iBASIS Austria GmbH
BUSINESS SMS SERVICES TERMS AND CONDITIONS

VERSION: 29. NOVEMBER 2021 (ACT 01.12.2023)

1. GENERAL

1.1. Validity

a. These General Terms and Conditions for Business SMS Services (*hereinafter referred* ***to as "BSMS T&Cs")*** **shall apply as of 29 November 2021.**

b. These BSMS Terms and Conditions were updated on December 1, 2023 with the following changes:

- the company name was changed to "iBASIS Austria GmbH".
- The company logo has been replaced.
- The contact information of IBASIS (as a processor) in Appendix 1 to the BSMS GTC has been updated.
- Section 6.7.c. has been amended to include multiple currencies in the future. The threshold amount of previously EUR 125.00 has been changed to "the equivalent of EUR 125.00 in the currency shown on the invoice".
- In section 6.2, the terms of payment have been updated to the extent that the fees to be paid are not to be paid exclusively in euros, but in the currency previously agreed and shown on the invoice.

1.2. iBASIS Austria GmbH, a company registered under Austrian law under the laws of Austria under the Commercial Register of the Regional Court of Wiener Neustadt, Austria, with its registered office in Brunn am Gebirge, Austria, and its business address at Campus 21, Europaring F16/402, A-2345 Brunn am Gebirge, Austria (*hereinafter referred* ***to as "IBASIS")***) is a provider of telecommunications services and provides access to messages gateways of mobile network operators, including radio virtual network operators, aggregators and/or other entities authorised and/or licensed to provide mobile telecommunications services (*'**MNOs***') worldwide.

1.3. The partner is a trader or entrepreneur within the meaning of Section 1 (2) of the Austrian Consumer Protection Act.

1.4. IBASIS provides the Partner with its infrastructure (hereinafter referred to as the "***Messaging Hub***") for the acceptance, storage, processing and/or forwarding (transmission) of SMS messages (*hereinafter referred* ***to as "***SMS").

1.5. The Partner wishes to use the Business SMS Services of IBASIS in accordance with these BSMS Terms and Conditions in connection with the Order Agreement for Business SMS Services (*hereinafter referred to as the "**Order Agreement**"). The BSMS T&Cs together with the Order Agreement and any other agreements concluded in writing between IBASIS and the Partner (*together the "**Parties**", individually the "**Party***") form the entire contractual relationship (*hereinafter referred to as the "**IBASIS Agreements**"). The BSMS T&Cs together with the Order Agreement and any other agreements concluded in writing between IBASIS and the Partner (*together the "**Parties**", individually the "**Party***") form the entire contractual relationship (*hereinafter referred to as the "**IBASIS Agreements**").

1.6. Hierarchy. In the event of a conflict or inconsistency between individual provisions of the IBASIS Agreements, unless otherwise specified, the contradiction or inconsistency shall be resolved in the following descending order of precedence:

a. any additional agreements concluded between the parties at or after the establishment of the contractual relationship, which amends and/or supplements the terms of the contractual relationship.

b. the order agreement.

c. the BSMS GTC in their current version.

1.7. headings. Headings are for convenience only and have no influence on the interpretation or interpretation of these BSMS T&Cs.

2. SUBJECT MATTER OF THE CONTRACT, CONCLUSION & AMENDMENTS

2.1. subject matter of the contractual relationship. The subject matter of the Agreement is to provide access to message gateways of MNOs in order to enable the Partner to send and/or receive so-called application-to-person messages (or ***"A2P SMS")*** via the messaging hub in accordance with the terms and conditions contained in the IBASIS Contracts (*hereinafter the "**Business SMS Services**"*). It is expressly stated that the acceptance, storage, processing and/or forwarding (transmission) of so-called person-to-person messages (or ***"P2P SMS")*** are not covered by the Business SMS Services.

2.2. Establishment of the contractual relationship.

a. Unless otherwise expressly stated, all offers from IBASIS are subject to change and non-binding.

b. The contractual relationship shall be established on the date of the countersignature of the order agreement by the last party.

c. The BSMS T&Cs apply without exception to the Business SMS Services. Deviating, conflicting or supplementary terms and conditions of the Partner or a third party are invalid, regardless of when and in what form they were brought to the attention of IBASIS and only become part of the contract if and to the extent that IBASIS has expressly agreed to their validity in writing. Silence is by no means considered consent.

