

**GENERAL TERMS AND CONDITIONS
OF DIMOCO EUROPE GMBH
(VERSION: 15 JANUARY 2016)**

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PREAMBLE

- I. As of 15 January 2016, these General Terms and Conditions (GTC) shall apply to the entire business relationship between the Customer and DIMOCO with respect to the Mobile Payment service of DIMOCO and shall replace the general terms and conditions of 26th April 2010.
- II. DIMOCO shall provide the Customer the Mobile Payment service, which enables the invoicing of Goods & Services via the Operator of End Users, as well as ancillary services.
- III. The Customer shall provide its own Goods & Services to End Users, which will be invoiced via the Operators' networks, and/or, as a service provider or aggregator, shall provide other Sub-Customers with the possibility of invoicing End Users for the Sub-Customers' Goods & Services via the Operators' networks.

1. DEFINITIONS & INTERPRETATION

1.1. **Definitions.** Unless otherwise stated, in these GTC the following terms shall have the following meanings:

- *Cash Collection Model* In connection with the Mobile Payment service, the Operators charge their subscribers the End User Spend (inclusive of VAT) for the Goods & Services and thus collect the VAT on the Goods & Services from the End Users. However, the Operator does not pay such VAT to the competent local tax authorities nor does it file tax returns with the same. Instead, the Operator or an upstream link in the Customer's service chain will pass the VAT through to the Customer, who will receive a credit note on the End User Spend (inclusive of VAT) and an invoice for the costs of the Mobile Payment service. The Customer shall file and be responsible for filing the tax return with the competent tax authorities and for paying the relevant VAT on the Goods & Services to the same.
- *Chargebacks* Reimbursements of the End User Spend to End Users carried out by the Operators.
- *Country Specific Regulations* These are country-specific regulations as well as Operator-specific requirements that the Customer must observe and/or abide by in the provision of the Goods & Services and which DIMOCO makes available on My DIMOCO. Whilst DIMOCO always endeavours to diligently ensure that the Country Specific Regulations made available on My DIMOCO are complete and up-to-date, no warranty for the completeness or the up-to-dateness of the provisions and requirements available in My DIMOCO is given or assumed.
- *Customer* A businessman or entrepreneur within the meaning of Article 1 (2) of the Austrian Consumer Protection Act [*Konsumenschutzgesetz*] to whom DIMOCO offers its services to.
- *Customer Contact* A contact person in the Customer's organisation who is available to DIMOCO and to whom DIMOCO may send communications regarding the contractual relationship in German and/or English.
- *Customer Data Sheet* This document contains information about the Customer that is relevant to establishing the

contractual relationship with DIMOCO. The Customer shall truthfully and completely fill out this document and subsequently send the signed document plus any other documents that may be required to DIMOCO. The Customer Data Sheet shall be kept up-to-date at all times, which means that the Customer is obliged to inform DIMOCO in writing about any changes of the information contained therein without delay.

- *DIMOCO* DIMOCO Europe GmbH, a company incorporated under Austrian law, registered under FN 199901 y of the Company Register of the Regional Court of Wiener Neustadt, Austria, whose registered seat is in Brunn am Gebirge, Austria, and whose business address is Campus 21, Europaring F15/302, A-2345 Brunn am Gebirge, Austria. For further information about DIMOCO please visit the DIMOCO Website.
- *DIMOCO API* The application programming interface or programming interface for processing payment transactions made available to the Customer by DIMOCO.
- *DIMOCO Contracts* Collective term for agreements and other documents which constitute the legal basis for the contractual relationship between DIMOCO and the Customer.
- *DIMOCO Share* The agreed share in the End User Spend that DIMOCO is entitled to as remuneration for the provision of the Mobile Payment service to the Customer.
- *DIMOCO Website* <http://www.dimoco.eu>
- *End User* These are end users or consumers within the meaning of Article 1 (1) (2) of the Austrian Consumer Protection Act who use the Goods & Services. No contractual relationship exists between an End User and DIMOCO.
- *End User Queries* Enquiries and/or complaints about Goods & Services made by an End User, an Operator, a court or a public authority, the processing and answering of which lies in the sole responsibility of the Customer (and if applicable their Sub-Customer).
- *End User Spend* The amount paid by an End User to the Operator for use of the Goods & Services (inclusive of VAT).
- *Goods & Services* The goods delivered or services provided to End Users by the Customer that will be invoiced via the Operators' networks under usage of the DIMOCO API and the Payment Hub. This also includes the goods delivered or services provided to an End User by a Sub-Customer.
- *GTC* These General Terms and Conditions of DIMOCO, dated 15 January 2016.
- *Mobile Payment* A service provided by DIMOCO to the Customer for the invoicing of Goods & Services with which the End User pays the End User Spend to the Operator.
- *MOSS System* The "Mini One Stop Shop System", a program that was developed in connection with Regulation (EU) No 1042/2013 (in conjunction with Regulation (EU) No 282/2011) to allow taxable merchants to pay VAT on telecommunication services, television and radio broadcasting services and electronically supplied services supplied to non-taxable persons in the EU in accordance with the statutory provisions.
- *My DIMOCO* A web customer portal made available to the Customer by DIMOCO.
- *Net Payout* The amount payable by DIMOCO to the Customer for the Goods & Services, which is calculated as follows:

$$\text{Payout} - [\text{SMS Fees} + \text{Refunds} + \text{Chargebacks} + \text{other costs}]$$
- *Operator* Mobile network operators including mobile virtual network operators and other telecommunication operators or providers (e.g. internet service providers) with whom DIMOCO cooperates in order to provide the Mobile Payment service to the Customer.
- *Operator Share* The share in the End User Spend which an Operator retains for enabling the payment transaction.
- *Payment Hub* The infrastructure operated by DIMOCO for the processing and/or aggregation of payment transactions.
- *Payout* The agreed share in the End User Spend that the Customer is entitled to for selling the Goods & Services. It is calculated as follows:

$$\text{End User Spend} - [\text{Operator Share} + \text{DIMOCO Share}]$$

less VAT payable on the End User Spend (in the case of the Revenue Share Model) or including VAT payable on the End User Spend (in the case of the Cash Collection Model).
- *Payout Schedule* An overview by Service Country of the dates for invoicing and payment of the Net Payout which may be viewed at My DIMOCO.

- *Refunds* Reimbursements of the End User Spend to End Users which are made directly by the Customer (or the Sub-Customer). In exceptional cases, such reimbursements may be made by DIMOCO (on behalf of the Customer/Sub-Customer in connection with the Service & Contact Center service) in accordance with Section 6.3.b of these GTC.
- *Revenue Share Model* In connection with the Mobile Payment service, the Operators charge their subscribers the End User Spend (inclusive of VAT) for the Goods & Services and thus collect VAT for the Goods & Services from the End User. The VAT will be paid or tax returns for the same will be filed by the relevant Operators or any other upstream link in the Customer's service chain. The Customer receives a Revenue Share, which is calculated as follows:
$$\text{Net End User Spend} - [\text{Operator Share} + \text{DIMOCO Share}]$$
- *Service & Contact Center* An ancillary service provided by DIMOCO, where DIMOCO makes available and operates an End User hotline for answering End User Queries.
- *Service Application Form* A form describing the relevant Goods & Services service in detail. The Customer shall truthfully and completely fill out this form and send it to DIMOCO, this for every single service per country and, where necessary, per Operator.
- *Service Country* Such target country or countries in which the Customer invoices the Goods & Services via the DIMOCO API.
- *Shared Account* Accounts with the Operator that are jointly used by several Customers for handling payment transactions.
- *Side Letter* A legally binding addendum concluded between the Parties in writing which contains special, additional, supplementary and/or divergent regulations with regard to the contractual relationship of the Parties.
- *SMS* "Short Message Service" is a telecommunication service for transmitting text messages of not more than 160 alphanumeric characters.
- *SMS Fees* Fees charged for the transmission of SMS.
- *Sub-Customer* A service provider of the Customer for the conduct of whom the Customer shall be liable vis-à-vis DIMOCO in the same way as for its own conduct. No contractual relationship exists between the Sub-Customer and DIMOCO.

