

**DIMOCO EUROPE GMBH**  
**GENERAL TERMS AND CONDITIONS MOBILE PAYMENT**

**VERSION: 25 JUNE 2018**

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**PREAMBLE**

- I. As of 25 June 2018, these 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 any previous versions of the general terms and conditions of DIMOCO, in particular those dated 15 July 2017.
- 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. For the record, it is expressly held that the relevant DIMOCO price lists may also contain country-specific provisions as well as Operator-specific requirements that the Customer must observe and/or abide by in the provision of the Goods & Services.

- *Customer* A businessman or entrepreneur within the meaning of Article 1 (2) of the Austrian Consumer Protection Act [*Konsumentenschutzgesetz*] 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 and forms the basis of the Customer Due Diligence. 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 information on the Customer contained in the Customer Data Sheet are to be kept up-to-date at all times, such that the Customer is obliged to inform DIMOCO in writing about any changes of the information set out therein without delay.
- *Customer Due Diligence* The process mandatorily implemented by DIMOCO for the review of the Customer as a business partner in terms of both risk and ownership which takes place not only for the establishment of the contractual relationship, but also during the contractual relationship.
- *DIMOCO* DIMOCO Europe GmbH, a licensed payment institute under the Austrian Payment Services Act [*Zahlungsdienstegesetz*] as duly incorporated 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 [*Konsumentenschutzgesetz*] 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 (if applicable).
- *GTC* The general terms and conditions of DIMOCO, as amended from time to time, the most current version of which is available for download at <https://dimoco.eu/gtc-carrierbilling/>.
- *Mobile Payment* A regulated 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 that DIMOCO makes available to the Customer.
- *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) or aggregators 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:
 

*End User Spend – [Operator Share + 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).
- *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:
 

*Net End User Spend – [Operator Share + DIMOCO Share]*
- *Service & Contact Center* An ancillary service offered by DIMOCO, where DIMOCO makes available 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 to the determination of deadlines by which the obligations of the Customer are to 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 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. the price lists of DIMOCO.
- g. the general terms and conditions of DIMOCO, as amended.
- h. the connection agreement (if applicable).

## 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 for Goods & Services.
- 2.2. **Establishment of the Contractual Relationship.**
- a. All offers of DIMOCO shall be subject to change and be 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 contractual relationship 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).
  - b. Customer expressly understands that the establishment (as well as the sustenance) of a contractual relationship with DIMOCO is subject to the positive outcome of the Customer Due Diligence.
- 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*, be given 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. The Customer shall have sole responsibility for the functional management of such access.
  - b. Access to My DIMOCO will be granted only for the term of the contractual relationship. The termination of the contractual relationship also terminates the Customer's right to access My DIMOCO. If My DIMOCO is used in violation of the terms of the contractual relationship or applicable law, DIMOCO may suspend such access also without prior notice.
- 2.4. **Modifications of and Amendments to the Subject Matter of the Contract.** For any 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 as well as a deputy to DIMOCO and shall immediately notify DIMOCO in writing (e-mail shall suffice) of any change in the Customer Contact (or their deputy).
- 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 inform the Customer in writing (e.g. via e-mail or by printing the information on a periodically issued invoice) of the material contents of modifications that are not exclusively beneficial at least 1 (one) month prior to the entry into force of the modification. In addition, the Customer shall be informed of the date on 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.
    - iii. in the case of regulatory modifications or modifications that have become necessary due to an ordinance issued by a competent authority or an Operator, once these have been communicated to the Customer, but in any event not later than on the date on which the announced modifications enter into force.
  - 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 a competent authority (e.g. Section 2.6.b.iii of these GTC) shall not entitle the Customer to exercise this special right and terminate the contractual relationship free of charge.

- d. Customer expressly acknowledges that with respect to modifications resulting from a regulation issued by a competent authority or an Operator (Section 2.6.b.iii of these GTC), it is possible that such entities do not give DIMOCO sufficient prior notice to allow DIMOCO to inform the Customer of the modification within the 1 (one) month notice period stipulated in Section 2.6.a of these GTC. In this case, DIMOCO shall be released from the 1 (one) month notice period obligation and shall inform the Customer of the modification without any undue delay following the receipt of the competent authority's or Operator's communication to DIMOCO under concurrent disclosure of the date on which the announced modifications are to enter into force.

