

GENERAL TERMS AND CONDITIONS

IQ mobile GmbH Communication Service Consultancy, Development and Distribution

I. GENERAL PART

1. Scope and subject of the contract

- 1.1. The IQ mobile Kommunikationsdienste Beratungs-, Entwicklungs- und Vertriebs GmbH (FN 282879z), Trabrennstraße 2A, 1020 Vienna ("IQ mobile"), provides for professional contracting partners („contracting partner“) as defined in § 1 Abs 2 of the Consumer Protection Act ("KSchG"), that are in a contractual relationship with business and/or endcustomers („customers“), services in the areas of (i) sales of products that make the transmission/reception of (Premium) SMS/MMS and video messages as well as the implementation of WAP-, Web, or online billing systems via mobile messaging platforms possible, (ii) the provision of consulting services in the context with mobile and internet-based communication services, (iii) the development and the trading with content of every kind, (iv) the support service of mobile communication and internet-based portal appearances and (v) the provision of research and development services for mobile and internet-based communications services on the following terms.
- 1.2. The subject of the contract is the provision of consulting services (for details see II.A.1), the formulation of comprehensive content concepts in the entertainment area (e.g. Content-Marketing, content selection inclusive the selection of order and payment systems, content purchasing and ongoing servicing of online and mobile content portals respectively) (see II.B.1.), the formation of video portals and the elaboration of video gateway solutions(see II.C.1.) as well as the supply of Messaging Gateways ("MGs") including the development of adequate mobile payment solutions (see II.D.1.).

- 1.3. IQ mobile enters a contract only according to its own terms. Differing terms and conditions of the contracting partner are only valid, as far as IQ mobile accepts them clearly in advance in written form.

2. Conclusion of the contract

- 2.1. The base for a contractual relationship between the contracting parties takes place on the grounds of a written offer of the contracting partner or a written offer of IQ mobile. As far as IQ mobile provides application forms for offers of contracting partners (at the most electronic), the applicant has to make use of these application forms.
- 2.2. Offers of IQ mobile, which include drafts of contracts that are forwarded to the contracting partner before the closing of the contract, are placed without any obligation and can therefore be understood as an invitation to the contracting partner to make an offer.
- 2.3. Contractual relationships between the contracting parties are closed for a definite or indefinite period of time and become effective with the signature of both contracting parties, as long as no differing agreements were made.

3. Scope of services

- 3.1. IQ mobile provides all present and future services („services“) according to the applicable legal requirements, these terms and conditions and the Mobile Consulting-, Mobile Entertainment-, Mobile Video-, Mobile Messaging-(Mobile Access contracts included) contracts ("contracts") that affect the articles that are mentioned under 1.2 in these terms. If these terms and the contracts contradict, the contracts have priority.

- 3.2. Possibly enclosed price plans to the contracts are binding for the contracting partners in the current relevant version and are available for inspection at the office of IQ mobile and can be requested as an electronic document.
- 3.3. The provision of services by IQ mobile may be disrupted temporarily or impaired by unforeseen or extraordinary circumstances as well as by necessary technical measurements or for prevention of breakdowns. Such disruptions and impairments will be eliminated by IQ mobile as soon as possible and do not represent a deficiency of services. This applies also for disruptions and impairments that were caused by third parties (e.g. Mobile network providers or internet service providers). IQ mobile is not liable for disruptions of the transmission performance that are caused by atmospheric, geo-graphical, constructional or other not by IQ mobile caused conditions.
- 3.4. As long as a case of force majeure is on hand, the contracting parties are exempted from the fulfilment of their mutual contractual obligations. As cases of force majeure apply for the purpose of this contract especially official orders, collective action measures, also in companies that are taken use of by IQ mobile to fulfil its contractual obligations, the breakdown of transportation or energy, the unforeseen failures of delivery by suppliers as well as other incidences that are not in the area of influence of IQ mobile such as armed conflicts, natural catastrophes and terrorist attacks that make the provision of the contractual obligations impossible or unreasonable.
- 3.5. The contracting partner is taking notice that he is responsible for the responses of all questions of the customers to the of the contracting partner's announced or provided services and IQ mobile will be indemnified and hold harmless of all claims, out of the violation of the duty to supply information towards customers, of third parties, that include contracting partners of IQ mobile („contracting partner IQ mobile“).
- 3.6. IQ mobile will inform the contracting partner of possible changes and extensions of arranged video gateways („VGs“) and platforms. The contracting partner is not allowed to cede the use of the VGs and video platforms that were installed by IQ mobile to third parties.
- 3.7. IQ mobile is authorized to use third parties to fulfil its contractual obligations.
- 4. Obligations of the contracting partner**
- 4.1. The contracting partner obligates himself to use the products and services delivered by IQ mobile only according to these terms and conditions and contracts. In this process, the contracting partner has to adhere to the responsibilities of IQ mobile proportional to the respective contracting partner IQ mobile, as far as they are referred to in these terms and conditions or in contracts.
- 4.2. The contracting partner is obligated to abstain from activities in the commercial intercourse that impinge or may impinge on the commercial reputation and/or the credit rating of IQ mobile or the contracting partners of IQ mobile. The contracting partner is prohibited to use labels of contracting partners IQ mobile that are proprietary in terms of company, brand, originator and/ or competition laws without prior written approval of IQ mobile and the particular contracting partner IQ mobile.
- 4.3. The contracting partner is not allowed to publish or let publish illegal content via the application, VGs and video portals that were implemented by IQ mobile. That includes in Austria especially content that violates the criminal code (Strafgesetzbuch „StGB“), the pornography act (Pornographiegesetz „PornoG“), the prohibition act (Verbotsgesetz „VerbotsG“), the Equal Treatment Act (Gleichbehandlungsgesetz „GIBG“), the data protection act (Datenschutzgesetz „DSG“), the telecommunications act (Telekommunikationsgesetz „TKG“) including the communications parameter-, price- and value added services regulations (Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung "KEMV"), the laws against unfair competition (Gesetz gegen den unlauteren Wettbewerb „UWG“), the consumer protection act (Konsumentenschutzgesetz „KSchG“), the e-commerce act (E-Commerce Gesetz „ECG“) or the gambling act (Glücksspielgesetz „GSpG“) (all available at www.ris.bka.gv.at), as well as content, that if it is published can be used to endanger the public policy and security as well as the moral and healthy