1.2. Interpretation. In these GTC

- a. any reference
 - i. used in the singular also implies the plural and vice versa;
 - ii. to a gender also implies all other genders.
- b. unless otherwise provided, deadlines shall be determined by excluding the first and including the last day; should the last day not fall on a working day, then the immediately following working day shall count. This regulation shall, however, not apply when determining the deadlines by which the obligations of the Customer must be fulfilled. If the deadline should fall on a date that is not a working day, then the relevant obligation shall be fulfilled on the immediately preceding working day.

1.3. Headings. Headings are for convenience only and shall have no influence on construction or interpretation of these GTC.

1.4. Conflict. Unless otherwise provided, in the case of a conflict or discrepancy between individual provisions of the DIMOCO Contracts, the conflict or discrepancy shall be resolved on the basis of the following declining order of precedence:

- a. Side Letters, if any, concluded by and between the Parties after the contractual relationship has been established which modify and/or amend the terms and conditions of the contractual relationship.
- b. Country Specific Regulations.
- c. the offer.
- d. the order confirmation.
- e. the Customer Data Sheet.
- f. these GTC.

2. SUBJECT MATTER & CONCLUSION OF THE CONTRACT

2.1. Subject Matter of the Contractual Relationship. The subject matter of the contract is the provision of the DIMOCO API to the Payment Hub for the invoicing of Goods & Services.

- 2.2. **Establishment of the Contractual Relationship.** All offers of DIMOCO shall be subject to change and non-binding and constitute an invitation to the Customer to submit an offer. The contractual relationship shall be established upon delivery of the order confirmation to be issued by DIMOCO. The contract shall commence on the day on which the order confirmation is issued by DIMOCO. DIMOCO shall be free to refuse to establish a contractual relationship with a Customer (even without stating any reasons).
- 2.3. **Access to My DIMOCO.**
- a. Upon establishment of the contractual relationship, the Customer shall be granted access to My DIMOCO, with which the Customer shall, *inter alia*, have the possibility to view specific transactions made in connection with the Goods & Services and to generate reports thereon. At My DIMOCO, the Customer may also view the contracts that concern him and the Country Specific Regulations relevant to him and download these. The access to My DIMOCO granted to the Customer (in particular the user name and the password) is personal and must not be passed on to third parties or unauthorised persons in the Customer's organisation.
 - b. Access to My DIMOCO will be granted only for the term of the contractual relationship. Upon termination of the contractual relationship, the Customer's right to access My DIMOCO will end as well. If My DIMOCO is used in violation of the contract or in a way that is abusive of the law, DIMOCO may block such access without prior notice.
- 2.4. **Modifications of or Amendments to the Subject Matter of the Contract.** For every modification of or amendment to the services to be provided by DIMOCO or the agreements made between the Parties, a separate Side Letter shall be drawn up and duly signed by the Parties. Any expansion of the Mobile Payment service and/or ancillary services to other Service Countries (Service Country expansion) shall merely require a simple written notification (e-mail shall suffice) plus the signature of the relevant DIMOCO price list by the Customer.
- 2.5. **Customer Contact.** In the Customer Data Sheet, the Customer shall nominate a Customer Contact and a deputy to DIMOCO and shall immediately notify DIMOCO in writing (e-mail shall suffice) in the case that the person of the Customer Contact (or their deputy) changes.
- 2.6. **Modifications of the DIMOCO Contracts.**
- a. DIMOCO is entitled to modify the regulations of the DIMOCO Contracts and, in particular, these GTC. DIMOCO shall advise the Customer of the material contents of modifications that are not exclusively beneficial in writing (e.g. via e-mail or by printing the information on a periodically issued invoice) at least 1 (one) month prior to the entry into force of the modification. In addition, the Customer shall be advised of the date at which the modifications will enter into force and of the fact that he has a special right to terminate the contractual relationship with DIMOCO free of charge with effect as of the date on which the announced modifications will enter into force. The full text of the modifications shall be provided to the Customer.
 - b. Modifications shall be deemed approved by the Customer
 - i. in the case of modifications that are not adverse or exclusively beneficial, once these have been communicated to the Customer, but in any event not later than at the date on which the announced modifications enter into force.
 - ii. in the case of modifications that are not exclusively beneficial, if the Customer does not object to these in writing within a period of 1 (one) month of receipt of the relevant communication.
 - c. In the event of a timely objection by the Customer in accordance with Section 2.6.b.ii of these GTC, the Customer shall have a special right to terminate the contractual relationship with DIMOCO free of charge with effect as of the date on which the announced modifications enter into force. It is expressly held for the record that modifications that become necessary only due to a regulation issued by the regulatory authority shall not entitle the Customer to terminate the contractual relationship free of charge.

3. SCOPE OF THE SERVICES

- 3.1. DIMOCO provides services in accordance with the applicable statutory provisions as well as the DIMOCO Contracts agreed between the Parties. Further, it is held for the record that the services provided by DIMOCO are also determined by the existing contractual relationships between DIMOCO and the relevant Operator.
- 3.2. **Availability.** Unless otherwise provided, the Customer shall have access to the Payment Hub 24 (twenty-four) hours a day, except during periods of necessary maintenance work and to the extent permitted by the capacity utilisation and operating status of the national or international telecommunication facilities used for the processing the services. The availability of the Payment Hub is also dependent on the availability of the transmission and switching paths of the Operators or those provided by third parties. The Customer expressly acknowledges that Operators are entitled to modify their services in the interest of the availability and operability of their telecommunication facilities upon prior notice. Interruptions of or disruptions to the provision of the Goods & Services caused thereby, or those caused as a result of circumstances not in the sphere of responsibility of DIMOCO, shall not be deemed to constitute a default. No warranty on the uninterrupted availability of the Payment Hub is given or owed.
- 3.3. At its own discretion, DIMOCO may have all or parts of the services it is to provide be provided by third parties as agents.
- 3.4. **Modification of the Technical Parameters.** DIMOCO is entitled to modify the technical parameters on which its services are based (including but not limited to the Payment Hub and the DIMOCO API) by giving at least 14 (fourteen) calendar days' notice, provided that this does not result in any unreasonable burden for the Customer and the scope of the services of DIMOCO used by the Customer will only insignificantly change to the Customer's disadvantage. Adaptations of the technical infrastructure used by the Customer that may

become necessary in this regard shall be implemented by the Customer on his own responsibility and at his own cost within the timeframe set by DIMOCO.

