

DIMOCO MESSAGING AG

GENERAL TERMS AND CONDITIONS FOR BUSINESS SMS SERVICES

VERSION: 11 FEBRUARY 2021

1. GENERAL PROVISIONS

- 1.1. These General Terms and Conditions for Business SMS Services (*hereinafter referred to as "BSMS GTC"*) **are effective as of 11 February 2021** and supersede all previous versions of DME's General Terms and Conditions for Business SMS Services, including, without limitation, those dated 1 October 2020.
- 1.2. DIMOCO Messaging AG, an enterprise incorporated under the laws of the Principality of Liechtenstein under No. FL-0002.466.595-3 of the Commercial Register of the Principality of Liechtenstein, with its registered office at Industriering 14, FL-9491 Ruggell, Liechtenstein (*hereinafter referred to as "DME"*), is a provider of telecommunications services and provides access to message gateways operated by mobile network operators, including operators of virtual radio networks, aggregators and/or other enterprises authorised and/or licensed to provide mobile telecommunications services (*hereinafter referred to as "MNOs"*) on a worldwide basis.
- 1.3. Partner is a trader or entrepreneur within the meaning of section 1, subsection 2 of the Austrian Consumer Protection Act (*österreichisches Konsumentenschutzgesetz*).
- 1.4. DME shall make its infrastructure (*hereinafter referred to as the "Messaging Hub"*) available to Partner; such infrastructure accepts, stores, processes and/or forwards (transmits) SMS messages (*hereinafter referred to as "SMS"*).
- 1.5. Partner wishes to make use of DME's Business SMS Services in accordance with these BSMS GTC in conjunction with the order form for Business SMS Services (*hereinafter referred to as the "Order Form"*). The BSMS GTC, together with the Order Form and any other agreements concluded in writing between DME and Partner (*hereinafter collectively referred to as the "Parties", and individually as a "Party"*), comprise the entire contractual relationship (*hereinafter referred to as the "DME Contracts"*).
- 1.6. Order of Priority. Unless otherwise specified, any conflict or inconsistency shall be resolved by reference to the following descending order of priority in the event of a conflict or inconsistency between any provisions of the DME Contracts:
 - a. any supplementary agreements concluded between the Parties at the time of or after the establishment of the contractual relationship, which amend and/or supplement the terms of the contractual relationship.
 - b. the Order Form.
 - c. the BSMS GTC as amended from time to time.
- 1.7. Headings. Headings are for convenience only and shall not affect the construction or interpretation of these BSMS GTC.

2. SUBJECT OF THE CONTRACT, CONCLUSION AND AMENDMENTS

- 2.1. Subject of the Contract. The subject of the contract is the provision of access to MNO messaging gateways in order to enable Partner to send so-called Application-to-Person Messages (or "**A2P SMS**") via the Messaging Hub (*hereinafter the "Business SMS Services"*) in accordance with the terms and conditions contained in the DME Contracts. It is expressly noted that the acceptance, storage, processing and/or forwarding (transmission) of so-called Person-to-Person Messages (or

"**P2P SMS**") are not included within the scope of the Business SMS Services.

2.2. Establishment of the Contractual Relationship

- a. Unless otherwise expressly stated, all offers made by DME are subject to change without notice and are non-binding.
- b. The contractual relationship shall be effective on the date of countersignature of the Order Form by the last of the Parties.
- c. The BSMS GTC shall apply to the Business SMS Services without exception. Terms and conditions of business of Partner, or any third party, which deviate, conflict, or include supplementary terms are invalid, regardless of when and in which form they were notified to DME, and shall only become part of the contract if and to the extent that DME has expressly agreed to their validity in writing. Silence shall not be deemed to comprise consent under any circumstances.

2.3. Amendments and Supplements to the Subject of the Contract

- a. A separate supplementary agreement shall be drawn up and signed by the Parties for each change or addition to services to be provided by DME or to the agreements made between the Parties. The extension of DME's services to other countries only requires a simple written notification (e-mail suffices). Price changes shall be communicated to Partner in writing (e-mail suffices).
- b. DME expressly reserves the right to make changes to these BSMS GTC. DME shall notify Partner of the essential content of changes that are not exclusively beneficial in writing (e.g. by e-mail or by printing them on a periodically issued invoice) at least 1 (one) month before the change concerned takes effect. Partner shall also be informed of the date on which the changes will become effective and that Partner has the special right to terminate the contractual relationship with DME free of charge on the date on which notified changes are to be effective. The full text of the changes shall be made available to Partner.
- c. Amendments to these BSMS GTC by DME shall be deemed to have been approved by Partner,
 - i. in the case of non-detrimental or exclusively beneficial changes, when such changes are communicated to Partner or, at the latest, on the notified effective date of such changes.
 - ii. in the case of changes that are not exclusively beneficial, if Partner does not object to the change in writing within a period of 1 (one) month after receipt of the relevant notification.
 - iii. in the case of regulatory changes or changes that become necessary as a result of a regulation issued by a competent authority or an MNO, at the time such changes are communicated to the customer or, at the latest, at the time of the notified effective date of the changes concerned.
- d. In the event of a timely objection by Partner within the meaning of Section 2.3.c.ii of these BSMS GTC, Partner shall have the special right to terminate the contractual relationship with DME free of charge on the notified effective date of such changes. It is expressly noted that changes that become necessary solely as a result of a regulation issued

by a competent authority (Section 2.3.c.iii of these BSMS GTC) do not entitle Partner to exercise this special right and to terminate the contractual relationship free of charge.

- e. Partner expressly acknowledges that in respect of changes resulting from a regulation issued by a competent authority or MNO (Section 2.3.c.iii of these BSMS GTC), it is possible that these entities may not give DME sufficient lead time to enable DME to notify Partner of the changes within the 1 (one) month notice period specified in Section 2.3.b of these BSMS GTC. In such cases, DME shall be exempt from the obligation to comply with the 1 (one) month notice period and shall notify Partner of the change upon receipt by DME of the notification from the competent authority or MNO, without undue delay, including communication of the effective date of the notified changes.

