

1. INTERPRETATION

In this Contract unless the context otherwise requires

"Teleswiss" is a brand of
 UTS Ltd
 17 Bond Street
 St Helier
 Jersey JE2 3NP
 Channel Islands

"SwissTelex" means
 SwissTelex SA
 Via Vergjò 8
 6932 Breganzona
 Switzerland

and includes their possible successors and assigns

"Contract" means the contract between Teleswiss and the Subscriber incorporating only these Terms and Conditions, the Teleswiss Price List and the Teleswiss Order Form

"Service" means telex service provided by means of connection to the SwissTelex telex exchange and through this, the international public switched telex network together with, where applicable, services or facilities listed in the Teleswiss Price List

"Subscriber" means the party here entering into the Contract with Teleswiss for provision of the Service
 "Subscription" means the monthly charge payable by the Subscriber to Teleswiss for use of the Service. Subscribers with more than one telex number shall pay one subscription per telex number.

2. PROVISION OF SERVICE

2.1 Teleswiss and SwissTelex have entered into an Agreement to provide the Service via SwissTelex's Telex Exchange in Switzerland. Teleswiss are not themselves a telex Operator but are the holder of the Contract with the Subscriber; SwissTelex are the national Operator of the Swiss telex network together with its access to and from the world-wide telex network.

2.2 Teleswiss agrees to provide the Subscriber with the Service on the terms and conditions of this Contract.

2.3 The Teleswiss Price List contains notes and terms and conditions, which form part of this Contract.

2.4 Teleswiss may vary the technical specification of Service from time to time for operational reasons.

2.5 It is technically impracticable to provide a fault-free Service and Teleswiss does not undertake to do so. Teleswiss does undertake to fulfil certain obligations with regard to faults in the Service (see section 5 below).

2.6 Requests made to Teleswiss relating to the provision of the Service are, unless otherwise agreed, to be confirmed in writing.

2.7 Any date proposed by Teleswiss for the provision of the Service or a facility is to be treated as an estimate only and Teleswiss accepts no liability for failure to meet that date.

2.8 If Teleswiss agrees any change in the Service this Contract is to be treated as varied accordingly.

3. MEANS OF PAYMENT

3.1 Payment for the Service shall normally be by Direct Debit. The Subscriber shall authorise the corresponding Direct Debit Mandate.

3.2 Payment for the Service by other means such as cheque or bank transfer shall be possible.

3.3 Payment by direct debit does not limit the subscriber's right to seek reimbursement in whole or in part for disputed amounts.

4. CHARGES AND SUBSCRIPTIONS

4.1 Subscription charges for the Service shall commence on the first day of the month in which the Service was made available.

4.2 Subscription charges for the Service are calculated in units of one month only. Subscription charges for a part of a month are the same as for a whole month.

4.3 The charges for any telex call made by the Subscriber are calculated based on call records from the SwissTelex telex exchange using the applicable rates as set out in the Teleswiss Price List. The duration of the call is the length of time during which the communication was established.

4.4 The charges for the Service are exclusive of any taxes levied by authorities in the Subscriber's country. If such taxes are applicable, the Subscriber shall be liable for their payment.

5. FAULT HANDLING

5.1 The Subscriber can report a fault in the service by email or telephone. The email address and telephone number will be as specified on the Teleswiss Order Form (Supplementary Details) or as notified to the Subscriber by Teleswiss from time to time. At the time of reporting the fault, the Subscriber shall give a contact telephone number and/or email address.

5.2 The Subscriber shall only report faults in the Service after investigation to confirm that the fault does not lie within their computer infrastructure or on the internet. Faults in the transmission path to the internet or faults due to malfunctions on the internet should be reported to the responsible authority such as the Subscriber's Internet Service Provider.

5.3 Subscriber fault handling is available during the Swiss working day (7 a.m. to 4 p.m. UTC Monday to Friday) and will provide advice by telephone, including tests and checks to be made by the Subscriber at his premises and/or those made from the SwissTelex telex exchange.

