

I. General provisions

1 Scope

- 1.1 These General Terms and Conditions for Business Customers ("GTC") apply to all services – whether subject to Charges or not – that Sunrise UPC GmbH ("Sunrise UPC") renders to business customers ("Customers"), such as, without limitation, telecommunication services and system integration services. General information about Sunrise UPC's products and services are not binding for Sunrise UPC.
- 1.2 Chapter I of these GTC contains general rules applicable to all types of Services provided by Sunrise UPC to the Customer. Chapter II with specific terms for Telecommunication Services, respectively chapter III with specific terms for integration Services (including maintenance, support and managed services as well as the sale of Supplies by Sunrise UPC to the Customer) (i) each only applies in addition to Chapter I, (ii) each shall prevail Chapter I in case of contradictions, and (iii) each Chapter only applies if, and to the extent that, such Services have been expressly agreed in the Contract. In the absence of such agreement, chapters II and III do not constitute an independent obligation of Sunrise UPC to provide such Services.
- 1.3 These GTC shall also apply to all future relationships between the Parties, without express confirmation being necessary for this each and every time.
- 1.4 General terms and conditions of the Customer shall not apply, unless confirmed by Sunrise UPC in writing.
- 1.5 The currently valid and binding version of the GTC is being published on the Internet at www.upc.ch/en/business/legal and www.sunrise.ch/en/business/legal. A written copy can be obtained from Sunrise UPC.
- 1.6 The Contract may also be concluded implicitly, i.e. by the Customer receiving or using the Services of Sunrise UPC.
- 1.7 Unless otherwise stated, offers issued by Sunrise UPC shall be valid for 30 (thirty) days.
- 1.8 In case of contradictions, the other contractual provisions in the order of Statement of Work, (or) Order Form, (or) signed Offer and other documents included in the contract by reference shall have precedence over the GTC.

2 Definitions

- 2.1 If nothing else is mentioned, the capitalized terms defined below shall always be used in the Contract with the meaning given here:
- 2.2 Charges means all fees that Sunrise UPC bills to the Customer. Charges may be invoiced as one-time fees or recurring fees, respectively as flat fees or (usage-based) variable fees.
- 2.3 Contract means these GTC together with any other documents referring to the GTCs, (including the applicable Statement of Work, the Offer, or Order Form) as well as any other documents referenced therein.
- 2.4 Installations means all equipment (including software) that is used at a Location in order to render the Services and that is the property of Sunrise UPC.
- 2.5 Location(s) means the place(s) where Sunrise UPC renders a Service or agrees to render a Service.
- 2.6 Services means all and any service(s) and/or parts thereof provided by Sunrise UPC to the Customer under the Contract. The details of each Service result of the applicable Statement of Work (SOW) or Order Form (OF) together with the applicable Service Description (SD) and Service Level Agreement (SLA), if any.
- 2.7 Supply means equipment (hard- and software) and other items sold by Sunrise UPC to Customer (e.g. mobile devices).

3 Services rendered by Sunrise UPC

- 3.1 Sunrise UPC shall render the Services with due care and diligence.
- 3.2 Sunrise UPC may use the services of third parties at any time in order to perform the Services.

4 Charges; payment terms

- 4.1 The Customer shall pay the Charges set forth in the Contract. In case the Charges are not explicitly agreed, Sunrise UPC shall determine the Charges based on the current and binding tariffs published on the website www.sunrise.ch.
- 4.2 The Charges are quoted net in Swiss francs (CHF), excluding value added tax, packaging, transport and insurance.
- 4.3 Invoices are due and payable within 30 (thirty) calendar days from the billing date. Payment shall be deemed remitted once the full amount owed has been credited to the Sunrise UPC account. All charges and bank fees incurred through payment shall be borne by the Customer.
- 4.4 The Customer has the right to raise written and substantially justified objections to the invoice within the time allowed for payment. After that, the invoice shall be deemed accepted without reservation. Submission of objections shall not release the Customer from the obligation to timely pay the undisputed part of the invoice.
- 4.5 Upon expiry of the deadline for payment, the Customer shall automatically fall in default, and Sunrise UPC shall be entitled to charge default interest of 7% (seven percent) p.a. for each day that payment is delayed from the date when payment becomes due. Sunrise UPC has the right to charge at least CHF 30.- (thirty) for each reminder. Sunrise UPC reserves the right to charge further fees. If payment is not made despite a written reminder setting a grace period of 14 (fourteen) days, Sunrise UPC shall be entitled to discontinue or deactivate all Services immediately without further notice. Charges which are not based on actual usage are payable even in the event of deactivated or discontinued Services.
- 4.6 If, at any time, Sunrise UPC reasonably determines that Customer's solvency might be in jeopardy, Sunrise UPC may request advance payment of the Charges or an appropriate security deposit.
- 4.7 The Customer waives his right to set-off with respect to all claims against Sunrise UPC.