development of children and adolescents. Furthermore the contracting partner obligates himself to take care that via the applications, VGs and video portals, implemented by IQ mobile no protected content is published that violates the regulations according to the copyright law (Urheberrechtsgesetz „UrhG“) or other intangible asset protection regulations, as far as no written permission and/or declaration of approval of all holders of rights are existent. At last the contracting partner will do its best to comply with the code of conduct that can be downloaded from the homepage of IQ mobile (www.iq-mobile.at).

- 4.4. IQ mobile is authorized to delete content that violates against the requirements of 4.2 and 4.3 after prior notification of the contracting partner. At reasonable suspicion of realization of a criminal and/or administrative penalty matter of facts, IQ mobile is allowed to delete mobile data of the contracting partner even without prior notification.
- 4.5. The contracting partner obligates himself to protect the personal rights and the industrial property rights of third parties while using the services provided by IQ mobile. The contracting partner has to conduct law suits on his own costs, that arise from the enforcement of proprietary right violations of third parties, and has to indemnify and hold IQ mobile harmless in respect to related disadvantages of the legal proceedings.
- 4.6. The contracting partner has to notify IQ mobile immediately in written form of all changes of his address, the business, the business location, his address of account as well as the legal form.
- 4.7. The contracting partner is liable towards IQ mobile for the compliance of 4.1 to 4.3 and 4.5 by his customers and will indemnify and hold IQ mobile harmless in respect to all disadvantages that were caused by violations of these regulations.
- 4.8. The contracting partner indemnifies and holds IQ mobile in matters of indemnification claims of third parties or penalties under public law on the grounds of violations of an obligation arising from these terms and conditions or the contracts harmless, independent of whether these claims or penalties are based on violations of the contracting partner or customers. Of the obligation of the contracting partner to indemnify and hold IQ mobile harmless, the costs that arise from the expenditures for the

repair of impairments by the contracting partner IQ mobile as well costs that arise from processing and answering of requests of third parties are taken into account.

- 4.9. If the behaviour of the contracting partner or the behaviour of the customer that can be assigned to the contracting partner already caused damages to IQ mobile of at least EUR 8,000 or a reasonable suspicion is existent that the arrival of damage events in this dimension is imminent, IQ mobile is authorized to ask the contracting partner in the interest of assuring possible further indemnification claims, to contract a liability insurance.
- 4.10. IQ mobile is authorized to make the further provision of services dependent on a prepayment or a bank guarantee (in the magnitude of the sum of the last four invoice amounts), if the contracting partner is in default with the payment of fees that are due despite dunning letter and specification of an adequate grace period.
- 4.11. The contracting partner obligates himself during and until the expiration of three years after the termination of a contractual relationship that was directed on the pro-vision of services described in detail in 1.1.2 not to commit to any business relation with individuals or legal entities, which IQ mobile uses or used to fulfil its contractual obligations. The contracting partner will especially not assign these persons with the provision of the same or similar services, that are offered by IQ mobile as well, and will indemnify and hold IQ mobile harmless for all disadvantages that were caused by violations of these terms.
- 4.12. The contractual partner authorizes IQ mobile to release information on processed campaigns of the partner respectively his client for marketing purposes. Publications of campaigns in press releases are only carried out after explicit approval by the contractual partner respectively his client.

5. Fees and payment conditions

- 5.1. As far as these general terms and conditions and contracts do not make other differing provisions, the price levels for the services are calculated according to the price lists that are valid at the time of the service provision. The prices stated in that list are indicated without VAT (Umsatzsteuer, „UST“). IQ mobile is authorized to change the prices,

especially for the purpose of adjustment of price changes of contracting partners IQ mobile. IQ mobile will inform the contracting partner about the essential content of every not exclusively promotive change at least a month before coming into effect in written form (e.g. by imprint on a periodically issued invoice, by mail, etc.). At the same time, IQ mobile will inform the contracting partner that he is authorized to terminate the contracts that are affected by the price change without costs, with effect at the point in time when the price changes are coming into effect.

