

## EMnify GmbH - Terms of Service

### 1 General

EMnify GmbH, headquartered in Landsteinerstrasse 4, 97074 Würzburg, Germany, registered at the Commercial Register of the District Court ("Amtsgericht") of Würzburg, HRB 12268 (hereinafter "EMnify") provides its services (hereinafter "Services") on the basis of the following terms of service (hereinafter "Terms") to the customer (hereinafter "Customer") as identified in the relevant Order Form (as described below) and/or through access on the EMnify Portal (as described below). EMnify Services are only available to business Customers and not to consumers. When accepting these Terms and ordering the EMnify Services, the Customer confirms that he is not ordering as a consumer but as a business customer and for business purposes and shall therefore always state his company/business details. EMnify and Customer are hereinafter also referred to as "Party" or together as "Parties."

### 2 Contract Conclusion and Contract Structure

- 2.1 The contract for EMnify Services (hereinafter "Contract") is concluded by Customer placing an order (hereinafter "Order") with EMnify through an order form (hereinafter "Order Form") made available by EMnify in electronic format or, if available, through means of online contracting, and EMnify having accepted such Order in text form by e-mail to the mail address of Customer indicated in the Order or, if available, through means of online contracting. Any offers or indications by EMnify on price, quantity, delivery time and availability are only binding when accepted by EMnify through acceptance of the Order, and it being understood that EMnify is not obliged to accept a Customer Order. Each Customer Order accepted by EMnify, and each activation of a SIM Card (as defined below), hereunder generate a separate Contract, in the latter case under the relevant Order.
- 2.2 EMnify makes available the Order Form to Customer either by e-mail upon request of Customer or online through the M2M web portal operated by EMnify (hereinafter "EMnify Portal"), after access to the online functionality has been granted by EMnify upon request of Customer. Customer may place his Order by filling out the Order Form and submitting it to EMnify either online via the EMnify Portal (when access has been granted to Customer), or by sending it per e-mail as attachment, or by sending the hardcopy through registered mail or courier to EMnify. Alternatively, Order Forms may be made available by, and submitted to, EMnify through means of online contracting.

- 2.3 When placing an Order, the Customer confirms that he is not ordering the EMnify Services as a consumer but as a business and for business purposes, and shall therefore always state his VAT number, and/or his company registration number, and/or his company/business details.
- 2.4 The Contract between EMnify and Customer includes the following documents as an integral part of the Contract with the following order of precedence in case of conflicting provisions:
- Order as accepted by EMnify
  - These Terms
  - Service Description
  - Service Level Obligations
  - Tariff and Rate Zone Documentation in its respective current version
  - API Specification.

These Terms and the above documents apply exclusively. Any terms and conditions or procurement terms of Customer are not binding or applicable to EMnify, even if EMnify does not expressly reject such terms and conditions or procurement terms.

- 2.5 Any subsequent Orders of Customer are governed by the then current version of these Terms. Any agreements containing individual terms deviating from these Terms are subject to our prior written consent.

### **3 Services provided by EMnify**

#### **3.1 General**

- 3.1.1 EMnify provides telecommunications and other Services for the Internet of Things (hereinafter "IoT") and in the area of Machine-to-Machine (hereinafter "M2M") mobile radio communications as detailed in the Contract documents listed in clause 2.4, and as agreed in the Order accepted by EMnify pursuant to clause 2.1 Other products and services than those explicitly agreed in the Order between EMnify and Customer are not covered by the Contract and require a separate agreement between the Parties.
- 3.1.2 The Services support the implementation and management of mobile radio network-based communication between distributed systems (such as vehicles, machines, electricity meters, etc.) and central control stations (e. g. communication hubs) as well as remote-controlled operation of devices for purposes of monitoring, measurement, meter reading and control by the Customer. These include application scenarios in the field of human-to-machine and machine-to-human communication, e.g. the control of systems by a service technician with his mobile device.



- 3.1.3 The Services are provided through (i) a cloud-based software platform (hereinafter “EMnify Platform”) that enables management and integration of Customer devices and systems by way of the EMnify API and EMnify Portal, and (ii) the provision of connectivity for the Customer devices. With respect to connectivity, EMnify supplies M2M SIM cards ((hereinafter “SIM Cards”) and data transmission to and from the EMnify Platform on the basis of network services provided by mobile network operators or mobile service providers. Geographic coverage for the connectivity is limited to the countries and regions as provided in the Tariff and Rate Zone Documentation. With respect to the EMnify Platform, the Services are technically confined to the location of the servers and software that operate the EMnify Platform.
- 3.1.4 Where required, the Services consist of a configuration phase during which the EMnify Platform and the EMnify Portal are configured for the usage by the Customer and receipt of the ongoing Services, and an operation phase during which the ongoing Services are being provided to and received by Customer. Where a configuration phase occurs, the resulting configuration of the EMnify Platform and the EMnify Portal determines the scope of the Services in addition to the Contract documents pursuant to clause 2.4.
- 3.1.5 EMnify procures products and services (in particular hardware and software and telecommunications services) from third parties (hereinafter “Suppliers”) to provide the Services and is entitled to engage third parties in providing the Services (hereinafter “Subcontractors”).
- 3.1.6 To the extent required for receiving the Services, EMnify herewith grants to Customer, against payment of the agreed remuneration, and for the term of the Contract, the non-exclusive, non-transferable, non-assignable and not sub-licensable usage right in the EMnify Platform and the EMnify Portal.