- 3.5. The services provided by DIMOCO (including access to the Payment Hub) may be temporarily interrupted or impaired as a consequence of unforeseeable or extraordinary circumstances as well as due to necessary technical interventions or measures undertaken for the prevention of disruptions.
- 3.6. **Provision of Services in Case of Force Majeure.** If and for as long as an event of force majeure prevails, DIMOCO shall be released from fulfilling its contractual obligations. Events of force majeure shall include, but not be limited to, instructions by public authorities, industrial actions (also in businesses that DIMOCO has contracted for the fulfilment of its contractual obligations), failure of the infrastructure of the Operators or their sub-suppliers as well as any other events beyond the sphere of influence of DIMOCO, such as armed conflicts, acts of god or terrorist attacks that make it impossible or unreasonable for DIMOCO or an agent instructed by DIMOCO to fulfil their contractual obligations.
- 3.7. **Gratuitous Services.** DIMOCO shall, at its own discretion, be free to discontinue, temporarily suspend or to provide only against payment any service made available to the Customer gratuitously by giving 14 (fourteen) calendar days' written notice (e-mail shall suffice). DIMOCO makes no warranty that the gratuitous services are free from disruptions or errors.
- 3.8. **Technical Customer Service of DIMOCO.** In case of technical questions about the DIMOCO API or the Payment Hub, the Customer may contact DIMOCO as follows:

E-mail: support@dimoco.eu
 Phone: +43 (1) 33 66 888 2040

4. OBLIGATIONS OF THE CUSTOMER

4.1. General.

- a. The Customer undertakes to use the Payment Hub exclusively for the contractually agreed purpose. Further, the Customer is obliged to make itself familiar with the legal and regulatory framework applicable to the provision of the Goods & Services in a Service Country, to act accordingly and to indemnify and hold DIMOCO harmless from any disadvantages resulting from a violation of those provisions, unless DIMOCO is responsible for the disadvantage. Moreover, the Customer shall ensure that no contents that are prohibited by law will be distributed in the advertising or provision of the Goods & Services.
- b. The Customer shall be solely responsible for the Goods & Services, including but not limited to their advertising, content and scope, and shall be liable for the conduct of third parties instructed by it (or its Sub-Customers) in connection with the provision of the Goods & Services (e.g. affiliate marketing enterprises).
- c. The Customer undertakes to actually provide the Goods & Services announced or advertised by the Customer. The use of the Payment Hub shall not be permissible in the event that a fictitious offer is made to the End User or the same is induced to use a service without actually receiving anything in return.
- d. The Customer shall offer the Goods & Services in a constant, professional quality and undertakes to constantly review the Goods & Services for their compliance with applicable law, the applicable Country Specific Regulations and the requirements of the DIMOCO Contracts. Moreover, the Customer is obliged to immediately discontinue the Goods & Services in the event of a violation and to resume the relevant service only after the violation has been fully cured, this, however, after prior approval from DIMOCO. In this regard, it is held for the record that in the event of a violation of applicable law, the Country Specific Regulations and/or of the requirements of the DIMOCO Contracts, DIMOCO is entitled to
 - i. temporarily block the Customer's access to the DIMOCO API and/or the Payment Hub until the violation has been fully cured.
 - ii. delete contents that are in violation of the above after prior notification of the Customer. In the event of a well-founded suspicion that the elements of a criminal or administrative offence are fulfilled, DIMOCO is entitled to delete the Customer's contents also without their prior notification.
- e. The Customer shall refrain from taking any actions that have or may have an adverse effect on the financial situation, the reputation and/or creditworthiness of DIMOCO or its contracting parties (particularly agents and Operators). In particular, the Customer shall be prohibited either himself or through third parties from
 - i. taking actions that cause or may cause an End User to terminate a contract concluded between the End User and the relevant Operator.
 - ii. sending SMS that were sent to End Users via premium-rate numbers (e.g. 0800, 0900, 0180) or via so-called SMS short codes through an SMS access different from the one assigned to it by DIMOCO.
 - iii. asking End Users to send SMS to other End Users.
 - iv. making more difficult, limiting or excluding the End Users' possibility of terminating the used Goods & Services via a SMS at any time (e.g. through the keyword "STOP").
 - v. contacting End Users for advertising purposes who have previously indicated by SMS or otherwise that they do not wish to receive texts from the Customer.

- vi. taking measures to circumvent, modify or manipulate in any form the payment pages made available by the Operators or DIMOCO.
- f. The Customer undertakes to immediately instruct DIMOCO to block its access to the Payment Hub by sending an e-mail message to support@dimoco.eu should it become aware of any misuse or other unauthorised use of the Mobile Payment service.
- g. The Customer shall notify DIMOCO immediately after it has become aware of any unauthorised or incorrectly carried out payment transaction by sending an e-mail message to support@dimoco.eu.
- h. DIMOCO reserves the right to refuse to provide or to terminate its service with regard to the Goods & Services if the announcement, provision or amendment of the same is in conflict with the legitimate interests of DIMOCO.

4.2. Service Application Form.

- a. The Customer shall apply for Goods & Services to be newly established by means of a Service Application Form.
- b. Upon DIMOCO's request, the Customer shall provide supplementary information and documents without delay.

4.3. Country Specific Regulations.

- a. The Customer undertakes to comply with the applicable Country Specific Regulations.
- b. The Operators grant DIMOCO access to their technical infrastructure only on the condition that DIMOCO itself and, in addition the Customer (and its Sub-Customers, if any) undertake to comply with certain requirements as well as codes of conduct. Those requirements and codes of conduct can be seen in the Country Specific Regulations. The Customer is obliged to comply with the Country Specific Regulations and, in the case of non-compliance, to indemnify and hold DIMOCO harmless from any disadvantages resulting therefrom (including, but not limited to, the payment of contractual penalties, fees, damages vis-à-vis DIMOCO, settlement payments or reasonable costs of legal defence, etc., if any).
- c. The amendment of the Country Specific Regulations by DIMOCO is permissible insofar as the relevant contractual provisions with the Operators and/or the relevant codes of conduct or statutory provisions applicable in the Service Countries change in relation to DIMOCO. DIMOCO shall inform the Customer about such amendments accordingly and make the amendments available on My DIMOCO. In derogation from the processes described in Section 2.6 of these GTC (Modifications of DIMOCO Contracts), the amendment shall become effective vis-à-vis the Customer upon the Customer gaining knowledge thereof (notification by e-mail shall suffice).

4.4. Approval of the Goods & Services. The Goods & Services may be invoiced via the Payment Hub only after an appropriate approval has been granted by DIMOCO. In the event of a violation of this provision, the Customer shall lose any entitlement to the Payout generated in this connection. In addition, DIMOCO is entitled to request the payment of a penalty from the Customer in accordance with Section 8.4.b of these GTC. The Customer shall indemnify and hold DIMOCO harmless from any and all damages, costs and other disadvantages caused by this violation.

4.5. Clarification of DIMOCO's Role. The Customer shall be prohibited from giving third parties (e.g. public authorities, End Users, etc.) the impression that DIMOCO is the provider of the relevant Goods & Services, a contracting party of the End User or responsible for the Goods & Services in any other way.

4.6. Systems of the Customer.

- a. By taking suitable measures, the Customer shall ensure that the Payment Hub and the DIMOCO API as well as the systems and/or networks of the relevant Operators and/or those of DIMOCO agents will not be misused by the Customer. The Customer undertakes to take effective measures to prevent unauthorised interferences with or access to the above-mentioned systems (e.g. hacking or other attacks) and distribution of malware. For this purpose, the Customer shall set up a state-of-the-art security system and ensure that it will be updated on a regular basis. Should attacks or cases of misuse occur at DIMOCO, an Operator or a third party (in particular DIMOCO's agents or the hardware of an End User) via the Customer's systems, and if DIMOCO suffers any damage as a result thereof, the Customer shall fully indemnify and hold DIMOCO harmless in this respect.
- b. The Customer undertakes to neither offer nor provide any Goods & Services that are likely to impair the security or stability of the Payment Hub or the systems operated by the Operators (including the Operators' networks). If the systems used by the Customer or the offered Goods & Services cause disruptions to the above-mentioned systems, DIMOCO is entitled to discontinue its services and block the Customer's access to the Payment Hub and to the Operators' systems until the disruption has been completely eliminated.

4.7. Sub-Customers.

- a. Should the Goods & Services not be provided by the Customer itself, but instead by a Sub-Customer, the Customer shall be solely responsible vis-à-vis DIMOCO for the Sub-Customer's conduct and shall indemnify and hold DIMOCO harmless from any damages, costs and other disadvantages caused by the Sub-Customer.
- b. The Customer is obliged to
 - i. impose on the Sub-Customer any and all obligations relating to the provision of the Goods & Services under the contractual relationship with DIMOCO, and

- ii. disclose to DIMOCO any and all information about the relevant Sub-Customers and the Goods & Services provided by them immediately upon request, but in any event not later than within 1 (one) working day.