- 5.2. For the invoice for the services of IQ mobile, the data collected by IQ mobile is relevant.
 - 5.3. All amounts billed to the contracting partner are due within ten days after the receipt of the invoice free of costs. Relevant for the timeliness is the date of the credit note on the account of IQ mobile indicated on the invoice.
 - 5.4. At delay of payment, IQ mobile charges the contracting partner interest for delay amounting to eight percentage points above the respective basis interest rate at the due date (3-month EURIBOR) as well as all costs, expenses and cash expenditures that are necessary for the adequate litigation of claims.
 - 5.5. Objections to the billed amounts have to be claimed by the contracting partner in written form within two weeks from the delivery of the invoice. With the expiration of the deadline, the customer of the services, who did not make any objections against the billed amounts, accepts the correctness of the receivables of IQ mobile in principle and in the amount.
 - 5.6. In the case that the assessment of the contested amount give no reason for recalculation, IQ mobile is authorized to charge the interest for delay, mentioned in part 5.4 from the due date indicated in the invoice.
 - 5.7. Irrespective of part 5.5, the right of the contracting partner to close or to reduce his liabilities by offsetting his own receivables against receivables of IQ mobile is excluded, except in the case of illiquidity of IQ mobile or for counter claims that are in a legal context with the liability of the contracting partner.
 - 5.8. The right of retention and/or the right of refusal of services of the contracting partner are excluded.
 - 5.9. Payments that arrive at IQ mobile amortize prior interest for delay, interest and execution costs as defined in part 5.4. Subsequently, the bills receivable, starting with the oldest, will be amortized.
 - 5.10. Orders can be cancelled free of charge until 15 business days before the projected start date (e.g. the start date of a media booking, the development or service creation, the activation of an SMS/MMS delivery, etc.). Should the customer cancel later than 15 business days before the projected start date, they will be charged 80 % of the total contract value.
- 6. Duration of the contract and termination**
- 6.1. All contracts with the exception of Mobile-Consulting-Contracts (part II.A) can be terminated by the end of the quarter without any reason by IQ mobile as well as by the consumer by observing the period of notice of 3 months. Notice has to be given written by registered letter. The contracting partner waives his right of ordinary termination for the period of 12 months beginning with the coming into force of the contracts mentioned at the beginning.
 - 6.2. All contracts with the exception of Mobile-Consulting-Contracts (part II.A) can be terminated for an important cause by both contracting parties with immediate effect. Such important causes are particularly on hand if:
 - 6.2.1. bankruptcy proceedings or settlements are opened over the property of one contracting party or a proceeding under article 5 Company Reorganisation Act (Unternehmensreorganisationsgesetz, "URG") is initiated or a petition in bankruptcy is rejected due to lack of assets;
 - 6.2.2. the financial situation of one contracting party gets that worse that there are serious concerns of the continuation of the business operations;
 - 6.2.3. one of the contracting parties does not fulfil its contractual obligations despite an effected dunning letter with a threat of termination of the contract under a grace period of 5 days. The 5 day period for the removal of the contract breaching behaviour starts with the reception of a written notice sent by letter, fax or E-Mail. A reasonable suspicion of committing a criminal act

as defined by part 4.2 or 4.3, as well as a breach of the parts 4.1. to 4.3, 4.5 and 4.11 entitles IQ mobile to terminate the contract without setting a grace period;

- 6.2.4. the contracting partner violates his contractual or legal duties, that intend to ensure the functioning of the services provided by IQ mobile or the protection of rights of third parties;
 - 6.2.5. the contracting partner harasses, threatens or harms costumers through distribution of contents as defined in part 4.1. to 4.3, 4.5 and 4.11;
 - 6.2.6. IQ mobile shuts down its business or loses its necessary authorization and licences for the provision of its services due to orders of the court or a regulatory authority;
 - 6.2.7. the contracting partner causes or threatens to cause serious harm to the business reputation of IQ mobile;
 - 6.2.8. violations of the contracting partner against the standards of the closed contracts between IQ mobile and the contractual partner, that lead to the discontinuation of services of a contracting party IQ mobile to IQ mobile;
 - 6.2.9. it is impossible or unacceptable for IQ mobile to continue the contractual relation with the contractual party due to the occurrence of reasons, that are not within the sphere of IQ mobile;
 - 6.2.10. the contracting partner refuses to conclude indemnity insurance, to fulfil a payment in advance or to place a bank guarantee in face of the existence of the in part 4.9. and 4.10 specified conditions;
 - 6.2.11. rival businesses of IQ mobile purchases a participation of the enterprise of the contracting partner so that they have the majority of the voting rights of the associates, the right to appoint or to withdraw the members of the administrative-, management- or supervisory body, or the right to exert a dominating influence on the enterprise of the contracting partner. "Rival businesses" in these general terms and conditions are all natural or legal persons that operate in Austria or in a foreign country in the field of SMS/MMS-distribution, mobile marketing, mobile consulting, mobile video, mobile entertainment and/or other forms of appearance of mobile commerce.
- 6.3. The occurrence of an important reason in the sense

of part 6.2 entitles IQ mobile to block the access of the contracting partner to MGs, VGs and video portals of IQ mobile immediately without prior notice and to refuse the transmission or the reception of data sets from/to the contracting partner. An, according to the circumstances in the moment of its realisation justified, interlock does not entitle the contracting partner to any claims of indemnity or warranty against IQ mobile.