## **3.2 Service Level Obligations**

- 3.2.1 When providing the Services, EMnify shall meet the Service Level Obligations agreed with the Customer. If no other Service Level Obligations have been agreed, the Obligations specified in the annex - Standard Service Level Obligations apply.
- 3.2.2 Customer is entitled to upgrade or downgrade the agreed Service Level Obligations in accordance with the provisions of the Service Level Obligations annex agreed with EMnify.
- 3.2.3 In case the Customer upgrades or downgrades the Service Level Obligations, the Tariff and Rate Zone Documentation and Service Description for the selected Service Level Obligations apply.

### **3.3 SIM Cards**

- 3.3.1 Unless agreed otherwise in writing between the Parties, EMnify provides the SIM Cards required for the use of EMnify Services to Customer. Except for the agreed delivery of SIM Cards by EMnify to Customer, EMnify does not offer or provide any hardware to Customer; in particular, EMnify does not provide any end devices. EMnify is entitled to withdraw from the relevant Contract by written (text form) notice, if SIM Cards agreed with Customer become unavailable on the market before their estimated delivery to Customer.
- 3.3.2 Delivery dates communicated by EMnify to Customer are estimates and not binding, unless explicitly communicated as binding by EMnify. In the event of any delay on binding delivery dates, EMnify shall have a grace period of at least three (3) weeks to remedy the delay. Partial deliveries shall be accepted by Customer.
- 3.3.3 As the SIM Cards pertaining to the Services are separately ordered and delivered on demand of the Customer, the SIM Card specifications are determined by the respective current SIM Card list that is made available by EMnify through the EMnify Portal or demand of the Customer and that may be updated on a daily basis.
- 3.3.4 Where Customer request shipping of the SIM Cards, the risk of accidental loss or deterioration of the SIM Card passes to the Customer at the moment of the dispatch of the SIM Card to the Customer, but no later than the SIM Cards leaving the premises of EMnify or its suppliers.
- 3.3.5 In the event that, without justification, Customer refuses acceptance of the SIM Cards despite a grace period of fourteen (14) days set by EMnify, or if Customer finally declares not to accept the SIM Cards, or if Customer declares withdrawal from the relevant Contract, EMnify may agree to a mutual termination of the relevant Contract subject to a lump sum payment by Customer of 30 % of the net goods value under the respective Order as compensation.
- 3.3.6 SIM Cards can be activated by the Customer himself at any time through the EMnify Portal after EMnify's receipt of payment in accordance with clauses 6 and 7. For activation, Customer will receive a confirmation through the EMnify API (if set up correctly by the Customer) or through the EMnify Portal.

## **4 Contract Term, Termination**

- 4.1 The Contract term begins upon acceptance of the Order by EMnify pursuant to clause 2.1 and its duration is dependent on the tariff (hereinafter "Tariff") chosen by the Customer from the Tariff and Rate Zone Documentation. Any minimum Contract term shall be determined in the Contract through the relevant Tariff chosen by the Customer. After expiry of any minimum Contract term, or in the absence of a minimum Contract

term, the Contract shall continue, or be concluded, as the case may be, for an indefinite term. The Contract may be terminated by either Party by giving one (1) month prior written (text form) notice to the end of a calendar month, but no earlier than to the end of the calendar month in which any minimum Contract term expires.

- 4.2 Other, additional or extended minimum Contract terms may apply in case of adding or activating Tariffs pursuant to the specific Tariff conditions as described in the Tariff and Rate Zone Documentation. Tariff changes, adding Services and/or Tariffs by the Customer during the Contract term can extend or shorten the remaining Contract term, if agreed in the respective Order pursuant to the procedure foreseen in clause 2.1
- 4.3 During any minimum term the ordinary termination is excluded. However, the Parties may terminate the Contract with immediate effect upon notice in writing to the other Party, in particular, if the other party commits a material breach of the Contract and fails to remedy such breach within thirty (30) days of receipt of a written notice giving full particulars of such material breach and requesting that it be remedied. EMnify may furthermore terminate the Contract with immediate effect, if Customer is in default with payment of a significant invoiced amount (i.e. at least two monthly payments or an amount equal to two average monthly invoices).
- 4.4 Termination notices shall be given in text form, i.e. by letter, email or fax.
- 4.5 Services are provided until the last day of the Contract term and the Customer is obliged to pay all fees and charges incurred until that time. Upon termination, or expiry, of the Contract, Customer shall be obliged to cease usage of the Services. Customer shall block access to any online tools, in particular the EMnify Platform and the EMnify Portal, it being understood that EMnify shall also be entitled to switch off any online access.

## **5 Use of the Services by Customer and Customer Obligations**

### **5.1 General Principles**

- 5.1.1 Customer shall use the Services solely in accordance with the provisions of the Contract and for lawful purposes and shall not give unlawful directions to EMnify or directions that would cause EMnify to violate any legal provisions. In particular, Customer shall not use or attempt to use, or allow or tolerate to use the Services in connection with any action that is prohibited by any applicable export control and economic sanction regulations, including those of the USA, the UK, and the EU/EEA. Customer shall notify EMnify in writing (text form) immediately upon becoming aware of or suspecting such activity in the course its own services. Furthermore, Customer shall not use the Services or features of the Services (or SIM Cards) in a manner that has not been agreed in the Contract. Services and features, such as Short Message Service (hereinafter: "SMS") to

any telephone number, voice communication to any telephone number as well as the forwarding of voice calls, use as voicemail service or the use of value-added services can only be used if explicitly agreed in the Contract. In the event that EMnify reasonably determines that any provision of this clause has been or may be violated, Customer will cooperate fully with EMnify's investigation to examine and resolve the issue. Furthermore, Customer shall indemnify EMnify in full and on demand for any claims, costs, demands, expenses or other liabilities that EMnify may incur whether actual or contingent, as a result of any use of the Services in violation of the Contract.