5. DISCONTINUATION OF THE SERVICES OF DIMOCO

- 5.1. DIMOCO is entitled to discontinue its services vis-à-vis the Customer in whole or in part immediately, even without prior notice, and, in particular, to block access to the Payment Hub if
- a. this is necessary in order to comply with an order issued by a court, a public prosecutors' office or an administrative authority or in the case of obligations under statutory provisions.
 - b. objective reasons relating to the security of the payment instrument justify this, including, but not limited to, a relevant contractual obligation of DIMOCO vis-à-vis an Operator (e.g. on the basis of a violation of applicable law or the Country Specific Regulations).
 - c. a suspicion of unauthorised or fraudulent use of the Mobile Payment service exists.
 - d. a good cause within the meaning of Section 12.3 of these GTC (Termination for Cause) exists or if there is a well-founded suspicion that such a cause exists.
- 5.2. In addition, DIMOCO is entitled to discontinue its services vis-à-vis the Customer for as long as the Customer fails to fulfil its payment obligations vis-à-vis DIMOCO or to provide a bank guarantee (upon request).
- 5.3. If and when the circumstances described in Section 5.1 or Section 5.2 of these GTC have ceased to exist, DIMOCO shall restore access to the Payment Hub and resume the provision of its service. The Customer shall bear the costs incurred in connection with discontinuation and/or resumption of the services, in as far as it is responsible for the reason for the discontinuation. This shall also apply in the event that a well-founded suspicion of good cause is subsequently not, but the Customer was responsible for the circumstances that gave rise to the well-founded suspicion. Upon having blocked the access, DIMOCO shall immediately notify the Customer about the block and the reasons for the same by e-mail, provided this does not compromise objective security considerations or violate a regulation of community or national law or an order issued by a court or administrative authority.
- 5.4. A block which was justified in light of the prevailing circumstances at the time the block was made shall trigger no claims for damages of the Customer or its Sub-Customers vis-à-vis DIMOCO. This shall apply, in particular, in cases where DIMOCO is obliged to discontinue its service vis-à-vis the Customer due to orders issued by a court, a public prosecutors' office or an administrative authority or as a result of contracts concluded with the Operators.

6. END USER QUERIES

- 6.1. As the contractual partner of the End Users, the Customer (or its Sub-Customers) is solely responsible for handling and answering End User Queries. Unless otherwise agreed, the Customer shall observe the following requirements for the handling of End User Queries:
- a. *Duty to provide information.* The Customer is obliged to
 - i. document all relevant information about fulfilment of the obligations applicable to the provision of the Goods & Services in conformity with the law in an appropriate manner (e.g. evidence that the End User has agreed to purchase the relevant Goods & Service).
 - ii. upon request, provide DIMOCO with all requested true and complete information, including but not limited to log files on the purchase of Goods & Services by the End User within 1 (one) working day. Should an End User Query prove to be justified, then the Customer shall immediately discontinue the conduct complained about and restore or bring about the owed condition and indemnify and hold the End User concerned harmless from any disadvantages suffered by the same resulting from the non-conformant provision of the Goods & Services. To the extent that this is necessary or expedient, DIMOCO shall have the right to pass on such information received from the Customer to the relevant End User, court, public authority and/or Operator.
 - b. For receiving and answering all End User Queries, the Customer shall operate an End User hotline that is available via phone and e-mail in the local language of every Service Country in which Goods & Services are provided and in accordance with the statutory provisions as amended as well as the Operators' requirements.
 - c. Should DIMOCO receive an End User Query relating to the Goods & Services, then DIMOCO shall forward the same to the Customer for further processing. To this end, the Customer shall provide DIMOCO with an e-mail address to which End User Queries shall be sent. Should the Customer fail to provide an e-mail address, then at DIMOCO's discretion, the query shall be forwarded to the Customer Contact or to any other person in the Customer's organisation. DIMOCO has the right to also process End User Queries which are forwarded to DIMOCO by the Operators itself.
 - d. DIMOCO is entitled to charge the Customer a handling fee for every End User Query received by DIMOCO in accordance with its currently valid price list. The Customer shall also reimburse any handling fees charged to DIMOCO by an Operator for forwarding queries received by these to DIMOCO.
 - e. Should the Customer fail to fulfil its duty of documentation and cooperation in accordance with Section 6.1.a of these GTC, and if an End User Query is sustained, then the Customer shall lose its entitlement to the monies collected from the End User for the Goods & Services. Irrespective of when the objections raised by the End User is sustained, DIMOCO is entitled to charge the Customer an amount equal to the credit note issued to the End User by the Operator.

- 6.2. If the Customer (or his Sub-Customers) does not have its own End User hotline as described in Section 6.1.b of these GTC, the Customer is obliged to use the Service & Contact Center ancillary service offered by DIMOCO.
- 6.3. **DIMOCO Service & Contact Center.**
- a. *General.*
- i. DIMOCO shall offer the Customer use of the Service & Contact Center operated by DIMOCO for End User Queries for a charge. This ancillary service provided by DIMOCO cannot be used by the Customer by itself.
 - ii. The Service & Contact Center accepts queries, handles the same on the basis of the information available and answers them in the Customer's name.
 - iii. The use of the End User hotline(s) for the Goods & Services provided by DIMOCO via the Service & Contact Center shall not release the Customer from its duties of cooperation in the processing and answering of End User Queries.
- b. *Refunds.*
- i. In the following cases, the DIMOCO Service & Contact Center is entitled to grant Refunds to End Users on behalf of the Customer even without consultation:
 - if the Goods & Services were purchased
 - by a minor or a person for whom a guardian has been appointed (after presentation of a relevant document by the End User or the person acting on their behalf) or
 - by means of a stolen device (after presentation of a relevant document by the End User or the person acting on their behalf).
 - if charges were paid for the Goods & Services
 - with no proved opt-in or
 - due to a technical error.
 - if the purchase of the Goods & Services was not effected in accordance with applicable country-specific requirements.
 - ii. The Customer shall ensure that Refunds (if these cannot be processed via the technical interface) are paid to End Users within a timeframe of 3 (three) working days. Should the Refund not have been paid within this timeframe, then DIMOCO is entitled to request the payment of a penalty in accordance with Section 8.4.b.iii of these GTC from the Customer. Should the Customer still have not paid the Refund to the End User after the lapse of another 10 (ten) calendar days from expiration of the three-day period, DIMOCO may pay the Refund on behalf of the Customer against reimbursement of the costs and an additional handling fee.

7. CHARGES

- 7.1. **General.**
- a. The charges to be paid by the Customer are based on the currently valid price lists agreed with the Customer. Unless expressly stated otherwise, all prices shall be net of statutory VAT.
 - b. All invoices issued by DIMOCO to the Customer shall be paid or transferred to DIMOCO within 14 (fourteen) calendar days of the date of issue free of any charges or deductions.
- 7.2. **Settlement & Payment of the Net Payout.**
- a. DIMOCO is entitled to deduct the charges to be paid by the Customer in connection with the settlement of the relevant service periods from the End User Spend before the Net Payout is credited or paid to the Customer.
 - b. After the relevant service period, DIMOCO shall prepare a statement of fees for the Net Payout and send the same to the Customer. The statement of fees shall be prepared on the basis of the transaction data collected by DIMOCO (which may be viewed at My DIMOCO). Any corrections which become necessary as a result of the Operator settlement shall be made in the statements of fees of the following months. Unless otherwise stated, for Goods & Services set up in Austria, the settlement shall be made by the end of the month following the relevant service period, for other countries at the end of the second month following the relevant service period.
 - c. DIMOCO shall transfer the Net Payout to the Customer's account stated in the Customer Data Sheet. Unless otherwise stated, for Goods & Services revenues generated in Austria, the Net Payout will be transferred by the 15th (fifteenth) of the second month following the relevant service period, and for Goods & Services revenues generated in other countries by the 15th (fifteenth) of the third month following the relevant service period.
 - d. In the event that the Net Payout (or a part thereof) is to be paid in the local currency of a Service Country, then the Customer shall ensure that the account nominated by the Customer in the Customer Data Sheet can accept or convert the local currency of the relevant Service Country.

