interested in establishing a contractual relationship within the meaning of Clause 2.1.1 ("Interested Parties"). DIMOCO reserves the right to exclude Interested Parties from the download area if they make abusive or improper use of their right of preliminary electronic access.
- 2.3. The Service Provider declares to have made its offer within the meaning of Clause 2.1.1 after having reviewed, understood and familiarized itself with the contents of the CA, including their Annexes. Irrespective of the language of contract negotiations chosen by the Contracting Parties, the provision of the preceding sentence shall equally apply to the German and English language parts of the CA. DIMOCO shall be under no obligation to provide the Service Provider with translations of such parts.
- 2.4. Upon acceptance of the offer by DIMOCO the Service Provider shall receive a confirmation containing its login data and its login code enabling it to access the Services provided by DIMOCO. The login data and the login code are unique and clearly identify the Service Provider to DIMOCO.
- 2.5. "Offers" made by DIMOCO, including draft agreements forwarded to the Service Provider prior to entering into an agreement, are made without creating any obligation for DIMOCO and shall therefore in any case be regarded as mere invitations to the Service Provider to make an offer.

#### 3. Scope of Services

- 3.1. DIMOCO shall provide all present and future services ("Services") in accordance with the applicable statutory provisions, these General Terms and Conditions ("GTC"), the CA, including its Annexes ("Country Specific Regulations Messaging" ["CSR-M"] and "Country Specific Regulations Payment" ["CSR-P"], including the Codes of Conduct ["CoC"] referred to therein, Technical Connection Specifications as well as Service Descriptions and Fee Regulations), and any written individual agreements ("Individual Agreements"). In the event of any discrepancies between these GTC on the one hand and the CA, including the CSR (CSR-M and/or CSR-P; collectively referred to as "CSR"), on the other hand, the CA, including the CSR, shall take precedence over these GTC. Individual Agreements shall take precedence over the CA, including the CSR, as well as over these GTC.

- 3.2 The Service Descriptions and Fee Regulations attached to the CA, as amended from time to time, shall be binding on the Service Providers. They are available for inspection at the headquarters of DIMOCO and shall be provided in electronic form by DIMOCO upon the request of the Service Provider.
- 3.3 In principle, the Services shall be available to the Service Provider 24 hours a day, except during periods in which necessary maintenance work is carried out. The Service Provider acknowledges that the availability of the Services is subject to limitations related to the capacity utilization, the traffic situation, and the operating condition of national and international telecommunications facilities, including, without limitation, the MGs, VGs, and PGs of the Mobile Network Operators, used for performing the Services. The Service Provider further acknowledges that the availability of the Services provided via the access to interfaces provided by DIMOCO depends on the availability of transmission and switching paths of the Mobile Network Operators and/or of the transmission and switching systems provided by third parties. Finally, the Service Provider acknowledges that the Mobile Network Operators are entitled to change their services, upon prior notification, for the sake of ensuring the availability and operability of their telecommunications facilities. The same shall apply to changes of the service numbers allocated to the Service Provider. Faults and disruptions in the performance of the services of the Service Provider caused by such changes shall not be deemed to constitute a default.
- 3.4 DIMOCO shall be entitled to change the Services and the technical parameters on which the Services are based upon three days' notice provided that this does not result in any unreasonable burden for the Service Provider.
- 3.5 The Services provided by DIMOCO may be temporarily disrupted or impaired as a consequence of unforeseeable or extraordinary circumstances or due to necessary technical intervention or measures undertaken to prevent faults. Such cases of disruption or impairment will be eliminated by DIMOCO as quickly as possible. A defect shall only be deemed present where DIMOCO does not eliminate such disruptions and impairments within a reasonable time which also takes account of the interests of the Service Provider(s) affected thereby. Where DIMOCO's services cannot be rendered for a period longer than one calendar day, a *pro rata* share of the monthly fees (to the extent such have been agreed) shall, in addition, not be deemed to fall due; the parties hereby exclude any claims beyond the foregoing. The same shall apply to cases of disruption or impairment caused by third parties (e.g. Mobile Network Operators). DIMOCO shall not be liable for disturbances of the transmission quality caused by atmospheric, geographical, structural, or other circumstances not attributable to DIMOCO.
- 3.6.1 For the duration of force majeure events, the Contracting Parties shall be released from their mutual obligations to perform. For the purposes of this Agreement, force majeure events shall include, without limitation, instructions by public authorities, industrial action, including industrial action in companies that DIMOCO has contracted to fulfill its contractual obligations, transport and power failures, unpredictable failure to deliver on the part of suppliers provided that such suppliers were carefully selected by DIMOCO and where and to the extent possible, in the event of a failure to deliver, measures are immediately taken to provide cover as quickly as possible, and other events beyond DIMOCO's sphere of influence such as armed conflicts, natural disasters, and terrorist attacks, which make it impossible or unreasonable for DIMOCO to perform its contractual duties.
- 3.6.2 Circumstances which only make the performance of the obligations of the Service Provider more difficult or more expensive or which result in a delay of performance shall not be deemed events of force majeure within the meaning of this Clause.
- 3.6.3 The occurrence of an event of force majeure shall not release the Service Provider from its obligations if the Service Provider has already defaulted on its obligations prior to the occurrence of such event or if the Service Provider failed to meet its duties of information regarding the nature and expected duration of the event of force majeure immediately upon occurrence of such event.
- 3.7.1 If required for the performance of Services via added-value numbers, short codes, and other service numbers, DIMOCO shall set up a separate call number with the Mobile Phone Operator for the sending and receiving process. The costs for setting up such number with the Mobile Phone Operator and the basic monthly rate shall be borne by the Service Provider.
- 3.7.2 In the event that a call number allocated to DIMOCO by a Mobile Phone Operator is cancelled for reasons under the responsibility of the Service Provider, the Service Provider undertakes to indemnify and hold DIMOCO harmless for any and all disadvantages arising in this respect.
- 3.8 Unless the Service Provider has a customer hotline of its own which meets the standards of the Mobile Network Operators, the Service Provider shall be obligated to use a customer hotline installed by DIMOCO in compliance with the standards of the Mobile Network Operators to answer all customer inquiries with respect to the Services offered or announced by the Service Provider. As consideration for using its customer hotline, the Service Provider undertakes to pay a monthly service fee to DIMOCO, the amount of which shall be governed by the applicable Fee Regulations as amended from time to time.
- 3.9 DIMOCO shall notify the Service Provider of any changes and extensions of the call number areas allocated to it. After termination of the contractual relationship with the Service Provider DIMOCO and/or the respective Mobile Phone Operator shall be free to use the service numbers allocated to the Service Provider for their own purposes or to pass them on to third parties.
- 3.10 DIMOCO shall be entitled to subcontract the performance of its obligations to third parties.