### **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 dependant on 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, also without prior notice. Interruptions of and/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 on the part of DIMOCO. The uninterrupted availability of the Payment Hub is neither owed nor is any warranty therefor given.
- 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.**
- a. 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 (if at all). Adaptations of the technical infrastructure used by the Customer that may become necessary in this regard shall be implemented by the Customer at its own responsibility and at its own cost within the timeframe set by DIMOCO.
- b. DIMOCO reserves the right to adapt the specifications of the DIMOCO API or the Payment Hub to new requirements. The Customer will be notified of such adaptations in due time, but in any event with at least 14 (fourteen) calendar days' prior written notice (e-mail shall suffice). The Customer is obliged to adapt its own systems accordingly, at its own expense and within the timeframe set by DIMOCO.
- c. Should the Customer
- i. not implement a modification or adjustment as communicated and/or required in a timely manner, then DIMOCO shall have the right to suspend the provision of its services to the Customer (including the Customer's access to the Payment Hub) until such time as the modification or adjustment has been implemented.
- ii. refuse to not implement a modification or adjustment as communicated and/or required at all, then DIMOCO shall have the right to terminate the contractual relationship with the Customer with immediate effect.
- 3.5. **Maintenance.** The Customer expressly acknowledges that restrictions on the availability of the services of DIMOCO may arise due to necessary maintenance and installation work on the DIMOCO API or the Payment Hub. DIMOCO is obliged to notify the Customer of predictable maintenance and installation work by giving the Customer prior written notice of at least 4 (four) calendar days' (e-mail shall suffice).
- 3.6. **Disruption/Interruption of Services.** 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. Consequently, any temporary disruption or interruption of the services provided by DIMOCO does not constitute a default on the part of DIMOCO.
- 3.7. **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 the fulfilment of its contractual obligations. Events of force majeure shall include, but not be limited to, orders of 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 its contractual obligations.
- 3.8. **Gratuitous Services.** DIMOCO shall, at its own discretion, be free to discontinue, temporarily suspend or to provide only against payment any service gratuitously made available to the Customer 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.
- 3.9. **Technical Customer Support 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](mailto: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 and the DIMOCO API exclusively for the contractually agreed purpose. The acceptance of Customer as a customer of DIMOCO shall in no way be construed as being a statement on the part of DIMOCO as to the legality of the Goods & Services. The Customer is solely responsible for compliance of the Goods & Services with the applicable laws and regulations. As such, the Customer is obliged to make itself familiar with and abide by 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 content prohibited by law or any requirement under the DIMOCO Contracts will be distributed in connection with the advertising or provision of the Goods & Services, and no violation of morality, law and order, applicable legal provisions, any rights of third parties (particularly proprietary and personality rights) or trade customs occurs.
- b. The Customer shall be solely responsible for the Goods & Services, including but not limited to their advertising, content and scope, and shall also 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 consistently, professional quality and undertakes to constantly review the Goods & Services as to 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 suspend the relevant Goods & Services or 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 could 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. restricting, 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 to [support@dimoco.eu](mailto: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 executed out payment transaction by sending an e-mail to [support@dimoco.eu](mailto: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.
- i. The Customer shall ensure that it holds all necessary rights and approvals for the provision of the Goods & Services.
- j. The Customer shall not use the Payment Hub or the services of DIMOCO for the purposes of money laundering, financing of terrorism, fraud or any other crime.

### 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, it being understood that the approval or the rejection of the Goods & Services by DIMOCO shall under no circumstance lead to a liability of DIMOCO. The Customer shall not change, modify or vary any approved Goods & Services without having obtained the prior express written consent of 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 is in any way responsible for the Goods & Services. It is expressly held for the record that DIMOCO does not in any way whatsoever either host, offer or provide any Goods & Services of the Customer (or the Sub-Customer), or have any contractual relationships with End Users with respect to the Goods & Services.
- 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 the agents of DIMOCO will not be misused by the Customer or any person/entity in the sphere of responsibility of the Customer. The Customer undertakes to take effective measures to prevent unauthorised interferences with or access to the aforementioned 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 (e.g. of security patches) on a regular basis. Should attacks or cases of misuse occur at DIMOCO, an Operator or a third party (in particular the agents of DIMOCO or on 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). Should the systems used or the Goods & Services offered by the Customer cause disruptions to the aforementioned 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.
- 4.8. The Customer shall provide DIMOCO immediately upon written request (e-mail shall suffice) such information as DIMOCO may from time to time reasonably require in order to verify the compliance of the Customer with the provisions of these GTC, and in particular this Section 4. Notwithstanding anything to the contrary in these GTC, DIMOCO shall be entitled to pass such information (or any part thereof) to any Operator or competent authority which may require the same.