- 5.1.2 Customer is responsible to use and maintain suitable, ready for use and compatible end devices and suitable SIM Cards to receive the Services. As data storage is not provided by EMnify, unless explicitly agreed otherwise, and irrespective of whether such agreement exists, Customer is also responsible for regularly making back-up copies of his data that is processed or used in conjunction with the Services.
- 5.1.3 To the extent that Customer concludes contracts with third parties (including general terms and conditions with end customers) that impair or hinder the provisioning of the Services by EMnify, EMnify shall be released from fulfilling its contractual obligations.
- 5.1.4 Where Customer resells the EMnify Services to third parties, in particular to end customers, and without prejudice to any claim that Customer may have against EMnify for EMnify's failure to provide the Services as agreed, any claim or demand arising from or related to a third party customer or other user of the Services resold by Customer shall be a matter between Customer and such third party. The Customer shall indemnify EMnify in full and on demand for any claims, costs, demands, expenses or other liabilities that EMnify may incur whether actual or contingent as a result of any claim or demand brought or alleged by such third party customer or user, or by any other third party as a result of the use of the third party customer or user of the Services. Customer shall be responsible for the actions and omissions of third-party customers or users the same way as for its own actions and omissions.
- 5.1.5 Customer shall provide EMnify with all information, data, documents and material that are required or that Customer considers required or useful for the rendering of the Services by EMnify. EMnify shall not be obliged to review material, data, documents and information provided by Customer or third parties (except Subcontractors and Suppliers of EMnify) for inconsistencies, mistakes or omissions.
- 5.1.6 Customer shall comply with all obligations, as set forth in the Contract, in a complete, orderly and timely manner, and at Customer own cost. Should Customer fail to fulfill its obligations in a complete, orderly and timely manner, such failure shall release EMnify, for the duration of the failure, from such performance hereunder that requires compliance by Customer with his obligations, or where Customer's failure would result

in unreasonable additional efforts for EMnify. Service Level Obligations shall be suspended for the duration of the failure or default plus a reasonable ramp-up period for restoration.

## **5.2 SIM Cards**

5.2.1 SIM Cards provided by EMnify may only be used in conjunction with the EMnify Services and not otherwise. SIM Cards shall only be used by the Customer in a physical manner and shall be activated by Customer through the EMnify Portal, the EMnify API or EMnify personnel only.

5.2.2 Customer is obliged

- to notify EMnify without undue delay of any change of name, change of address, changes of headquarters, email address and other inputs significant for the Contract;
- to protect the SIM Card from abuse and shall inform EMnify of any abuse by giving full particulars of the impacted SIM Card(s) immediately after obtaining knowledge thereof. Such information can be provided by phone once recorded in EMnify's service-ticketing-system, or by sending an email to the service hotline. In the event of loss of control over the SIM Card attributable to Customer, Customer remains obliged to pay the fees arising from use of the SIM Card by third parties until suspension of the SIM Card by the Customer using the EMnify Portal or by explicitly requesting such suspension from EMnify in writing.
- to refrain from accessing the SIM Card file system, from using the SIM Cards for SMS SIM Boxing, from generating any (signalling) traffic with non-activated or non-allocated SIM cards, and from activities with similar effect (Phantom SIM Cards), and to tolerate permanent physical deactivation of the affected SIM Cards by EMnify without liability or replacement obligation of EMnify in the event of SIM Card usage in violation of the provisions in this Contract.
- to ensure that the device using the SIM Card is not generating excessive/large amount of signaling requests to the mobile network in case of failures to connect, e.g. through implementing exponential backoffs.

## **5.3 FREE Evaluation eSIM**

5.3.1 EMnify provides potential customers (hereinafter "Customer" or "Customers") a FREE evaluation eSIM (hereinafter "FREE Evaluation eSIM") based on the terms in this clause 5.3 and its subclauses through access on the EMnify Portal.

5.3.2 The EMnify FREE evaluation eSIM is primarily intended to offer the Customer the



possibility to test EMnify's Services (such as, however not limited to, Intra-Cloud Connect, OpenVPN, Data streamer with basic API integration) on a free, non-remunerated basis.

- 5.3.3 The EMnify FREE evaluation eSIM contains 1 (one) eSIM Card. The eSIM Card is a single-IMSI subscription profile which can be downloaded and installed by the Customer by ways of scanning the QR-Codes for the eSIM Card after ordering the EMnify FREE evaluation eSIM and creating the eSIM Evaluation Account (hereinafter "The eSIM Evaluation Account") on compatible devices such as smartphones or tablets. The eSIM Evaluation Account contains a credit amount of 10 EUR (hereinafter "Credit") which can be consumed by the Customer within 60 days (hereinafter "Testing Phase") after the eSIM Evaluation Account creation. An extension of the Credit during the Testing Phase is not possible. After the Testing Phase has expired, the eSIM will be deactivated automatically unless the Customer decides to conclude a contract with EMnify for the use of the eSIM or other EMnify Services based on EMnify Terms of Service. Should the Customer decide to conclude a contract with EMnify after the Testing Phase and if Customer wishes to continue using the eSIM for testing purposes, the eSIM will remain activated. If requested by the Customer, the eSIM will be re-credited with 10 EUR by EMnify and can be used in accordance with these Terms.
- 5.3.4 Customer shall use the FREE evaluation eSIM solely for the purpose of testing the compatibility of the EMnify Services which includes Management Portal, Intra Cloud-Connect, OpenVPN, Data streamer, Rest-API with the Customer's products and/or connectivity solutions. Other Services and features, such as short message service to any telephone number, voice communication to any telephone number as well as the forwarding of voice calls, use as voicemail service or the use of value-added services cannot be used with the FREE evaluation eSIM.
- 5.3.5 Customer is obliged to
- not use FREE evaluation eSIM for any fraudulent or unlawful purposes;
  - not use FREE evaluation eSIM to commit or facilitate the commission of a crime, or other unlawful act;
  - not act in any way, which may affect or impair the operation of any network used or operated by EMnify;
  - only use the FREE evaluation eSIM for its own business use and must not sell, resell, lease, sub-lease or otherwise deal commercially with the FREE evaluation eSIM;
  - only use the FREE evaluation eSIM for the purposes and in the manner expressly permitted by clause 5.3.4;
  - only use the FREE evaluation eSIM in accordance with all applicable laws and regulations of its home nation, the country in which it resides, or the country in



which it is present whilst using the FREE evaluation eSIM;

- to comply with obligations set forth in clause 5.2. to these Terms.