#### 4. Obligations of the Service Provider

- 4.1.1 The Service Provider undertakes to use the SMSC operated by DIMOCO and the other Services provided by DIMOCO exclusively in accordance with these GTC, the provisions of the CA, the CSR, and any Individual Agreements. The Service Provider shall also comply with the obligations imposed on DIMOCO by the respective Mobile Phone Operator, provided that such obligations are referred to in these GTC, the CA, the CSR, or any Individual Agreements.
- 4.1.2 The Service Provider shall offer the contents made available by it at a constant level of professional quality and undertakes to regularly check these contents for their validity and to update them, if necessary.
- 4.1.3 The Service Provider undertakes to notify DIMOCO, no later than four weeks prior to announcing or providing a new service, of the contents of such service and of its compliance with the standards of the Mobile Network Operators. The Service Provider shall observe the same deadline if it intends to change existing services. DIMOCO reserves the right to refuse performing its Services with regard to services whose announcement, provision, or change is in conflict with justified interests of DIMOCO.
- 4.2 The Service Provider shall be obligated to refrain from taking any actions in its business dealings that have or might have a negative effect on the business reputation and/or the creditworthiness of DIMOCO or of its contractual partners. In particular, the Service Provider shall not
- send SMS/MMS for any purpose other than advertising or information and/or (if a CA-P is entered into) for the purpose of providing the respective value-added service;
  - send SMS/MMS to mobile phones or other mobile terminal equipment whose owners have not expressly and provably consented to such transmission in advance;
  - act in any way that causes or might cause Subscribers to terminate their contracts with the respective Mobile Phone Operator;
  - transmit SMS/MMS sent to business or end customers via value-added numbers (e.g. 08XX, 09XX, 05XX, etc.) or so-called short codes (e.g. 9XX, 8XX, 6XX, etc.) through an SMS/MMS access different from the one allocated to the Service Provider by DIMOCO;
  - use business names, signs and/or logos of Mobile Network Operators, DIMOCO, or other contractual partners of DIMOCO which are protected under company name, trademark, copyright, and/or competition law, without the prior written approval of DIMOCO and the owner of the respective business name, sign and/or logo;
  - ask end customers to send MO-SMS/MMS (c.f. Clause 2.1) to other end customers;
  - restrict or exclude a Subscriber's option to terminate its use of the services offered by the Service Provider at any time by sending an SMS (e.g. with the keyword "stop").
- 4.3 The Service Provider shall not spread, either itself or through others, any illegal contents via the MGs and/or applications provided by DIMOCO. In Austria, this prohibition shall include, without limitation, contents in breach of the (Austrian) "Strafgesetzbuch, StGB" (Criminal Code), the (Austrian) "Pornographiegesezt, PornoG" (Pornography Act), the (Austrian) "Verbotsgesezt, VerbotSG" (National Socialism Prohibition Act), the (Austrian) "Gleichbehandlungsgesezt, GIBG" (Equal Treatment Act), the (Austrian) "Datenschutzgesezt, DSG" (Data Protection Act), the (Austrian) "Telekommunikationsgesezt, TKG" (Telecommunications Act), including the (Austrian) "Kommunikationsparameter-, Entgelt-, und Mehrwertdiensteverordnung, KEMV" (Communications Parameters, Fees and Value-Added Services Ordinance), the (Austrian) "Gesetz gegen den unlauteren Wettbewerb, UWG" (Unfair Competition Act), the (Austrian) "KSchG" (Consumer Protection Act), the (Austrian) "E-Commerce-Gesezt, ECG" (E-Commerce Act), and the (Austrian) "GSpG" (Gambling Act) (all available for download at [www.ris.bka.gv.at](http://www.ris.bka.gv.at)) as well as contents which may jeopardize public order or security or the development of children and adolescents in terms of their morals and health. In addition, the Service Provider shall comply with the CoC available for download at DIMOCO's website.
- 4.4 The Service Provider shall furthermore be obligated, prior to starting its business activities in destination networks outside Austria, to make itself familiar with the relevant provisions and CoC and to ensure compliance with these provisions both vis-à-vis the contractual partners of DIMOCO and the Subscribers in these networks.
- 4.5 The Service Provider shall be obligated, upon the request of DIMOCO, to immediately furnish DIMOCO with proof of having obtained the express, prior written approval of the SMS/MMS recipient (in particular via SMS/MMS-MO). If a Subscriber informs the Service Provider that he/she refuses receipt of further SMS/MMS (e.g. by sending the keyword "stop"), the Service Provider shall stop sending further SMS/MMS to the Subscriber, draw up a stop/opt out list and maintain such list according to the Subscribers' wishes.
- 4.6 DIMOCO shall be entitled to delete contents in breach of the standards laid down in Clauses 4.2 through 4.4 after prior notification of the Service Provider. If there are reasonable grounds to suspect that the Service Provider has committed a criminal and/or administrative offense, DIMOCO may also delete data of the Service Provider without prior notification.
- 4.7.1 The Service Provider undertakes to protect the personality rights and industrial property rights of third parties when using the Services provided by DIMOCO. The Service Provider shall bear the costs of legal disputes arising from violations of rights asserted by third parties and indemnify and hold DIMOCO harmless for any and all disadvantages suffered in this respect.
- 4.7.2 Upon request the Service Provider shall without delay provide DIMOCO and the Mobile Network Operators with all information available on advertising activities that are required in order to assess the Service Provider's compliance with company name, trademark, copyright and/or competition law regulations.

- 4.8 The Service Provider shall ensure that, in the course of marketing activities and other measures to present its Services, it is clearly stated that the respective Mobile Phone Operator and DIMOCO are only responsible for providing the technical means to send SMS/MMS and payment processing services.
- 4.9.1 The Service Provider shall be obligated to keep the login code secret. The Service Provider shall be liable to DIMOCO for any damage caused by a violation of this obligation of secrecy.
- 4.9.2 The Service Provider shall, at its own expense and risk, procure, repair and maintain in a serviceable condition such technical deployment environment / infrastructure as is needed to use the services. The foregoing shall apply, in particular, with respect to utilization and appropriate handling and providing of any services to be rendered by long-distance data communications (telephone, facsimile, e-mail, internet connection). In addition, the Service Provider shall ensure that a state-of-the-art security system is installed which excludes, to the extent possible, breaches of contractual provisions and unlawful acts on the part of persons within the sphere of influence of the Service Provider, and that such system is updated on a regular basis.
- 4.10 The Service Provider shall notify DIMOCO, without delay and in writing, of any change in address, company name, headquarters, billing address, and legal form.
- 4.11.1 The Service Provider shall be obligated to report, without delay, any faults or disruptions to the technical center of DIMOCO as specified in the CA and to grant DIMOCO, at its request, access to its premises and systems for the purpose of eliminating such faults or disruptions. DIMOCO or its vicarious agents shall use all technical and operational means available to them to eliminate the fault without negligent delay.
- 4.11.2 The Service Provider shall use exclusively systems and telecommunications facilities which are in accordance with the relevant provisions and shall ensure compliance with all technical specifications and other standards of DIMOCO or of the Mobile Network Operators. In addition, the Service Provider shall warrant that its services are provided in accordance with generally accepted standards of the telecommunications industry and that its services are updated on a regular basis. Adaptations of the applications provided to the Service Provider which become necessary due to changes of the systems, telecommunications facilities, or mobile network of DIMOCO or of the Mobile Network Operators shall be borne by the Service Provider.
- 4.11.3 The Service Provider undertakes not to offer or provide any services which may affect the security and stability of the telecommunications facilities or mobile networks provided by DIMOCO and the Mobile Network Operators. DIMOCO shall inform the Service Provider as soon as possible should systems used by the Service Provider cause faults or disruptions of the telecommunications facilities or mobile networks of DIMOCO or of the Mobile Network Operators. If the Service Provider fails to eliminate such faults or disruptions within three business days after notification by DIMOCO, such failure shall be deemed good cause within the meaning of Clause 6.3 entitling DIMOCO to discontinue the provision of its Services and to terminate the CA with immediate effect. The Service Provider shall indemnify and hold DIMOCO harmless for any and all claims in connection with the early termination of the CA, including third-party claims.
- 4.11.4 The Service Provider shall take adequate measures to guarantee that no improper use is made of the Services and the telecommunications facilities and/or the network of the respective Mobile Phone Operator. In particular, the Service Provider undertakes to take effective measures in order to prevent unauthorized interventions with third-party systems and the spreading of computer viruses.
- 4.11.5 The Service Provider undertakes to provide DIMOCO, upon request and within two business days, with all data necessary for DIMOCO to meet its duties of information vis-à-vis the Mobile Network Operators.
- 4.11.6 The Service Provider acknowledges that the Mobile Network Operators are authorized to check its ability to comply with their standards. In the event that the Service Provider fails to comply with the standards of the Mobile Network Operators without delay, DIMOCO shall be entitled to discontinue its Services and to terminate the CA with immediate effect. The Service Provider shall indemnify and hold DIMOCO harmless for any and all disadvantages suffered by DIMOCO as a consequence of the insufficient implementation of the standards of the Mobile Network Operators by the Service Provider.
- 4.12 The Service Provider shall be liable to DIMOCO for compliance of its Subscribers with Clauses 4.1 through 4.11.
- 4.13.1 The Contracting Parties hereby state that the Service Provider shall have the sole responsibility for answering inquiries/complaints by Subscribers regarding the services announced and/or provided by the Service Provider. The Service Provider shall be obligated to answer such inquiries/complaints within 48 hours. Upon request, the Service Provider shall provide DIMOCO, the Mobile Network Operators, and/or the Subscribers concerned with all information requested, including, without limitation, log files of service applications of the Subscribers, in a truthful and complete manner within two business days. If a Subscriber complaint turns out to be justified, the Service Provider shall without delay discontinue the conduct which gave rise to the complaint and restore (create) the status owed to the respective Subscriber and indemnify and hold the Subscriber concerned harmless for any and all disadvantages suffered due to the deviation from the service announcement or provision owed. In any case, DIMOCO shall be entitled to charge the Service Provider with lump-sum handling fees for Subscriber inquiries/complaints received by DIMOCO.
- 4.13.2 The Service Provider shall assist DIMOCO in processing Subscriber inquiries/complaints and in enforcing claims assigned to the Mobile Network Operators and provide DIMOCO and/or the Mobile Network Operators with all information requested for that purpose, without delay in a truthful and complete manner.
- 4.14 The Service Provider shall furthermore indemnify and hold DIMOCO harmless for any and all claims (for damages) of third parties (including claims for liquidated damages and handling fees of the Mobile Network Operators) and public law penalties for violations of obligations under these GTC, the CA, the CSR, or any Individual Agreements (including the violation of duties of information vis-à-vis Subscribers or other circumstances attributable to the Service Provider)