## 5. SUSPENSION OF THE SERVICES OF DIMOCO

- 5.1. DIMOCO is entitled to suspend its services vis-à-vis the Customer in whole or in part immediately, even without prior notice, and may in particular suspend the 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, an administrative authority or an Operator, 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 corresponding 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 reasonable suspicion of an unauthorised or fraudulent use of the Mobile Payment service exists.
  - d. a just 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. Additionally, DIMOCO is entitled to suspend its services vis-à-vis the Customer for as long as the Customer is in default of its payment obligations vis-à-vis DIMOCO or to provide an appropriate security (if requested by DIMOCO).
- 5.3. Should a suspension of service be initiated, DIMOCO shall in the first instance be entitled to withhold remittance of any settlement and/or other outpayment otherwise due to the Customer. DIMOCO shall notify the Customer about the suspension and the reasons for the same by e-mail, unless this would be contrary to objective security considerations or would violate a regulation of community or national law or an order issued by a court, a competent authority or an Operator, or jeopardise any investigation of fraud/illegal activity. Should prior notice of the suspension not be possible, DIMOCO shall notify the Customer without undue delay.
- 5.4. If and when the circumstances described in Section 5.1 or Section 5.2 of these GTC have ceased to exist (in DIMOCO's sole judgement), DIMOCO shall restore access to the Payment Hub (if possible) and resume the provision of its service. The Customer shall bear the costs incurred in connection with the suspension and/or resumption of the services, in as far as it is responsible for the reason for the suspension. This shall also apply in the event that a well-founded suspicion of just cause is subsequently not confirmed, but the Customer was responsible for the circumstances that gave rise to the well-founded suspicion.
- 5.5. A suspension which was justified in light of the prevailing circumstances at the time the suspension was made shall not trigger any 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 suspend 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 its 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 for End User Queries for a charge. This ancillary service offered by DIMOCO cannot be used by the Customer on its own.
- 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 of receipt of the relevant banking details of the End User from DIMOCO. 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) working 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 (see price list) for the late Refund.

**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. Unless otherwise stated, 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. Unless otherwise stated, the service period shall be the calendar month.
- b. After the relevant service period, DIMOCO shall prepare a report on the Net Payout and send the same to the Customer. The report 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 reports of the following months. Unless otherwise stated (e.g. in a price list), for Goods & Services set up in Austria, the report shall be made available to the Customer 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 (e.g. in a price list), for Goods & Services revenues generated in Austria, the Net Payout will be transferred by the 15<sup>th</sup> (fifteenth) of the second month following the relevant service period, and for Goods & Services revenues generated in other countries by the 15<sup>th</sup> (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. As a general rule, the Net Payout shall be paid out to the Customer in the local currency of the relevant Service Country. Should (at the request of the Customer) 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 report was issued and charge the Customer FX exchange fees in the amount of 1% (one percent) of the relevant Net Payout.
  - f. Transfers of the Net Payout shall only be made to the Customer as of an amount of EUR 1,000.00 (say: one thousand Euros) or more or the equivalent foreign currency amount per transfer. Should the Customer not reach this threshold, then the Net Payout shall be aggregated until the EUR 1,000.00 (say: one thousand Euro) threshold (or equivalent foreign currency amount) is reached, upon which it shall be transferred to the Customer.
  - g. It is expressly held for the record that the Customer shall lose its entitlement to the Payout (or part thereof), and DIMOCO shall therefore not transfer the Net Payout (or part thereof) to the Customer in the event that evidence on the non-compliance of the Customer of a material obligation of the DIMOCO Contracts or an applicable provision of law exists. In the event that the unlawful conduct of the Customer in accordance with the previous sentence is determined only after payment to the Customer of the relevant Net Payout of a service period, then DIMOCO shall have the right to offset the already paid out Net Payout with future Payouts payable to the Customer.
- 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 arise from the use of the Goods & Services. The Customer shall bear the risk of collection and default in respect of such claims regardless 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.** DIMOCO has the right to withhold the Net Payout (or a part thereof) in the following situations:
- a. At the request of an Operator, a court or other competent authority.
  - b. When a reasonable suspicion of an unauthorised or fraudulent use of the Mobile Payment service and/or the non-compliance of a material obligation of the DIMOCO Contracts, a Country Specific Regulation or an applicable provision of law exists.
  - c. The Customer does not pass or provide the required information for the mandatory Customer Due Diligence (in particular, the know-your-customer/anti-money laundering checks) conducted by DIMOCO.
  - d. 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 up to 6 (six) 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 the future, 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 in general apply accordingly. In derogation to this, adjustments made as a result of changes in the Operators' prices or resulting from a regulation issued by a competent authority shall become effective once these have been communicated to the Customer, but in any event not later than at the date on which the announced adjustment enters into force. Where such adjustment results in DIMOCO having overpaid the Customer, then DIMOCO shall have the right to offset the overpayment with future Payouts payable to the Customer.
- 7.7. **Default Interest on Late Payment.** In the case of late payment, a party may charge the defaulting party commercial default interest at the statutory rate as well as all expenses from the due date and the cost of any damage caused by and expenses incurred in connection with the default, including but not limited to the costs, charges and disbursements required for the enforcement of the claim. Payments received by a party from the defaulting party shall initially be applied to settle interest and expenses, then subsequently the outstanding principal claims shall be settled, starting with the oldest one. While the Customer is in default, DIMOCO shall have the right to suspend the provision of any services to the Customer until such time as the outstanding amount is paid in its entirety, this notwithstanding the right of DIMOCO to terminate the contractual relationship for this reason.
- 7.8. **Objections to Reports or Invoices.**
- a. Objections to reports issued or amounts invoiced by DIMOCO shall be raised by the Customer with DIMOCO in writing (e-mail shall suffice) within 1 (one) month of receipt of the report and/or invoice. Upon expiration of this period, a Customer who has not raised any objections acknowledges accuracy of the accounts receivable by DIMOCO contained in the relevant report 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 on which the report 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 shall form the basis for the 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 are 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 set-off 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 regard shall also be reimbursed.
- c. For the avoidance of doubt, this reimbursement obligation of the Customer 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 within 5 (five) working days 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 a national tax authority deem DIMOCO or an Operator to be the provider of the Goods & Services to the End Users for VAT purposes (and hence be responsible for the payment of the VAT thereon), then Customer is obliged to:
  - i. transfer or provide to DIMOCO either the relevant VAT payable to such national tax authority or conclusive documentary evidence of the payment thereof either to such national tax authority or to Customer's local national tax authority within 2 (two) working days of the written request of DIMOCO (e-mail shall suffice). This obligation of Customer shall be conditional on
    - DIMOCO having provided Customer with a copy of the written request from the relevant tax authority or Operator, and
    - Customer actually having received the relevant VAT from DIMOCO together with the relevant Payout from DIMOCO.
  - ii. provide DIMOCO with such assistance as necessary (including documentation) to prove to the national tax authority that the Customer is the actual provider of the Goods & Services to the End Users for VAT purposes, and hence the actual entity that liable for the payment of the VAT on the Goods & Services.