- 6.4. If IQ mobile terminates one of the contracts mentioned in part 6.1 for an important reason as defined in part 6.2 within the first year beginning with the coming into force of the contract, the contracting partner is committed to pay all base fees that arise during the year after the termination and the fees that arise for compensation for services rendered for a minimum turnover. IQ mobile indicates that a blockade of applications, VGs and video portals can be effected at any time by a contracting partner IQ mobile, if the contracting partner violates any clause of the contract concluded between IQ mobile and a contracting partner IQ mobile or the contracting partner IQ mobile is bound to do so by an official directive or by a contract with a foreign operator. In that case any liability and warranty of IQ mobile is excluded.
- 6.5. If IQ mobile terminates a contract (with exception of mobile-consulting-contracts in the sense of part II.A) due to of the contracting partner represented reasons according to part 6.1 in these terms and conditions with immediate effect and cease its activities, the contracting partner has to indemnify and to hold the contracting partner IQ mobile harmless in respect of legal proceedings and claims of third parties, that are attributed to the necessity to purchase substitute content.

7. Immediate cessation of services

- 7.1. IQ mobile has the right to cease its activities temporarily fully or partially without any previous ordinary or extra-ordinary termination of the contracts (except mobile-consulting-contracts according to part II.A), in particular to block the access of the contracting partner to applications, VGs and video-portals of IQ mobile immediately without previous settlement, if
 - 7.1.1. there are reasonable indications for the

occurrence of an important reason I according to parts 6.2.1 to 6.2.11;

- 7.1.2. the contracting partner violates his duties imposed by part 4 and therefore causes a loss or impairment of performance;
- 7.1.3. the contracting partner or clients who use services or data excessively, improperly or unconstitutional, independent of whether the excessive, improper or unconstitutional use is related to applications or systems provided by IQ mobile or other (internet)-systems;
- 7.1.4. the continuation of the contractual relation between IQ mobile and the contractual partner is impossible or un-acceptable for reasons that are not in the sphere of IQ mobile;
- 7.2. IQ mobile will continue its services immediately as soon as the conditions of part 7.1 are removed. Any liability of IQ mobile for a cease of services is excluded.

8. Liability

- 8.1. The liability of IQ mobile conforms with the Austrian civil law code (Allgemein Bürgerliches Gesetzbuch, "ABGB), as far as these general terms and conditions do not deter-mine other provisions. The liability of IQ mobile for slight negligence of property damages as well as every liability of IQ mobile of financial damage, loss of profit and other consequential damages is excluded.
- 8.2. Without prejudice to point 8.1, the liability of IQ mobile of property damages caused by gross negligence is limited to the business liability insurance closed by IQ mobile in the relevant version at the moment of the damage to the maximum amount mentioned per damaging event per year. For property damages caused through stark gross negligence IQ mobile is liable for a maximum of EUR 5.000,- per damaging event and for a maximum of EUR 20.000 ,- for the year of the damaging event as well as the totality of the injured person with a maximum of EUR 200.000 ,- per damaging event and a maximum of EUR 250.000 per year where the damaging event occurred. If the total damage exceeds these maximum limits, the damage claims of every injured party are reduced pro-rata.
- 8.3. IQ mobile is not liable for the content of data transferred via its services or for the content of data

that is accessible through its services, as far as the data is not provided by IQ mobile. In particular IQ mobile is not liable for damages caused by data developed by the contracting partner or a third party that is sent/ provided via VGs or video-platforms provided by IQ mobile. If IQ mobile is prosecuted by a third party for services provided by the contracting party, he indemnifies and holds IQ mobile harmless as far as the relevant content was not delivered by IQ mobile.

- 8.4. IQ mobile is not liable for damages based on acts of third parties or impacts on machines installed by the contracting partner. Cases of force majeure do not cause liability for damages of the contracting partner as defined in part 3.4.
- 8.5. IQ mobile is neither liable for the operational reliability of the data transmission network nor for damages that happen because of missing or insufficient service provision of the contracting partner IQ mobile.
- 8.6. IQ mobile does not assume liability for damages that occur to the contracting partner because licences, per-missions or concessions and/or declarations of consent of third parties were not issued or withdrawn.
- 8.7. IQ mobile will keep content provided by the contracting partner confidential and together with contracting partners of IQ mobile, IQ mobile will undertake all reasonable efforts to avoid that unauthorized third parties get access to content distributed over IQ mobile serial interfaces or other applications. For damages that occur to the contracting partner or to a customer through unlawful access of third parties that resolve state-of-the-art safety precautions, IQ mobile does not assume liability.
- 8.8. Claims for damages of the contracting partner can only be enforced at court within 6 months beginning with no-tice of damage and injuring party, at the latest within 3 years after the occurrence of the claim-justifying event.
- 8.9. The contracting partner has to prove that the occurred damage is attributed to the default of IQ mobile.
- 8.10. Be it that IQ mobile exercises its contractual duties with the help of a third party and in this context warranty or indemnity claims are asserted against this third party, IQ mobile will transfer this title to the

contracting partner. The contracting partner has to stick prior to the third party.