5.3.6 The FREE evaluation eSIM are provided on an "as is" and "as available" basis. EMnify does not warrant or guarantee a fault free FREE evaluation eSIM service and gives no warranties or guarantees as to network coverage, quality or availability.

5.3.7 In the event that EMnify reasonably determines that any provision of this clause 5.3 has been or may be violated, Customer will cooperate fully with EMnify's investigation to examine and resolve the issue. Furthermore, Customer shall indemnify EMnify in full and on demand for any claims, costs, demands, expenses or other liabilities that EMnify may incur whether actual or contingent, as a result of any use of the FREE evaluation eSIM in violation of these terms.

#### **5.4 EMnify API and the EMnify Portal**

5.4.1 The Customer is responsible for the technical set-up and interoperability of his systems with EMnify Services, in particular the EMnify API and EMnify Portal. The implementation shall be in accordance with the API specifications and policies (in particular 'EMnify RestAPI specification') provided by EMnify.

5.4.2 The Customer is responsible for the connectivity of his systems to the EMnify Platform through a suitable Internet access that enables him to access the EMnify Platform at the location of the servers and software that operate the EMnify Platform.

5.4.3 The Customer is responsible for the security of his hardware, and the security and confidentiality of his data, as well as the access data, which he uses for the access to the EMnify Portal.

#### **5.5 EMnify SMS Services**

5.5.1 The Customer may choose to activate the EMnify SMS Service via his access to the EMnify Portal only.

5.5.2 The Customer may not use or allow or tolerate third parties' use of SMS outbound Services for unsolicited communications, or any illegal, immoral or improper purpose or in any manner which violates applicable laws or regulatory requirements of the relevant jurisdiction, and Customer may not re-sell the SMS Services. In the event that either Party detects such SMS traffic, such Party will notify the other and suspend the endpoint, Service, or relevant (end) customer account immediately.

### **6 Prices and Invoicing**

6.1 All prices are net of freight, packaging and ancillary costs, such as customs and import duties, and applicable statutory Value Added Tax ("VAT") in the amount as applicable

at the date of invoicing.

- 6.2 For the provision of SIM Cards, EMnify issues the invoice upon acceptance of the Customer Order pursuant to clause 2.1.
- 6.3 Agreed monthly fees or minimum fees are invoiced monthly in advance.
- 6.4 Variable charges, in particular agreed usage fees will normally be invoiced within three (3) working days from the end of the previous month. EMnify reserves the right to invoice usage fees for such month also in later invoices, if the fees have not been invoiced in the following month.
- 6.5 All invoiced amounts are payable immediately.
- 6.6 Invoices are provided to the Customer electronically. The Customer also receives access to itemized usage statements through the EMnify Portal; this data is available to Customer for eighty (80) days after dispatch of the invoice.

## **7 Payment, Security, Disputes**

- 7.1 EMnify's Services are generally provided on the basis of advance payments for which the Customers are invoiced on a regular basis and for which a true-up is made by EMnify on a monthly basis pursuant to the invoices issued in accordance with clause 6. Invoices for advance payments are payable immediately upon receipt and without deduction.
  - 7.1.1 Payments via wire transfer have to be made in Euro to the bank account named in the invoice. The Customer may also authorize EMnify to regularly charge advance payments by direct debit.
  - 7.1.2 Payments may also be made on a regular basis via EMnify's credit card facility as indicated on the EMnify Portal. The Customer is responsible to ensure that the credit card data stored in EMnify's credit card facility is up to date. Where EMnify is unable to withdraw funds from the Customer's credit card EMnify will notify Customer.
  - 7.1.3 EMnify may withhold the Services until payment of the invoiced advance amount is received in full. Any applicable bank charges shall be borne by the Customer.
- 7.2 EMnify may agree to the Services being paid by Customer without advance payments pursuant to clause 7.1. When agreeing to such post-paid Service providing, the provisions in clauses 7.1.1 to 7.1.3 apply to the payment of the invoices issued pursuant to clause 6 accordingly. Furthermore, EMnify can request, in its sole and reasonable discretion, that Customer provides adequate security in order to secure due and future payments using one or more of the following methods:

### **7.2.1 Credit Limit**

EMnify may provide Customer with an initial Credit Limit amount (hereinafter: "Credit Limit") and will notify Customer of this in writing.

EMnify may change the Credit Limit in its reasonable discretion by giving twenty-four (24) hours prior written (text form) notice. EMnify will send this notice by e-mail notification.

EMnify may suspend the Services without prior notice if the Credit Limit is exhausted, meaning that the sum of (i) the total invoiced amounts, which remain unpaid, plus (ii) the unbilled but accrued usage across all Contracts, has exceeded the then current Credit Limit.

### **7.2.2 Bank Guarantee or Deposit**

Instead of, or in addition to a Credit Limit, EMnify may require a deposit or a bank guarantee from Customer, in an amount and form that is satisfactory to EMnify. Failure to provide the deposit or bank guarantee as requested shall entitle EMnify to suspend the Services.