In the event that Customer should breach one of the stated obligations, then DIMOCO is entitled to request the payment of a penalty in accordance with Section 8.4.b.iv of these GTC from the Customer.

- d. 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 the Parties.

- a. Unless otherwise provided for in these GTC, the parties' liability shall be governed by the provisions of the Austrian Civil Code [ABGB]. A party's liability in the case of damage to property or any liability of a party for pecuniary loss, loss of profit or any other indirect or consequential damage shall be excluded, unless the other party proves that the damage was caused by the party 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 services. 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 via the Payment Hub, neither for its completeness, correctness or currency, nor that they are free of any third-party rights. 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 also not be liable for any damage suffered by the Customer due to the non- or defective provision of services by the Operators or other third parties, including, but not limited to, any damage caused by a late, multiple or not executed payment transaction. DIMOCO shall, however, be liable if the Operators' or the third party's conduct can, by way of exception, be attributed to DIMOCO as a result of the circumstances of the specific case and if the Operator or other third party has caused direct damage to the Customer by wilful intent or gross negligence.
  - v. DIMOCO assumes no liability for any 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 for any restriction or revocation of the same.
  - 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 the consequences of force majeure or 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.
  - viii. DIMOCO shall not be liable for any damage caused by the Customer's misuse or improper use of the DIMOCO API or of the Payment Hub.
  - ix. For any gratuitous services made available, DIMOCO shall only be liable if it acted with wilful intent or gross negligence.
- 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 officers, legal representatives, employees and 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 which enables DIMOCO to assert warranty claims and/or claims for damages against this agent, DIMOCO shall assign such claims against such agent to the Customer. In this case, the Customer shall primarily hold the agent liable.

- g. DIMOCO does not warrant that the provided DIMOCO API meets all requirements of the Customer, is technically and economically viable for the Customer's purposes, or compatible with other programmes of the Customer.
- 8.2. The Customer's claims for damages may be asserted 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/or 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 5 (five) working days 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. This provision is not applicable if the Customer uses the ancillary Service & Contact Center service offered by DIMOCO.
  - iv. Should the Customer or its Sub-Customer breach
    - the obligation under Section 7.12.c.i of these GTC to transfer the relevant VAT payable to the national tax authority to DIMOCO within 2 (two) working days, then the Customer shall pay a penalty in the amount of EUR 500.00 (say: five hundred Euros) for every commenced calendar day until fulfilment is proved.
    - the obligation under Section 7.12.c.ii of these GTC to assist DIMOCO before a national tax authority, then the Customer shall pay a penalty in the amount of EUR 10,000.00 (say: ten thousand Euros).

For the record, it is held that the payment of any of these penalties shall not release the Customer (or its Sub-Customers) from its obligations under Section 7.12.c of these GTC.
- 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 any confidential information they receive or have received from the other party in the course of the negotiation, conclusion and implementation of their 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. It is expressly held for the record that DIMOCO is a duly licensed Austrian payment institute and as such is also subject to the provisions of the Austrian Banking Act [*Bankwesengesetz* or "*BWG*"], in particular also Article 38 BWG relating to bank secrecy. The Customer, therefore, undertakes to keep strictly confidential all data, facts and valuations communicated by DIMOCO within the framework of the contractual relationship, which have become known to it as a result of, on the occasion of or within the framework of the business relationship with DIMOCO. Customer will completely indemnify DIMOCO in case of violations of bank secrecy for which it is responsible.
- 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) or to an Operator, a court, and/or a competent authority as a result of an official query or investigation 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 of information 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 was 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 a confirmation to this effect shall be sent to the disclosing party 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 the deletion of the copy stored thereon would entail 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 demonstrably destroyed.
- 9.5. If the receiving party obtains knowledge of any unlawful use or dissemination of confidential information, then it shall immediately notify the disclosing party thereof and initiate all measures necessary to counteract such use or dissemination.
- 9.6. The receiving party acknowledges that any disclosure, use or misappropriation of the confidential information of the disclosing party in violation of this Section 9 would cause the disclosing party irreparable harm for which there may be no adequate remedy at law. Accordingly, the receiving party agrees that the disclosing party shall (in addition to any other rights and remedies at law and in equity, which might be available to it) have the right to apply to any court of competent jurisdiction for injunctive relief (without any requirement for proof of special damages or the like) and/or specific performance.
- 9.7. The confidentiality obligations set out in this Section 9 shall apply for the duration 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/demonstrable 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 prior to the 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 (including, but not limited to, know-how) and other intellectual property rights to works (e.g. 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.