5 Customer's cooperation obligations

- 5.1 The Customer shall free of charge:
- 5.1.1 provide to Sunrise UPC in a timely manner all information, documents, data, etc. necessary for the provision of the Services;
- 5.1.2 create the technical and operational prerequisites on its premises and within its infrastructure in view of the provision of the Services by Sunrise UPC, whereas Sunrise UPC may give the Customer appropriate instructions in this regard;
- 5.1.3 obtain all necessary approvals, authorizations and third party consents needed for Sunrise UPC to deliver the Services;
- 5.1.4 provide and operate connections for on-site and remote works required for the Services;
- 5.1.5 grant the Sunrise UPC staff and/or third parties engaged by Sunrise UPC access to Customer's premises, both during ordinary working hours and, upon prior announcement, at other times, provided that the persons in question identify themselves;
- 5.1.6 if needed, make available fully equipped workplaces for Services to be carried out on Customer's premises and ensure a safe working environment for the Sunrise UPC staff and the third party's staff deployed by Sunrise UPC on Customer's premises;
- 5.1.7 treat the technical equipment which is the property of Sunrise UPC or its suppliers, and which is in the Customer's possession, with the necessary care and ensure that the premises in which the technical

- equipment is installed are adequately protected, particularly from fire, theft and vandalism;
- 5.1.8 make available duly qualified staff, including the designation for each service of a person acting as single point of contact.
- 5.2 The Customer shall be solely liable for the safe-keeping and backing up of its data (including installed software).
- 5.3 In the event, that the Customer does not fully and timely fulfill his cooperation obligations, Sunrise UPC may adjust the deadlines and charge the Customer for any additional costs incurred.

6 Deadlines

- 6.1 All deadlines (in German: "Termine und Fristen") shall be non-binding and for information purposes only, unless explicitly identified as binding deadlines.
- 6.2 If a binding deadline is missed due to reasons which are not within the sole control of Sunrise UPC, the deadline will be extended accordingly.
- 6.3 If a binding deadline is not respected for reasons attributable to Sunrise UPC, the Customer shall set an appropriate grace period for Sunrise UPC in writing. If Sunrise UPC does not fulfill its contractual obligations within the grace period, then Sunrise UPC shall be in default. After expiry of an additional reasonable grace period notified in writing, the Customer is entitled to reject only the delayed service in writing. To the extent permitted by law, all other claims of Customer in the event of a default are excluded.

7 Acceptance

- 7.1 General
- If no protocol of acceptance is drawn up, Supplies and Services shall be regarded as accepted, provided the Customer has not submitted a written complaint about quantity, performance or defects within 10 (ten) days upon receipt of the Supply or Service.
- 7.2 Acceptance with protocol
- 7.2.1 As a rule, whenever work results, Supplies or other deliverables are to be provided as part of the Services, Sunrise UPC shall invite the Customer to an acceptance procedure and draw up a protocol of such event (even though the Customer might not take part). Unless otherwise agreed, the acceptance shall take place within 10 (ten) days after the Customer is notified that the acceptance procedure can start. If the acceptance is delayed by the Customer beyond such deadline and if no notice of defect is submitted in writing within that period, the acceptance shall be deemed to have taken place. The acceptance shall also be deemed to have taken place if the Customer commences productive operation or modifies the deliverables.
- 7.2.2 If a minor defect is detected during the acceptance test, the acceptance shall nevertheless take place upon the completion of the test. Sunrise UPC and the Customer shall agree in such case on a schedule within Sunrise UPC shall have to rectify the defects. If Sunrise UPC fails to rectify the defects in time and despite a written reminder setting an appropriate additional grace period, the Customer's sole remedy shall be a reduction of the Charges for the affected Service.
- 7.2.3 If a major defect is detected during the acceptance test, the acceptance shall be postponed. Sunrise UPC shall remedy the defect within an appropriate period of time and invite the Customer in due course for a new acceptance test. If the acceptance test fails a second time for the same defect, the Customer may:
- continue to request performance of the Service;
 - request a reduction of the Charges for the Service showing a defect;
 - reject the said failed Service.
- 7.2.4 A defect qualifies as major defect only if the Service does not comply with the specifications expressly