irrespective of whether these claims or penalties are based on violations on the part of the Service Provider or the Subscribers or on other acts/omissions within the sphere of influence of the Service Provider. The obligation of the Service Provider to indemnify and hold DIMOCO harmless shall also apply to the costs for the measures taken by the Mobile Network Operators to eliminate faults and disruptions as well as to the costs incurred for processing and answering requests of third parties.

- 4.15 If the conduct of the Service Provider or the conduct of one of its Subscribers attributable to the Service Provider has already caused DIMOCO damage in the amount of at least EUR 5,000.00 or if there are reasonable grounds to suspect that damage in such amount is imminent, DIMOCO shall be entitled to demand that the Service Provider take out adequate third-party liability insurance to cover further claims for damages, if any.
- 4.16 If the Service Provider defaults on the payment of due fees in spite of having been reminded to pay and been granted a grace period, DIMOCO shall be entitled to make the further provision of Services conditional upon receipt of an advance payment or a bank guarantee (amounting to the sum of the amounts billed during the past four months).
- 4.17 In the event a Service Provider should fail to perform a duty of cooperation, DIMOCO shall grant such Service Provider a reasonable grace period (to a maximum of 7 days) within which the Service Provider must eliminate the breach and render subsequent performance of its contractual obligation. Where the Service Provider's failure to perform the act of cooperation continues, DIMOCO shall be entitled to resile both from the contract in question and from any other contracts with that Service Provider with immediate effect. In such case, the cumulative amount of compensation under the respective contract(s) up until the first date on which Service Provider is allowed to terminate the contract (and where the Service Provider has no right of termination, the entire amount of compensation owed) shall be deemed automatically due and payable (without deductions) at such time as the contract is rescinded.

## **5. Fees and Terms of Payment**

- 5.1 Unless otherwise provided for by these GTC, the CA, the CSR, and any Individual Agreements, the fees owed by the Service Provider shall be based on the price lists valid at the time of provision of the Services. All prices on such lists are quoted exclusive of value added tax ("VAT"). DIMOCO shall be entitled to change the fees, including, without limitation, for the purpose of adjusting its prices to the price changes of the network operators. DIMOCO shall notify the Service Provider in writing (e.g. by printing it on a periodical invoice, by e-mail etc.) of the material contents of every change that is not exclusively to the benefit of the Service Provider at least one month prior to entry into force of such change. At the same time, DIMOCO shall inform the Service Provider that the Service Provider is entitled to terminate, free of charge, the CA and any Individual Agreements which are affected by the change in prices with effect as of the date on which such change takes effect.
- 5.2.1 SMS and MMS Large Account billing, Call Center billing, and initial costs billing:  
At the beginning of every calendar month, DIMOCO shall send an invoice for fees incurred during the past month to the Service Provider. In such invoice, DIMOCO shall charge the Service Provider for the monthly fees ("Fees") owed in accordance with the Service Descriptions and Fee Regulations as amended from time to time.
- 5.2.2 Value-added services billing:  
DIMOCO shall, together with its statement of fees, inform the Service Provider of the amount of the service fee allocated to the Service Provider according to the CA, the CSR, or any Individual Agreements ("Service Fee") on a monthly basis. Value-added services set up in Austria shall be charged at the end of the month following the period in which the services were rendered, services set up in other countries at the end of the second month following the period in which the services were rendered.  
  
In this statement of fees, DIMOCO shall charge the Service Provider for the monthly fees owed in accordance with the Service Descriptions and Fee Regulations as amended from time to time. These Fees and the Service Fee shall be offset against each other as follows: If the Service Fee is higher than the Fees, DIMOCO shall transfer the positive balance for Fees generated in Austria by the 15th day of the second month following the period in which the services were rendered and for Fees generated in other countries by the 15th of the third month following the period in which the services were rendered, to an account indicated by the Service Provider when entering into the CA. If the Fees owed are higher than the Service Fee, the principles laid down in Clauses 5.6 and 5.7 shall apply to the payment of the liabilities of the Service Provider. DIMOCO shall only be obligated to transfer the positive balance between the Service Fee and the Fees owed after having received the payments for the Service Fee from the Mobile Network Operators.
- 5.3 DIMOCO shall be entitled to charge the Service Provider a minimum turnover rate laid down in the CA, the CSR, or any Individual Agreements and/or in the Fee Regulations at the prices specified therein even if such minimum turnover is not reached.
- 5.4 If the Mobile Network Operators charge DIMOCO extra fees for routing SMS/MMS, the Service Provider shall be obligated to reimburse DIMOCO for such extra costs. The Service Provider shall indemnify and hold DIMOCO harmless for any and all third-party claims for payment of such fees.
- 5.5.1 DIMOCO shall charge its Services (including the Service Fee) on the basis of data collected by DIMOCO (e.g. regarding the SMS/MMS volumes etc). In the event that the Service Provider contests the correctness of the data collected by DIMOCO, the Contracting Parties shall accept the relevant data of the respective Mobile Phone Operator/Carrier as the basis for calculation of the Fees by DIMOCO. In case of differences between the sent/received SMS/MMS, inbound/outbound voice/video calls or Services charged via the PP on the one hand and the Services charged by the Mobile Network Operators to Subscribers as stated in the mobile phone bill on the other hand, the transaction data recorded by the Mobile Network Operators shall be applicable.