3. OBLIGATIONS OF PARTNER

- 3.1. If necessary, Partner shall be responsible for connecting to DME's Messaging Hub or network and procuring, at Partner's own expense, the necessary systems, appropriate hardware and/or network equipment, and any related equipment required for Partner's access to DME's Messaging Hub or network. Partner shall be liable for vicarious agents employed by Partner to the same extent to which Partner would be liable itself.
- 3.2. Partner undertakes to use the Business SMS Services exclusively for the contractually agreed purpose.
- 3.3. Partner is solely responsible for the account provided by DME, all activities conducted in connection with the account, and the accuracy of any information provided by or to Partner with respect to that account, including, but not limited to, contact, technical, or payment details. Partner shall therefore protect the account (including all access data and other credentials) and update all account details as they change without undue delay and shall communicate any unauthorised use of the account and/or credentials and any related security breaches.
- 3.4. Partner is solely responsible for ensuring that the data communications it sends comply with applicable laws and regulations and will therefore not only familiarise itself with (and comply with) the legal and regulatory framework applicable to the sending of messages but will also act accordingly and indemnify and hold DME harmless from any detriment resulting from a breach of such provisions, unless DME is responsible for the detriment concerned. In addition, Partner shall ensure that no content prohibited by law or the provisions of the DME Contracts is disseminated and that no moral norms, laws and regulations, applicable legal provisions, rights of third parties (in particular property and personal rights) or commercial practices are violated.
- 3.5. Partner is obliged to ensure that
 - a. Partner has obtained, prior to the transmission of each A2P SMS sent using the Business SMS Services, the prior consent of the recipient of each A2P SMS before the respective A2P SMS is sent.
 - b. Partner holds all rights/licences in respect of each A2P SMS (including in respect of the content of the A2P SMS) sent using the Business SMS Services.
- 3.6. Partner shall therefore ensure that neither it nor its customers use the Business SMS Services to send Non-Permitted Traffic. "**Non-Permitted Traffic**" includes, but is not limited to:
 - a. P2P SMS messages.
 - b. unsolicited, improper, or fraudulent messages.
 - c. messages with content that may be considered unlawful, offensive (e.g. pornography, threats to national or international security, etc.), illegal, malicious, or harmful in the relevant applicable jurisdiction, or capable of damaging

systems, networks, equipment, or the infrastructure of DME, an MNO or an SMS recipient in any way (e.g. messages containing viruses, Trojans, spyware or generally malware of any kind, or SMS that may be classified as SPAM).

- 3.7. Partner shall at all times ensure that any agreements it enters into with its customers in relation to the Business SMS Services contain clauses prohibiting the sending of Non-Permitted Traffic. Partner is obliged to do everything possible to prevent Non-Permitted Traffic from reaching DME's Messaging Hub.
- 3.8. The following actions must be taken if Non-Permitted Traffic is nevertheless sent to DME's Messaging Hub by Partner (or any of its customers or customers of its customers):
 - a. The Party that discovers that Non-Permitted Traffic have been sent shall contact the other Party without undue delay and inform it that Non-Permitted Traffic has been sent.
 - b. The Parties shall make immediate good faith efforts and exchange information (including timestamp, content, destination number and sender) to identify the source of the Non-Permitted Traffic as soon as possible after the incident concerned.
 - c. If the Non-Permitted Traffic originates from a customer of Partner, Partner shall immediately terminate or interrupt the connection with its customer from which such Non-Permitted Traffic originated. Partner must ensure that no messages from such customer can be sent via the Messaging Hub.
- 3.9. Partner shall be liable for all claims, contractual penalties, fines, and detriments imposed on DME by third parties or by institutions due to Non-Permitted Traffic sent by and/or via Partner.
- 3.10. If Partner breaches its obligation not to send Non-Permitted Traffic, DME may, at its sole discretion, immediately suspend Partner's Business SMS Services and/or Partner's access to DME's Messaging Hub until such breach is fully remedied. This remedy shall be without prejudice to any claims for damages DME may have.
- 3.11. DME may temporarily suspend Business SMS Services for purposes of maintenance or upgrades (network modifications or emergencies) and shall endeavour to inform Partner as soon as possible. Partner shall be notified in writing (e-mail suffices) of scheduled maintenance at least 7 (seven) calendar days in advance, if possible.
- 3.12. Partner expressly acknowledges that
 - a. without Partner's prior consent, DME is entitled to engage subcontractors in the course of providing the Business SMS Services; however, this applies only to MNOs and technical service providers in order to enable DME to provide the Business SMS Services in the relevant countries selected by Partner.
 - b. the provision of Business SMS Services offered by DME is governed by
 - i. the rules and regulations issued by the competent authorities, and
 - ii. the contractual relationship between DME on the one hand, and the relevant MNOs and corporate and other stakeholders with whom DME has a contractual relationship, on the other hand.

Given that DME therefore acts only as an access provider for the transmission of SMS messages, Partner shall exercise the same care in the use of the services as DME has undertaken to exercise in relation to competent authorities, MNOs, or relevant stakeholders. Partner shall indemnify and hold DME harmless as to any and all detriments incurred by

DME due to violations of the standard of care Partner is obliged to uphold.