2.3. Modification and addition of the subject matter of the contract.

a. For each change or addition to the services to be provided by IBASIS or to the agreements made between the parties, a separate supplementary agreement must be drawn up and signed by the parties on behalf of the company. The extension of IBASIS's services to other countries only requires a simple written notification (e-mail is sufficient). Price changes will be communicated to the partner in writing (e-mail is sufficient).

b. IBASIS expressly reserves the right to make changes to these BSMS Terms and Conditions. IBASIS shall notify the Partner of the essential content of any changes that are not exclusively beneficial at least 1 (one) month before the change comes into force in written form (e.g. by e-mail or by printing it on a periodically generated invoice). The Partner is also informed of the date of entry into force of the changes and that he has the special right to terminate the contractual relationship with IBASIS free of charge at the time of the announced entry into force of the changes. The full text of the changes will be made available to the Partner.

c. Changes to these BSMS T&Cs by IBASIS shall be deemed to have been approved by the Partner,

i. in the case of non-detrimental or exclusively beneficial changes, if these are communicated to the Partner or at the latest at the time of the announced entry into force of the changes.

ii. in the case of changes that are not exclusively beneficial, if the latter does not object to the change in writing within a period of 1 (one) month after receipt of the corresponding notification.

iii. in the case of regulatory changes or changes that become necessary due to a regulation issued by a competent authority or an MNO, if these are communicated to the customer or at the latest at the time of the announced entry into force of the changes.

d. In the event of a timely objection by the partner within the meaning of the point 2.3.c.ii Pursuant to these BSMS GTC, the Partner has the special right to terminate the contractual relationship with IBASIS free of charge at the time of the announced entry into force of the changes. It is expressly stated that changes that become necessary solely as a result of a regulation issued by a competent authority (point 2.3.c.iii of these BSMS GTC), do not entitle the Partner to exercise this special right and to terminate the contractual relationship free of charge.

e. The Partner expressly acknowledges that with regard to changes resulting from a regulation issued by a competent authority or an

MNO (point 2.3.c.iii of these BSMS T&Cs), it is possible that these instances do not give IBASIS sufficient lead time to enable IBASIS to contact the Partner within the period specified in point 2.3.b specified in these BSMS Terms and Conditions of 1 (one) month of the changes. In this case, IBASIS shall be exempt from the obligation to comply with the notice period of 1 (one) month and shall notify the Partner of the change without undue delay upon receipt of the notification from the competent authority or MNO to IBASIS, while at the same time disclosing the effective date of the announced changes.

3. OBLIGATIONS OF THE PARTNER

3.1. If necessary, Partner shall be responsible for connecting to the Messaging Hub or the IBASIS Network and procuring, at its own expense, the necessary facilities, appropriate hardware and/or appropriate network equipment, and any related necessary facilities necessary for its access to the Messaging Hub or the IBASIS Network. Partner shall be liable for vicarious agents appointed by Partner as for its own fault.

3.2. The Partner undertakes to use the Business SMS Services exclusively for the contractually agreed purpose.

3.3. Partner is solely responsible for the account provided by IBBASIS, all activities conducted in connection with the account, and the accuracy of all information provided by or to Partner in relation to such account, including, but not limited to, contact details, technical data, or payment information. The Partner therefore protects the Account (including all access credentials and other credentials) and promptly updates all Account Information if it changes, and notifies of any unauthorized use of the Account and/or Login Credentials, as well as any related security breaches.

3.4. The Partner is solely responsible for ensuring that the traffic it sends complies with applicable laws and regulations, and therefore will not only familiarize itself with (and comply with) the legal and regulatory frameworks applicable to the sending of messages, but will also act accordingly and indemnify IBASIS from any disadvantages resulting from a violation of these provisions, unless IBASIS is responsible for the disadvantage. In addition, the Partner shall ensure that no content prohibited by law or the provisions of the IBASIS Agreements is disseminated and that morality, law and order, applicable legal provisions, rights of third parties (in particular property and personal rights) or trade practices are not violated.