- 7.3 In the event of payment default, EMnify is entitled to charge default interest in the amount of nine percent (9 %) per annum above the applicable base interest rate of the European Central Bank from the due date for payment until payment is made in full, whether before or after judgment. EMnify's right to claim a higher damage caused by the default remains unaffected.
- 7.4 Objections against the invoiced amounts shall be made in good faith to EMnify by email (mailto: [finance@emnify.com](mailto:finance@emnify.com)) within thirty (30) calendar days from receipt of the invoice in writing (text form) and in a substantiated manner, if the event giving rise to the objection has become known within this period. Upon expiry of one (1) year from receipt of the invoice, objections shall be excluded. Objections only entitle the Customer to withhold payment only to the extent the invoiced amount has been disputed as required above.

## **8 Suspension**

- 8.1 Without prejudice to other rights EMnify may have under this Contract or otherwise, EMnify is entitled to wholly or partly suspend the Services (hereinafter "Suspension"), including the physical deactivation of a SIM Card in case of, but not limited to, the following events, without liability towards the Customer:
- 8.1.1 The Customer is in default with payments, a Credit Limit has been exhausted, or Customer has violated other provisions relating to payment (clause 7);
- 8.1.2 EMnify monitors a substantial increase in volumes and use of the Service, and consequently the Customer's liability towards EMnify is in EMnify's reasonable opinion justifying the assumption that the Customer will not pay the applicable Tariffs;
- 8.1.3 An order for suspension of the Services by a competent court or regulatory authority;

- 8.1.4 Any threat to the technical facilities and/or network of EMnify (including, in particular, the EMnify Platform), or one or more of its network service providers, that is, with high probability and/or in EMnify's reasonable opinion, caused by the Customer's use of the Service;
- 8.1.5 EMnify obtains secured information that the SIM Card usage caused or causes violations of applicable laws or violates the provisions in clauses 5.2 or 5.5.2;
- 8.1.6 Customer fails to provide EMnify with a valid business address and email address and any other essential information reasonably requested by EMnify in accordance with the Contract;
- 8.1.7 Customer continues to violate the provisions of the Contract, despite a single written (text form) request sent to him by letter, email or courier, to remedy the violation.
- 8.2 The Customer remains obliged to pay fixed and any usage-based charges, in particular monthly fees, minimum fees, etc. during any Service Suspension for causes attributable to Customer.

## **9 Warranty**

### **9.1 General**

- 9.1.1 EMnify's obligations to remedy Service defects regulated in the following provisions. EMnify shall only be liable for damages ("Schadenersatz") and efforts ("Aufwendungsersatz") due to Service defects or due to any performance which is not in compliance with the contractually agreed specifications within the limitations of clause 10 hereof. Subject to the following provisions, any further rights and claims of Client due to Service defects are excluded.
- 9.1.2 EMnify warrants in accordance with that the Services essentially comply with the specifications agreed in the Contract. EMnify does not warrant that the Services are fit for Customer's intended purposes. Customer shall notify EMnify in writing (text form) of any defects without undue delay.
- 9.1.3 In the event of Service defects, EMnify provides a warranty by way of remediation ("Nacherfüllung") in that EMnify, in its discretion, either provides to Customer a new or error free service (including replacement of defective components) or rectifies the defect. Defect rectification may also consist of showing to or providing Customer with reasonable possibilities that avoid the effects of the defect.
- 9.1.4 Customer claims shall be excluded in the event of an insignificant deviation of the Services from the agreed specifications or in the event of insignificant impairments of fitness for the contractually agreed purpose of the Services. Any specifications and product descriptions shall not be construed as guarantee, unless separately and explicitly agreed in writing and signed by the authorized representatives of the Parties.

- 9.1.5 Customer may only claim further statutory rights or claim damages and/or efforts within the limitations of clause 10, (i) if after unsuccessful expiry of a first period to rectify the defect EMnify has failed with a second rectification effort within a reasonable period of time (typically four (4) weeks), or (ii) after EMnify has failed with a reasonable number of remedial, replacement or workaround efforts. Customer may then terminate the Contract for cause pursuant to clause 4.3, provided that the period of time for the second rectification effort has been at least thirty (30) calendar days. Any rights of rescission (“Rücktritt”, “Wandlung”) of Customer are replaced by this termination right. Any self-rectification (“Selbstvornahme”) by Customer is excluded. Where the annex Service Level Obligations provides for service credits in the event of defects, any rights to reduce the remuneration (“Minderung”) are then exclusively and finally governed by the annex Service Level Obligations.
- 9.1.6 Modifications or extensions of the Services and modifications of the Customer systems or end devices, as well as interferences with the EMnify Platform, carried out by Customer, or third parties commissioned or tolerated by, Customer cancel all warranty obligations of EMnify, unless Customer can establish that the modification or extension has not caused the defect in the Services. EMnify is not responsible for defects of the Services that are caused by improper handling or usage of the EMnify API or EMnify Platform, by the use of improper equipment by Customer or by failures in the obligations of Customer.
- 9.1.7 If EMnify incurs effort in the defect detection or rectification for which EMnify is not responsible due to the foregoing provisions, then EMnify may charge this additional effort to Customer pursuant to the then current hourly, or daily rates, of EMnify personnel on a time & material basis.

## 9.2 SIM Cards

- 9.3 All SIM Cards provided by EMnify are manufactured by third parties. EMnify obtains the technical specifications of the SIM Card from these manufacturers. As is custom in trade, these technical specifications are to be considered as approximate and represent no warranted characteristics.
- 9.4 The Customer shall examine the SIM Cards upon their receipt and before installing the SIM cards in any devices. Complaints or objections with regard to quantity or type of SIM Cards, as well as with regard to externally visible defects shall be notified to EMnify in writing (text form) within ten (10) days of receipt of the SIM cards. Where Customer has moved a SIM Card to another location than the establishment of the Customer to which it was originally delivered, then Customer shall bear the additional costs caused in conjunction with any warranty claims. If SIM Cards are returned without proper packaging, the Customer shall bear the risk of damage.