- c. the availability of services is also dependent on the availability of the transmission paths and switching paths of MNOs or third parties. Partner is expressly aware that MNOs are entitled to change their services in furtherance of the availability and operability of their telecommunications systems. Interruptions or malfunctions in services, the cause of which is not within the scope of DME's responsibilities, shall not be considered a default.
 - d. DME is entitled to make changes to its systems in order to maintain them at the highest technical standards possible. DME reserves the right to update the specifications of its systems to reflect new requirements. Partner shall be informed of such updates in writing (e-mail suffices) in good time, but in any case, no fewer than 7 (seven) calendar days in advance. If necessary, Partner shall be obliged to update its systems accordingly at its own expense within a reasonable period set by DME.
 - e. the services provided by DME may be temporarily interrupted or impaired due to unforeseeable or exceptional circumstances, as well as due to required technical actions or measures intended in particular to prevent malfunctions.
 - f. if the content of an SMS sent by Partner exceeds the maximum number of characters available for this purpose, such content will be divided into several individual SMS by the Messaging Hub, each of which is to be paid for by Partner or will be sent only with the maximum possible number of characters/file size.
 - g. all commissioned SMS must be paid for, even those that are not delivered, e.g. because Partner has sent the SMS to an address that does not exist, is not active or cannot be identified by DME.
- 3.13. Each Party shall inform the other party as soon as possible by e-mail or telephone of any disruptions to use of the Business SMS Service of which it is notified, or of which it becomes aware.
 - 3.14. Partner shall keep accurate and complete records of the use of the Business SMS Services during the contractual term and in accordance with the applicable rules and relevant laws. Upon request, Partner shall provide DME with copies of such records without undue delay. DME or its representatives shall be entitled to submit such records to a service provider, MNO, regulatory authority, or other competent authority.
 - 3.15. Partner shall be responsible for payment of all amounts due to DME on the basis of the agreed terms.
 - 3.16. If an SMS sent via DME does not originate from Partner itself, but from a customer of Partner (or its customer), Partner is exclusively responsible for the behaviour of such customer (or its customer) in relation to DME and shall indemnify DME as to any damages, costs, and other detriments.
 - 3.17. Partner shall remain fully liable to DME for the acts and omissions of its customers (or its customers' customers), employees, contractors, agents or third parties (whose acts and omissions shall be deemed to be the acts and omissions of Partner). Partner is obliged to disclose to all information concerning a customer (or the customer's customer), and all SMS sent by Partner through DME's systems, to DME upon reasonable request and without undue delay but in any event no later than within 1 (one) business day.
 - 3.18. Partner is obliged to notify DME of all errors or defects within the Business SMS Services it discovers after the provision of such service, or which it should have discovered via inspection in the course of normal business operations, without undue delay. Services provided by DME shall be deemed to have been approved or accepted absent such notification. The assertion of warranty claims or claims for damages (including consequential

damages), including the right to lodge a complaint about disruptions in service due to errors, are excluded in such cases.

4. SUSPENSION

- 4.1. If Partner violates these BSMS GTC or any provision of relevant DME Contracts, or if there is good cause as referred to in Section 7.3 of these BSMS GTC, DME is entitled, at its own discretion, to take immediate action against Partner without further notice.
- 4.2. Potential measures include:
 - a. deactivation or suspension of the respective services for the customer.
 - b. completely suspending the account provided by DME.

The respective measure shall be proportionate to the severity of the infringement committed by Partner and shall remain in force, at the least, until Partner has ceased the infringement concerned and any risk of recurrence has been eliminated.
- 4.3. The foregoing is without prejudice to DME's right of termination for good cause as referred to in Section 7.3 of these BSMS GTC as well as the right to assert other claims. Other obligations of Partner shall also remain unaffected by suspension or other measures.

5. REPRESENTATIONS AND WARRANTIES

- 5.1. Each Party represents and warrants to the other Party that:
 - a. it is duly incorporated, registered, and existing under the laws of its home country.
 - b. the adoption of the DME Contracts has been duly and fully approved by it.
 - c. it has legal capacity and authority to enter into a contractual relationship with the other Party and to perform its obligations arising under the contractual relationship concerned.
 - d. the contractual relationship contains obligations which are lawful, valid, binding, and enforceable against them in accordance with their respective terms.
 - e. the provisions of the contractual relationship do not conflict with, and do not constitute a breach of, the provisions of any other agreements, obligations, restrictions, or undertakings binding upon them.
 - f. the person(s) signing for the respective Party is/are authorised to enter into the contractual relationship in a legally valid and binding manner for such Party.
- 5.2. DME shall make reasonable efforts under the circumstances to maintain the overall quality of its network. The quality of service provided under the Business SMS Services is consistent with other industry standards, government regulations and sound business practices.
- 5.3. Except as otherwise expressly provided, DME provides the Business SMS Services on an "as is" and "as available" basis. DME makes no representations or warranties with respect to the Business SMS Services and does not warrant that the Business SMS Services will be uninterrupted, timely or error-free or that content will be delivered. To the fullest extent permitted by law, DME disclaims all warranties, implied or statutory, including warranties of title and non-infringement, merchantability, or fitness for a particular purpose. Partner acknowledges that network connections carry risks that may result in loss of privacy, data, confidential information, and property. Partner further acknowledges that DME does not control third party networks (including, but not limited to, those of MNOs) and is not responsible for the effects of the operation or non-operation of such networks, or third parties, on the Business SMS Services.