3.5. The Partner is obliged to ensure that:

a. prior to sending each A2P SMS sent through the use of the Business SMS Services, the Partner has obtained the prior consent of the recipient of each A2P SMS prior to sending the relevant A2P SMS.

b. he/she has all rights/licenses in respect of any A2P SMS (including with respect to the content of the A2P SMS) sent using the Business SMS Services.

3.6. The Partner shall therefore ensure that neither it nor its customers do not use the Business SMS Services to send Prohibited Traffic. "***Prohibited Traffic***" includes, but is not limited to:

a. P2P SMS messages.

b. unsolicited, disorderly or fraudulent messages.

c. Messages containing content that may be considered objectionable, offensive (e.g., pornography, threats to national or international security, etc.), illegal, malicious, harmful, or capable of damaging in any way to any system, network, device, or infrastructure of IBASIS, an MNO, or an SMS recipient (e.g., messages containing viruses, Trojan horses, spyware or malware of any kind in general, or SMS that can be classified as SPAM).

3.7. The Partner shall at all times ensure that all agreements it enters into with its customers in relation to the Business SMS Services contain clauses prohibiting the sending of Prohibited Traffic. The Partner is obliged to do everything possible to prevent Prohibited Traffic from reaching the IBASIS messaging hub.

3.8. If the Partner (or any of its customers or its customers) nevertheless sends Prohibited Traffic to the IBASIS messaging hub, the following actions must be taken:

a. The party that determines that Prohibited Traffic has been sent shall immediately contact the other party and inform it that Prohibited Traffic has been sent.

b. The parties shall promptly make efforts in good faith and exchange information (with timestamp, content, destination number, and sender) to determine the source of the Prohibited Traffic as soon as possible after the incident.

c. If the Prohibited Traffic originates from a Customer of the Partner, the Partner shall immediately terminate or interrupt the connection with its customer from whom the Prohibited Traffic originated. The Partner shall ensure that no messages from this Customer can be sent through the Messaging Hub.

3.9. The Partner shall be liable for all claims, penalties, fines and disadvantages imposed on IBASIS by third parties or institutions due to the Prohibited Traffic sent by and/or through the Partner.

3.10. If the Partner violates the obligation not to send any Prohibited Traffic, IBASIS shall be entitled, at its sole discretion, to immediately suspend the Business SMS Services and/or the Partner's access to the IBASIS Messaging Hub until the breach has been fully remedied. This remedy is without prejudice to any claims for damages by IBUNut.

3.11. IBASIS may temporarily suspend the Business SMS Services for maintenance or update reasons (network changes or in case of emergencies) and will endeavor to inform the Partner as soon as possible. In the event of scheduled maintenance, the Partner must be informed in writing (e-mail is sufficient) at least 7 (seven) calendar days in advance, if possible.

3.12. The Partner expressly acknowledges that:

a. In the course of providing the Business SMS Services without the prior consent of the Partner, IBASIS is entitled to engage subcontractors, but only MNOs and technical service providers who enable IBASIS to provide the Business SMS Services in the relevant countries selected by the Partner.

b. the provision of the business SMS services offered by IBASIS by

i. the rules and regulations issued by the competent authorities, and

ii. the contractual relationships between IBASIS on the one hand and the relevant MNOs and corporate and other interest groups with which IBASIS has a contractual relationship on the other hand,

is regulated. Therefore, since IBASIS only acts as an access provider for the sending of SMS messages, the Partner exercises the same care in the use of the Services to which IBASIS has committed itself to the competent authorities, the MNOs or the economic and interest groups. The Partner shall indemnify and hold IBASIS harmless for all disadvantages incurred by IBASIS due to violations of this standard of care under the responsibility of the Partner.

c. the availability of the Services is also dependent on the availability of the transmission paths and switching paths of the MNOs or third parties. The Partner is expressly aware that the MNOs are entitled to change their services in the interest of the availability and functionality of their telecommunications facilities. Service interruptions or malfunctions the cause of which is not within the scope of responsibility of IBASIS shall not be considered a default.