- 5.5.2 Justified Subscriber complaints shall reduce the claim of the Service Provider to transfer of the Service Fee and entitle DIMOCO to refuse transferring such fee or to reclaim Fees already transferred to the Service Provider.
- 5.6 All amounts invoiced to the Service Provider shall be due and payable without any deductions and charges within fourteen days after receipt of the invoice. Timeliness of the payment shall be determined by reference to the date on which the amount is credited to the account of DIMOCO indicated in the invoice.
- 5.7 In the case of default in payment DIMOCO shall charge the Service Provider interest on arrears in the amount of eight percentage points above the valid base lending rate applicable at that time and all costs, charges, and out-of-pocket expenses necessary for the expedient pursuit of claims.
- 5.8 The Service Provider shall raise any objections to the invoiced amounts to DIMOCO in writing within four weeks after receipt of the invoice. If the Service Provider does not raise any objections to the invoiced amounts within such period, it shall accept the correctness of the amounts charged by DIMOCO both on the merits and in terms of the amounts due.
- 5.9 If the Service Provider raises objections to an invoice in due time, the Service Provider shall pay at least a lump-sum fee at the due date of the invoice, the amount of which shall correspond to the average of the amounts invoiced during the previous three months. If the contractual relationship between the Contracting Parties had started less than three months before the Service Provider raised the objection, DIMOCO shall be entitled to a lump-sum fee in the amount invoiced for the previous month. Once the contested amount has been determined (out of court or in court), the Service Provider shall pay the difference or receive a refund.
- 5.10 In the event that the review of the contested amount does not give rise to a recalculation, DIMOCO shall be entitled to charge interest on arrears as specified in Clause 5.7 starting from the due date indicated in the invoice.
- 5.11 Notwithstanding Clause 5.2, any rights of the Service Provider to balance or reduce its accounts payable by offsetting its own claims against claims of DIMOCO shall be excluded, except in the case of insolvency of DIMOCO or of counterclaims acknowledged by DIMOCO or recognized by a court.
- 5.12 Any rights of retention and/or rights to refuse performance on the part of the Service Provider shall be excluded.
- 5.13 Payments received by DIMOCO from the Service Provider shall first be used to pay for compound interest, interest, and costs for pursuing claims within the meaning of Clause 5.7. Then, the outstanding principal claims shall be repaid, starting with the oldest claim.
- 5.14 DIMOCO shall not be liable for claims for fees of the Service Provider vis-à-vis Subscribers which were caused by the Subscribers use of information and value-added services provided by the Service Provider. The Service Provider shall bear the risk of collection and default regarding such claims irrespective of the causes for the uncollectibility of such claims. The claim of the Service Provider for payment of the Service Fee (c.f. Clause 5.2) shall therefore arise, at the earliest, at the time and to the extent that the Subscribers have paid the amounts charged by the Service Provider in their mobile phone invoices and the Mobile Network Operators have transferred the respective amounts to DIMOCO. Any liability of DIMOCO vis-à-vis the Service Provider for the failure of the Mobile Phone Operator to charge Premium SMS/MMS, voice/video calls or Services charged via the PGs to the Subscribers and/or for the transfer of the payments received from the Subscribers by the Mobile Network Operators to DIMOCO shall be excluded. Orders by regulatory authorities or courts that release the Subscriber from its obligation to perform shall also be at the expense of the Service Provider.
- 5.15 Any and all fees, duties and taxes arising out of the execution of the contract and the use of the Services shall be borne by the Service Provider.

## **6. Term of Agreement and Termination**

- 6.1 Unless otherwise agreed upon, the CA shall be concluded for an indefinite period of time and shall enter into effect upon their signing by the Contracting Parties. The CA may be terminated both by DIMOCO and the Service Provider without giving any reasons, with effect as of the end of each quarter, upon four weeks' notice. Notice of termination shall be given in writing by registered letter.
- 6.2 No ordinary right of termination shall apply in respect of contracts for one-time services, such as – in particular – contracts for the grant of a right of use to software and contracts for programming services.
- 6.3 The CA may be terminated with immediate effect by either Contracting Party for good cause. Such good causes shall include, without limitation, the following events:
- 6.3.1 A Contracting Party suspends its payments, bankruptcy or composition proceedings are instituted over the assets of a Contracting Party or a petition in bankruptcy is dismissed for lack of assets to cover the costs of proceedings;
- 6.3.2 The financial situation of a Contracting Party deteriorates to a level where there is serious doubt as to the continuation of that Party's business activities;
- 6.3.3 A Contracting Party fails to comply with its contractual obligations in spite of having received a reminder in which it is warned of the CA's termination and granted a grace period of five days (in cases of default of payment, the period of grace will be fourteen days). The grace period of five days (or, in cases of default of payment, fourteen days) for eliminating the conduct in breach of the Agreement shall start to run upon receipt of a written warning sent by letter, facsimile, or e-mail. The well-founded suspicion of the commission of a criminal offense within the meaning of Clauses 4.3 (Content of Services) or 4.4 (Knowledge of applicable provisions) and any violation of Clauses 4.5 (Proof of the