6. PAYMENT TERMS, INVOICING

- 6.1. Fees to be paid by Partner for use of the Business SMS Services are specified in the Order Form.
- 6.2. Partner shall pay all fees in euros.
- 6.3. Apart from any other agreed amounts, Business SMS Services will be charged per SMS for all SMS delivered via the Messaging Hub according to records maintained by DME.
- 6.4. **Payment Model.** The payment model applicable to Partner for use of the Business SMS Services is selected in the Order Form. The advance payment model shall be applicable if nothing, or both, has been selected in the Order Form, and unless otherwise agreed in writing.
- a. *Advance Payment.*
- i. DME shall issue an invoice to Partner for any advance payment amounts that are due. Partner shall transfer such advance payment amount to DME's bank account specified in the Order Form.
 - ii. Invoices issued by DME are due upon receipt. All bank charges shall be borne by Partner ("OUR" instruction).
 - iii. All advance payments made by Partner to DME's bank account will be credited to Partner's account within DME's system. Amounts credited as described above are referred to as "**Credit Balance**". Credit Balances do not bear interest.
 - iv. It is expressly noted that DME is not obliged to provide Business SMS Services if Partner's account within DME's system does not have sufficient cover. Consequently, Partner's account within the DME system must always have a positive balance in order for DME to provide services to Partner.
 - v. The Credit Balance will be used to pay for all services used by Partner, regardless of whether the amount to be paid is a one-time, recurring or transaction-based amount.
 - vi. Any taxes, fees or amounts payable will be deducted from the Credit Balance.
 - vii. If desired, the Parties may agree that DME will send a notification to Partner as soon as the Credit Balance reaches a certain threshold.
 - viii. Partner loses its rights to a Credit Balance (or a part thereof) and such Credit Balance (or a part thereof) will be permanently assigned to DME without further notice if such Credit Balance (or a part thereof) has not been used within 6 (six) months after the Credit Balance has been credited to DME's bank account. Under no circumstances shall Partner be entitled to a refund of any unused Credit Balance.
 - ix. If Partner does not use DME's Business SMS Services for 6 (six) consecutive months, DME is entitled to suspend the services established to provide Business SMS Services.
- b. *Payment in Arrears.*
- i. Partner shall settle the invoice within 14 (fourteen) calendar days after receipt of the invoice. The date of receipt of the invoice shall be the third business day from the date of issue unless it is officially verified that Partner did not receive the invoice on whatever grounds. All bank charges shall be borne by Partner ("OUR" instruction).
 - ii. The invoice period is MONTHLY (calendar month). Invoices are issued at the beginning of the month for the previous billing period and are sent electronically to Partner's e-mail address (e-mail for billing purposes) as specified in the Order Form. A paper invoice may be issued should this be necessary due to country-specific regulations.
- iii. Unless otherwise agreed, Partner must pay invoices due to DME in full without off-sets or netting.
- iv. Partner has the option of paying by SEPA direct debit. In such cases, Partner is obliged to complete the SEPA direct debit mandate provided by DME completely and truthfully, to have it signed by a representative who is authorised to sign and has power of attorney over the account, and to send the original to DME without undue delay. Partner is obliged to inform DME of any changes regarding the SEPA direct debit mandate without undue delay. In case of changes of the bank details, Partner is obliged to send a new original SEPA direct debit mandate to DME on the form provided by DME without undue delay.
- 6.5. Subsequent price changes by DME shall be sent electronically to Partner's e-mail address (e-mail of the contact person) indicated in the Order Form. Price changes will take effect immediately upon receipt of official notification via e-mail. Price changes are communicated from Monday to Friday (except holidays). Partner is obliged to keep the contact details provided in the Order Form valid and up to date at all times. Missed price change notifications as a result of a failure to fulfil this obligation shall be at Partner's expense.
- 6.6. **Default Interest for Late Payments.**
- a. In the event of a delay in payment of an invoice that has fallen due, DME may charge Partner interest on arrears at the rate of 6% (six percent) per annum and all costs from the due date, as well as costs related to damages caused by the delay and any associated costs, including the costs, fees and expenses incurred in the course of enforcing the claim to payment. Payments received by DME from Partner shall first be applied to settle interest and costs, then to settle outstanding principal claims, starting with the oldest.
 - b. While Partner is in default, DME shall have the right to suspend the provision of the Business SMS Services until outstanding amounts are paid in full, without prejudice to DME's right of termination in accordance with Section 7.3.a of these BSMS GTC.
 - c. Partner explicitly acknowledges DME's right to initiate a dunning procedure against Partner if Partner is in default of one of its payment obligations to DME. In this context, Partner acknowledges that it shall not only pay any dunning fees incurred but shall also be obliged to reimburse all costs incurred by DME in connection with collecting any amounts outstanding.
- 6.7. **Disputed Invoices.**
- a. Partner shall send objections to amounts invoiced by DME in writing within 14 (fourteen) days of receipt of the invoice by e-mail to the e-mail address indicated in the Order Form for the receipt of disputed invoices from DME. Upon expiry of this period, and provided that no objections have been lodged, Partner confirms the accuracy of DME's claims contained in the invoice both as to basis and amount.
 - b. Partner is not entitled to withhold any amounts on the basis of an objection.
 - c. *Threshold amount.* Objections may not be raised for a disputed amount of 1% (one percent) of the total invoice amount or EUR 125.00 (one hundred twenty-five euros), whichever is lower.
- 6.8. **Taxes.** Charges for the Business SMS Services and other amounts due under the contractual relationship are stated

exclusive of any applicable taxes imposed by law, statute or regulation of any governmental body or authority, such as value added tax, sales tax, duties, fees, levies, or surcharges (including, where applicable, any universal service fund or similar surcharge), all of which shall be the sole responsibility of Partner and shall be payable promptly by Partner when due. Furthermore, Partner agrees to indemnify and hold DME harmless from any liability in connection with any of the foregoing.

7. CONTRACT TERM AND TERMINATION

- 7.1. The contract shall be effective on the date of countersignature of the Order Form by the last party to sign and shall be concluded for an indefinite term.
- 7.2. Termination for Convenience. Either Party may terminate the contractual relationship by giving 1 (one) month's written notice to the other Party to the end of any calendar month without need to indicate the grounds.
- 7.3. Termination for Cause. The Parties have the right to terminate the contractual relationship with immediate effect in writing for good cause. Without limitation, good cause applies in cases in which the other Party:
 - a. is in default of payment, or is in breach of any material provision of this contract that remains uncured (if capable of curing) after the expiry of 7 (seven) calendar days after receipt of written notice from the terminating Party describing the breach in full detail and requesting that it be cured.
 - b. assigns the rights or obligations arising from the contractual relationship in whole or in part to a third party in violation of the provisions of Section 12.4 of these BSMS GTC.
 - c. commits a criminal offence in connection with the use of the Business SMS Services or there is a reasonable suspicion that a criminal offence may have been committed.
 - d. is no longer an operating company, is over-indebted or insolvent, or bankrupt or other insolvency proceedings are instituted against it, or such proceedings are refused for lack of assets.
- 7.4. In the event of termination, DME shall settle outstanding amounts by invoicing all services already provided to Partner for which invoices have not yet been issued at the time of termination; all such amounts shall be due and payable within 7 (seven) calendar days of receipt of the respective invoice.
- 7.5. Except as otherwise expressly provided herein, termination of the contractual relationship shall not affect or diminish the right of the terminating Party to any damages or other relief to which it may be entitled with respect to the event giving rise to the termination or any other rights to damages or other relief to which a Party may be entitled with respect to a breach of contract at or prior to the time of termination. However, Partner shall not be entitled to claim any amount based on the replacement of DME as contractor due to the termination of this contract regardless of grounds.
- 7.6. Unless otherwise agreed, any termination of the contractual relationship must be in writing and signed by the duly authorised representative(s) of the terminating Party. Written notice of termination may also be scanned and sent by e-mail to the non-terminating Party, provided that the original letter is sent by registered mail or messenger service after dispatch of the e-mail. The date of receipt of written notice of termination within the respective Party's sphere of control shall be decisive for the running of the notice period and the effectiveness of a termination of the contractual relationship. The grounds for termination of this contract shall be stated with reference to the relevant provisions of this contract.