- agreed or is impaired in such a way as to make it unusable by the Customer.
- 7.2.5 To the extent permitted by law, all other rights of the Customer in case of failed acceptance shall be excluded, except for claims for damages subject to clause 12.
- 8 Warranty (in German: "Gewährleistung")**
- 8.1 General
- 8.1.1 Sunrise UPC warrants that the Supplies and Services comply with the specifications expressly agreed.
- 8.1.2 Unless otherwise agreed, the warranty period for Supplies is 12 (twelve) months following acceptance or, in the absence of a formal acceptance, following delivery. The warranty period for replaced or repaired Supplies shall expire at the same time as the period covering the original Supplies, but shall be in force at least 1 (one) month from the date of replacement or repair.
- 8.1.3 Upon expiry of the warranty period as well as in case of intervention by the Customer or by third parties into the Supplies, external damage, operating mistakes as well as conditions of use and operation deviating from the product documents, the warranty shall be null and void.
- 8.2 Customer's rights in case of defects
- 8.2.1 In the event of defects, the Customer shall inform Sunrise UPC immediately in writing of the exact extent of the complaint.
- 8.2.2 Sunrise UPC shall rectify any defects at its choice through free repair work or replacement supplies, or grant an appropriate reduction of the Charges. The Customer shall bear the costs for removal and installation, for transportation of spare parts as well as for any necessary adjustments, as far as no maintenance contract is in place. Upon re-quest, the Customer shall at its own cost send the defective item to Sunrise UPC, orderly packed and insured.
- 8.3 Warranty for third party products
- With regard to third party products, the terms of the manufacturer's or third party supplier's warranty shall solely apply, to the exclusion of all other warranty rights. To the extent permitted by law, Sunrise UPC excludes any warranty for third party products supplied as part of the Supplies or Services and at the same time assigns all claims it may have against the manufacturer or supplier to the Customer.
- 8.4 Maintenance agreements
- If the Services or Supplies showing a defect are covered by a maintenance agreement, the provisions of such maintenance agreement shall solely apply with regard to the correction of defects, to the exclusion of all other warranty rights.
- 8.5 Limited warranty
- Any and all warranty rights not explicitly stated in this clause 8 shall be excluded. The liability of Sunrise UPC for damages resulting of defects shall be subject to clause 12 below.
- 9 Warranty of title**
- 9.1 If a Supply or Service or a part thereof is or, in the reasonable opinion of Sunrise UPC, may become the subject of a complaint by a third party based on an alleged infringement of intellectual property rights, Sunrise UPC may, at its option, (i) provide the Customer the right to use the Supply or Service free of all liability for breach of intellectual property rights, or (ii) replace the Supply or Service with one that complies with the essential contractual properties of the existing Supply or Service, or (iii) modify the Supply or Service so that it no longer breaches any intellectual property rights; or, if none of the above possibilities can be achieved at reasonable costs (iv) take back the Supply against reimbursement of an appropriate share of the Charges paid therefore, respectively terminate the Service without notice.
- 9.2 In the event that a third party disputes the Customer's rights of property of a Supply or use of the contractual Services, Sunrise UPC may conduct the defence at its own costs and cover, subject to the limitations set forth in clause 12, all costs and damages incurred by the Customer as a result of any legal rulings, on the cumulative conditions that
- the Customer informs Sunrise UPC in writing as soon as any claims are raised, and
 - authorises Sunrise UPC to conduct the defence, including an amicable settlement, or in case this is not possible, Customer leads the defence according to Sunrise UPC's instructions, and
 - supports Sunrise UPC to an appropriate and reasonable extent free of charge, and
 - the claim of the third party is based on the fact that the intended use of the unaltered Supply or Service infringes rights in Switzerland or represents unfair competition, and
 - such claim is not arising from (i) unauthorized modification of the Supply or Service by Customer or any third party, or (ii) a combination of the Supply or Service with a product not supplied by Sunrise UPC provided that the infringement will not occur but for the combination, or (iii) use of the Supply or Service in breach of the terms and conditions of the Contract.
- 10 Benefits and risks, retention of title**
- Supplies shall remain the property of Sunrise UPC until the price has been paid in full. The Customer grants Sunrise UPC the right to enter a retention of title notice (in German: "Eigentumsvorbehalt") in the retention of title register.
- 11 Intellectual property rights**
- 11.1 General
- 11.1.1 Unless otherwise agreed, the rights to all work results arising from or deployed during the fulfilment of the Contract (such as copyright, patents, design or trademark rights), particularly the rights to individual software created or used by Sunrise UPC, including source codes, programme descriptions and parameterisations, and all related documentation, papers or data media, shall be the exclusive property of Sunrise UPC, and the Customer shall be granted a non-exclusive right to use such work results for the duration of the Contract to the extent necessary for the intended use of the Services. The Customer must not transfer the rights of use to third parties.
- 11.1.2 Pre-existing intellectual property rights remain the property of Sunrise UPC or the third-party holder of the right. If Sunrise UPC uses such pre-existing intellectual property rights for the provision of the Services, it hereby grants the Customer the rights of use necessary for the intended use of the Services. In the case of intellectual property rights belonging to third parties, in particular regarding software licenses from third-party suppliers or manufacturers, the Customer accepts licence terms and use restrictions imposed by such third parties; Sunrise UPC shall provide the Customer with these licence terms and use restrictions. Should the Customer violate the licence rights of third parties in this context and should claims be asserted against Sunrise UPC for this reason, the Customer shall fully indemnify and hold harmless Sunrise UPC against such claims and all further damages resulting thereof.
- 11.2 Software
- 11.2.1 Upon payment of the licence fee, the Customer shall acquire a non-exclusive and non-transferable right of use of the machine-readable code of the licensed software on the Customer's system. Such right of use shall be limited to the processing of the Customer's own business data and restricted to the number of users agreed as well to all other price-
- determining parameters. The Customer shall allow any controls applicable to checking on the observation of the licensing terms. In the event of gross or ongoing violations, the right of licence may be withdrawn without any indemnification and notice.
- 11.2.2 The Customer shall obtain the licensed programmes in machine-readable code only. The Customer shall not be allowed to decompile, re-construct the source code, make changes or further develop the software, unless explicitly authorised by law to do so.
- 11.3 Copyright protection
- The Customer shall be allowed to make a backup copy of the licensed software and the documentation obtained. The Customer shall undertake not to produce any further copies, and to duly protect the software and documentation against unauthorised inspection or copying by third parties as well as against loss. The Customer shall immediately notify Sunrise UPC in writing in the event of unauthorised perusal by third parties or loss.
- 12 Sunrise UPC's Liability**
- 12.1 The liability of Sunrise UPC shall only be unlimited for cases where mandatory law provides for unlimited liability without possibility of a waiver, such as damages caused by unlawful intent or gross negligence, or for death or personal injury.
- 12.2 To the fullest extent permitted by law, the liability of Sunrise UPC for indirect damages and financial loss, consequential damages, loss of data, lost profits, savings not realized, additional expenses, third party claims, etc. is excluded.
- 12.3 In all other cases, the overall liability of Sunrise UPC per contract year shall be limited to an amount corresponding to the paid Charges (excluding hardware and software deliveries) for the relevant Service during the respective contract year in which the damage-causing event took place, respectively started, but in any case shall not exceed CHF 50'000.- (fifty thousand) per contract year.
- 12.4 Sunrise UPC is not liable for damage caused by force majeure, such as earthquakes, floods, power failure or malware (e.g. viruses, denial-of-service attacks and similar).
- 12.5 Penalties paid by Sunrise UPC under the Contract shall be deducted from damages due.
- 12.6 All further liability of Sunrise UPC is excluded.
- 13 Confidentiality**
- 13.1 For the duration of the Contracts and for a period of 2 (two) years thereafter, the Parties shall treat as confidential, in accordance with the usual safety regulations, all information received from the other Party and all information marked as confidential and, in particular, shall not make such information accessible to unauthorized third parties.
- 13.2 The duty of secrecy does not apply to information that is in the public domain or comes into the public domain without any breach of a duty of secrecy or that is known to the recipient of the information without there being any duty of secrecy, that the recipient of the information obtains independently, without access to the information, or from third parties, without infringing upon any duty of secrecy, or that is made accessible to another third party by the provider of the information without there being any duty of secrecy.
- 13.3 In the case of inquiries by third parties, courts of law or administrative authorities with regard to the disclosure of information, the recipient of the information shall immediately notify the provider of the information and support the latter in its efforts to prevent the disclosure of the information.
- 13.4 Sunrise UPC reserves the right to disclose data to third parties implied in the provision of the Services as well as to its affiliated companies, provided that they have also undertaken to observe a duty of secrecy not less restrictive than this clause 13.