- customer's consent), 4.7 (Honoring third-party rights), 4.8 (Marketing activities), and 4.11 (Technical Specifications and notice of faults) shall entitle DIMOCO to terminate the Agreement with immediate effect and without granting a grace period.
- 6.3.4 The Service Provider violates its contractual or statutory obligations imposed on it to ensure the operability of the Services offered by DIMOCO or to protect third parties;
- 6.3.5 The Service Provider violates the obligations imposed on it in the CSR or any other Annexes to the CA;
- 6.3.6 The Service Provider harasses, threatens, or causes damage to Subscribers by spreading contents within the meaning of Clause 4.3;
- 6.3.7 DIMOCO shuts down its business or, due to orders by regulatory authorities or courts, loses the permits and licenses required for providing the Services, or an event within the meaning of Clause 3.6 continues for more than thirty days;
- 6.3.8 the Service Provider severely damages or threatens to severely damage the business reputation of DIMOCO;
- 6.3.9 violations of the standards laid down in the agreements entered into between DIMOCO and the Mobile Network Operators on the part of the Service Provider result in the discontinuation of the provision of services of a Mobile Phone Operator to DIMOCO or to a blocking within the meaning of Clause 6.5;
- 6.3.10 the continuation of the contractual relationship with the Service Provider becomes impossible or unreasonable for DIMOCO due to the occurrence of circumstances beyond the sphere of influence of DIMOCO (this termination event shall include the termination of an agreement entered into between DIMOCO and one or more Mobile Phone Operator/s for reasons beyond the responsibility of DIMOCO);
- 6.3.11 the Service Provider refuses to take out third-party liability insurance, to make an advance payment, or to provide a bank guarantee despite the fact that the requirements specified in Clauses 4.14 through 4.16 are fulfilled;
- 6.3.12 competitors of DIMOCO acquire an interest in the company of the Service Provider which entitles them to the majority of voting rights of the shareholders, to appoint or recall the majority of members of the administrative, managing, or supervisory body, or to exercise a dominant influence on the business of the Service Provider. For the purposes of these GTC, "competitors" shall be all natural or legal persons operating in Austria or abroad in the fields of SMS/MMS transmission, mobile marketing and/or mobile commerce, including, without limitation, the provision of value-added services. DIMOCO shall be entitled to discontinue its Services and to terminate the CA with immediate effect if there is reason to believe that the Service Provider violates or is going to violate the provisions of the CA, the CSR, any Individual Agreements and/or these GTC or that the Service Provider has provided incorrect or incomplete data when entering into any of the aforementioned agreements.
- 6.4 DIMOCO shall exercise its right of termination for good cause pursuant to Clause 6.3 within a period of no more than four weeks from the date of occurrence of good cause within the meaning of Clause 6.3.
- 6.5 If DIMOCO terminates the CA for good cause within the meaning of Clause 6.3 within the first quarter after the entry into force of the CA, the Service Provider shall be obligated to pay to DIMOCO the basic monthly rates incurred up to the expiry of the first quarter after the entry into force of the CA according to the Fee Regulations and any service fees related to the monthly minimum turnover rates.
- 6.6 The existence of good cause within the meaning of Clause 6.3 shall entitle DIMOCO to block the access of the Service Provider to the SMSC, to the VP, and to the PP of DIMOCO with immediate effect and without prior notification of the Service Provider and to refuse the transmission or receipt of SMS/MMS sent from/to the Service Provider as well as of voice/video and payment requests. If there are reasonable grounds for suspicion within the meaning of Clause 7.1.2 or other circumstances entitling DIMOCO to terminate the CA for good cause with immediate effect and/or to temporarily discontinue the provision of its Services in whole or in part, DIMOCO shall be exempt from its obligation to transfer the Service Fee to the Service Provider, unless the Service Provider proves that no improper use or good cause exists. A block justified by the circumstances at the time when it is effected shall not give rise to any claims for damages of the Service Provider against DIMOCO. This shall also apply to cases in which DIMOCO is obligated, on the basis of orders by public authorities or agreements entered into with the Mobile Network Operators, to block the access of the Service Provider to the SMSC, to the VP, and to the PP and to refuse the transmission or receipt of SMS/MMS sent from/to the Service Provider as well as of voice/video and payment requests. DIMOCO shall lift the block as soon as the reasons for its imposition have ceased to exist. The costs arising in connection with imposing (and, if applicable, lifting) the block shall be borne by the Service Provider.
- 6.7 DIMOCO points out that the Mobile Phone Operator concerned may block access at any time if the Service Provider violates any provisions of an agreement entered into between DIMOCO and the Mobile Phone Operator or the Mobile Phone Operator, due to orders by public authorities or agreements with foreign network operators, is obligated to block the access of the Service Provider. In such case any liability and warranty of DIMOCO shall be excluded.
- 6.8 In the event that DIMOCO terminates the CA with immediate effect for reasons under the responsibility of the Service Provider pursuant to Clause 6.3 of these GTC or discontinues the provision of its Services, the Service Provider shall also indemnify and hold DIMOCO harmless for any and all claims for damages raised by third parties on the basis of the necessity to obtain replacement contents.
- 6.9 In the event of extraordinary termination upon grounds lying within the sphere of responsibility of the Service Provider, DIMOCO shall be entitled to assert a claim for payment of all receivables due on or before the next possible date of ordinary termination / of the agreed total contract sum.

## **7. Immediate Suspension of Services**

- 7.1 DIMOCO shall be entitled to temporarily suspend its Services in whole or in part without prior termination subject to a notice period or termination for cause of the contracts and agreements mentioned in Clause 3.1 and Clause 12.1 and in particular to block the access of the Service Provider to the SMSC, the VP, and the PP of DIMOCO with immediate effect and without prior notification if
- 7.1.1 there are well-founded reasons to believe that good cause within the meaning of Clauses 6.3.1 through 6.3.12 has occurred (c.f. Clause 6.6);
- 7.1.2 the Service Provider violates its obligations under Clause 4. and thereby causes faults or disruptions of the services;
- 7.1.3 the Service Provider or the Subscribers use the Services or data excessively, for purposes other than the ones intended or in breach of the intended purposes, regardless of whether this excessive use or use for purposes other than the ones intended or in breach of the intended purposes is related to applications and systems provided by DIMOCO or to other Internet systems;
- 7.1.4 it is impossible or unreasonable for DIMOCO to continue the contractual relations with the Service Provider for reasons beyond the sphere of influence of DIMOCO.
- 7.2 DIMOCO shall resume the provision of its Services without delay as soon as the circumstances listed under Clause 7.1 cease to exist. Any liability and warranty on the part of DIMOCO for the discontinuation of Services pursuant to this Clause shall be excluded.

## **8. Liability**

- 8.1 Unless otherwise provided for in these GTC, DIMOCO's liability shall be governed by the provisions of the (Austrian) "*Allgemeines Bürgerliches Gesetzbuch, ABGB*" (Civil Code). DIMOCO hereby disclaims liability for property damage and any and all liability for financial losses, lost profits and other consequential damages in all cases in which the Service Provider fails to furnish evidence of DIMOCO's intentional act or omission or gross negligence in causing the damage.
- 8.2 Notwithstanding Clause 8.1, DIMOCO's liability for damage to property vis-à-vis an individual injured party shall be limited to EUR 5,000.00 per damaging event and to a maximum of EUR 20,000.00 per year in which the damage is caused, and vis-à-vis all injured parties to EUR 100,000.00 per damaging event and EUR 150,000.00 per year in which the damage is caused. If the total damage exceeds this upper limit, the claims for damages of the individual injured parties shall be reduced proportionally.
- 8.3 DIMOCO shall not be liable for the contents of data transmitted with its Services or for the contents of data made accessible with its Services unless such data were provided or made available by DIMOCO. If third parties assert claims against DIMOCO in respect of information services or value-added services provided by the Service Provider, the latter shall fully indemnify and hold DIMOCO harmless unless the contents giving rise to third party claims were provided by DIMOCO.
- 8.4 DIMOCO shall not be liable for any damage caused by actions of third parties or impacts of equipment connected by the Service Provider. Events of force majeure within the meaning of Clause 3.6 shall not give rise to any obligation of the Contracting Parties to pay damages.
- 8.5 DIMOCO shall not be liable for the operability of the mobile networks. As a fundamental matter, DIMOCO shall not be liable for any damage incurred by the Service Provider due to failure to perform or faulty performance by the Mobile Network Operators, including, without limitation, damage resulting from the delayed, multiple, or failed delivery of SMS/MMS by the Mobile Network Operators; however, DIMOCO shall bear liability if, in an exceptional case and based on the circumstances of the individual case, the conduct of the Mobile Network Operators is attributable to DIMOCO and the intentional actions or omissions or the gross negligence of the Mobile Network Operators have caused direct damages. DIMOCO shall not be liable for expenses and damage incurred by the Service Provider due to changes within the meaning of Clauses 3.3 and 3.4 .
- 8.6 DIMOCO does not assume any liability for damage incurred by the Service Provider because permits, approvals, and licenses of public authorities and/or declarations of consent of third parties were not granted to or withdrawn from the Service Provider.
- 8.7 DIMOCO shall treat confidentially any SMS/MMS contents provided by the Service Provider and, together with the Mobile Network Operators, shall take all reasonable efforts to prevent unauthorized third parties from accessing the contents of the information transmitted via DIMOCO's applications or interfaces. DIMOCO shall not assume any liability for damage incurred by the Service Provider or by Subscribers as a result of unauthorized access of third parties despite the fact that state-of-the-art security precautions as customary in the market have been installed.
- 8.8 The Service Provider may assert claims for damages in court only within six months after having obtained knowledge of the damage and of the damaging party, however no later than three years after the occurrence of the event which gave rise to the claim.
- 8.9 If DIMOCO performs its contractual obligations with the help of third parties and the Service Provider asserts warranty claims and/or claims for damages against such third parties, DIMOCO shall assign its claims against such third parties to the Service Provider. In such case, the Service Provider shall claim primarily against those third parties.