d. IBASIS is entitled to make changes to its systems in order to keep them at the highest possible technical level. IBASIS reserves the right to adapt the specifications of its systems to new requirements. The Partner will be informed of such adjustments in writing in good time, but in any case at least 7 (seven) calendar days in advance (e-mail is sufficient). If necessary, the Partner shall be obliged to adapt its systems accordingly at its own expense within a reasonable period of time set by ISBASIS.

e. the services provided by IBASIS may be temporarily interrupted or impaired as a result of unforeseeable or extraordinary circumstances, as well as due to necessary technical interventions or measures, in particular to prevent disruptions.

f. if the content of an SMS submitted by the Partner for sending exceeds the maximum number of characters available for it, the content is divided by the messaging hub into several individual SMS, each of which is to be remunerated by the Partner or is only sent with the maximum possible number of characters/file size.

g. all ordered SMS are to be remunerated, even those that are not delivered, e.g. because the partner sent the SMS to a non-existent, non-active or non-identifiable address for ISBASIS.

3.13. Each party shall notify the other party as soon as reasonably practicable by email or telephone of any disruption to the use of the Business SMS Service that is notified to it or of which it becomes aware.

3.14. The Partner will keep accurate and complete records of the use of the Business SMS Services during the term of the Agreement and in accordance with the applicable rules and relevant laws. Upon request, the partner will provide IBASIS with copies of these records without undue delay. IBASIS or its representatives shall be entitled to submit such records to a service provider, MNO, regulatory authority, or other competent authority.

3.15. The Partner is responsible for paying the amounts due to IBASIS based on the agreed terms.

3.16. If an SMS sent via IBASIS does not originate from the Partner itself, but from a customer of the Partner (or its customers), the Partner is solely responsible to IBASIS for the conduct of this Customer (or its customers) and indemnifies IBASIS from any damages, costs and other disadvantages.

3.17. The Partner remains fully liable to IBASIS for the acts and omissions of its customers (or its customers' customers), employees, contractors, agents or third parties (whose acts and omissions shall be deemed to be the acts and omissions of the Partner). The Partner is obliged to provide IBASIS with all information about a Customer (or its Customers) and all SMS sent by it via the systems of IBASIS without undue delay, but no later than within 1 (one) business day.

3.18. The Partner is obliged to immediately notify IBASIS of any errors or defects in the Business SMS Services that it has discovered after its provision or that it should have discovered by examination in the course of normal business operations. If no complaint is made, the services provided by IBASIS are deemed to have been approved or accepted. The assertion of warranty or damage claims (including consequential damages), including the right to complain about failures due to errors, are excluded in these cases.

4. BARRIER

4.1. If the Partner violates these BSMS T&Cs or any provision of the IBASIS Agreements, or if there is an important reason within the meaning of the point 7.3 of these BSMS Terms and Conditions, IBASIS is entitled, at its sole discretion, to take action against the Partner immediately and without further notice.

4.2. The following measures may be considered:

a. the deactivation or blocking of the Services for the Customer.

b. the complete suspension of the account provided by ISBASIS.

The measure depends on the seriousness of the partner's infringement and remains in place at least until the violation has been remedied by the partner and any risk of recurrence has been eliminated.

4.3. The right of IBASIS to extraordinary termination for good cause pursuant to point 7.3 These BSMS GTC remain unaffected by this as well as the assertion of other claims. Other obligations of the partner also remain unaffected by a blocking or other measures.

5. WARRANTY

5.1. Each party represents and warrants to the other party that:

a. it is duly constituted, registered and existing in accordance with the legislation of the country from which it comes.

b. the acceptance of the IBASIS contracts has been duly and fully approved by it.

c. it has legal capacity and is authorised to enter into a contractual relationship with the other party and to fulfil its obligations arising from the contractual relationship.

d. the contractual relationship contains obligations that are lawful, valid, binding and enforceable against it in accordance with its provisions.

e. the provisions of the contractual relationship do not conflict with the provisions of any other agreement, obligation, limitation or undertaking binding on it and do not constitute a breach thereof.

f. the person(s) signing for the party is entitled to enter into the contractual relationship in a legally valid and binding manner for the party.