14 Data protection

- 14.1 The Parties shall comply with the Swiss Federal Data Protection Act. The Customer shall be solely responsible for the safety and protection of its own and third party data (including its staff's data) processed on its systems.
- 14.2 Sunrise UPC uses customer data for the conclusion and the execution of the Contract, for the delivery of the Services, the care of the customer relationship, the perpetuation and optimization of the business, to prevent unlawful use of Services (in particular on prevention of fraud relating to the conclusion of the Contract, during the term of the Contract or with e-commerce transactions), to investigate structural usage behavior, for publication in directory data, to determine a high usage profile as well as for the development, formation and tailored submission of service offers.
- 14.3 Sunrise UPC is entitled to disclose data to third parties implied in the provision of the Services. Furthermore, Sunrise UPC may transfer data, which is generated during the conclusion or the execution of the Contract, to third parties for the enforcement of claims, for the verification of solvency and for the validation of addresses.
- 14.4 Under the foregoing provisions and the applicable legal requirements customer data may be transferred abroad.
- 14.5 Sunrise UPC may limit the Customer's information right to inspect information according to data protection law.
- 14.6 Sunrise UPC shall not provide information about marginal communication data (in German: "Kommunikationsranddaten") which are subject to the secrecy of telecommunications and are generated by services subscribed to by the Customer if this information (i) does not serve as a basis for invoicing and the deadline for objection to the invoice has not yet expired, and (ii) is not required to determine abusive calls and unfair mass advertising, what the Customer has to show credibly to Sunrise UPC.
- 14.7 For further details on data privacy see the relevant data privacy statement at www.upc.ch/en/business/legal and www.sunrise.ch/en/business/legal.

15 Start and termination of the Contract

- 15.1 Commencement of the Contract
- 15.1.1 The Contract for a particular Service shall become effective with the signing by both Parties of a Statement of Work or an Order Form.
- 15.1.2 If an order is placed via the internet, the Contract will only commence when Sunrise UPC issues a confirmation of the order, either by letter or by e-mail. In any case, the Contract will commence once the Customer starts using the Service.
- 15.2 Ordinary termination
- 15.2.1 The Contracts for the individual Services are of unlimited duration, unless a fixed term of contract is stated in the applicable Statement of Work or Order Form. The fixed term shall be calculated as of the date when the Service is activated or first provided, unless otherwise expressly provided in the said Statement of Work or Order Form.
- 15.2.2 Unless otherwise agreed in the specific provisions below (clauses 17 et seqq.) or an Individual Contract, Individual Contracts for Services may be terminated by giving 3 (three) months' notice to the end of a calendar month, however not earlier than to the end of their fixed term, if any.
- 15.2.3 If a Contract providing for a fixed term is not terminated to the end of a fixed term, it shall be automatically extended for another fixed term of 1 (one) year at the end of each fixed term. In case of termination or expiry of a Statement of Work for any reason whatsoever, the related Order Form(s) shall be deemed terminated unless expressly otherwise agreed by the Parties in writing.

15.2.4 The termination of an individual Contract does not affect any other Contracts.

15.2.5 The Customer may terminate an individual Contract for convenience (i) by giving 3 (three) months' notice to the end of a calendar month and (ii) by paying Sunrise UPC the foreseen Early Termination Fee(s) defined in the respective Statement of Work and/or Order Form. For avoidance of doubt, should no Early Termination Fee be agreed upon by the Parties, the Customer may not terminate as per this clause.