**9. Warranty**

- 9.1 DIMOCO shall ensure the highest possible level of diligence, reliability, and availability when providing the Services. Unless expressly agreed otherwise in the CA, the CSR, any Individual Agreements, or these GTC, any warranty on the part of DIMOCO shall be excluded to the extent legally possible. In any case, warranty claims shall be limited to the improvement or subsequent delivery of deficient Services.
- 9.2 In particular, DIMOCO does not give any warranty as to the uninterrupted accessibility of its Services, the possibility of establishing the desired connections at any time, or the preservation of stored data under all circumstances. Furthermore, DIMOCO does not warrant the operability of the mobile networks and the provision of services by the Mobile Network Operators, including, without limitation, the delivery of SMS and MMS.

**10. Secrecy**

- 10.1 The Contracting Parties undertake to keep secret and not to disclose to third parties any confidential information received from the other Contracting Party under the CA, the CSR, and any Individual Agreements as well as in the course of the initiation, negotiation and execution of these contracts and agreements, and to impose such obligation on their agents. In addition, the Contracting Parties agree to use confidential information exclusively for the purpose of fulfilling its obligations under the aforementioned contracts and agreements. The Contracting Parties undertake, up to the termination of the CA and of any Individual Agreements, to publish information intended for the public (e.g. press releases) relating to these contracts and agreements exclusively after mutual coordination of the contents of such publications.
- 10.2 Confidential information shall mean all information (e.g. data, know-how) of a Contracting Party which is not generally known and with regard to which such Contracting Party has a recognizable interest in non-disclosure. This shall also include information and facts which are per se not of a confidential nature but may turn into confidential information in combination with other pieces of information. In case of doubt all facts, information, and data shall be deemed to be confidential and secret.
- 10.3 This obligation of secrecy shall not apply to information which is or becomes publicly known, could be assumed to be known to the Contracting Party receiving it at the time of receipt, and was or is made accessible to the receiving Contracting Party by third parties without the imposition of a secrecy obligation. The burden of proof shall be borne by the Contracting Party which invokes any of these exceptions.
- 10.4 For the purposes of this Clause a "third party" shall be any person other than the Contracting Parties and their agents.
- 10.5 The term "agents" shall not only refer to persons in an employment relationship with either Contracting Party, but also to natural or legal persons who/which are active for either Contracting Party on the basis of a contract for services or another agreement. Statutory representatives and executives shall also be referred to as "agents" within the meaning of this Clause.
- 10.6 Any disclosure of confidential information shall require the prior written approval of the other Contracting Party. An exception from this obligation to obtain the approval of the other Contracting Party shall only be made if the disclosure of confidential information is ordered by a court or by another authority. The Contracting Parties shall notify each other without delay of any requests for information by third parties, including requests for information by public authorities, and respond to such requests taking the greatest possible care to safeguard the non-disclosure interests of the Contracting Party concerned.
- 10.7 Notwithstanding the requirement to obtain the other Contracting Party's approval pursuant to Clause 10.6, the disclosure of confidential information to third parties shall only be permissible if such third parties have agreed to enter into a secrecy obligation in advance whose substance at least corresponds to the provisions of this Clause.
- 10.8 The Contracting Parties undertake to grant access to confidential information of the other Contracting Party exclusively to those agents who are directly involved in the execution and performance of the contracts and agreements listed under Clause 10.1.
- 10.9 The Contracting Parties undertake to protect all documents which might contain confidential information of the other Contracting Party from the access of third parties and agents not involved in the execution and performance of the contracts and agreements listed under Clause 10.1.
- 10.10 The Contracting Parties undertake to return all documents that might be of confidential character to the respective other Contracting Party without delay after termination of the Agreement. Should it be necessary to keep copies of confidential documents, the Contracting Party concerned shall be informed accordingly.
- 10.11 If a Contracting Party learns of any unlawful use or passing on of confidential information, it shall without delay inform the other Contracting Party and initiate all necessary steps to counteract such unlawful use or passing on of confidential information.
- 10.12 The obligation of secrecy shall survive the termination of this Agreement until the confidential information under this Agreement has become publicly known. The obligations of secrecy of the Contracting Parties shall pass to their heirs and legal successors.
- 10.13 These secrecy provisions shall apply without any geographical limitations.

## 11. Data Protection

### 11.1 Data of the Contracting Parties:

- 11.1.1 On the basis of the (Austrian) "*Datenschutzgesetz, DSG 2000*" (Data Protection Act 2000) the Contracting Parties undertake to collect, process, and transmit personal data exclusively for performing their respective services and for the purposes agreed upon in these GTC, the CA, the CSR, and any Individual Agreements.
- 11.1.2 The Service Provider expressly consents to DIMOCO's processing its personal data such as address, line of business, mode of payment, given name, surname, academic degree, date of birth, telephone and facsimile number, and e-mail address of the contact persons.
- 11.1.3 The Service Provider expressly consents to DIMOCO's requesting information about the Service Provider from the trade credit database ("*Warenkreditevidenz*") of the Austrian "*Kreditschutzverband von 1870*" or other institutions for the protection of creditors. In addition, the Service Provider expressly consents to DIMOCO's forwarding personal data, including, without limitation, data on the agreed credit limit, on outstanding balances and (in the case of default in payment) reminders sent to the Service Provider which are required for assessing its creditworthiness and/or collecting the invoiced amounts, to lawyers and collection agencies.
- 11.1.4 The Service Provider expressly consents to the use of traffic data for the purpose of marketing the telecommunications services provided by DIMOCO, including, without limitation, the further development, demand analysis, and improvement of suggested solutions and offers of such telecommunications services, and the provision of additional services.
- 11.1.5 The Service Provider consents to receiving product-related advertisements and information, to a reasonable extent, from DIMOCO. The Service Provider may withdraw its consent at any time in writing, per facsimile or e-mail.
- 11.1.6 If the Contracting Parties agree on credit card payment, the Service Provider shall consent to the transmission of all billing data in the format required for the purpose of billing to the respective credit card company.
- 11.1.7 Unless otherwise provided for in these GTC, the CA, the CSR, and any Individual Agreements, the Contracting Parties undertake to keep secret all commercial, personnel and technical matters of the respective other Contracting Party and to refrain from disclosing such information to third parties.
- 11.1.8 The Service Provider shall be entitled to withdraw its consent at any time, which shall result in the prohibition of any further use of the data.