- e. Should the Net Payout not be paid in the relevant local currency of the Service Country, then DIMOCO shall apply the FX selling rate of Oberbank AG as at the last day of the month preceding the month in which the statement of fees was issued.
- f. Transfers of the Net Payout shall only be made to the Customer as of an amount of EUR 2,000 (in words: two thousand Euros) or more or the equivalent foreign currency amount per transfer.
- 7.3. **Minimum Turnover Amount.** Should the Customer have failed to generate a turnover of at least EUR 1,000.00 (say: one thousand Euros) per month or the equivalent foreign currency amount (*the "Minimum Turnover Amount"*) for 6 (six) consecutive months, DIMOCO may invoice the Customer the Minimum Turnover Amount until the Customer's monthly turnover once again reaches the Minimum Turnover Amount.
- 7.4. **Customer's Risk of Collection and Default.** DIMOCO shall not be liable for claims for fees of the Customer vis-à-vis an End User that are caused by use of the Goods & Services. The Customer shall bear the risk of collection and default regarding such claims irrespective of the cause of irrecoverability of such claims. The Customer's entitlement to the Net Payout shall therefore arise, at the earliest, at the time and to the extent that the End Users have paid the relevant accounts receivable of the Customer to the Operator and the relevant amounts have been forwarded by the Operator to DIMOCO. Any liability of DIMOCO vis-à-vis the Customer for the Operators' failure to charge the Goods & Services and/or to forward to DIMOCO the payments made by End Users shall be excluded. The Customer shall also bear the consequences of orders issued by public authorities or courts that release End Users from their obligation to perform.
- 7.5. **Withholding of the Net Payout.** In the event of termination of the contractual relationship for whatever reason, DIMOCO will be entitled to withhold the last Net Payout (or a part thereof) for a duration of 3 (three) months from the payment date of that Service Country in which Goods & Services are provided that is paid out the latest, in particular to pay any Refunds or Chargebacks to End Users or other costs that may arise in connection with the Goods & Services. After this period, DIMOCO shall transfer the withheld Net Payout (or a part thereof) to the Customer's account nominated in the Customer Data Sheet. In the event that after transfer of the last Net Payout (or a part thereof) to the Customer, Refunds or Chargebacks are paid to End Users or any other costs are incurred in connection with the Goods & Services, the Customer shall refund DIMOCO such costs immediately after an invoice has been issued. This obligation shall survive termination of the contractual relationship.
- 7.6. **Adjustment of Charges.** DIMOCO is entitled to change the fees to be paid by the Customer, in particular for the purpose of adjustment to changes in the Operators' prices. The provisions of Section 2.6 (Modifications of DIMOCO Contracts) of these GTC shall apply accordingly.
- 7.7. **Default Interest on Late Payment.** In the case of late payment, DIMOCO shall charge the Customer commercial default interest at the statutory rate as well as the cost of all damage caused by and expenses incurred in connection with the default, including but not limited to the costs, charges and out-of-pocket expenses required for the enforcement of the claim. Payments received by DIMOCO from the Customer shall initially be used to settle interest and expenses, then subsequently the outstanding principal claims shall be settled, starting with the oldest one.
- 7.8. **Objections to Statements of Fees or Invoices.**
- a. Objections to statements of fees issued or amounts charged by DIMOCO shall be raised by the Customer with DIMOCO in writing within 1 (one) month of receipt of the statement of fees or invoice. Upon expiration of this period, a Customer who has raised no objections acknowledges accuracy of the accounts receivable by DIMOCO contained in the relevant statement of fees or invoice as to the merits and the amount.
- b. In the event that a review of the contested amount does not give rise to a recalculation, DIMOCO shall be entitled to demand default interest on late payment in accordance with Section 7.7 of these GTC from the date at which the statement of fees or invoice contested by the Customer became due.
- 7.9. **Authoritative Data.** The transaction data collected by DIMOCO (e.g. about SMS volumes, etc.) shall be used for the settlement of the Mobile Payment service. Should, however, the Customer contest the accuracy of the transaction data collected by DIMOCO (which may be viewed at My DIMOCO), then the Parties agree that the relevant data of the relevant Operator will be taken as the basis for calculation of the fees by DIMOCO. In the case of discrepancies between the data collected by DIMOCO, on the one hand, and the data collected by an Operator, on the other hand, the transaction data recorded by the Operator shall be authoritative.
- 7.10. **Set-Off.**
- a. The set-off of the Customer's claims against claims of DIMOCO shall only be permissible for counterclaims that are undisputed or are final and binding. Any rights of retention and/or rights to refuse performance on the part of the Customer shall be excluded.
- b. DIMOCO is entitled to set-off all of its claims and the claims of enterprises affiliated with DIMOCO against claims of the Customer and those of enterprises affiliated with the Customer (group transfer pricing clause).
- 7.11. **Customer's Reimbursement Obligation.**
- a. Should the Customer act in breach of applicable law, the relevant Country Specific Regulations, the Operators' requirements and/or the DIMOCO Contracts, then the Customer shall reimburse DIMOCO any and all expenses, damages and disadvantages incurred or suffered by DIMOCO as a result thereof.
- b. The Customer is aware of the fact that the contracts concluded between DIMOCO and the Operators provide for contractual penalties, refund obligations and charges if the Goods & Services provided are not in compliance with the applicable statutory regulations, the relevant Country Specific Regulations or the Operators' requirements. Such payments to the Operators are considered to be amounts that must be reimbursed to DIMOCO by the Customer in accordance with Section 7.11.a of these GTC,

provided these are imposed on DIMOCO by an Operator in connection with the Goods & Services, save where the reason for the imposition is due to conduct which is not attributable to the Customer. Reasonable costs of legal defence incurred by DIMOCO in this connection shall also be reimbursed.

- c. For the avoidance of doubt the reimbursement obligation shall not be limited to income generated by the Goods & Services (Payout) and can significantly exceed such income in a specific case.

7.12. VAT Handling.

a. *General.*

- i. For any revenue earned through a Cash Collection Model, the Customer (as provider of the Goods & Services) is obliged to declare and pay VAT on this income through the MOSS System, for which prior registration is required, in a timely manner.
- ii. For any revenue generated through a Revenue Share Model, the VAT shall be declared and paid by an upstream link in the service chain.
- iii. The current overview of the countries assigned to either the Cash Collection Model or to the Revenue Share Model shall be provided to the Customer on request.

b. *Customer's Obligations.*

- i. Unless otherwise already provided to DIMOCO, the Customer shall provide DIMOCO with the following information:
 - registered business address of the Customer and specification of the legal form (e.g. Ltd., PLC, etc.);
 - tax/VAT (VAT ID) number and/or MOSS registration number under which the VAT is declared for the Goods & Services being provided to End Users.
 - ii. Upon request, the Customer shall ensure that an invoice document is provided to End Users on which the Customer is stated as being the party that is responsible for both the payment of the VAT as well as the provision of the Goods & Services.
- c. Should the Customer not itself be the provider of the Goods & Services to the End Users, then the Customer warrants to impose the VAT handling obligations set out in this Section 7.12 in the same way on his Sub-Customer (as the actual provider of the Goods & Services) by means of a contract.

7.13. Miscellaneous.

- a. Should the Goods & Services not fulfil the requirements of the DIMOCO Contracts, the Country Specific Regulations or those of the statutory provisions applicable in the relevant Service Country, or should the Goods & Services have been provided without DIMOCO's or an Operator's express approval, then the Customer's entitlement to the amounts collected by the Operators for the Goods & Services that are in violation of the law, directives or a contract shall be forfeited.
- b. Should any deviations from the agreed price levels/price points occur in the settlement of accounts with the End Users because the Customer has failed to adhere to the technical requirements or specifications of the Operators, then the Customer's entitlement to the payment of the Payout shall be forfeited in the amount of such deviations.