15.2.6 If the Customer terminates the Contract or a part thereof during its fixed term or during its extended fixed term, or if Sunrise UPC terminates the Contract or a part thereof for one of the reasons set out in clause 15.3, the recurring Charges for the remaining (extended) fixed term, any other Charges that have been agreed up to the end of the (extended) fixed term as well as any cost, fee and/or penalties due by Sunrise UPC to sub-contracted third parties due to the consequential termination of its contract with the third parties shall be due immediately by Customer; they are not eligible for reimbursement.

15.3 Termination for cause

15.3.1 Sunrise UPC has the right to terminate the Contract without notice if bankruptcy proceedings are initiated against the Customer, if the Customer is granted a stay of bankruptcy (in German: "Nachlassstundung") or is liquidated, if there is an important reason that makes it seem unreasonable to respect the notice period, or if the law and/or official orders prevent either of the Parties from performing the Contract.

15.3.2 In the case of such important reasons, Sunrise UPC has the right to stop all or individual Services and to terminate the Contract with immediate effect. This particularly applies if the Customer does not provide any security deposit required by Sunrise UPC in due time, fails to pay the invoices on the due date, in the case of any misuse of Services, in the case of endangering of Sunrise UPC's equipment or equipment of partners of Sunrise UPC, in case of an imminent or acute threat to prevailing public or private interests, in the case of a sharp increase in the Charges due that justifies the assumption that the Customer will not be able to pay the Charges as agreed, and in the case of any doubts regarding the Customer's solvency.

15.3.3 In any cases, Sunrise UPC may cease or deactivate all or part of the Services instead of terminating the Contract or parts thereof. If Services are ceased, deactivated or terminated, the Customer shall be fully liable for all damage resulting there-of and remain liable for the Charges for the remaining contract term, such Charges being due immediately.

16 Miscellaneous

16.1 Entire agreement; written form

16.1.1 The Contract contains all of the arrangements made between the Parties with regard to its object. It supersedes and replaces all former agreements in this matter between the Parties, including any declarations of intent.

16.1.2 Any modifications, additions and amendments of the Contract (including any waiver of the requirement of the written form) are only valid if made in writing and signed by both Parties (e-mail or fax are not considered as sufficient).

16.2 Assignment

The Customer may only assign the Contract or any rights hereunder to third parties if Sunrise UPC has given its written consent. Sunrise UPC has the right to assign the Contract to third parties after prior notification to the Customer.

16.3 Reference

Sunrise UPC has the right to use the Customer as a reference Customer and to use the Customer's name and trademark/logo for marketing and

promotion purposes, including (i) disclosing to third parties that the Customer is Sunrise UPC's customer; (ii) disclosing to third parties the scope of services provided to the Customer by Sunrise UPC; and/or (iii) list the Customer as a customer of Sunrise UPC on Sunrise UPC's promotion material including Sunrise UPC homepage. In case of using the trademark/logo Sunrise UPC obtains the approval of the Customer for the "good for print", provided that this was expressly agreed upon by the Parties at the time of the contract signing.

16.4 Severability

If individual provisions of the Contract are deemed void or invalid, such invalidity or unenforceability of any provision shall not affect the validity and enforceability of other provisions of the Contract. The Parties shall endeavour to amend the provision so affected so as to make it valid and enforceable whilst reflecting as closely as possible the purpose and intent of said provision in a legally valid form.

16.5 Non-solicitation

The Customer shall refrain from any kind of attracting persons employed by Sunrise UPC for carrying out the Contract. The Customer shall not accept any services by such persons, except via Sunrise UPC. Such obligations shall apply during employment of such persons for the Customer as well as 1 (one) year thereafter. In the event of any contravention, a penalty of 1 (one) annual salary of the person concerned shall be applicable.

16.6 Export compliance

As far as the export of Supplies and Services from Switzerland is subject to legal regulation, the Customer shall fully comply with the corresponding regulations and pass on such obligations to its legal successors.

16.7 Applicable law and place of jurisdiction

16.7.1 The Contract shall be exclusively governed by substantive Swiss law, to the exclusion of the rules on Private International Law. The Vienna Convention (United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods) shall not apply.

16.7.2 Disputes arising under or in connection with the Contract shall be exclusively subject to the jurisdiction of the courts of the City of Zurich 1.

II. Specific provisions for telecommunication Services

17 Scope

17.1 This chapter II sets forth specific rules applicable to Services provided by Sunrise UPC to the Customer in the field of telecommunication services.

17.2 Telecommunication Services are defined as any Services provided by Sunrise UPC to the Customer which are not related to system integration, maintenance and support, nor to the sale of Supplies.

18 Services by Sunrise UPC

18.1 Sunrise UPC shall grant the Customer a non-transferable and non-exclusive right to use the Services within the framework of the existing network coverage for the agreed term of the Contract.

18.2 Sunrise UPC shall arrange for the maintenance of its infrastructure and will rectify disturbances occurring during operational hours within a reasonable time, provided that these are within the area of control of Sunrise UPC.

18.3 Sunrise UPC reserves the right

18.3.1 to carry out modifications to the Services rendered that may affect the technical specifications, the equipment, operation or processes, provided that these modifications will not lead to major disruptions to the Services;

18.3.2 to interrupt or restrict the Services in cases of emergency or for scheduled maintenance work.