### 11.2 Data of Subscribers:

- 11.2.1 The Contracting Parties hereby agree by mutual consent that the Service Provider is the controller (*Auftraggeber*) and DIMOCO is the processor (*Dienstleister*) within the meaning of secs. 10 et seq of the Data Protection Act 2000, with regard to the personal data of the Subscribers, including, without limitation, the processed master, content, and traffic data. DIMOCO shall also be entitled to collect personal data of the Subscribers in the course of this services relationship on behalf of the Service Provider.
- 11.2.2 DIMOCO undertakes to use data and data processing results exclusively for the purpose of following the instructions of the Service Provider and to return them exclusively to the Service Provider or to transmit them only upon a written instruction of the Service Provider. Any use of the data provided by the Service Provider to DIMOCO's own ends shall also require a written order. In the event that a Subscriber raises an objection against his/her mobile phone invoice or fails to pay the invoiced amount, the Service Provider hereby authorizes DIMOCO to transmit all master, content, and traffic data (including, without limitation, log files) of such Subscriber to the Mobile Phone Operator that has issued the invoice, for collection purposes.
- 11.2.3 DIMOCO declares in a legally binding manner that it has imposed the data confidentiality obligation within the meaning of sec. 15 of the Data Protection Act 2000 on all persons entrusted with data processing prior to the commencement of their duties. In particular the secrecy obligation of the persons entrusted with data trafficking tasks shall also survive the termination of their activities and their employment with DIMOCO. This secrecy obligation shall also apply to data of legal persons and partnerships under commercial law.
- 11.2.4 DIMOCO declares in a legally binding manner that it has taken sufficient security measures within the meaning of sec 14 of the 2000 Data Protection Act in order to prevent that the data are used illegally or made accessible to unauthorized third parties.
- 11.2.5 DIMOCO may subcontract its processing services to another company without the consent of the Service Provider. However, DIMOCO shall notify the Service Provider of its intention to subcontract its processing services in a timely manner to allow for the Service Provider to prohibit the envisaged subcontracting. In addition, any contracts between DIMOCO and sub-processors shall be concluded within the meaning of sec 10 of the Data Protection Act 2000. In such contract, DIMOCO shall ensure that the sub-processor accepts the same obligations as DIMOCO on the basis of these GTC, the CA, the CSR, and any Individual Agreements.
- 11.2.6 DIMOCO shall ensure that the technical and organizational requirements are met in such a manner that the Service Provider is able to comply with the provisions of secs 26 et seq (right to information) and 27 (right to correction or deletion) of the Data Protection Act 2000 vis-à-vis the Subscribers (under data protection law referred to as the data subjects [*Betroffene*]) at any time within the statutory deadlines and shall provide the Service Provider with all information required to that end.

- 11.2.7 After the completion of the provision of the Services DIMOCO shall be obligated to provide the Service Provider with all data processing results and documents that contain data and/or, at the Service Provider's instruction and expense, to keep them protected from unauthorized inspection or destroy them as instructed, provided that these data are not required for the purposes of billing or making Fees collectible, processing complaints or complying with statutory obligations.
- 11.2.8 Regarding the processing of the data provided by it, the Service Provider shall be granted the right to inspect and monitor the data processing facilities. This right of inspection shall be limited to business hours and shall be exercised with the highest possible level of protection of the business operations of DIMOCO. DIMOCO undertakes to provide the Service Provider with all information required for checking compliance with the obligations laid down in the CA.
- 11.2.9 It is furthermore laid down by mutual consent that the Service Provider shall be obligated to comply with all provisions under data protection law, including, without limitation, the Austrian Telecommunications Act 2003 and the Austrian Data Protection Act 2000. This obligation shall refer in particular to the requirement to delete master, traffic, and content data and to comply with the Subscribers requests for information, correction, objection and deletion. Where required, the Service Provider shall obtain the necessary consent of the Subscribers for data processing (including the storing of content data). In this context, DIMOCO shall act exclusively on the instructions of the Service Provider and under the Service Provider's sole responsibility.
- 11.2.10 The Service Provider shall indemnify and hold DIMOCO harmless for any and all claims for damages of third parties (including Subscribers) or public law penalties imposed as a result of the use of data in breach of data protection provisions.
- 11.3 Data security: DIMOCO shall take all technically feasible and economically reasonable measures in order to guarantee data security, including, without limitation, the protection of stored data from unauthorized access of third parties. Should third parties nevertheless succeed in illegally obtaining access to the data stored with DIMOCO and/or use such data, Clause 8 shall apply.

## **12. Special provisions - software programming**

### 12.1 Scope, Subject-matter of contract, Formation of contract

- 12.1.1 DIMOCO performs software programming for the Service Provider solely on the basis of these GTC and, in particular, on the basis of the terms set forth in Clause 4 hereof. These shall be deemed an integral element of every contract for software programming concluded by DIMOCO, even if no express reference is made thereto. In the event that individual terms of this Clause 12 conflict with the other terms of these GTC, the terms of this Clause 12 shall prevail.
- 12.1.2 Contracts with Service Providers shall be formed either by execution of a written agreement by both parties or by DIMOCO's written acceptance of an offer corresponding to an order placed.
- 12.1.3 With respect to the subject-matter of the contract, a distinction should be made between standard programming (12.2.1), modified programming (12.2.2) and customized programming (12.2.3). The content and scope of work in each case as between DIMOCO and the Service Provider shall be defined exclusively on the basis of an individual written contract / service specifications. Oral agreements or unilateral change requests by the Service Provider shall not be binding on DIMOCO.

### 12.2 Services of DIMOCO, Service Providers' duties of cooperation

- 12.2.1 In the case of standard programming, the Service Provider shall receive a product which corresponds to the technical specifications furnished by DIMOCO. No modifications are made to take account of any service specifications of the Service Provider. Standard programming is purchased on an "as is" basis, without any modifications and without any specific warranties of quality or of fitness for a particular purpose.
- 12.2.2 In the case of modified standard programming, the product supplied pursuant to Clause 12.2.1 is modified to take account of the Service Provider's written service specifications in so far as mutually agreed. Within seven days of executing the contract, the Service Provider must disclose its modification requests to DIMOCO in writing and in a detailed fashion which is capable of technical realization. Changes to the service specifications will only become binding upon DIMOCO's written approval. DIMOCO shall not be obliged to review the Service Provider's service specifications for correctness, completeness and, in particular, compatibility with the standard programming, and shall not be deemed to assume any duty to warn the Service Provider in this respect. DIMOCO shall endeavor to satisfy the service specifications to the best of its abilities.
- 12.2.3 In the case of customized programming, the Service Provider must prepare performance specifications and must define the basic parameters for the programming work. Changes to the performance specifications and the basic parameters shall only be binding upon DIMOCO's express consent. DIMOCO shall not be obliged to review the performance specifications and the basic parameters for correctness, completeness and for feasibility and their fitness for a particular purposes, and in this regards it shall not be deemed to assume any liability or duties to warn vis-à-vis the Service Provider. DIMOCO shall endeavor to satisfy the service specifications to the best of its abilities.
- 12.2.4 As a fundamental matter, DIMOCO's contractual obligation shall be to render its services in a proper and workmanlike fashion. However, the parties shall not be deemed to have agreed on any particular outcome (except where such is expressly provided under an individual agreement). Unless expressly so provided in writing in the contract between the parties, the Services Provider shall not have any entitlement to particular reaction times or a particular completion date in terms of DIMOCO's performance of services.

- 12.2.5 DIMOCO shall determine the location at which it renders its services in light of the technical and organizational circumstances and of space availability (e.g. at site, at DIMOCO's premises, at the premises of a third party; by remote access). DIMOCO may determine the actual place at which it renders its services from among several possible options in its own discretion.
- 12.2.6 DIMOCO shall render other services which are not expressly defined in the individual agreement, such as general support work, only where it is separately engaged to do so and in light of available resources, in consideration for a separate fee. See also Clause 13.
- 12.2.7 Due and proper performance of services by DIMOCO shall be deemed premised on the provision of timely support of the proper quality by the Service Provider's staff. The Service Provider shall provide comprehensive assistance to DIMOCO in its performance of the services and shall take all such measures for this purpose as are appropriate and necessary in a timely fashion. Unlimited compliance with DIMOCO's requirements and instructions must be assured. DIMOCO shall, in addition, provide the Service Provider with unlimited access to the IT structure.
- 12.2.8 The Service Provider furthermore undertakes to furnish the development environment, development tools and test environment, interfaces for data import and export and real data for testing purposes. The Service Provider's obligations to afford sufficient protection against unauthorized access and harm from external sources shall also apply with respect to development and testing environment.