8. LIABILITY & PENALTIES

8.1. Liability of DIMOCO.

- a. Unless otherwise provided for in these GTC, DIMOCO's liability shall be governed by the provisions of the Austrian Civil Code [ABGB]. DIMOCO's liability in the case of damage to property or any liability of DIMOCO for pecuniary loss, loss of profit or any other indirect or consequential damage shall be excluded, unless the Customer proves that the damage was caused by DIMOCO by wilful intent or gross negligence.
- b. DIMOCO's liability for damage shall be limited to the amount of EUR 100,000.00 (say: one hundred thousand Euros) per damaging event and EUR 150,000.00 (say: one hundred and fifty thousand Euros) per year in which the damage was caused.
- c. For the avoidance of doubt, the Parties agree that DIMOCO shall not be liable for circumstances that are beyond its control and that do not form part of the contractually due obligations. This shall include, but not be limited to, the following cases:
 - i. Where DIMOCO provides technical information or provides advice and such information or advice does not form part of the contractually due obligations, this is done without any liability whatsoever.
 - ii. DIMOCO shall not be liable for the data content or information that is transmitted or made accessible by the Customer and/or their Sub-Customer via the Payment Hub. Should a third party assert claims relating to the Goods & Services against DIMOCO, then the Customer shall fully indemnify and hold DIMOCO harmless.
 - iii. DIMOCO shall not be liable for availability, operability and/or quality of the Operators' networks.
 - iv. As a matter of principle, DIMOCO shall not be liable either for any damage suffered by the Customer due to non-provision or defective provision of services by the Operators, including, but not limited to, any damage caused by a late, multiple or not

effected payment transaction. DIMOCO shall, however, be liable if the Operators' conduct can, by way of exception, be attributed to DIMOCO as a result of the circumstances of the specific case and if the Operator has caused direct damage to the Customer by wilful intent or gross negligence.

- v. DIMOCO assumes no liability for damage incurred by the Customer as a result of DIMOCO not having been granted official permits, approvals, licences and/or declarations of consent of third parties or that the same has been restricted or revoked.
 - vi. DIMOCO shall not be liable for any damage incurred as a result of the blocking of a Shared Account that is used by the Customer which was caused by a co-user of the Shared Account.
 - vii. DIMOCO shall not be liable for extraordinary or unforeseeable events which are beyond its control and the effects of which could not have been avoided by use of the due care or in situations where DIMOCO is bound by orders under Community law, national law or orders issued by courts or administrative authorities.
- d. Should DIMOCO inform the Customer of potential violations or potential practical ways of interpretation or implementation of applicable law or the Country Specific Regulations, then this shall merely constitute an assessment based on DIMOCO's experiences in the industry without any claim to accuracy or completeness. In no case shall DIMOCO be deemed to be providing legal advice and no liability shall be assumed in this respect.
- e. The above limitations of liability shall be equally applicable to organs, legal representatives, staff or other agents of DIMOCO.
- f. In as far as DIMOCO fulfils its contractual obligations with the assistance of third parties (agents) and the Customer incurs any damage due to a circumstance because of which DIMOCO is entitled to assert warranty claims and/or claims for damages against this agent, DIMOCO shall assign such claims against the agent to the Customer. In this case, the Customer shall primarily hold the agent liable.
- 8.2. The Customer may assert claims for damages in court only within 6 (six) months of the date on which the damage and the damaging party became known to it, however, no later than within 3 (three) years after the occurrence of the event which gave rise to the claim; otherwise the claim will become time-barred.
- 8.3. The above limitations of liability shall not apply to any damages resulting from injury to life, limb or health or to liability under the Austrian Product Liability Act [*Produkthaftungsgesetz*] that were culpably caused by DIMOCO, its legal representatives or agents.
- 8.4. **Special Fees and Penalties.**

- a. Should an Operator or a public authority impose a penalty on DIMOCO as a result of a breach of duties for which the Customer is responsible, then DIMOCO is entitled to demand the Customer to pay a handling fee of up to 10% (ten percent) of the penalty imposed capped at a maximum of EUR 10,000.00 (say: ten thousand Euros). In turn, DIMOCO shall take all reasonable measures to defend itself against the imposition of the penalty and to reduce the penalty.
- b. DIMOCO shall be entitled to demand the Customer to pay the following penalties:
 - i. If the Customer breaches a material contractual obligation, including, but not limited to, Sections 4.1.e.v (sending unsolicited texts to End Users), 4.1.e.vi (circumvention of the payment page), 4.3.b (compliance with Country Specific Regulations) and 4.4 (approval of the Goods & Services) of these GTC, then the Customer shall pay DIMOCO a penalty in the amount of EUR 5,000.00 (say: five thousand Euros) for every commenced day during which the material breach of contract persists, but not more than a total of EUR 30,000.00 (say: thirty thousand Euros) per violation.
 - ii. Should the Customer (or its Sub-Customer) fail to comply with its duty to issue invoices to End Users as set out in more detail in Section 7.12.b.ii of these GTC within 1 (one) week of the relevant request, then the Customer shall pay a penalty in the amount of EUR 100.00 (say: one hundred Euros) for every commenced day until fulfilment is proved. For the record it is held that the payment of this penalty shall not release the Customer (or its Sub-Customers) from the duty to issue invoices.
 - iii. Should the Customer (or its Sub-Customer) fail to transfer a Refund to an End User within the 3 (three) working day timeframe stipulated in Section 6.3.b.ii of these GTC, then the Customer shall pay a penalty in the amount of EUR 100.00 (say: one hundred Euros) for every commenced day until fulfilment is proved. For the record it is held that the payment of this penalty shall not release the Customer (or its Sub-Customers) from the duty to remit the Refund to the End User.
- c. The assertion of the handling fee and/or the penalty by DIMOCO shall not affect its right to claim additional damages.

9. CONFIDENTIALITY

- 9.1. The Parties undertake to keep confidential and protect against access by or disclosure to third parties all confidential information they receive or have received from the other Party in the course of the negotiation, conclusion and implementation of the contractual relationship. Any information that is marked as confidential or of which a Party must assume due to the contents of the transmitted information that it was accidentally not marked as confidential shall be considered confidential. In particular, the contents of the DIMOCO Contracts shall be considered as being confidential.
- 9.2. The forwarding of information to End Users, courts, public authorities and/or Operators in accordance with Section 6.1.a.ii of these GTC (duty to provide information in connection with End User Queries) shall be expressly exempt from the obligation of confidentiality under of this Section 9. Further, the forwarding of information to a Party's consultants who are obliged to maintain secrecy due to their profession (e.g. lawyers, auditors) shall also be exempt.
- 9.3. The following information shall not be considered as being confidential:

- a. Information that has demonstrably already been in the public domain or enters the public domain at a later point in time without any action of the receiving Party that is in violation of the law or a contract.
 - b. Information that has demonstrably already been known to the receiving Party prior to receipt from the disclosing Party.
 - c. Information that has been disclosed to the receiving Party in good faith by a third party who lawfully possessed the confidential information and was entitled to disclose the same.
 - d. Information that demonstrably independently developed by a Party with no access to confidential information of the other Party.
 - e. Information that must be disclosed due to statutory provisions or orders issued by a public authority or a judge.
 - f. Information that has been disclosed with the express written approval from the disclosing Party.
- 9.4. Any and all confidential information, including all copies, shall be returned to the disclosing Party or demonstrably destroyed within 5 (five) calendar days of the end of the contractual relationship or receipt of a written request from the disclosing Party, whichever comes first, and the disclosing Party shall be sent a confirmation to that effect upon request. The receiving Party is entitled to retain a copy of the confidential information if this is necessary for the purpose of an audit or due to other statutory or regulatory provisions or if it is stored on a backup medium and deleting the copy stored thereon would result in disproportionate work or expenses. The disclosing Party shall without delay be notified in writing of the fact that a copy of the confidential information has been retained and the same shall be subject to the confidentiality obligations of this Section 9 (even after the termination of the contractual relationship) until it is returned or provably destroyed.
- 9.5. If the receiving Party gains knowledge of the unlawful use or distribution of confidential information, then they shall immediately notify the disclosing Party thereof and initiate all measures necessary to counteract such use or distribution.
- 9.6. The duties confidentiality set out in this Section 9 shall apply for the term of the contractual relationship and for a period of 3 (three) years from the later of the end of the contractual relationship or the return/provable destruction of the copy that was necessarily retained or stored on a backup medium.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. **General.**
- a. Any and all intellectual property rights owned by a Party before commencement of the contractual relationship shall remain with that Party upon entry into the contractual relationship. Unless otherwise agreed, no intellectual property rights of a Party shall be transferred to the other Party.
 - b. Any copyrights, exploitation rights, related proprietary rights and other intellectual property rights to works (including but not limited to software), database works or databases and other work results protected by intellectual property rights that were developed by a Party, its staff and/or third parties instructed by it shall remain with that Party and may be used by the other Party for the duration of the contractual relationship only insofar as this is absolutely required for achieving the purpose of the contract.
- 10.2. **Rights to Goods & Services.** The Customer shall grant DIMOCO a non-exclusive, worldwide and free-of-charge right to and/or licence for the Goods & Services (including but not limited to the right to sub-licence, modify or edit the same) for the purpose of provision of the Goods & Services, in particular if there is a need to optimise the display and/or delivery of messages to be sent.
- 10.3. Unless otherwise agreed, no Party shall have the right to use the trademarks, logos or signs of the other Party for any purpose without the prior written approval of the other Party. The Customer expressly grants DIMOCO the right to use its name, trademarks and the offered Goods & Services in DIMOCO's marketing and/or presentation materials.

11. DATA PROTECTION & EXTENT OF DATA USAGE

- 11.1. **Customer's Data.**
- a. On the basis of the Austrian Data Protection Act [*Datenschutzgesetz* or "*DSG*"], DIMOCO undertakes to collect, process and transmit personal data of the Customer (and its Sub-Customers) only in connection with the provision of the contractually agreed services and for the purposes agreed in the DIMOCO Contracts.
 - b. **THE CUSTOMER GIVES ITS EXPRESS CONSENT AND ACKNOWLEDGES AND AGREES**
 - i. **THAT DIMOCO WILL COLLECT AND PROCESS THE PERSONAL DATA OF THE CUSTOMER AND ITS CONTACTS WHO WORK IN CONNECTION WITH IMPLEMENTATION OF THIS CONTRACTUAL RELATIONSHIP RECEIVED FROM THE CUSTOMER, SUCH AS COMPANY NAME, FIRST NAME, SURNAME, ACADEMIC DEGREE, DATE OF BIRTH, ADDRESS, PHONE AND FAX NUMBER AND E-MAIL ADDRESS, ONLY FOR THE PURPOSES OF IMPLEMENTATION OF THIS CONTRACTUAL RELATIONSHIP. THE CUSTOMER SHALL ENSURE THAT ANY PERSONS CONCERNED AGREE TO THE TRANSMISSION OF DATA TO AND USE OF DATA BY DIMOCO.**
 - ii. **THAT DIMOCO IS ENTITLED TO SUBMIT QUERIES ABOUT THE CUSTOMER TO THE REGISTER OF COMMERCIAL LOANS OF THE KREDITSCHUTZVERBAND VON 1870 OR OTHER INSTITUTIONS FOR THE PROTECTION OF CREDITORS. MOREOVER, THE CUSTOMER EXPRESSLY AGREES THAT DIMOCO IS ALLOWED TO TRANSMIT TO LAWYERS OR COLLECTION AGENCIES PERSONAL DATA THAT IS NECESSARY FOR CARRYING OUT A CREDIT CHECK AND/OR COLLECTING INVOICE AMOUNTS, INCLUDING BUT NOT LIMITED TO DATA REGARDING THE**

AGREED CREDIT LINE, OUTSTANDING BALANCES AND (IN THE CASE OF LATE PAYMENT) DUNNING DATA OF THE CUSTOMER.

- iii. **TO RECEIVE FROM DIMOCO ADVERTISING AND INFORMATION ABOUT PRODUCTS OR SERVICES OFFERED BY DIMOCO VIA LETTER, PHONE, TEXT, FAX AND/OR E-MAIL.**
 - iv. **THAT UPON A WELL-FOUNDED REQUEST OF A COURT, A PUBLIC AUTHORITY OR AN OPERATOR, DIMOCO WILL FORWARD OR DISCLOSE TO THE SAME INFORMATION ON THE CUSTOMER'S (OR THE SUB-CUSTOMERS') IDENTITY AND ABOUT THE GOODS & SERVICES.**
- c. The revocation of the consent given by the Customer is possible at any time and shall result in the inadmissibility of the further use of its data.

11.2. Data of End Users.

- a. The Parties mutually hold for the record that the Customer is the controller [*Auftraggeber*] under data protection law and that DIMOCO is the processor [*Dienstleister*] under data protection law within the meaning of Article 10 *et seq* DSGVO with regard to the personal data of End Users, including, but not limited to, the processed master data, content data and traffic data. In this regard, DIMOCO is also entitled to collect the personal data of End Users on behalf of the Customer under this contractual relationship.
- b. DIMOCO undertakes to use data and data processing results exclusively in accordance with the Customer's instructions and to return the same exclusively to the Customer or to transmit the same only upon the Customer's written instruction. Likewise, any use of the provided data for DIMOCO's own purposes shall require such a written instruction. In the event that an End User raises an objection against their Operator invoice or fails to pay the invoiced amount, DIMOCO is hereby authorised by the Customer to transmit any master data, content data and traffic data (including, but not limited to, log files) of the relevant End User to the Operator who issued the invoice for collection purposes. The Customer additionally authorises DIMOCO to forward master data, content data and traffic data (including, but not limited to, log files) of an End User to the End User himself, to courts, to public authorities and/or to the Operator as described in Section 6.1.a.ii of these GTC.
- c. DIMOCO declares in a legally binding manner that
 - i. all persons entrusted with data processing were put under an obligation to maintain data secrecy as defined in Article 15 prior to the commencement of their duties. In particular, the confidentiality obligation of the persons entrusted with data trafficking tasks shall also survive the termination of their activities and their employment with DIMOCO. The confidentiality obligation shall also apply with regard to data of legal entities and commercial law partnerships.
 - ii. it has taken sufficient security measures within the meaning of Article 14 DSGVO to prevent data from being used improperly or becoming accessible to third parties without authorisation.
- d. DIMOCO shall ensure that the technical and organisational requirements are met in such a manner that the Customer will be able to comply with the provisions of Article 26 (Right to Information) and Article 27 (Right to Correction or Deletion) DSGVO vis-à-vis the End Users (the data subjects [*Betroffene*] under data protection law) at any time within the statutory periods and shall make available to the Customer all information necessary for that purpose.
- e. After the completion of the provision of the services to the Customer, DIMOCO shall be obligated to provide the Customer with all data processing results and documents that contain data and/or, at the Customer's instruction and expense, to keep them protected from unauthorized inspection or destroy them as instructed, provided that the data is not required for billing purposes or making fees collectible, processing complaints or complying with statutory obligations.
- f. With regard to the processing of data provided by it, the Customer shall be granted a right to inspect and monitor the data processing facilities. This right of inspection shall be limited to business hours and shall be exercised under the least possible disruption of DIMOCO's business operations. DIMOCO undertakes to provide the Customer with the information required for monitoring compliance with the obligations set forth in these GTC.
- g. It is mutually held for the record that the Customer is obliged to comply with all provisions of data protection law, including, but not limited to, the DSGVO and the Austrian Telecommunications Act [*Telekommunikationsgesetz*]. This obligation shall in particular relate to the requirement of deletion of master data, traffic data and content data and to fulfilling requests for information, requests for correction, objections and requests for deletion from End Users. Where required, the Customer shall obtain the necessary consent of End Users for data processing (including storage of content data). DIMOCO shall act exclusively on the instructions of the Customer and at the sole responsibility of the Customer.
- h. The Customer shall indemnify and hold DIMOCO harmless from and against any and all claims for damages asserted by third parties (including End Users) or public-law penalties imposed as a result of data used in violation of data protection provisions.