19 Charges

- 19.1 Any change in tax rates or other important levies shall entitle Sunrise UPC to adjust its tariffs without prior announcement. In this case, the Customer will not have a right of termination. Roaming tariffs and Charges for value-added services, special services and short numbers may be changed at any time without notice.
- 19.2 The Charges for the individual Services will be charged from the ready for service (RFS) Date, respectively from the date when the Customer uses the Service for the first time if this is before the RFS Date.
- 19.3 Any usage-based Charges will be calculated based on the data recorded by Sunrise UPC and will be invoiced monthly in arrears.
- 19.4 Recurring fixed Charges and all one-time Charges, including but not limited to Charges for installation work, shall be generally billed in advance.

20 Use of the Services

- 20.1 The use of the Services is solely intended for the usual type of use made by business customers. The use of the Services is subject to the conditions of use published on the website www.sunrise.ch and www.upc.ch or handed out by Sunrise UPC on request and which Sunrise UPC may change from time to time without notice.
- 20.2 The Customer shall refrain from all acts which are prohibited by law or which may have a negative impact on Sunrise UPC (be it in commercial or technical terms or with regard to reputation). The following acts shall be considered as breach of the Contract by the Customer, without this list being exhaustive: hacking (attempts at intrusion, etc.), phishing (spying on other Internet users, etc.), spamming (sending bulk e-mails), uninterrupted, excessive use, uninterrupted downloading and sending any kind of contents containing viruses or any other malware, the use of Ser-vices to terminate calls on the mobile network of Sunrise UPC via GSM gateways or similar equipment.
- 20.3 The Customer is solely responsible for the contents of the information in whatsoever form which is sent to or processed by Sunrise UPC or made available to third parties.
- 20.4 The Customer is in any case responsible for the use of his connection, the use of passwords and/or for accessing the Service rendered, also by dialing numbers that incur additional Charges and in the case of use by third parties. The Customer shall keep secret all identifying data such as PIN and PUK codes and other codes and passwords, and in particular undertakes to store the data in a safe manner and not make them accessible to anyone. The Customer will protect his infrastructure and data against unauthorized access by third parties with suitable, state-of-the-art security measures. Customer will be held liable for all damages resulting of Customer's failure to comply with these security requirements. The Customer must inform Sunrise UPC with-out delay of any unauthorized use or the loss of his identifying data or of his SIM card.
- 20.5 The Customer is not allowed, unless priorly approved by Sunrise UPC in writing, to resell the Services rendered by Sunrise UPC to third parties and/or use Services to convey calls on the Sunrise UPC fixed or mobile phone network by means of gateways or similar facilities.
- 20.6 The Customer shall ensure that the end user of the Services complies with the terms set forth herein.

21 Installations; maintenance

- 21.1 The Installations rented out or on loan in view of the provision of the Services remain the property of Sunrise UPC. It is expressly agreed that any rights of lien or rights of retention in favor of third parties shall be excluded. The Customer is responsible for the Installations and may not remove, modify or

- interfere therewith in any way, nor allow third parties to do so (unless priorly authorized by Sunrise UPC in writing). The Customer shall be liable to Sunrise UPC for all loss or damage caused to Installations. When the provision of the Ser-vice ends, the Customer shall, as instructed by Sunrise UPC, return to Sunrise UPC or allow Sunrise UPC to collect all Installations, in their original condition, ordinary wear and tear excepted.
- 21.2 The Customer shall ensure unhindered access to the Installations and other systems used for the provision of the Services so that Sunrise UPC can carry out maintenance work unimpeded. In the event of remote maintenance, the Customer shall additionally ensure secure access by means of remote maintenance equipment. The transmission equipment needed for remote maintenance (analog or digital connection) shall be provided by the Customer at the Customer's own expense.
- 21.3 As a prerequisite for Sunrise UPC to carry out maintenance work on the Customer's equipment, the Customer shall ensure that such equipment is in impeccable condition and good working order. Sunrise UPC will examine any equipment that has not been put into operation by Sunrise UPC or equipment that has been operated without a maintenance agreement; for that purpose the Customer shall provide Sunrise UPC with a written list of such equipment before RFS Date. Before this examination has been brought to a positive written conclusion by Sunrise UPC, no warranties whatsoever of Sunrise UPC shall apply and the work carried out by Sunrise UPC shall be rendered on a time and material basis.

22 Deadlines

- The deadline for the planned beginning of the Service (RFS Date) depends on the standard delivery periods set out in the applicable Service Descriptions unless (a) special request date(s) has/have been agreed with Sunrise UPC. The RFS Date is given by Sunrise UPC for information purposes only and shall not be binding unless expressly confirmed by Sunrise UPC in writing as binding.

23 Acceptance

- If Sunrise UPC performs installation work related to the Services, these shall be deemed accepted if the Customer does not inform Sunrise UPC in writing of any major defects within 10 (ten) days of the RFS Date and asserts substantiated claims related to these defects.

24 Adding and changing Locations

- 24.1 If the Customer changes or adds any Location, the Customer shall inform Sunrise UPC in writing. Should the change or addition of Location have an impact on the Services, Sunrise UPC shall prepare a new offer for the new or additional Location. The Parties shall individually agree on any costs in connection with closing down the previous Location and setting up the new or additional Location.
- 24.2 Sunrise UPC may submit to the Customer a new offer, which the latter shall take into consideration, for any new or additional Customer premises, as well as for any changes of the Services at existing Customer premises. Customer shall invite Sunrise UPC to participate in any tender relating to ICT services.