### 12.3 Formal acceptance, Warranty

- 12.3.1 With respect to standard programming pursuant to Clause 12.2.1, the Service Provider shall only be entitled to assert warranty claims if the software does not comport with the specifications of the standard product as provided by DIMOCO. Any such claims must be raised in writing within three days of delivery of the software. DIMOCO hereby disclaims all warranty claims or claims for damages exceeding the foregoing.
- 12.3.2 The Service Provider shall test modified standard programming under Clause 12.2.2 and customized programming under Clause 12.2.3 within seven days of implementation / of installation for any possible defects ("Test Phase"). The Service Provider must record and sufficiently describe any defects in a written log ("Description of Defects"). Where critical or serious, reproducible defects as defined in the GTC-IT arise during the Test Phase ("Operation-Impeding Defects"), DIMOCO shall eliminate them within a reasonable time and shall stipulate a new date for formal acceptance. An Operation-Impeding Defect shall only be deemed present where the specific programming – despite efforts to eliminate the defect – does not comport with the agreed service specifications / the basic parameters of the Service Provider as set forth in the individual agreement. Where, after the Test Phase, the Service Provider does not give written notice of Operation-Impeding Defects, then formal acceptance shall be deemed to have occurred, even if the Service Provider has not performed any tests. In any event, at such time as the software is commissioned by the Service Provider for actual operations, formal acceptance shall be deemed to have occurred notwithstanding any defects for which notice may have been given. The Service Provider shall have no right to assert warranty claims and claims for damages for defects it may ascertain following formal acceptance.
- 12.3.3 The Description of Defects must be sufficiently detailed so as to enable the defect to be reproduced at any time and to be efficiently eliminated. DIMOCO shall be entitled to invoice the Service Provider for time and expenses occasioned by defects as to which the Service Provider has given notice but which do not in fact exist or which are occasioned by defects which are unrelated to the services of DIMOCO, which are occasioned by insufficient descriptions of defects, defects which are not capable of reproduction and difficulties encountered in eliminating defects.
- 12.3.4 DIMOCO does not assume any liability vis-a-vis the Service Provider for defects and shall not bear liability for disruptions where such are attributable to the Service Provider's sphere of responsibility, and in particular where such are caused by third-party products or are due to interactions with third-party products. In particular, DIMOCO shall not be deemed to assume liability for a lack of interoperability with third-party programming.

### 12.4 Fees

- 12.4.1 Unless otherwise agreed in an individual agreement, the software programming services shall be charged on the basis of DIMOCO's time actually spent, at DIMOCO's applicable hourly rates in effect at the time of rendering the services. 50% of the fee shall be due for payment at the time of issuing the order, 25% at the time of delivery and 25% upon formal acceptance.

### 12.5 Rights of use

- 12.5.1 In addition to the mandatory statutory rights to which the Service Provider is entitled under secs. 40 (d) und (e), unless otherwise provided in writing in an individual agreement the Service Provider shall be deemed to acquire a right of use to the software programs provided by DIMOCO which is non-transferable, non-exclusive and limited to use by the Service Provider in such IT environment and to such purposes as the Service Provider has disclosed to DIMOCO (Permission to Use a Copyrighted Work [*Werknutzungsbewilligung*]). Any and all exploitation and/or processing exceeding the foregoing, and any disclosure of programs or of portions thereof and of any documentation delivered with the same to third parties is hereby prohibited. DIMOCO expressly reserves all other rights of intellectual property, and in particular its rights of exploitation, to the software programs provided to the Service Provider.

## 13. **Industrial Property Rights**

- 13.1 Copyrights, exploitation rights and related intellectual property rights as well as other intellectual or industrial property rights to works (in particular: software programming), database works, and databases created by DIMOCO, DIMOCO's employees and/or third parties commissioned by DIMOCO, as well as to other work results protected by intellectual or industrial property rights, shall remain with DIMOCO and may only be used by the Service Provider during

the duration of the CA and after the termination of the CA to the extent that DIMOCO has authorized the Service Provider in writing. Notwithstanding such authorization, the Service Provider shall in particular not be entitled to reproduce and/or disseminate the works (software programming), database works and databases created by DIMOCO, DIMOCO's employees and/or third parties commissioned by DIMOCO or other work results protected by intellectual or industrial property rights without the prior express consent of DIMOCO. DIMOCO shall not be liable to third parties for the unauthorized exploitation of the above intellectual or industrial property rights on the part of the Service Provider.

#### **14. Miscellaneous**

- 14.1. Amendments and additions to the CA and to any Individual Agreements shall only take effect if made in writing or, in the case of electronically transmitted amendments and additions, accepted in writing within the deadlines laid down in the CA and the Individual Agreements. The Contracting Parties have not entered into any additional verbal agreements. Any waiver of this requirement of written form shall also be made in writing.
- 14.2. The Service Provider shall only transfer rights and obligations under the CA and any Individual Agreements to third parties after having obtained the prior written consent of DIMOCO. In addition, any such transfer of rights and obligations shall require the express written consent of the third parties concerned. These principles shall also apply to the Service Provider's granting of rights of use to third parties in respect of rights (initially) granted to or Services rendered to the Service Provider by DIMOCO.
- 14.3. DIMOCO shall be entitled to transfer rights and obligations under the CA, the CSR, and any Individual Agreements to affiliated companies and group companies within the meaning of sec 244 para. 2 of the (Austrian) Commercial Code ("*Unternehmensgesetzbuch, UGB*").
- 14.4. Unless otherwise provided for in these GTC, the CA, the CSR, or any Individual Agreements, the connection of the infrastructure of the Service Provider to the infrastructure of DIMOCO shall not give rise to any rights of the Contracting Parties to the infrastructure of the respective other Contracting Party.
- 14.5. Notifications made by facsimile or e-mail shall be deemed made in writing. Deadlines shall be deemed met if documents, facsimile messages or e-mails containing declarations subject to a deadline are received by the recipient within such deadline. Approvals of a Contracting Party required under these GTC, the CA, the CSR, and any Individual Agreements shall be obtained in writing and stamped and signed by the approving party prior to taking the action which needs to be approved.
- 14.6. The Service Provider shall act in its own name, for its own account, and at its own risk.
- 14.7. These GTC, the CA, the CSR and any Individual Agreements shall constitute a comprehensive contractual framework setting forth the rights and obligations of the Contracting Parties. The Contracting Parties have not entered into any additional agreements. Any additional agreements made prior to or upon the conclusion of the CA shall cease to be effective upon the Service Provider's signing of the CA.
- 14.8. If any provision hereof is held to be invalid or unenforceable, it shall be severed from these GTC and shall not affect the validity of the other provisions of these GTC. The Contracting Parties agree to replace invalid or unenforceable provisions by provisions which come as close as possible to the economic purpose of the invalid or unenforceable provisions and the original intent of the Contracting Parties.
- 14.10. A single European emergency call number 112 has been set up.
- 14.11. Stamp duties and charges, if any, payable for the CA and any Individual Agreements shall be borne by the Service Provider.
- 14.12. These GTC, the CA, the CSR, and any Individual Agreements shall be governed by, and interpreted in accordance with, Austrian law. The Contracting Parties, by mutual consent, exclude the applicability of the UN Convention on Contracts for the International Sale of Goods and the conflict-of-law provisions.
- 14.13. All disputes arising between the Contracting Parties and/or their legal successors from or in connection with these GTC, the CA, the CSR and any Individual Agreements, including any and all issues regarding the existence, validity, or termination of these contracts and agreements, shall be settled exclusively by the competent court in Wiener Neustadt which has subject-matter jurisdiction.