8. DATA PROTECTION

8.1. General Provisions.

- a. DME takes data protection very seriously and therefore treats information provided by Partner (including Personal Data) with the utmost care and confidentiality in accordance with the provisions of this Section 8 ("Data Protection") and in accordance with applicable Data Protection Laws. Within the scope of the contractual relationship, the Parties expressly agree and state that
 - i. Partner is the Controller; and
 - ii. DME is the Processor
 of data which Partner provides to DME.
- b. For the purposes of this Section 8 ("Data Protection"), the following terms shall have the following meanings:
 - i. **"Data Protection Laws"** means the Data Protection Laws and regulations applicable in a country and jurisdiction relevant to the provision of the services.
 - ii. **"GDPR"** means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 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. **"Operators"** means MNOs including other telecommunication operators or providers (e.g. internet service providers) with whom DME (as Processor) cooperates to provide the Business SMS Services to Partner (as Controller).
 - iv. **"Sub-Processor"** means a natural or legal person, public authority, agency, or other body which has been commissioned by Processor, to the extent permitted, to process Personal Data in accordance with this Section 8 ("Data Protection").
 - v. Any term not expressly defined in this Section 8 ("Data Protection") (including, but not limited to, **"Controller"**, **"Data Subject"**, **"Personal Data"**, **"Personal Data Breach"**, **"Processor"**, **"Supervisory Authority"**, etc.) has the meaning ascribed to it in the GDPR.

8.2. Data Processing.

- a. This Section 8 ("Data Protection") shall govern the processing of Personal Data provided to DME by Partner in connection with use of the Business SMS Services.
- b. DME (and accordingly any Sub-Processors employed by DME) shall process Personal Data exclusively in accordance with the provisions of this Section 8 ("Data Protection") and in accordance with documented instructions from Partner, with due regard to the nature, purpose and duration of the processing of the Order, the type of Personal Data, the categories of Data Subjects and other aspects specified in this Section 8 ("Data Protection") and in Annex 1 to these BSMS GTC (Details Concerning Personal Data Processing).
- c. In connection with the processing of Personal Data under the contractual relationship, the Parties shall comply with their respective obligations, whether as Controller or Processor, under applicable Data Protection Laws and shall not knowingly do or permit anything to be done that could result in a breach of applicable Data Protection Laws by themselves or the other Party.

8.3. Partner's Obligations as Controller.

- a. Partner is solely responsible for ensuring that the legitimacy and lawfulness of Personal Data it provides to DME for processing is ensured, including protecting the rights of the respective Data Subjects. Partner is therefore responsible

and expressly guarantees that there is a lawful basis for the processing of Personal Data provided to DME at all times. In any event, this shall include the right to provide Personal Data to DME for processing as Processor.

- b. Partner warrants that its instructions on the basis of which DME processes Personal Data are lawful, so that processing Personal Data by DME within the scope of providing the Business SMS Services does not result in DME violating any applicable laws, regulations, or rules, including applicable Data Protection Laws, as well as the rights and freedoms of Data Subjects.
- c. Partner shall indemnify DME against any liability or damages that DME may incur due to a breach of the customer's obligations under this Section 8 ("Data Protection") or applicable Data Protection Laws. This provision shall also apply to all cases in which such liability or damage is due to acts or omissions of third parties on whose behalf Partner processes Personal Data provided to DME.

8.4. DME's Obligations as Processor.

- a. *Processing Purpose.* DME shall process Personal Data provided by Partner exclusively in accordance with these BSMS GTC and in particular for the purposes specified and defined in Annex 1 to these BSMS GTC (Details Concerning Personal Data Processing). DME shall not acquire any rights to Personal Data provided by Partner unless required by law or separately agreed upon by the Parties in writing.
- b. *Instructions from Partner.* DME shall at all times process Personal Data provided by Partner exclusively in accordance with this Section 8 ("Data Protection"), Partner's documented instructions and the provisions of these BSMS GTC, in each case in accordance with applicable Data Protection Laws. Within the scope of the foregoing, and unless otherwise agreed between the Parties and/or otherwise instructed by Partner, DME shall refrain from
 - i. exercising control over such Personal Data itself, transferring it to third parties or purporting to do so.
 - ii. applying or using Personal Data for purposes other than those specified in Annex 1 to these BSMS GTC (Details Concerning Personal Data Processing).
 - iii. processing such Personal Data for its own purposes or integrating such data into products or services offered to third parties.
- c. *Notices.*
 - i. Should
 - any applicable law prevent DME from acting in accordance with Section 8.4.b of these BSMS GTC; or
 - a change in processing procedures be required or ordered at DME;

DME shall inform Partner in writing (e-mail suffices) of the legal impediment and/or the process change prior to further processing activities, unless such notification would contradict legitimate security considerations or violate applicable law or a court or administrative order.
 - ii. Furthermore, DME shall also notify Partner if DME believes that an instruction from Partner is otherwise not practicable.
 - iii. For the avoidance of doubt, it is expressly noted that DME has the right to suspend the provision of its services to Partner until agreement is reached with Partner on how to proceed.