25 Warranty (in German: "Gewährleistung"); availability; liability

- 25.1 Sunrise UPC does not warrant that the Services will function free of interruptions and disturbances, nor does it warrant specific transmission times and capacities, or any absolute protection of its network against unauthorized access and unlawful bugging.
- 25.2 Sunrise UPC did not test the necessary infrastructure required for the provision of the agreed bandwidth at the time when the Contract

- was concluded. Sunrise UPC therefore cannot warrant that the bandwidth will in fact be available at the agreed Charges at all Locations. If it is not available at the agreed Charges at certain Locations, then Sunrise UPC will notify the Customer thereof and will offer the Customer an alternative connection type for the Locations affected as per the Ser-vice Description at the Charges valid for this alternative connection type. If Customer accepts this offer, the Contract shall be deemed modified accordingly. If the Customer does not accept this offer within the period specified therein, then the Contract shall not apply for these locations, without Sunrise UPC incurring any liability towards Customer in this regard, but shall continue to remain in effect for all other Services and Locations.

- 25.3 Sunrise UPC cannot be held responsible for content created or services rendered by the Customer and third parties via its telecommunications infrastructure. Consequently, Sunrise UPC can neither give any assurance in relation to such content or services nor assume any liability or warranty.

26 Compliance with laws

- The Parties shall comply with the provisions of the Swiss Telecommunications Act.

27 Term and termination

- 27.1 In case of suspension or deactivation of Services, Sunrise UPC may charge at least CHF 50.- (fifty) for deactivating or reactivating any individual Service.
- 27.2 In the case of extraordinary termination of the Contract or of a Service as per clause 15.3, a one-time processing fee is due, which is equal to the amount of the monthly fees for the remaining term between the extraordinary termination and the expiry of the minimum term of the Service(s) plus any as yet unpaid non-recurring fees as well as any installation and development costs on a pro rata temporis basis.
- 27.3 Changeover to a smaller package is only possible after reaching an agreement in writing.

III. Specific provisions for integration Services

28 Scope

- This chapter III sets forth specific rules applicable to Services provided by Sunrise UPC to the Customer in the field of system integration, maintenance, support and managed services as well as to Supplies.

29 Supplies and Services by Sunrise UPC

- 29.1 Pre-sales phase
As a rule, Customer shall be solely responsible for the definition of the specifications the Services to be provided by Sunrise UPC have to comply with. As far as Sunrise UPC supports the Customer by analysing his business requirements and/or by selecting products free of Charges, this shall be done without any contractual obligation and without any liability. If, however, a Statement of Work is concluded for consulting Services against payment of Charges, Sunrise UPC shall be li-able in accordance with the Contract.
- 29.2 Specifications of Services and Supplies
Specifications of each individual Service (consultancy, programming, system integrations, maintenance, managed services, etc.) or Supply result exclusively from the corresponding Statement of Work or Order Form as well as from the product documents of the manufacturer. These specifications set forth the requirements the Services or Supplies have to comply with in an exhaustive manner.
- 29.3 Third party products and related services
For the supply and/or licensing of products of a third party manufacturer as well as for services related thereto (such as troubleshooting, error analysis, debugging, delivery of patches and up-dates,