9. Warranty

- 9.1. IQ mobile provides its contractual owed services under due diligence, reliability and availability. As far as in these general terms and conditions or contracts nothing else is explicitly agreed, every warranty - as far as lawful possible - is excluded. In every case the warranty is limited to improvement and amendments.
- 9.2. In particular IQ mobile does not warrant that services are accessible without interruption that the desired connection is established at every time and that stored data stays conserved at any circumstance. Moreover IQ mobile does not warrant for the functionality of the data transmission network and for the service provision of contracting partners of IQ mobile.

10. Data protection

- 10.1. Data of the contracting parties:
- 10.1.1. Based on the data protection act (Datenschutzgesetz "DSG 2000") the contracting parties commit to determine, transfer and use personal data only within the service provision and within the purpose agreed in these general terms and conditions and contracts.
- 10.1.2. The contracting partner gives explicitly his consent that IQ mobile is allowed to use personal data of the contact person, as address, branch, mode of payment, name, last name, academic degree, date of birth, telephone- or fax number and e-mail address.
- 10.1.3. The contracting partner gives explicitly his consent that IQ mobile is allowed to ask questions concerning his person to the commercial credit evidence of the credit reference association from 1870 or to another creditor protection body. Furthermore the contracting partner gives explicitly his consent that IQ mobile is allowed to transfer personal data for the examination of his solvency and/or data that are necessary for the collection of the invoice value, in particular data concerning the agreed credit limit and the open account balance as well as (in case of delayed

payment) dunning data of the contracting partner to lawyers and collection agencies.

- 10.1.4. As far as these general terms and conditions and contracts do not make any arrangements, the contracting parties commit to maintain silence about commercial, personal and technical issues concerning the other contracting party and not to hand on these data to third parties.
- 10.1.5. A revocation of this consent through the contracting partner is possible at any time and causes the inadmissibility of the further use of data.
- 10.2. Data of the costumers:
- 10.2.1. It is noted by mutual agreement that the contracting partner is the contracting body for data security and IQ mobile is the service provider for data security in sense of section 10 data protection act (DSG 2000) with regard to personal data of the clients, in particular the processed master-, content- and traffic data. IQ mobile is therefore authorized to retrieve personal data of the customers within the scope of the service relation for the contracting partner.
- 10.2.2. IQ mobile commits to use data and processing results exclusively within the order of the contracting partner and to return them exclusively to him or to transfer them exclusively after a written request. Likewise, an utilisation of entrusted data for personal use of IQ mobile requires a written request. If a customer objects his bill or does not pay the invoice amount, the contracting partner hereby empowers IQ mobile to transfer all customer master-, content- and traffic data (particularly log-files) to the invoice issuing contracting partner for the purpose of collection.
- 10.2.3. IQ mobile declares legally binding that it obliged all with the data processing charged people to observe data secrecy in sense of section 15 data protection act (DSG 2000) before starting their occupation. In particular the confidentiality obligation of the people charged with the data transfer also remains in force after a termination of the working relationship and resignation from IQ mobile. The obligation of confidentiality has to be kept also for data of juridical persons and civil companies.
- 10.2.4. IQ mobile declares legally binding that it

undertook sufficient security measures according to section 14 data protection act (DSG 2000) to prevent disorderly use of data and access by unauthorized persons.

- 10.2.5. IQ mobile is allowed to choose another enterprise for the execution of processing without consent of the contracting partner. IQ mobile has to inform the contracting partner of its intention to subcontract its processing in a timely manner to make it possible for him to prohibit the envisaged subcontracting. Moreover a contract between IQ mobile and the subcontractor has to be concluded according to section 10 data protection act (DSG 2000). In that contract IQ mobile has to ensure that the subcontractor has to enter the same commitments as IQ mobile following these general terms and conditions und contracts.
- 10.2.6. IQ mobile takes all precautions for the technical and organisational requirements in such a way that the contracting partner can meet the requirements according to section 26 (right of access) and section 27 (right of rectification or cancellation) data protection act (DSG 2000) within the legal deadline at any time and leaves all necessary information to the contracting partner.
- 10.2.7. After the completion of the service(s) IQ mobile shall be obliged to provide the contracting partner with all data processing results and documents that contain data and/or, at the contracting partner's expense, to keep them protected from unauthorized inspection or destroy them as instructed.
- 10.2.8. The contracting partner is bound to inform IQ mobile immediately about modifications and supplementary provisions of the data protection act (DSG 2000). The contracting partner shall give IQ mobile an applicable time to adjust to changed data protection.
- 10.2.9. Regarding the processing of the data provided by the contracting partner, the contracting partner shall be granted a right to inspect and monitor the data processing facilities. This right of inspection shall be limited to business hours and shall be exercised with the highest possible level of protection of the business facilities of IQ mobile. IQ mobile commits to provide the contracting

partner with all information required for checking compliance with the obligations named in this agreement.