## **10 Liability**

- 10.1 Nothing in this agreement shall limit or exclude the liability of either Party:
- (a) for death or personal injury resulting from its negligence or that of its Employees or subcontractors;
  - (b) for fraud or fraudulent misrepresentation; and
  - (c) any other liability which cannot be limited or excluded by applicable law.
- 10.2 Subject to clause 10.1, neither Party shall be liable to the other Party, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation or otherwise, for any loss of profits, business, contracts, anticipated savings or revenue, loss of or damage to goodwill, loss or corruption of data and/or any business special, indirect or consequential, losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise).
- 10.3 Subject to clauses 10.1 and 10.2, the total liability of EMnify in relation to any liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited (i) per calendar year to an amount equal to the amount of 50% of the remuneration pursuant to the affected Order for that calendar year, and (ii) per each damage causing event to an amount of €5,000.00.
- 10.4 Where EMnify is providing a publicly available telecommunications service, EMnify's liability may also be limited in accordance with applicable statutory provisions in the relevant jurisdiction.
- 10.5 All claims for damages and efforts become time-barred within one year from the statutory commencement of the limitation period.

## **11 Data Protection**

- 11.1 Within their respective sphere of responsibility, the Parties ensure at their respective own cost the compliance with the applicable data protection laws when processing personal data as controller or processor, each within the meaning of applicable data protection laws.
- 11.2 Where the Services qualify as electronic communications services or telecommunications services, EMnify is acting as a data controller and may need to process personal data and other data covered by applicable data protection laws (including, but not limited to, Customer contract data, traffic data and billing data), and (ii) to disclose it to third parties for the proper fulfilment of its contractual and statutory obligations or as permitted by law. In handling such data, EMnify will act as permitted by law and in compliance with its privacy information available through the EMnify

Portal. The same applies to the processing of personal data of Customer employees (such as name and contact details) by EMnify required for proper fulfilment of its contractual and statutory obligations, or Customer's proper receipt of the Services. In particular, EMnify is entitled to transfer the necessary accounting and receivables data, e. g. to a debt collection company in the case of judicial or extrajudicial proceedings aiming for the recovery of debt.

- 11.3 Where the Services include the processing of personal data by EMnify as Customer's data processor (e.g. through the management of Customer devices or devices of Customer's end customers when such management includes access to, or handling of, personal data), Customer is the data controller and EMnify shall process such personal data only in compliance with the written (text form) instructions of Customer and as stipulated in a separate data processing agreement to be concluded between the Parties for such purpose. Irrespective of provisions in such data processing agreement to the contrary, where any Customer instructions on data processing or the data processing agreement have an impact on the scope of Services agreed in any Contract, EMnify shall be entitled to appropriate additional remuneration to be agreed between the Parties; should the Parties not agree on such remuneration, the then current hourly or daily rates of EMnify personnel and costs shall apply on a time & material basis.

## **12 Changes to the Terms, Services and Prices**

- 12.1 At any point during the term of the Contract EMnify shall be entitled to increase the charges payable by Customer in relation to the Services to reflect any increase in EMnify's underlying costs of providing those Services (including but not limited to costs for network provision, network use and network operation, connectivity provision (e.g. for technology, special network access and network interconnections, technical service), costs for customer support (e.g. for service hotlines, billing and IT systems), personnel and service costs, energy costs, general costs (e.g., for administration, marketing, rent, interest), as well as fees, expenses, and financial contributions imposed by public authorities), by giving Customer 1 (one) month prior written notice of such increase.
- 12.2 By giving 1 (one) month prior written notice, (in text form) the Services (including Order Form and Service Description) may be changed by EMnify if and to the extent that this is necessary for good cause not foreseeable at the time of conclusion of this Agreement. Good cause shall be deemed to exist if
- the Service can no longer be provided in the contractually agreed form due to technical issues or new technical developments that EMnify needs to implement, or
  - new or changed regulations or other legal requirements require a change in



the Service.

- 12.3 Any other changes to the Contract, including the EMnify Tariffs, the Order Form, these Terms as well as the Service Description, shall be communicated by EMnify to the Customer in advance with reasonable prior notice in writing (text form).
- 12.4 Where changes are made by EMnify during the term of the Contract and where such changes are not to the advantage of the Customer and the Customer is the end-user of the Service pursuant to German Telecommunications Act, EMnify shall notify Customer of such changes by giving Customer 1 (one) month prior written notice. Customer then has the right to terminate the affected Contract by written (text form) notice within a period indicated in the notice by EMnify. EMnify shall inform the Customer about this termination right in the change notice and the consequence that the change becomes valid and agreed, if the termination is not exercised.

## **13 Miscellaneous Provisions**

### **13.1 Assignment**

Notwithstanding any subcontracting by the Parties, neither Party may charge, assign or otherwise dispose of the agreement or any part thereof without prior written (text form) consent of the other Party. Such consent shall not be unreasonably delayed or withheld.

### **13.2 Severability**

In the event that any provision of the Contract shall be invalid, illegal, or unenforceable, the validity of the remaining provisions of the Contract shall not be affected. The invalid, illegal or unenforceable provision shall be replaced by a provision that comes as close as possible to fulfilling the economic purpose of the invalid or unenforceable provision. The same shall apply in the event that the Parties subsequently discover that the Contract contains an omission.