- d. DME shall ensure that access to Personal Data is limited only to those employees who need to access such data in order to provide the Business SMS Services. DME shall likewise ensure that employees who have access to Personal Data are subject to appropriate confidentiality and non-disclosure undertakings with regard to such data prior to the processing thereof or are otherwise bound to maintain confidentiality by the provisions of applicable law.
- e. It is expressly noted that DME is entitled to provide its professional third party advisors with such Personal Data as they may need to perform and/or enforce its contractual obligations and rights under the contract. In this regard, DME is obliged to ensure that the protection of Personal Data provided for in this Section 8 ("Data Protection") is duly respected.
- f. *Data Security.* For the duration of the contractual relationship, DME shall ensure that it implements appropriate and sufficient technical and organisational measures to protect Personal Data against accidental loss, destruction, damage, alteration, unauthorised disclosure, or access – in particular in cases where processing involves the transmission of data over a network – and/or against all other unlawful forms of processing.
- g. Without prejudice to any other security standards agreed by the Parties, DME shall implement appropriate technical and organisational measures to ensure the security of processing Personal Data in accordance with the standards set out in Article 32 of the GDPR. These measures shall include in particular:
 - i. Pseudonymisation and encryption.
 - ii. The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.
 - 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 processing.
- h. DME is committed to continuously implementing and improving the technical and organisational measures it employs to ensure the security of Personal Data and to prevent, identify and control any unauthorised or illegal access or use of Personal Data.
- i. *Inquiries by Data Subjects.*
 - i. DME shall assist Partner in fulfilling its obligations 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 Laws. At Partner's request, DME shall provide all data reasonably required for such purposes to Partner.
 - ii. Should a request exercising the right of a Data Subject be addressed to DME, DME shall forward such request to Partner for further processing without undue delay (e-mail suffices). Notwithstanding the foregoing, DME may, in its sole discretion and after consultation with Partner, respond to such request on Partner's behalf.
 - iii. In the event that a Data Subject erroneously considers DME to be the Controller in a request addressed to DME, DME shall forward the request concerned to Partner without delay (e-mail suffices). Partner is obliged to correct misconception of the Data Subject without undue delay and to inform the Data Subject that Partner is the Controller and DME is acting as Processor.

- j. *Inquiries from Government Agencies and Regulatory Authorities.* Unless prohibited by applicable law, DME shall notify Partner of any inquiry made by a government agency or regulatory authority with respect to Personal Data provided by Partner without undue delay. DME shall support and assist Partner in complying with the requirements of applicable Data Protection Laws (in particular, Articles 32 to 36 of the GDPR), and will assist Partner in data protection audits conducted by government agencies or supervisory authorities with respect to Personal Data processed under these BSMS GTC.
- k. *Audits and Control.*
- i. DME agrees to provide Partner with all information reasonably necessary to demonstrate compliance with the obligations set forth in this Section 8 ("Data Protection"), and shall permit and contribute to audits, including on-site inspections, conducted by Partner or a third party engaged by Partner (and accepted by DME), at Partner's sole expense. Any third party engaged by Partner shall be subject to a documented obligation to maintain confidentiality.
 - ii. DME shall be notified in writing at least 14 (fourteen) days in advance of the intent to conduct an audit. The right to conduct an audit may generally be exercised only once per calendar year during normal business hours, with the least disruption to DME's business operations, and subject to DME's reasonable requirements for confidentiality and/or security. Any such audit shall also be carried out on the basis of a mutually agreed audit plan.
- l. *Personal Data Breaches.* DME shall notify Partner of a Personal Data Breach in writing (e-mail suffices) without undue delay, but no later than 48 (forty-eight) hours after it becomes aware of the breach concerned. Such notification shall be sent to the e-mail address of Partner's data protection contact person indicated in the Order Form and shall contain the following information at a minimum:
- i. a description of the nature of the Personal Data Breach, including, where possible, the categories and approximate number of Data Subjects concerned, the categories and approximate number of data records containing Personal Data that have been affected.
 - ii. the name and contact details of the person responsible for data protection at DME or another contact point from which further information can be obtained.
 - iii. a description of the likely consequences of the Personal Data Breach.
 - iv. a description of the measures taken or proposed by the Processor to remedy the Personal Data Breach and, where appropriate, measures to mitigate its possible adverse effects.
- 8.5. **Subcontracting/Sub-Processors.**
- a. DME shall have the right to engage Sub-Processors to perform obligations related to processing Personal Data arising under the contractual relationship. Any such engagement of a Sub-Processor shall be made on the basis of a written contract or other legal instrument in accordance with applicable Data Protection Laws, which shall impose substantially the same obligations on the Sub-Processor as those described in this Section 8 ("Data Protection").
 - b. Within the scope of fulfilling its obligations, DME is expressly entitled to use as Sub-Processors only those Operators and technical service providers that enable DME to provide the services in the countries selected by the customer for the provision of the services by giving them a specific order to transmit a specific message to a recipient. DME also has the right to engage other persons as necessary to provide the Business SMS Services.
- c. DME shall be liable to Partner for any failure by a Sub-Processor to comply with such obligations and requirements.
- d. Prior to the commencement of processing, DME shall ensure compliance by the Sub-Processor with the obligations set out in this Section 8 ("Data Protection"), in particular compliance on the part of the latter with agreed technical and organisational security measures.
- 8.6. **International Transmission of Personal Data.** In cases where Personal Data is processed by a Sub-Processor outside the European Economic Area, DME shall take all steps reasonably necessary 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 of the GDPR, which may include the conclusion of the standard contractual clauses set out in European Commission Decision 2010/87/EU.
- 8.7. **Return of Personal Data.**
- a. Upon termination or expiry of the contract – on whatever grounds – or at any time based on an expressly documented instruction of Partner, DME will erase or return to Partner all Personal Data, as well as erase all existing copies, unless applicable law requires DME to retain such Personal Data, or erasure is not practicable due to technical limitations. In such cases, the Personal Data concerned will be blocked from further use.
 - b. Where applicable, DME shall contractually ensure that Sub-Processors engaged by DME comply with the obligation set out in Section 8.7.a of these BSMS GTC.
- 8.8. In the event of any conflict, ambiguity, or inconsistency between the provisions of this Section 8 ("Data Protection") and any other provision of these BSMS GTC, the provisions of this Section 8 ("Data Protection") shall prevail over such conflict, ambiguity, or inconsistency unless otherwise expressly stated.

9. CONFIDENTIALITY

- 9.1. For purposes of the instant contract, all information of any form that has been or may be disclosed or accessed by one Party (hereinafter referred to as the "**Disclosing Party**") and/or any of its affiliates to the other Party (hereinafter referred to as the "**Receiving Party**") and/or its affiliates, including, without limitation, any know-how and any business, financial, legal, marketing, organisational and/or technical information that is either marked or otherwise designated as confidential or proprietary to the Disclosing Party, or which by the nature of the circumstances surrounding its disclosure in good faith shall be considered confidential or proprietary, shall be referred to as "**Confidential Information**". Confidential Information also includes Personal Data as defined in Section 8 of these BSMS GTC ("Data Protection").
- 9.2. All Confidential Information provided by the Disclosing Party and/or its affiliates to the Receiving Party and/or its affiliates are and shall remain the property of the Disclosing Party.
- 9.3. **Confidentiality.** The Parties agree that the contractual relationship is confidential, and its terms may therefore not be disclosed in any way to third parties without the prior written consent of the Disclosing Party.
- 9.4. In respect of Confidential Information and subject to the provisions of Section 9.5 of these BSMS GTC, the Receiving Party undertakes:
- a. to treat Confidential Information disclosed by the Disclosing Party as confidential and to use it exclusively for the

purposes intended within the scope of the contractual relationship.