- a. The Customer expressly warrants that the rights to the Goods & Services either belong to the Customer or that the Customer has obtained the appropriate licenses for the provision of the Goods & Services, and as such do not and will not infringe any intellectual property rights owned by a third party. The Customer shall ensure that, before any material is used as part of the Goods & Services or made available to End Users, all rights, authorisations, licences and consents including any intellectual property rights, have been obtained, and all requirements of law complied with, as may be necessary for the provision of the Goods & Services. The Customer shall at all times throughout the duration of contractual relationship maintain in full force and effect all such rights, authorisations, licences and consents. DIMOCO may in writing (e-mail shall suffice) request evidence from the Customer of compliance with this obligation, and the Customer must promptly comply with such written request. The Customer shall hold DIMOCO free from any and all liability and fully indemnify DIMOCO from any breach of this provision.
- b. 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, neither party shall have the right to use the trademarks, logos or signs of the other party for any purpose without the prior written consent of the other party. The Customer expressly grants DIMOCO the right to use its name, trademarks and the offered Goods & Services in the marketing and/or presentation materials of DIMOCO as well as on the DIMOCO Website.

10.4. Unless otherwise agreed, any rights granted to a party under this Section 10 shall immediately be revoked upon the termination or expiry of the entire contractual relationship between the parties.

## 11. DATA PROTECTION & DATA PROCESSING

### 11.1. General.

- a. DIMOCO takes data protection very seriously and as such, DIMOCO will process the information (including Personal Data) provided by the Customer with utmost care and confidentiality in accordance with the provisions of this Section 11 as well as applicable Data Protection Laws. Within the scope of the contractual relationship, it is expressly agreed between the parties that
  - i. the Customer is the Controller, and
  - ii. DIMOCO is the Processorof the information provided to DIMOCO by the Customer.
- b. For the purposes of this Section 11,
  - i. **“Data Protection Laws”** shall mean data protection laws and regulations in force in any country and under any jurisdiction relevant for the provision of the Mobile Payment services under the contractual relationship.
  - ii. **“GDPR”** shall mean Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
  - iii. **“Sub-Processor”** shall mean a natural or legal person, public authority, agency or other body that has been assigned by the Processor to process Personal Data in accordance with Section 11.5 hereof.
  - iv. any term written in title case that is not expressly defined in these GTC shall have the meaning ascribed to them under the GDPR (such as, but not limited to, **“Controller”**, **“Data Subject”**, **“Personal Data”**, **“Personal Data Breach”**, **“Processing”**, **“Processor”**, **“Supervisory Authority”**, **“Third Party”**, etc.).

- 11.2. Data Processing. The Processing of Personal Data by DIMOCO (and any Sub-Processors accordingly) shall be performed exclusively in accordance with the provisions of this Section 11 as well as the Customer’s instructions, having due regard to the nature, purpose and duration of the Processing, the type of Personal Data, the categories of Data Subjects as well as other aspects specified in this Section 11 and in Annex 1 hereto (which forms an integral part of the contractual relationship).

### 11.3. Obligations of the Customer as Controller.

- a. The Customer shall be solely responsible for determining the permissibility and lawfulness of the Personal Data it provides to DIMOCO for Processing, including the preservation of the rights of the relevant Data Subjects. As such, the Customer is responsible and expressly warrants that it shall demonstrably obtain the necessary and desirable consent of the relevant Data Subject, which shall in any event include the right of the Personal Data of the relevant Data Subject to be forwarded to and Processed by DIMOCO.
- b. The Customer shall ensure that its instructions, upon which DIMOCO shall process Personal Data, are lawful, such that DIMOCO’s Processing of Personal Data for the provision of the Mobile Payment service will not cause DIMOCO to violate any applicable law, regulation or rule, including any Data Protection Laws.
- c. The Customer shall indemnify and hold DIMOCO harmless and free from any liability or damages incurred by DIMOCO as a result of the breach of the Customer’s obligations under this Section 11.3. The provisions of Article 82 GDPR shall remain unaffected.