- 10.2.10. Moreover it is determined by mutual agreement that the contracting partner shall be obligated to comply with all provisions under data protection law, including the Telecommunication Act 2003 (Telekommunikationsgesetz, TKG 2003) and the Data Protection Act (DSG 2000). This obligation shall refer in particular to the requirements to delete master-, traffic- and con-tent data and to comply with the clients request for information, correction, objection and withdrawal. Where required the contracting partner shall obtain the necessary consent of the client for data processing (including the storing of data content). In this context, IQ mobile shall act exclusively on the instructions of the contracting partner and under his sole responsibility.
- 10.2.11. The contracting partner shall indemnify and hold IQ mobile harmless for any and all claims of third parties (including customers) or public law penalties imposed as a result of the use of data in breach of data protection provisions.
- 10.3. Data security: IQ mobile shall take all technically feasible and economically reasonable measures in order to guarantee data security, including the protection of stored data from unauthorized access of third parties. Should third parties nevertheless succeed in illegally obtaining access to the data stored with IQ mobile and/or use such data, the liability of IQ mobile is excluded.
- 10.4. Transfer of data to facebook: The website of IQ mobile uses the so-called "like button" of the social network facebook. During your visit to our website your internet-browser automatically establishes a connection with the server of facebook. Facebook transfers the content of the like button directly to your browser and your browser embeds it in the website. At the call of the like button the following data will be transferred to facebook, if you are not a registered facebook user or if you as a registered member are not logged in while visiting our website: Your IP-address and browser string, the address of our website as well as the ID for our website provided by facebook, runtime environment of your browser, your screen re-solution, the language and the installed browser plugins as well as an ID

installed via a facebook cookie that is valid for 2 years. If you are logged in to your facebook account during your visit at our homepage your like button will be personalized and you will be authenticated via facebook cookies. You can find the facebook privacy policy at: <http://de-de.facebook.com/policy.php>

11. Contractual penalty

- 11.1. If the contracting partner continues to breach important contractual obligations, in particular obligations according to parts 4.1. to 4.3 and 4.5 as well as 4.9 to 4.11, after receiving a written warning of IQ mobile and after letting go by a 3 days deadline, the contracting partner has to pay EUR 1.000,- irrespective of negligence for every day that he continues the breach, beginning with the day after the expired deadline, with a maximum limit of EUR 25.000,-, to IQ mobile. Assertions of further claims, in particular (because of violation of contract of a contracting partner) through the application of penalties towards damages due to IQ mobile remain unaffected.
- 11.2. Customer complaints based on violations of legal or contractual provisions that are attributed to the sphere of the contractual partner, empowers IQ mobile to invoice the additional expenditures with a lump-sum of EUR 50,- per case. Further reaching compensation claims shall not be affected.

12. Industrial property rights

- 12.1. Copyrights, exploitation rights and related intellectual property rights as well as other intellectual or industrial property rights to creations, database works and data-bases created by IQ mobile, IQ mobile employees and/or third parties commissioned by IQ mobile, as well as to other work results protected by intellectual or industrial property rights, shall remain with IQ mobile and may only be used by the contracting partner during the duration of the consultancy relationship to the extent that IQ mobile has authorized the contracting partner in written form. Notwithstanding such authorization, the contracting partner shall in particular not be entitled to reproduce and/or disseminate the creations, database works and databases created by IQ mobile, IQ mobile's employees and/or third parties commissioned by IQ

mobile or other work results protected by intellectual or industrial property rights without the prior express consent of IQ mobile. IQ mobile shall not be liable to third parties for unauthorized exploitation of the above intellectual or industrial property rights on the part of the contracting partner.

- 12.2. Every breach of contract of the contracting partner of part 6.2 empowers IQ mobile to terminate the agreement specified in part 1.1.2 for an important reason, to assert contractual penalties regulated in part 1.11 as well as further legal and contractual claims.

13. Miscellaneous

- 13.1. The contracting parties shall waive all claims of errors and *laesio enormis*.
- 13.2. Amendments and additions to this contract shall only take effect if made in written form. Further additional oral agreements between the contracting parties were not taken. Any change of the requirement of written form also requires the written form.
- 13.3. The contracting partner is only empowered to transfer rights and obligations under this contract to third parties with their consent after previously written permission by IQ mobile. This principle shall also apply to the contracting partner's granting of rights of use to third parties in respect of rights granted to or services rendered to the contracting party by IQ mobile.
- 13.4. IQ mobile shall be entitled to transfer rights and obligations under these contracts to affiliated companies and group companies within the meaning of section 244 paragraph 2 Commercial Code (*Unternehmensgesetzbuch*, "UGB").
- 13.5. Unless otherwise provided for in this or in other contracts, the connection of the infrastructure of the contracting party to the infrastructure of IQ mobile shall not give rise to any rights of the contracting parties to the infrastructure of the respective other contracting party.
- 13.6. Notifications made by fax or e-mail shall be deemed as written, unless otherwise is provided in these contracts. Deadlines shall be deemed as met if documents, facsimiles or e-mails containing declarations subject to a deadline are received by the recipient within such a deadline. Approvals of a

contracting party required under these general terms and conditions and contracts shall be obtained in written form and stamped and signed by the approving party prior to taking the action that needs to be approved.