5.4 Teleswiss shall ensure that all proper steps are taken without undue delay to investigate any faults that are found.

6. CONNECTION TO THE SERVICE

6.1 It is the Subscriber's responsibility to arrange access to the internet through a reliable Internet Service Provider. Payment for such access, and the terms and conditions governing it lie outside the scope of this Contract.

6.2 Communication between the SwissTelex telex exchange and the Subscriber's computer shall either be via a direct virtual circuit or via email.

a) via email, in which case the Subscriber's email infrastructure must support the signing of messages with an X.509 certificate (issued by SwissTelex as the Certificate Authority). Where the Subscriber requires his telexes to be in encrypted form, his email infrastructure must also support cryptographic functions with X.509 certificates.

or

b) by means of an SSL (Secure Socket Layer) connection over the internet between the SwissTelex exchange and the Subscriber's PC running the software provided by Teleswiss. In order to establish Subscriber authentication and enable encryption on the SSL connection, Teleswiss will provide the Subscriber with an X509 certificate (issued by SwissTelex as the Certificate Authority).

6.3 If the Subscriber requires reception of inbound telexes in real time, he must arrange for permanent internet connection and a permanent IP address.

6.4 Subscribers who do not have permanent internet connection shall be unable to receive telexes during the periods when they are not connected to the internet. Such a Subscriber may elect to make use of a SwissTelex telex exchange facility called INSTORE, which accepts his telexes when the Subscriber is not connected to the telex exchange, thus enabling them to be downloaded later either directly or optionally, delivered to him by email. Subscribers electing to make use of the INSTORE facility must accept that

a) Teleswiss will not be held responsible for non-delivery or mis-delivery of telexes arising from any malfunction of the INSTORE facility or of email services

b) the calling party will not be aware that the telex is held in an intermediate device for later delivery except by examining the answerback sent to him by INSTORE. This answerback shall not be the Subscriber's normal answerback, but a text defined by the Subscriber. Teleswiss recommend that this should be as stipulated in ITU Recommendation U.74 (Operational Provisions relating to Mailbox Devices connected to the Telex Network).

7. ANSWERBACK AND NUMBER

7.1 Each Subscriber shall be assigned his current UK telex number and shall be accessible to the international telex network by this number prefixed by UK's international access code 51.

7.2 The Subscriber answerback shall contain the telex number, an alphabetical suffix as agreed with Teleswiss and the telex network identifier for UK (G).

7.3 The Subscriber certificate supplied by SwissTelex shall contain the Subscriber's answerback and telex number.

7.4 Teleswiss shall ensure that the Subscriber retains the UK telex number and answerback already assigned to him. However, this does not affect Teleswiss's right to alter the telex number subsequently if this is necessary for important operational or technical reasons.

8. SUBSCRIBER DUTIES AND RESPONSIBILITIES

8.1 The Subscriber must take all appropriate steps to keep safe the certificate mentioned in clause 6.2, as well as the associated certificate password. Under no circumstances shall Teleswiss be liable for any damages arising out of the loss of this information or its becoming known to a third party.

8.2 Under no circumstances shall the Subscriber attempt to alter the contents of the certificate mentioned in clause 6.2. Any attempt shall invalidate the certificate and disable access to the Service. Re-connection to the Service under these circumstances shall be subject to the charges set out in the Teleswiss Price List.

8.3 The Subscriber must exercise appropriate care to ensure that the software on his telex station is not exposed to the risk of software viruses.

8.4 It is the responsibility of the Subscriber to check that he receives the correct answerback of the called party at the start of the call and to invoke and check the answerback again at the end of the call.

9. ABUSE OF SERVICE

9.1 The Service must not be used for fraudulent or illegal purposes. The Subscriber shall not send communication which is offensive, indecent, menacing, a nuisance or a hoax, or in connection with the conduct of a criminal offence

9.2 Cyber attacks made on the SwissTelex telex exchange which emanate from a Subscriber's telex station shall be deemed as an abuse of service regardless of whether or not such attacks are made with the knowledge of the Subscriber.