### 11.4. Obligations of DIMOCO as Processor.

- a. *Purpose of Processing.* DIMOCO shall Process the Personal Data provided by the Customer exclusively within the scope of the contractual relationship and the provision of the Mobile Payment service, and in particular the purposes as set out in Annex 1 hereto. Unless required by applicable law, the Processor shall not acquire any title or rights to the Personal Data provided by the Controller.
- b. *Customer’s Instructions.* DIMOCO shall at all times Process the Personal Data provided by the Customer exclusively in accordance with this Section 11 as well as any instructions of the Customer, in each case in accordance with Data Protection Laws. As such, and unless otherwise agreed between the parties and/or instructed by the Customer, DIMOCO shall
  - i. not itself exercise control, transfer or purport to transfer control of such Personal Data to any Third Party.
  - ii. not apply or use the Personal Data for any purpose other than the purposes as set out in Annex 1 hereto as necessary for the performance of Mobile Payment service.
  - iii. not Process the Personal Data for its own purposes nor include it in any product or service offered to Third Parties.
- c. *Notifications.*
  - i. Should an applicable provision of law prevent or hinder DIMOCO from acting in accordance with Section 11.4.b hereof, or a change in the Processing processes of DIMOCO be required or mandated, then prior to the conduct of any further Processing, DIMOCO shall notify the Customer of such legal impediment and/or process change in writing (e-mail shall suffice), unless such notification would be contrary to objective security considerations, or would violate applicable law or an order issued by a court or a competent authority.
  - ii. Further, DIMOCO shall notify the Customer also if - in DIMOCO’s opinion - an instruction of the Customer is otherwise impossible to carry out.

- iii. For the avoidance of doubt, it is expressly held for the record that DIMOCO has the right to suspend the provision of its services towards the Customer until a consensus with the Customer is reached on how to proceed further.
- d. *Confidentiality.* Without prejudice to any existing arrangements between the parties, DIMOCO shall treat Personal Data provided to it as strictly confidential, and shall therefore not make this available to any Third party without the express written consent of the Customer (e-mail shall suffice). This obligation shall remain valid for the term of the contractual relationship or for as long as DIMOCO is in possession of the Personal Data provided by the Customer, whichever is the later.
- e. DIMOCO shall ensure that the access to Personal Data is limited exclusively to those employees, whose access is necessary for the provision of the Mobile Payment service. DIMOCO shall furthermore ensure that any such employees having access to Personal Data are under appropriate confidentiality and data secrecy obligations, or are otherwise bound by the requirement of confidentiality by the provisions of applicable law prior to the Processing of Personal Data.
- f. *Data Security.* For the term of the contractual relationship, DIMOCO shall ensure that it maintains appropriate and sufficient technical and organisational measures to protect Personal Data from accidental loss, destruction, damage, alteration, unauthorized disclosure or access, in particular where the Processing involves the transmission of data over a network, as well as against all other unlawful forms of Processing.
- g. Without prejudice to any other security standards agreed upon by the parties, DIMOCO shall take appropriate technical and organisational measures to ensure security of the Processing of Personal Data in compliance with the standards stipulated in Article 32 GDPR. These measures shall include in particular:
  - i. pseudonymisation and/or encryption of Personal Data.
  - ii. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and the Mobile Payment service.
  - iii. the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident.
  - iv. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.
- h. DIMOCO is committed to continuously implement and enhance the technical and organisational measures adopted by it in order to safeguard the security of Personal Data as well as preserve, identify and control any unauthorised or illegal access or use of Personal Data.
- i. *Requests of Data Subjects.*
  - i. DIMOCO shall provide assistance to the Customer in order to allow the Customer to comply with its duties in relation to the rights of Data Subjects, such as the right to information, rectification, erasure, data portability or objection within the time limits prescribed by applicable Data Protection Law. As such, at the Customer's request, DIMOCO shall provide the Customer with all data reasonably necessary for such purpose.
  - ii. In case a request exercising the right of a Data Subject is addressed to DIMOCO, then DIMOCO shall without any undue delay forward (e-mail shall suffice) such request to the Customer for further action.
  - iii. In the event that in a request addressed to DIMOCO, a Data Subject mistakenly considers DIMOCO to be the Controller, then DIMOCO shall without any undue delay forward (e-mail shall suffice) such request to the Customer for further action, and the Customer shall have to obligation to correct misconception of the Data Subject and inform them accordingly that they are the Controller and DIMOCO is the Processor.
- j. *Requests of Governmental Bodies and Supervisory Authorities.* Unless prohibited by applicable law, DIMOCO shall without any undue delay notify the Customer of any request made by a governmental body or a Supervisory Authority concerning the Personal Data made available by the Customer. DIMOCO shall support and assist the Customer in its compliance in relation to the requirements imposed by the Data Protection Laws (in particular, but not limited to those stipulated in Articles 32 to 36 GDPR), and shall support the Customer in data protection audits conducted by the governmental bodies or Supervisory Authorities concerning Personal Data processed under this Section 11.
- k. *Audits and Control.*
  - i. DIMOCO agrees to provide the Customer all information reasonably necessary to demonstrate compliance with the obligations set out in this Section 11 and to allow for and contribute to audits, including on-site inspections, conducted by the Customer - or a Third Party designated by the Customer and accepted by DIMOCO - at the Customer's own expense. The Third Party entrusted by the Customer shall be under a documented obligation to maintain confidentiality.
  - ii. The intent to conduct an audit shall be communicated to DIMOCO with at least 14 (fourteen) days' prior written notice. The right to audit may generally be exercised only once per calendar year, during normal business hours, under the least disruption of DIMOCO's business operations and subject to any reasonable requirements of DIMOCO as to confidentiality and/or security. The audit shall, furthermore, be performed on the basis of a mutually agreed audit plan.
- l. *Personal Data Breach.* DIMOCO shall notify the Customer in writing without any undue delay, but in any event no later than 48 (forty-eight) hours after DIMOCO has become aware of a Personal Data Breach. Such notification shall be sent to the e-mail address of the Customer specifically communicated to DIMOCO for this purpose. Should no specific e-mail address have been communicated by the Customer, then DIMOCO shall send any Personal Data Breach notifications to the Customer Contact. The notification shall as a minimum contain the following information:

- i. Description of the nature of the Personal Data Breach, including (where possible) the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned.
  - ii. Communicate the name and contact details of DIMOCO's data protection officer or other point of contact from where more information can be obtained.
  - iii. Description of the likely consequences of the Personal Data Breach.
  - iv. Description of the measures taken (or proposed to be taken) by DIMOCO to address the Personal Data Breach, including (where appropriate) measures to mitigate its possible adverse effects.
- m. Unless required by applicable law, DIMOCO shall not disclose or publish any statement, communication, notice, press release or report regarding the Personal Data Breach, or notify any Data Subjects or Supervisory Authorities without the prior written consent (e-mail shall suffice) of the Customer.

#### 11.5. Sub-Contracting/Sub-Processors.

- a. DIMOCO shall have the right to engage Sub-Processors for carrying out obligations regarding the Processing of Personal Data arising from this Section 11. The sub-contracting of any Sub-Processor shall be subject to a written contract or other legal act according to applicable Data Protection Laws and imposing on a Sub-Processor substantially the same obligations as those set out in this Section 11. DIMOCO shall be liable to the Customer for any failure of a Sub-Processor to fulfil such obligations and requirements.
- b. Prior to the commencement of any data Processing, DIMOCO shall ensure compliance with the obligations set out in this Section 11 on the part of the Sub-Processor, in particular the latter's compliance with any agreed technical and organizational security measures.
- c. DIMOCO is expressly entitled to provide and/or forward Personal Data in particular (but not limited) to the following subjects:
  - i. 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 such 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.
  - ii. such Operators active in the Service Countries chosen by the Customer to be active in, with the specific instruction to charge the End User.
  - iii. such technical service providers used by DIMOCO for the provision of the Mobile Payment service.
  - iv. such service providers used by DIMOCO to carry out the Customer Due Diligence.
  - v. a court, a competent authority, an Operator or an End User, provided that a well-founded request is made by any such entity/person.
- d. In case the Processing of Personal Data by a Sub-Processor takes place outside of the European Economic Area, DIMOCO shall undertake all reasonably required steps in order to ensure an adequate level of protection for such Personal Data in accordance with applicable Data Protection Laws, in particular the standards set out in Articles 44 to 49 GDPR, which may include entering into the Standard Contractual Clauses set out in the European Commission's Decision 2010/87/EU.

#### 11.6. Return of Personal Data.

- a. Upon termination of the contractual relationship for any reason, or at any other time upon express documented instruction of the Customer, DIMOCO shall - at the request of the Customer - delete or return to the Customer all the Personal Data and delete existing copies unless a contractual obligation or applicable law requires DIMOCO to continue storing such Personal Data, or the deletion is practically not possible due to technical limitations, in which case the Personal Data will be blocked from further use.
- b. Where applicable, DIMOCO shall contractually ensure that any Sub-Processors engaged by it comply with the obligation set out in Section 11.6.a hereof accordingly.

- 11.7. In the event and to the extent of any conflict, ambiguity or inconsistency between the provisions of this Section 11 and another provision of these GTC, then unless expressly stated otherwise, the provisions of this Section 11 shall prevail over the conflict, ambiguity or inconsistency.

## 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' written 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. The date of receipt of the notice of termination in the domain of the respective party shall be decisive for the calculation of the notice period and the effectiveness of the termination of the contractual relationship.

- 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 immediately 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) working days (of receipt of the written notice via e-mail).
  - ii. the Customer refuses to fulfil any of its contractual obligations.
  - iii. the Customer does not successfully pass the Customer Due Diligence.
  - iv. the Customer is in delay with a payment obligation and fails to fulfil its obligation to provide or increase an appropriate security (as set out in Section 5.2 of these GTC) within a reasonable period set by DIMOCO.
  - v. a criminal offence in connection with the Goods & Services or a well-founded suspicion that a criminal offence may have been committed exists.
  - vi. the Customer breaches its obligation set out in Section 4.6.a of these GTC (misuse of the systems of DIMOCO or of the Operators).
  - vii. a breach by the Customer of an obligation set out in Section 4.6.b of these GTC (impairment of the systems of DIMOCO or of the Operators) exists, provided the Customer has not eliminated the disruption within 3 (three) calendar days of knowledge of the same.
  - viii. 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.
  - ix. 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 3.7 of these GTC persists for longer than 1 (one) month without interruption.
  - x. the 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, a termination resulting from the breach of contract by a third party using DIMOCO's services shall not be considered as falling under DIMOCO's responsibility).
  - xi. a competitor of DIMOCO acquires an interest in the Customer's enterprise by 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 operating in the same business sector as DIMOCO.