### **13.3 Confidentiality**

- 13.3.1 Each Party shall keep confidential and protect from unauthorized access all Confidential Information (as defined below) of the other Party. In particular, the Party receiving the Confidential Information shall only disclose the Confidential Information to its own employees and employees of its affiliated companies, to Subcontractors, Suppliers and advisors on a need-to-know basis for the proper fulfillment of the Contract, provided that these persons have agreed to the same confidentiality and non-disclosure obligations or are subject to statutory confidentiality obligations. The receiving Party shall treat Confidential Information with the same level of diligence and care that it applies to its own confidential information, and in any event with no less

skill and care than that of a diligent businessperson. No Party shall make any property rights registration with respect to Confidential Information of the other Party.

13.3.2 For the purposes of the Contract “Confidential Information“ shall mean a) status, content and result of the negotiations between the Parties relating to Contract, b) all information of any kind (irrespective of whether it is named or indicated as being confidential, a trade or business secret), which aa) was or is made available to the receiving Party by the disclosing Party or by third parties commissioned by the disclosing Party in the context of the implementation of the Contract – be it in oral, written, electronic or other format, or bb) comes to the knowledge of the receiving Party in the course of the implementation of the Contract, c) the intellectual property rights of each Party and d) all reports, analyses, technical operational documentation, compilations, memos, summaries, notes, excerpts or other materials in oral, written, electronic or other format that entail information within the meaning of lit. a) through c), or that are based on such information and which aa) were or are made available to the receiving Party by the disclosing Party or by third parties commissioned by the disclosing Party in the context of the implementation of the Contract, or bb) the receiving Party has obtained or will obtain, has created or will create, in the course of the implementation of the Contract.

13.3.3 The foregoing provisions do not limit the rights of the Parties to the extent that (a) usage or disclosure of Information is required for the fulfillment of obligations or the exercise of rights under the Contract, or (b) usage or disclosure of Confidential Information is required by law or due to court or administrative order and the Party obliged thereunder has informed the other Party thereof in writing without undue delay, or (c) the affected Party, has given its prior written consent to a disclosure of its Information. Further, the foregoing provisions do not limit the disclosure of Confidential Information, if and to the extent that

- the receiving Party can establish, that the Confidential Information (i) was known to it prior to the disclosure or knowledge without use of the Confidential Information, or (ii) has been developed by it independently from the Confidential Information,
- the Confidential Information, at the time of disclosure or knowledge by the receiving Party, is already or becomes publicly known or accessible without violation of the Contract or other confidentiality obligations of the receiving Party,
- the receiving Party has obtained the Confidential Information from a third party without violation of a confidentiality obligation towards the disclosing Party or of another confidentiality obligation, or

- the receiving Party discloses the Confidential Information to its auditors or legal advisers or other persons that are bound to confidentiality obligations due to their professional rules.

13.3.4 The foregoing confidentiality obligations apply during the Contract term, and for a period of three (3) years after the Contract's termination.

#### **13.4 Intellectual Property, Trademarks and Logos**

13.4.1 The Parties agree that EMnify exclusively owns and reserves all right, title and interest in and to the EMnify Services, EMnify's properties, software, other inventions whether or not patentable, copyrightable, protectable as trade secrets, or otherwise subject to intellectual property rights, and EMnify's confidential information. The Parties further agree that Customer exclusively owns and reserves all right, title and interest in and to the Customer data, Customer applications and Customer's confidential information.

13.4.2 All title (intellectual property rights) in work products (for clarity including any configuration of the Services, the EMnify Platform and the EMnify Portal and the other software used by EMnify), in particular all usage and exploitation rights under copyright law („Urheberrecht“), rights in inventions and technical property rights shall vest in relation to Customer exclusively in EMnify, no matter whether and to what extent the work products are based on requirements or contributions of Customer.

13.4.3 Except for the limited usage rights explicitly granted in the Contract all intellectual property rights as well as all other rights, interest and claims in relation to the Services, the EMnify Platform and the EMnify Portal and the other software used by EMnify in this context shall remain with EMnify.

13.4.4 The use of EMnify trademarks and logos by Customer and the use of Customer's trademarks and logos, including those of their respective affiliated companies, requires prior written (text form) consent of the affected Party by way of a separate agreement between the Parties.

#### **13.5 Place of Fulfilment, Choice of Law and Venue**

Place of performance and payment is Würzburg. Place of venue for all disputes arising from or out of the Contract shall be Würzburg. The Contract shall exclusively be governed by the laws of England and Wales. The application of uniform sales law, in particular the application of the Convention of the United Nations on Contracts for the International Sale of Goods (CISG) is expressly excluded.

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## EMnify GmbH - Standard Service Level Obligations

These Service Level Obligations (hereinafter the "SLO") shall form an integral part of the EMnify Terms of Service agreed to by Customer.

### 1. Scope of this Document and important Definitions and Abbreviations

- 1.1 This Service Level Obligations (SLO) defines particular aspects of the Service provided by EMnify to CUSTOMER: scope, quality, and responsibilities between EMnify and CUSTOMER.
- 1.2 Unless explicitly mentioned in the below text, EMnify has no obligations towards third parties such as CUSTOMER's own customer base or suppliers.
- 1.3 This SLO shall apply from the beginning of the SLO Term as set forth in clause 7 and shall be in effect for the duration set forth therein.
- 1.4 EMnify may change this SLO at any point during the term by giving written notice to Customer, provided that where such change is a material change to Customer's disadvantage EMnify shall give not less than 1 month's written notice prior to such change taking effect. Where the Customer is the end-user of the Services, clause 13.4 of the Terms of Service applies.