- 13.7. The contracting party shall act on its own name, for its own account, and its own risk.
- 13.8. These general terms and conditions and contracts shall constitute a comprehensive contractual framework of rights and obligations of the contracting parties. The contracting parties have not entered any additional agreements. Any additional agreements made prior to or at the conclusion of the contract will become ineffective with the signature of the contracting parties.
- 13.9. If any provision of these general terms and conditions is held to be invalid or unenforceable, it shall not affect the validity of the other provision of these general terms and conditions. The contracting parties agree to replace in-valid or unenforceable provisions by provisions which come as close as possible to the economic purpose of the invalid or unenforceable provisions and the original intent of the contracting parties.
- 13.10. If any contract charges apply, they have to be covered by the contracting party.
- 13.11. These general terms and conditions and contracts shall be governed by, and interpreted in accordance with, Austrian law. The contracting parties, by mutual consent, exclude the applicability of the UN Convention on Contracts for the International Sale of Goods and the conflict-of-law provisions.
- 13.12. All disputes arising between the contracting parties and/ or their legal successors that arise from or results in connection with these general terms and conditions or contracts, including any and all issues regarding the existence, validity, or termination of these general terms and conditions or contracts, shall be settled exclusively by the competent court in Vienna which has subject-matter jurisdiction.

II. SPECIAL SECTION

A. MOBILE CONSULTING

1. Subject of the contract

- 1.1. IQ mobile has many years of market experience in the area of mobile messaging, mobile

entertainment, mobile video as well as mobile research and development and is part of a Europe wide network of concerned with questions of mobile- and web-based service providers, consultants and representatives of authority. Furthermore IQ mobile stays in close cooperative relationships with various universities specialized in mobile services. Based on this professional background, IQ mobile offers consultancy services to the contracting parties related to mobile and web based communication services (e.g. knowledge transfer) and related questions of economic (e.g. cooperation with research facilities), legal (support in the setting up and execution of legal mobile services in the EU area) and technical nature. Moreover IQ mobile supports the contracting parties in project management and with research and development of projects via mobile or web based communication services.

2. Consultancy contract

- 2.1. The scope of each particular consulting assignment shall be individually agreed by contract between IQ mobile and the contracting party.

3. Cooperation duties of the contracting partner

- 3.1. The contracting partner shall ensure that during the consulting assignment, the organizational conditions at the headquarters are beneficial to the consulting process to proceed in a timely and undisturbed manner.
- 3.2. The contracting partner shall inform IQ mobile in detail about previously conducted and/or currently active consulting projects, including those in other areas of competency.
- 3.3. The contracting partner shall, in a timely manner and without special request of IQ mobile provide IQ mobile with all documents necessary to fulfil and perform the consulting assignment and shall inform it of all activities and conditions pertinent to the performance of the consulting assignment. The information duty shall cover circumstances that appear during the consultancy of IQ mobile or to a later point as well.

4. Securing independence

- 4.1. The parties are mutually obligated to take all necessary precautions to avoid influences between employees of IQ mobile and third parties authorized by IQ mobile. This commitment particularly extends to the prohibition of employment of third parties commissioned by IQ mobile through the contracting partner and the takeover of orders of the contracting partner.

5. Duty to report

- 5.1. IQ mobile is obligated to inform the contracting partner constantly about its progress over the rendered service performance.
- 5.2. During the implementation of the given service contract, IQ mobile shall act independently and on its own responsibility.

6. Provision of the agreed consulting services

- 6.1. After the accomplishment of the consulting contract, a consulting fee is due to IQ mobile according to the agreement with the contracting partner. IQ mobile is authorized to ask for a down payment of up to 50% of the agreed consulting fee. IQ mobile is further authorized to render partial accounts, according to the consulting advancement.
- 6.2. Incidental cash expenditures, costs and travel expenses, etc. of IQ mobile have to be substituted additionally according to the consulting fees mentioned in part 6.1, after accounting exposure
- 6.3. If the provision of the consulting services is omitted because of reasons that are in the sphere of the contracting partner, or following an authorized termination of the consulting relation by IQ mobile, IQ mobile is further authorized to ask for the payment of the whole agreed consulting fees less saved expenditures. When an hourly fee was agreed, the contracting partner is committed to pay the consulting fees for the number of hours that would have been necessary to complete the agreed consultancy services less saved expenditures of IQ mobile. As saved expenditures 20% of the consulting fees for the services, that IQ mobile and/or of IQ mobile assigned third parties up to the occurrence of the (further) provision of agreed consultancy services conflicting obstacles in the sphere of the contracting partner or the day

of an early termination of the consulting relation by IQ mobile not yet provided, are agreed as a flat rate.

- 6.4. If the signatory does not fulfil his obligation of paying the amounts stated in the partial invoices within the stated period of time, IQ mobile is set free of its obligation to provide further services. The enforcement of further, out of the non-payment resulting claims, is not touched by that.

B. MOBILE ENTERTAINMENT

1. Subject of the contract

- 1.1. Within the scope of the service "Mobile Entertainment", IQ mobile supports the contracting partner at the promotion, the selection and the acquisition of content inclusive the selection of convenient order- and payment-procedures and takes for the contracting partner particular steps or the management of the whole performance over including the ongoing support of online and accordingly mobile content portals and campaigns.
- 1.2. The rights and duties of the contracting parties in the connection with the provision of mobile entertainment services are regulated in separate written mobile entertainment contracts. Depending on the requirements of the contracting partner, such mobile entertainment contracts can be combined with other contracts.