Just causes for the Customer shall include, but not be limited to, situations where

- xii. DIMOCO 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) working days (of receipt of the written notice via e-mail).
  - xiii. DIMOCO refuses to fulfil any of its material contractual obligations.
- 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 of becoming aware of the just cause.

## 13. GENERAL PROVISIONS

- 13.1. Since the Customer avails itself of the Mobile Payment service as part of its commercial activities (and not as a consumer), it is expressly agreed that 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 applicability of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws rules are excluded.



- b. The competent court in Vienna, Austria shall have exclusive subject-matter 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. These 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 contractual relationship. 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 most closely reflects the commercial purpose of the ineffective provision and to the intention of the parties.
- 13.6. **Assignment.** The Customer is only entitled to assign rights and duties under the contractual relationship to third parties, in whole or in part, with DIMOCO's prior written consent. 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.xi of these GTC, the 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 as well as for a period of 12 (twelve) months after its termination, neither party may directly or indirectly solicit for employment any employee of the other party. This non-solicitation clause shall, however, 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.
- 13.12. **Relationship of the Parties.** The parties are independent contractors, and as such, nothing in the contractual relationship is intended or shall be deemed to constitute a partnership, agency, franchise, joint venture or employment relationship between the parties. Except as otherwise specifically provided, neither party shall be authorized to act as an agent of or otherwise to represent or legally bind the other party.

**ANNEX 1**  
**TO GTC MOBILE PAYMENT**

**DETAILS OF PERSONAL DATA PROCESSING**

**I. PURPOSE OF THE PROCESSING**

DIMOCO (as Processor) Processes the Personal Data made available to it by the Customer (as Controller) for the sole purpose of the implementation of the contractual relationship for the provision of the Mobile Payment service, in particular

- A. the onboarding and maintenance of the Customer as a customer of DIMOCO, including the conduct of the mandatory Customer Due Diligence.
- B. the ongoing communication with the Customer throughout the contractual relationship with regards to existing business as well as future opportunities.
- C. the conduct of billing/charging processes on behalf of the Customer with respect to End Users who purchased Goods & Services from the Customer.

**II. DATA SUBJECT AND PERSONAL DATA CATEGORIES**

The following Data Subject and Personal Data categories are Processed by DIMOCO during the contractual relationship:

- A. Data Subject: **Customer's ultimate beneficiaries**  
Personal Data: *Details of individuals who directly or indirectly own or control more than 25% (twenty-five percent) of the shares or voting rights in or who otherwise exercise control over the management of the Customer (e.g. first name, surname, academic degree, date of birth, address, phone and fax number and e-mail address, nationality, etc.).*
- B. Data Subject: **Customer's officers and employees**  
Personal Data: *Details and other data of natural persons in the Customer's company usually used in business relations including, but not limited to, first name, surname, academic degree, date of birth, address, phone and fax number and e-mail address, nationality, job title, signing rights, video identification data, etc.*
- C. Data Subject: **End Users who purchased Goods & Services from the Customer**  
Personal Data: *Such information necessary for charging such End User for the Good & Services purchased from the Customer, such as the MSISDN of the End User, the price of the Goods & Services (including frequency of payment) and other transaction data.*

**III. DURATION OF THE PROCESSING/DATA RETENTION**

DIMOCO shall save and retain such Personal Data provided to it by the Customer only for as long as the relevant data set is required for the fulfilment of the contractual relationship for the provision of the Mobile Payment service, or to comply with legal/regulatory (in particular commercial and fiscal) or contractual (e.g. with Operators) obligations applicable to DIMOCO and its business, whichever is the longer. Depending on the purpose for which the relevant Personal Data set was provided, the relevant data retention periods will vary. For example, the data set provided for the charging of End Users and subsequent calculation of the Payout to the Customer will be retained for a period of 7 (seven) fiscal years following the issuance of the relevant invoice for the Payout by DIMOCO in accordance with Article 132 (1) of the Austrian Federal Fiscal Code [*"Bundesabgabenordnung"*]. After the lapse of the applicable period, the relevant Personal Data provided will be erased, unless the deletion is practically not possible due to technical limitations, in which case the Personal Data will be blocked from further use.

**IV. DIMOCO CONTACT INFORMATION**

Contact person:	Data Protection Supervisor
E-mail:	<a href="mailto:DCB_DataProtection@dimoco.eu">DCB_DataProtection@dimoco.eu</a>
E-mail for Personal Data breach:	<a href="mailto:DCB_DataBreach@dimoco.eu">DCB_DataBreach@dimoco.eu</a>
Telephone:	+43 1 33 66 888 - 0