### 2. Definitions and Abbreviations

Capitalised terms in this SLO, unless otherwise defined, shall have the definition ascribed in the Terms of Service and in the SLO definitions specified below. In addition, the following definitions and abbreviations shall apply:

API	Application Programming Interface
Critical Incident	A complete breakdown, total outage/interruption or critical degradation of the Service or a functionality of a Service causing Service to be unavailable.
GUI	Graphical User Interface
GRX/IPX network	GPRS Roaming Exchange / IP Exchange, the private network between mobile operators to exchange roaming

traffic.

Incident	Any event which is not part of the standard operation of a service and which causes or may cause an interruption to, or a reduction in, the quality of that service.
Incident Resolution	Means Action taken to repair the Cause of an Incident, or to implement a Workaround.
SLI	Service Level Indicator – the performance metrics defined in clause 3 of this SLO.
Operational Incident	The functionality of the Service is affected. A performance degradation or limitation where normal Services are still possible, but quality levels may not be fully achieved and may require immediate attention.
SCCP	Signalling Connection Control Part
SLO Term	Term of this SLO pursuant to clause 7
VPN	Virtual Private Network
Working Hours	Means 9 am to 5 pm on all weekdays, excluding bank holidays in Würzburg, Germany.

### 3. Service Availability

3.1 Unless otherwise agreed by the Parties, EMnify grants the following service availability:

Service Level Indicators (SLI)	Value
Core Network	> 98.5 %
Service Availability	Internet Breakout/VPN
	API / GUI
	> 98.5 %
Planned Downtime	< 0.5% (less than 48 hours per year, less than 4 hours per month)

- 3.2 Service availability shall be deemed to be CUSTOMER's ability to use the main functions of the Services. Maintenance times shall be deemed as times of availability of the Service. Times of insignificant malfunctions where the functionality of the Service is affected, but the main functions of the Services can be used shall not be considered in the calculation of Service availability. EMnify's measuring and monitoring instruments shall be decisive for the proof of availability.
- 3.3 Loss of internet connectivity due to internet service provider contracted by the CUSTOMER are excluded from the SLI calculation of Service availability.
- 3.4 Loss of Service availability due to routing or firewalls issue in the CUSTOMER network are excluded from the SLI calculation of Service availability.
- 3.5 The performance of any equipment at the CUSTOMER site or 3rd party providers sub-contracted by CUSTOMER is excluded in the determination of Service availability. EMnify will use best efforts to provide uninterrupted radio network access.

#### 4. **Monitoring**

- 4.1 The performance is measured for the following Segments: PLATFORM, API and Network Elements
  - 4.1.1 The PLATFORM gives CUSTOMER access to the SERVICE. The functionality of the PLATFORM consists of API and GUI and is specified in the current version of EMnify's SERVICE DESCRIPTION.
  - 4.1.2 Network Elements include GRX/IPX network, SCCP and Internet Connectivity, as well as Core Network Components.
  - 4.1.3 CUSTOMER can check the performance of the Service and subscribe for updates via the EMnify Status Page.

#### 5. **Incident Management**

- 5.1 Any Incident shall be classified into a specific level, namely either a Critical Incident or an Operational Incident. For the avoidance of doubt, all other CUSTOMER inquiries referring to general questions, subscription plans and/or the provided Services or the like, shall not be Incidents.

- 5.2 The CUSTOMER is obliged to notify any Incidents immediately after having become aware of it via the ticketing system.
- 5.3 EMnify handles Critical Incidents at any time of the day and Operational Incidents during Working Hours. EMnify will resolve Incidents as quickly as possible, to EMnify's best effort and to the extent technically feasible.
- 5.4 EMnify shall confirm receipt of an Incident notification by providing an assigned Incident ticket number to the CUSTOMER.
- 5.5 The duration of an Incident is calculated as the time expired between the notification of the Incident via the ticketing system and the confirmation by EMnify to the CUSTOMER that the Incident is cleared.
- 5.6 Incident Resolutions have to be confirmed or rejected by the CUSTOMER within (2) working days. If no answer is received within this time frame, Incidents will automatically be closed.
- 5.7 EMnify is only responsible for Incident Resolutions concerning its own network infrastructure. Incidents related to 3rd party network failures which are not sub-contracted by EMnify will not be considered as Incidents according to this SLO. The same applies to Incidents for which EMnify is not culpably (intent or negligence) responsible for.
- 5.8 In the case of Critical Incidents EMnify will share with the CUSTOMER relevant information about the root cause of the Incident via EMnify Status Page.

## **6. Service Support**

- 6.1 Service support is granted via the Help Center, the Community Forum, EMnify Status Page and the Webform Support (Ticket System)
- 6.2 Unless otherwise agreed by the Parties, EMnify grants the CUSTOMER the following standard service support:
  - 6.2.1 access to the Help Center (Knowledge Base)
  - 6.2.2 access to the Community Forum
  - 6.2.3 access to the Webform Support (Ticket System)



## **7. Term**

- 7.1 The term of this SLO (“SLO Term”) begins upon acceptance of the Order by EMnify pursuant to clause 2.1 of the Terms of Service. Its duration is dependent on the Tariff chosen by the Customer from the Tariff and Rate Zone Documentation.
- 7.2 The term of this SLO ends automatically when the Service is terminated or the Customer has upgraded the Service Level Obligations stipulated in this SLO to other Service Level Obligations (Business Service Level Obligations or Enterprise Service Level Obligations).

## **8. Upgrades and Downgrades of the SLO**

- 8.1 Customer is entitled to upgrade the Standard Service Level Obligations to Business Service Level Obligations or Enterprise Service Level Obligations at any time by submitting an Order Form requesting the upgrade. EMnify will confirm the upgrade and the time the upgrade enters into effect within 5 business days.
- 8.2 After an upgrade pursuant to clause 8.1, the Customer is entitled to downgrade the upgraded Service Level Obligations according to the provisions in the respective Service Level Obligations.

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