C. MOBILE VIDEO

1. Subject of the contract

- 1.1. IQ mobile imparts for its distribution partner products that make the access to MGs for the transmission/ the reception of SMS and MMS/ by customers possible. With regard to this case, IQ mobile acts as an agent and for account of its distribution partners and enters mobile messaging contracts as an agent and for account of its distribution partners. The clearance of the accounts of all provided services because of such mobile messaging contracts will be carried out between the contracting partner and the respective distribution partner of IQ mobile.
- 1.2. Subject of the contract is the provision of an access point to the by IQ mobile operated video platform ("VP") for the purpose of provision of VMS between

the contracting partner and the customers that are connected in the networks of the mobile network providers.

D. MOBILE MESSAGING

1. Subject of the contract

1.1. IQ mobile imparts for its distribution partner products that make the access to MGs for the transmission/ the reception of SMS and MMS/ by customers possible. With regard to this case, IQ mobile acts as an agent and for account of its distribution partners and enters mobile messaging contracts as an agent and for account of its distribution partners. The clearance of the accounts of all provided services because of such mobile messaging contracts will be carried out between the contracting partner and the respective distribution partner of IQ mobile.

2. Claims out of the relation distribution partner-contracting partner

2.1. The contracting partner takes note that mobile messaging contracts (part II.D.1.1) came about indeed through the intermediation of IQ mobile, but were accomplished exclusively with one or more distribution partners of IQ mobile. Consequently, the contracting partner is, at a breach of the rights he is entitled to by the distribution partner of IQ mobile, because of the content of the closed contracts with the distribution partner of IQ mobile, not entitled to neither warranty claims nor compensation claims or other claims against IQ mobile.

E. BILLING OF MOBILE ENTERTAINMENT-, MOBILE VIDEO- AND MOBILE MESSAGING SERVICES

1. Demand oriented product design and billing

1.1. Be it that, that the in part I.3.1 named contracts or combinations of contracts include no contrary conditions, the modes of billing are aligned to the services covered by the contract according to one of the in this part 1.2 defined service categories.

1.2. For the purpose of these terms and conditions and the in part I.3.1 specified contracts are the following definitions decisive.

1.2.1. Own charged services are services that were

provided by IQ mobile independent of services of third parties and that can be billed independent of accounting steps of third parties (e.g. provision of an access point to a video platform; support of the contracting partner at the promotion, the selection and the acquisition of content). Third parties as defined in part II.E are natural and legal persons that are not subsidiaries or distribution partners of IQ mobile.

1.2.2. Partially external charged services are services whose provision by IQ mobile was fully or partially based on services that were provided by third parties and whose billing by third parties is prior to the billing of services provided by IQ mobile (e.g. Premium SMS transmission/ reception as additional service on the basis of the provision of a video platform access point). If in one of the in part I.3.1 specified contracts or in a contract that is combination of the contracts service elements that have to be assigned to different service categories as defined by part II.E.1, every service element is billed according to its service category.

1.2.3. Exclusively external charged services are services that are not provided and billed by IQ mobile, but by a distribution partner of IQ mobile (e.g. services on the basis of in part II.D.1.1 specified Mobile Messaging contracts).

2. Own charged services

2.1. IQ mobile will forward to the contracting partner at the beginning of the calendar month an invoice where the fees that aroused in the connection with own charged services are billed for the past month. IQ mobile bills the contracting partner in this invoice according to the current valid fee regulations (e.g. price lists).

2.2. The due dates of the in part 2.1 specified remunerations conform to part I.5.4.

2.3. IQ will transfer earnings that are due to the contracting partner in the context of provision of own charged services, until the 25th of the month following the service period to the account stated at the closing of one of the in part I.3.1 specified contracts.

3. Partially external charged services

3.1. IQ mobile informs the contracting partner monthly about the amount of the earnings according to the

contracts and the respective valid fee regulations (e.g. price lists) in the context of partially external charged services. The billing of partially external charged services is carried out at the end of the second following month of the service period. IQ mobile bills the contracting partner the owed monthly fee according to the valid fee regulations (e.g. price lists) and adds them up with the earnings due to the contracting partner as follows. If the earnings exceed the fees, IQ mobile transfers the net total of the generated earnings until the 25th of the second following month of the service period to the account specified in part 2.3. On the contrary, if the fees exceed the earnings, the payment conforms to the liabilities of the contracting partner according to the in part 1.5.3 and 4 determined principles.

- 3.2. For fee claims of the contracting partner towards customers of the contracting partner that occur by the usage of the by the contracting partner provided services by customers, IQ mobile does not guarantee. The contracting partner holds the risk of cashing and default of such claims independently

of the reasons why the claims cannot be recovered. The claim of the contracting partner of paying the net total (compare part 3.1) arises therefore the earliest at the date and in the extent when the customers who paid the corresponding claims of the contracting partner within their mobile service invoice and the corresponding values by the contracting partner IQ mobile (mobile network provider) were forwarded to IQ mobile. Any liability of IQ mobile towards the contracting partner for a not carried out clearing by the mobile network provider towards customers and/or for the transmission of the effected payments by the mobile network providers to IQ mobile is excluded.

4. External invoices

- 4.1. Services that are invoiced exclusively through external invoices are subject to the respective terms of the contract between IQ mobile and its co-contracting parties. Article 3.2, first and second paragraph are to be applied in their respective sense.