- b. not to disclose such Confidential Information to any third party or disclose any part thereof without the prior written consent of the Disclosing Party, except:
 - i. to affiliated enterprises, directors, officers, employees, agents, representatives, auditors, or professional advisors of the Receiving Party who have a need to know, and provided that, prior to disclosure, the Receiving Party shall ensure that such persons are not only expressly advised of the confidential nature of the disclosure, but are also legally or contractually bound to keep the disclosed Confidential Information confidential.
 - ii. by virtue of the provisions of laws, regulations or decisions of public authorities or regulatory bodies, or orders or requests from public authorities or competent courts.
 - c. to treat the Confidential Information with the same level of care in order to prevent unauthorised access, use or misappropriation as it uses in relation to its own equally important information that must be treated confidentially, but in no case with less than reasonable care.
- 9.5. **Exceptions.** The duty to maintain confidentiality shall not apply to any parts of the Confidential Information of which the Receiving Party can demonstrate, on the basis of written records, that such information:
- a. was or became public knowledge through no fault of the Receiving Party.
 - b. was lawfully received from an independent third party without any restriction.
 - c. was already known to the Receiving Party at the time it was disclosed by the Disclosing Party.
- 9.6. All Confidential Information, including all copies thereof, shall be returned to the Disclosing Party or (at the Disclosing Party's request) verifiably destroyed within 7 (seven) calendar days after termination of the contractual relationship or upon receipt of a written request from the Disclosing Party, whichever occurs first, and confirmation thereof shall be sent to the Disclosing Party. The Receiving Party shall be entitled to retain a copy of the Confidential Information if this is necessary for purposes of an audit or due to other legal or regulatory provisions or if such copy is stored on a backup medium and its deletion would cause a disproportionate amount of work or expense. The Disclosing Party shall be notified in writing without undue delay that a copy of Confidential Information has been retained and that such copy – even after termination of the contractual relationship – shall be subject to the non-disclosure obligations set forth in Section 9 of these BSMS GTC ("Confidentiality") until it is returned or verifiably destroyed.
- 9.7. The Receiving Party acknowledges and agrees that in the event of an actual or alleged breach of any of the provisions of Section 9 of these BSMS GTC ("Confidentiality"), the Disclosing Party shall be entitled, in addition to (and not in lieu of) any other rights and remedies available to it, to seek and obtain injunctive relief (without the need to prove special damages or the like) to prevent or restrain any such actual or alleged breach by the Receiving Party. The Receiving Party further agrees to indemnify and hold harmless the Disclosing Party from and against any and all costs (including reasonable attorneys' fees) incurred by the Disclosing Party in obtaining such injunctive relief.
- 9.8. **Surviving Provisions.** The confidentiality and non-disclosure obligations in Section 9 of these BSMS GTC ("Confidentiality") shall remain in effect for a period of 3 (three) years after termination of the contractual relationship.

10. LIABILITY

- 10.1. Save as otherwise provided by law or expressly set forth in this contract, DME shall not be liable to Partner (or any customer of Partner) for any indirect loss or damage resulting from any failure, degradation, or interruption of service on its network or on any other network or interconnection involved in the provision of the Business SMS Services.
- 10.2. Neither Party shall be liable to the other under this contract, contractually or otherwise, for any consequential, indirect, or special damages, including, without limitation, loss of sales, business, contracts, anticipated savings, profits, data, or goodwill. Notwithstanding the foregoing, neither Party shall limit its liability to the other Party for:
 - a. fraud or fraudulent misrepresentation;
 - b. death or personal injury caused through negligence;
 - c. wilful misconduct or gross negligence; and/or
 - d. if such exclusion or restriction would be contrary to applicable law.
- 10.3. **Compensation for Damages.** Partner shall indemnify and hold DME harmless, without exception, from and against any and all liabilities (including damages, costs, reimbursement of regulatory and/or third party fines, penalties, and other expenses), actions, proceedings, claims, and demands, and all alleged claims and demands of any kind (including, but not limited to, infringement of intellectual property rights) arising directly or indirectly from Partner's use of the Business SMS Services, unless such claim arises as a result of an act or omission by DME.
- 10.4. **Claims.** Any claim of either Party shall be barred upon the expiry of 12 (twelve) months from the date on which a Party would first have been entitled to assert such claim against the other Party.
- 10.5. **Limitations on Liability.** DME's total liability for all claims arising under this contract shall be limited to the amount of fees paid by the customer in the 6 (six) months immediately preceding the date the cause of action arose. If the contract has not been in effect for 6 (six) months at such time, the liability cap will be calculated by multiplying the monthly average of fees paid during the term of the contract by 6 (six).
- 10.6. **Force Majeure.** Under no circumstances shall a Party be held responsible for delays or failures in performance the causes of which are beyond its reasonable control, including, but not limited to, strikes, labour disputes, riots, civil disturbances, fires, floods, storms, explosions, acts of God, war, military conflicts, government action, orders from public authorities, industrial action (including in companies which the supplying Party has commissioned to perform its contractual obligations), failures in the infrastructure of MNOs or their subcontractors and any other events which are beyond the control of a Party and make it impossible or unreasonable for it to perform its contractual obligations.

11. APPLICABLE LAW, SETTLEMENT OF DISPUTES, JURISDICTION

- 11.1. **Applicable Law.** The instant contract shall be governed in its entirety by the laws of the Republic of Austria, with the exception of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and private international law.
- 11.2. **Dispute Resolution.** The Parties shall make good faith efforts to use all reasonable methods to amicably resolve any dispute or claim arising under or in relation to this contract or any alleged breach thereof or any ancillary agreement. An attempt to reach an amicable settlement shall be deemed to have failed as soon as one of the Parties notifies the other in writing or after 21 (twenty-one) calendar days, calculated from the date of

notification by one Party of such dispute, have elapsed without an amicable settlement having been reached between the Parties.