- hardware replacement), the terms of supply, licensing, guarantee and warranty of the third party manufacturer, which shall be made available to the Customer in an appropriate form, shall be solely applicable.
- 29.4 Services: mandate law / work and services contract (in German: "Werkvertrag")
Services shall be carried out as (i) qualified professional activities in the sense of a mandate or (ii) within the framework of a work and services contract, as far as a work result to be supplied in the form of a clearly defined deliverable has been described in the Statement of Work or Order Form.
- 30 Delivery; installation**
- 30.1 Delivery
- 30.1.1 Software, work results and documentation may be conveyed, at Sunrise UPC's option, on data carriers or via data transmission to the Customer or may be put at his disposal on-line.
- 30.1.2 Supply of hardware is effected for the account and risk of the Customer to the Customer's address as indicated in the Statement of Work or the Order Form.
- 30.2 Installation and training
Installation shall be carried out by Sunrise UPC only to the extent specifically agreed in the Statement of Work or Order Form. Any corresponding additional costs shall be borne by the Customer, in particular any adaptations of the technical environment at the Customer's end as well as the configuration of interfaces, data migration, parameterisation, Customer training and related activities.
- 31 Maintenance and Support**
- 31.1 Purpose of maintenance
- 31.1.1 In the case of software, maintenance serves the purposes of maintaining the technical standard and of restoring full functioning in the event of software-related shortcomings.
- 31.1.2 In the case of hardware, maintenance serves the purposes of ensuring smooth running as well as repairs or replacement of the hardware in the event of technical-related shortcomings.
- 31.1.3 In each case, no guarantee or warranty shall be provided for uninterrupted operation, for permanent system compatibility or for immediate rectification of shortcomings.
- 31.1.4 Sunrise UPC may offer an alternative solution (workaround) until the fault has been rectified.
- 31.2 Upgrades and new versions
Supply of upgrades or new versions with enhanced functions shall only be included in the maintenance fee if the Statement of Work or the Order Form explicitly so provides.
- 31.3 Reasons for faults, consumables, replacements
- 31.3.1 Replacement or repair of hardware and software damaged by external influences, as well as of consumables and parts subject to wear and tear (including batteries) shall be included in the maintenance only as far as provided for in the Statement of Work or the Order Form.
- 31.3.2 Sunrise UPC may at its option replace any faulty parts by non-faulty components.
- 31.3.3 Parts replaced shall remain the property of the Customer unless otherwise defined in the Statement of Work or Order Form.
- 31.4 Preconditions of maintenance
- 31.4.1 Maintenance shall relate to unaltered hardware and software that has been serviced without interruption, for use at the Locations mentioned in the Statement of Work or Order Form, and in accordance with the configurations and conditions of use recommended by Sunrise UPC or the manufacturer.
- 31.4.2 Sunrise UPC may request that other components of the Customer's entire system that may have an impact on Sunrise UPC's Services be serviced competently as well and that the Customer allows free changes being made to the end of increased reliability.
- 31.4.3 The Customer shall install or shall have Sunrise UPC install all updates and releases provided by the software suppliers or manufacturers within the timeframe indicated by such suppliers or manufacturers. If the updates and releases are not installed in time, Sunrise UPC shall not be responsible for any problems encountered by the Customer with the software. In addition, Sunrise UPC may suspend all or certain software support and maintenance Services until the updates and releases have been successfully installed.
- 31.4.4 The Customer shall apply prior to any advice of fault the means provided to him towards delimitation of the problem and fault diagnosis.
- 31.4.5 The Customer shall ensure access to the object to be serviced and shall provide for its account any installations for remote maintenance.
- 31.5 Additional maintenance Charges
In the event of interventions by the Customer or third parties, operating mistakes or wrong advices of fault, reasons for faults outside the components serviced by Sunrise UPC, deviations from the preconditions of maintenance as set forth in clause 31.4 or neglect of its cooperation obligations by the Customer, Sunrise UPC may either suspend parts or all of its Services or may charge additionally at the rates currently in force to the Customer any Services and Supplies that may have become necessary for these reasons or which lie outside the usual business hours of Sunrise UPC.
- 31.6 Exceptions from maintenance
- 31.6.1 In particular the following items, without limitation, are not covered by maintenance Services and shall be charged to the Customer additionally: maintenance of extensions and options not supplied by Sunrise UPC; maintenance of electrical installations; rectification of faults caused by external influences not attributable to Sunrise UPC; services in connection with changing the hardware location; restoring and back-up of data and software.
- 31.6.2 Should the third party manufacturer cease, suspend or interrupt for any reason whatsoever the provision of support and maintenance for its products, Sunrise UPC shall be relieved of its obligations relating thereto.
- 32 Charges**
- 32.1 Invoicing as per time spent
- 32.1.1 As a rule, Services shall be invoiced on a time and material basis.
- 32.1.2 Travelling time shall be paid as per the current tariffs of Sunrise UPC.
- 32.1.3 Expenses and additional costs (in particular travelling expenses, accommodation and subsistence) and the costs of auxiliary means specifically used for a given project (hardware, licences, databank fees, etc.) shall be charged to the Customer additionally.
- 32.2 Flat rates; Cost ceiling
- 32.2.1 Flat rates (fixed prices) shall only apply if explicitly agreed as such in the Statement of Work or Order Form.
- 32.2.2 A cost ceiling shall not be regarded as a flat rate, but shall have the following meaning: on reaching the cost ceiling, the Customer shall have the option to discontinue the Service, without either Party incurring any further liability. If possible, Sunrise UPC informs Customer before a cost ceiling is reached.
- 33 Intellectual property rights**
- 33.1 The results of Services (including software developments, but not pre-existing intellectual property rights) made individually and exclusively for the Customer against payment of specific Charges shall, upon full payment, become Customer's property, including the transfer of protection rights.
- 33.2 Customer grants Sunrise UPC, irrevocably and free of charge, a perpetual, non-revocable, transferable, sub-licensable, worldwide license to use, further develop, adapt, modify, amend, enhance, market and distribute such results and create derivative works thereof for its own purposes and for other customers (including but not limited to commercial purposes).
- 33.3 Sunrise UPC may further apply freely and without any consequential costs the ideas, procedures and results used for development.
- 34 Term and termination**
- 34.1 Term
- 34.1.1 As a rule, Contracts for the delivery of Supplies and Services shall remain in force until their full completion.
- 34.1.2 For ongoing Services (e.g. maintenance, managed services), a minimum term and a period of notice shall be fixed in the applicable Statement of Work or Order Form.
- 34.1.3 Unless otherwise agreed, contracts for maintenance Services shall have a minimum term of 3 (three) years, and an initial termination notice period of 6 (six) months. In the absence of termination, such Contracts shall each time be extended by one more year automatically. During the extended term, the notice period shall be 3 (three) months.
- 34.2 Termination
- 34.2.1 Contracts about permanent software licences (i.e. licences granted against payment of Charges in the form of a one-time fee) may be terminated by the Customer at any time, but by Sunrise UPC only in the event of a breach by the Customer of its contractual obligations. In both cases, no refund of Charges shall take place.
- 34.2.2 Contracts about hardware Supplies shall not be subject to termination.

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