9.3 Teleswiss may immediately suspend Service to the Subscriber for contravention of clause 9.1 or clause 9.2, and can refuse to restore the Service until it is satisfied that there will be no further contravention.

10. INDEMNITY

The Subscriber must indemnify Teleswiss against any claims or legal proceedings arising from the provision of the Service which are brought or threatened against Teleswiss by a third party because of the Subscriber's misuse of the service or because the service is faulty or cannot be used by a third party.

11. LIMITATION OF LIABILITY

11.1 Teleswiss's responsibility to the Subscriber is only to ensure that the Service is conducted with reasonable care and skill by a competent telecommunications provider.

11.2 Teleswiss is not liable to the Subscriber, either in contract, tort or otherwise for any direct, indirect or consequential loss of revenue, business, contracts, anticipated savings, profits, or for any indirect or consequential loss, howsoever arising.

11.3 In cases of violations of the Contract, Teleswiss shall be liable to the Subscriber for any proven direct damage only in the event of unlawful intent or gross negligence. Teleswiss shall not be liable for simple negligence.

11.4 Teleswiss shall bear no responsibility for the content of the information which is transmitted from or to the Subscriber.

11.5 The Subscriber must accept that, despite the deployment of state-of-the-art technologies and security standards, absolute security and a fault-free service cannot be guaranteed, and the Subscriber must therefore accept the risk. Neither SwissTelex nor Teleswiss shall be liable for decryption of the code or utilization of data obtained by such means or similar means by unauthorised persons. SwissTelex reserves the right on discovery of such security risks to interrupt data transmission at any time, and to introduce other security elements or another form of authentication. Neither Teleswiss nor SwissTelex shall be liable for any damages arising from such interruptions.

12. FORCE MAJEURE

If despite all its efforts, Teleswiss cannot meet its contractual obligations as a result of particularly serious natural disasters, war, strikes, unforeseen government restrictions, etc., Teleswiss will have no liability to the Subscriber and Contract performance or the deadline for Contract performance will be postponed accordingly.

13. ASSIGNMENT

The Subscriber may not assign or transfer any rights or obligations under the Contract without the written consent of Teleswiss.

14. DURATION AND TERMINATION

14.1 This Contract shall enter into force on the date indicated in the Teleswiss Order Form

14.2 The minimum duration of this Contract is three months from the time when the Service is first made available but this does not prevent Teleswiss from exercising its rights to suspend or terminate Service to the Subscriber under the relevant clauses of this Contract.

14.3 Either party may terminate the Contract by giving one month's notice in writing. The Contract shall remain in force until the last day of the month following that in which notice was given.

14.4 If the Subscriber terminates the Contract before the expiry date for the minimum Contract duration, the Subscriber shall be liable to pay Teleswiss the balance outstanding for the remainder of the minimum duration.

14.5 Teleswiss shall be entitled immediately to terminate this Contract:

a) if the Subscriber commits a breach of this Contract and (in the case of a remediable breach) fails to remedy the breach within a reasonable time of written notice from Teleswiss to do so; or

b) if it is not possible to remedy the breach; or

c) for any further important reason (i.e. any circumstance under which Teleswiss can in good faith not be expected to continue the contractual relationship).

15. NO WAIVER

Failure by Teleswiss to exercise or enforce any right conferred by this Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

16. AMENDMENTS TO CONTRACT

Teleswiss shall inform the Subscriber of any changes to service descriptions and prices in sufficient time to allow the Subscriber to terminate the Contract within the notice period defined in clause 14.3 above. Unless there is written notice of termination of the Contract within the notice period, the changes shall be considered as approved by the Subscriber.

17. GOVERNING LAW

17.1 This Contract is governed by Swiss Law.

17.2 The place of jurisdiction is Bern, Switzerland.