- 11.3. **Jurisdiction.** The exclusive place of jurisdiction for all disputes between the Parties arising under or in connection with the contractual relationship shall be the competent court in Vienna, Austria.

12. FINAL PROVISIONS

- 12.1. **Entire Understanding and Written Form.** The DME Contracts contain the entire understanding between the Parties with respect to the subject matter hereof and supersede and override all prior and/or contemporaneous drafts, agreements, understandings and/or arrangements of any kind. Each of the Parties acknowledges that there are no representations, promises, warranties, covenants, or agreements made by either Party or by any person acting on behalf of either Party with respect to the contractual relationship that are not fully contained in the DME Contracts. Any amendments, changes, or modifications to the DME Contracts (with the exception of the BSMS GTC) shall be in writing and shall not be effective until signed by the duly authorised signatory/signatories of the relevant Party.

- 12.2. **Annexes.** The following Annex comprises an integral element of these BSMS GTC:

Annex 1: Details Concerning Personal Data processing

- 12.3. **Severability.** The invalidity of any provision of these BSMS GTC shall not affect the validity of the remaining provisions. The Parties undertake to replace any such invalid provision with a valid provision that comes as close as possible to the commercial purpose of such invalid provision, and the intent of the Parties, without undue delay.

- 12.4. **Assignment.** Partner is only entitled to transfer rights and obligations arising under the contractual relationship to third parties, in whole or in part, with the prior written consent of DME. However, DME shall be entitled to transfer rights and obligations arising under the contractual relationship to enterprises affiliated with DME.

- 12.5. **Relationship of the Parties.** The Parties are independent contractors and, in that regard, no aspect of the contractual relationship is intended to create, or shall be deemed to create a partnership, agency, franchise, joint venture or employment relationship between the Parties. Except as otherwise expressly provided herein, neither Party shall be entitled to act as proxy for or represent or validly bind the other Party.

- 12.6. **Waiver.** Failure by either Party at any time to enforce any provision of these BSMS GTC shall not be construed as a waiver by such Party of such provision or affect the validity of these BSMS GTC in any way.

- 12.7. **Intellectual Property Rights.** All intellectual property rights belonging to a Party prior to commencement of the contractual relationship shall remain the property of the Party concerned upon concluding the contractual relationship. Unless otherwise agreed herein, no intellectual property rights of one Party shall pass to the other Party. Unless otherwise agreed herein, neither Party shall have the right to use the trademarks, logos, or signs of the other Party for any purpose without the prior express written consent of the Party concerned. However, Partner expressly grants DME the right to use its name and logo in marketing and/or presentation materials as a reference.

- 12.8. Unless otherwise specified, all days specified as deadlines in these BSMS GTC shall be calendar days.

- 12.9. **Notices.** Except as otherwise provided in these BSMS GTC, any notice, request, message, report or demand required or

permitted to be given hereunder or by law shall be in writing and shall be deemed to have been duly given if delivered personally, by messenger service, by e-mail (with transmission and read confirmation) or by registered mail, postage prepaid, to the addresses set forth in the Order Form (or such other addresses as the Parties may later provide to each other in writing). A notice shall be deemed to have been delivered on the day it is sent if delivered personally or by messenger service; no later than 7 (seven) calendar days after it is sent if sent by registered mail; and 1 (one) hour after it is sent if sent by e-mail, provided, however, that the e-mail was sent before 17:00 CET (+1 UTC) on a business day, otherwise at 09:00 CET (+1 UTC) on the immediately following business day.

- 12.10. **Costs.** Each Party shall bear its own costs of negotiating, preparing, entering into, and performing this contract and related incidental expenses.

- 12.11. **Legal Succession.** The rights and obligations of the Parties arising under the contractual relationship shall be binding on the respective legal successors of the Parties.

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ANNEX 1

TO THE BSMS GTC

DETAILS CONCERNING PERSONAL DATA PROCESSING

1. PROCESSING PURPOSE

DME processes Personal Data provided to it by Partner exclusively in performance of the contractual relationship, in particular:

- A. to provide the Business SMS Services and to deliver the SMS transmissions to recipients; and
- B. to maintain customer relationships as well as ongoing communications with Partner during the entire contractual relationship with regard to existing business and future business opportunities

(hereinafter referred to as the "**Purpose**").

2. DATA SUBJECTS AND CATEGORIES OF PERSONAL DATA

DME processes the following categories of Data Subjects and Personal Data:

- A. Data Subject: **Recipients of the SMS.**
Personal Data: *The information necessary for the delivery of specific SMS to recipients, such as the recipient's MSISDN and any Personal Data contained in the SMS.*
- B. Data Subject: **Partner's officers and employees.**
Personal Data: *Detailed information and other data related to persons commonly used in business relationships, including, but not limited to, first name, last name, academic degree, date of birth, address, telephone and fax numbers, e-mail address, nationality, job title, signing rights, etc.*

3. PROCESSING ACTIVITIES

DME will only process Personal Data to the extent necessary for the performance of the contractual relationship. This includes, in particular, the use, transmission, storage and, if instructed, the erasure and/or destruction of Personal Data.

4. DURATION OF PROCESSING/DATA RETENTION PERIODS

DME retains and processes Personal Data provided to it by Partner only as long as this is necessary for the fulfilment of the Purpose or of legal and/or administrative (in particular commercial and tax law) or contractual provisions (e.g. in relation to Operators) applicable to DME and its business activities, whichever period is longer. The respective retention periods will vary depending on the Purpose for which the respective Personal Data were provided.

Upon expiry of the relevant period, the Personal Data concerned will be automatically erased by DME and all Sub-Processors, unless erasure is practically impossible due to technical limitations, in which case the Personal Data will be blocked for further use.

5. CONTACT DETAILS FOR DME (AS PROCESSOR)

- Contact: Data protection supervisor
Email: DME_DataProtection@dimoco.eu
Email in the event of a
Personal Data Breach: DME_DataBreach@dimoco.eu
Phone: +43 1 33 66 888 – 0