- 11.3. **Data Security.** DIMOCO shall take all technically feasible and economically reasonable measures to ensure data security, in particular to protect data stored with it from unauthorised access of third parties. Should third parties nevertheless succeed in illegally obtaining access to data stored with DIMOCO and/or in using the same, Section 8 (Liability & Penalties) of these GTC shall apply.

12. TERM & TERMINATION

- 12.1. **Term of Contract.** Unless otherwise agreed between the Parties, the contractual relationship shall be established for an indefinite period of time and shall commence on the date on which the order confirmation is issued by DIMOCO. The Parties agree on a minimum term of 12 (twelve) months.

12.2. Termination For Convenience.

- a. *Entire Contractual Relationship.* Unless otherwise agreed, either Party may terminate the entire contractual relationship by giving 3 (three) months' notice to the end of any calendar month by means of a duly signed letter. The notice of termination may also be scanned and sent by e-mail to the other Party. Such right of termination may be exercised for the first time to the end of the minimum term set out in Section 12.1 of these GTC.
- b. *Service Countries & Ancillary Services.* Unless otherwise stated, Service Countries and/or ancillary services may be terminated by giving 1 (one) month's written notice to the end of any calendar month by e-mail. In the case of such termination, all other agreements that are not affected by the termination shall continue to apply with no change. It is held for the record that some Service Countries provide for longer periods of notice.

12.3. Termination For Cause.

- a. The Parties are entitled to terminate the contractual relationship without notice for just cause in accordance with applicable statutory provisions. Just causes for DIMOCO shall include, but not be limited to, situations where
 - i. the Customer fails to fulfil its contractual obligations despite a notice with which it was warned of the termination of the contractual relationship and granted a grace period of at least 5 (five) calendar days (of receipt of the written notice via e-mail).
 - ii. the Customer refuses to fulfil any of its contractual obligations.
 - iii. the Customer is in delay with a payment obligation and fails to fulfil its obligation to furnish or increase a security (as set out in Section 5.2 of these GTC) within a reasonable period fixed by DIMOCO.
 - iv. a criminal offence in connection with the Goods & Services or a well-founded suspicion that a criminal offence may have been committed exists.
 - v. the Customer has breached an obligation set out in Section 4.6.a of these GTC (misuse of the systems of DIMOCO or of the Operators).
 - vi. the Customer breaches an obligation set out in Section 4.6.b of these GTC (impairment of the systems of DIMOCO or of the Operators), provided the Customer has not eliminated the disruption within 3 (three) calendar days of knowledge of the same.
 - vii. the Customer or its Sub-Customer uses the Payment Hub, in particular the possibility of accessing the Operators' systems, outside of the scope of the contractual relationship despite having been given a warning by DIMOCO.
 - viii. DIMOCO discontinues its business operations or loses the permits or licences necessary for the provision of the Mobile Payment service due to orders of regulatory authorities or courts, or where an event of force majeure within the meaning of Section 3.6 of these GTC continues for longer than 1 (one) month without interruption.
 - ix. continuation of the contractual relationship with the Customer becomes impossible or unreasonable for DIMOCO due to the occurrence of circumstances beyond the sphere of control of DIMOCO (which shall include, but not be limited to, the termination of an agreement concluded between DIMOCO and one or more Operator(s) for reasons for which DIMOCO is not responsible, whereby in this regard, a termination resulting from the breach of contract by a third party who uses DIMOCO's services shall not be considered falling under DIMOCO's responsibility).
 - x. a competitor of DIMOCO acquires an interest in the Customer's enterprise with which the competitor acquires the majority of the shareholders' voting rights or a controlling influence on the Customer's enterprise. For the purpose of this provision, competitors shall mean, *inter alia*, all natural persons or legal entities that are engaged in the areas of Mobile Messaging and Mobile Payment.
- b. Unless otherwise provided, the termination for cause shall be exercised by means of a duly signed letter sent to the other Party. The termination may also be scanned and sent by e-mail to the other Party. A termination for cause may only be asserted within 1 (one) month the Customer becomes aware of the just cause.

13. GENERAL PROVISIONS

13.1. Any and all provisions of the Austrian Payment Services Act [*Zahlungsdienstegesetz* or "*ZaDiG*"] that are, above all, provisions for the protection of consumers and that may be excluded in business transactions with enterprises, including but not limited to Article 26 (1) to (5), Article 27 (1) to (4), Articles 28 to 32, Article 33 (1), Article 34 (2) and (3), Article 35 (6) (except for the first sentence), Article 44 (2) and (3) and Articles 45 to 47 *ZaDiG*, are hereby excluded.

13.2. Governing Law & Jurisdiction.

- a. The contractual relationship shall be governed by and construed in accordance with Austrian law. The Parties exclude applicability of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws rules.
- b. The competent court in Vienna, Austria shall have exclusive jurisdiction for all disputes between the Parties arising out of or in connection with the contractual relationship.

- 13.3. Terms and Conditions of the Customer or of Third Parties. Terms and conditions of the Customer or of third parties shall not apply. They shall also not be applicable if DIMOCO fails to expressly object to them.
- 13.4. Entire Agreement & Written Form. The DIMOCO Contracts concluded with the Customer constitute the entire agreement between the Parties with regard to the subject matter of the contract. No oral side agreements exist. Modifications of or amendments to the DIMOCO Contracts concluded between the Parties need to be made in writing in order to be effective.
- 13.5. Severability. Should any provision of these GTC be ineffective, the validity of the other provisions shall not be affected. The Parties undertake to immediately replace the ineffective provision by a provision which comes as close as possible to the economic purpose of the ineffective provision and to the intention of the Parties.
- 13.6. Assignment. Only upon DIMOCO's prior written approval is the Customer entitled to assign rights and duties under the contractual relationship to third parties in whole or in part. However, DIMOCO is entitled to assign rights and duties under the contractual relationship to enterprises affiliated with DIMOCO.
- 13.7. Legal Successors. Subject to Section 12.3.a.x of these GTC, rights and obligations of the Parties under this contractual relationship shall bind and inure to the benefit of the Parties and to their respective legal successors and entitled assignees.
- 13.8. Non-Solicitation. For the term of the contractual relationship and for a period of 12 (twelve) months after its termination, neither Party will directly or indirectly solicit for employment any employee of the other Party. This non-solicitation clause shall not apply in respect of any recruitment resulting from public job advertisements or general recruiting campaigns.
- 13.9. Advertising & PR Measures. The Parties undertake to publish advertising and PR measures (e.g. press releases) that refer to the Parties' contractual relationship and/or cooperation only after mutual approval of the contents of the same.
- 13.10. Costs. Each Party shall bear its own costs incurred in connection with the negotiation, preparation, execution and implementation of the contractual relationship. The costs of any necessary registration of the DIMOCO Contracts (or certain parts thereof) shall be borne by the Customer.
- 13.11. Authoritative Text. These GTC are only available in German and English and both languages shall be considered authoritative.

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