5.2. IBASIS will make reasonable efforts in the circumstances to maintain the overall quality of its network. The quality of the services provided as part of the Business SMS Services is in line with other industry standards, government regulations, and sound business practices.

5.3. Unless otherwise expressly stated, IBASIS provides the Business SMS Services on an "as is" and "as is" basis. IBASIS makes no representations or warranties with respect to the Business SMS Services and does not warrant that the Business SMS Services will be uninterrupted, timely, error-free or that any content will be delivered. To the fullest extent permitted by law, IBASIS disclaims all warranties, implied or statutory, including warranties of title and warranties of non-infringement, merchantability, or fitness for a particular purpose. Partner acknowledges that the network connection involves risks that may result in loss of privacy, data, confidential information, and property. The Partner further acknowledges that IBASIS does not control the third-party networks (including those of the MNOs) and is not responsible for the impact of the activity or inactivity of such networks or third parties on the Business SMS Services.

6. TERMS OF PAYMENT, INVOICING

6.1. The fees to be paid by the Partner for the use of the Business SMS Services are specified in the Order Agreement.

6.2. The fees to be paid shall be paid by the Partner in the currency previously agreed and shown on the invoice.

6.3. Except for any other agreed amounts, the Business SMS Services will be charged per SMS for all SMS delivered through the Messaging Hub, according to IBASIS's records.

6.4. Payment model. The payment model applicable by the Partner for the use of the Business SMS Services will be selected in the Order Agreement. Unless either or both have been selected in the Order Agreement, and unless otherwise agreed in writing, the payment model of advance payment shall apply.

a. *Prepayment.*

i. IBASIS will issue an invoice to the Partner for the amount of the prepayment to be paid. The Partner shall transfer this prepayment amount to the bank account of IBASIS specified in the Order Agreement.

ii. Invoices issued by IBASIS are due upon receipt of the invoice. All bank charges are to be borne by the Partner ("OUR" instruction).

iii. All advance payments made by the Partner to the bank account of IBASIS will be credited to the Partner's account in the IBASIS Systems. This credited amount is called "***credit***". The credit is non-interest-bearing.

iv. It is expressly stated that IBASIS is not obliged to provide the Business SMS Services if the Partner's account in the IBASIS systems is insufficiently funded. Consequently, the Partner's account in the IBASIS Systems must always have a positive balance in order for IBASIS to provide services to the Partner.

v. The credit will be used to pay for all services used by the Affiliate, regardless of whether the amount to be paid is a one-time, recurring or transaction-based amount.

vi. Any taxes, fees or amounts payable will be deducted from the balance.

vii. If desired, the parties may agree that IBASIS will send a notification to the Partner once the balance reaches a certain threshold.

viii. The Affiliate will lose the right to a credit (or part thereof) and such credit (or part thereof) will be permanently allocated to IBASIS without further notice if such credit (or part thereof) has not been used within 6 (six) months of receipt of the credit in the bank account of IBUSE. The Partner is not entitled to a refund of any unused credit under any circumstances.

ix. In the event that Partner does not use the IBASIS Business SMS Services for 6 (six) consecutive months, IBASIS shall be entitled to suspend the services set up for the Business SMS Services.

b. Payment in arrears.

i. The Partner shall pay the invoice within 14 (fourteen) calendar days of receipt of the invoice. The date of receipt of the invoice is the third working day from the date of issue, unless it is officially proven that the partner did not receive the invoice for any reason. All bank charges are borne by the partner ("OUR" instruction).

ii. The billing period is MONTHLY (calendar month). Invoices are issued at the beginning of the month for the previous billing period and are sent electronically to the Partner's e-mail address specified in the Order Agreement (e-mail for invoicing). If this is required due to country-specific regulations, a paper invoice can be issued.

iii. Unless otherwise agreed, the Partner shall pay the invoices due to IBASIS in full without offsetting or netting.

iv. The partner has the option of paying by SEPA direct debit. In this case, the Partner is obliged to complete the SEPA Direct Debit Mandate provided by IBASIS completely and truthfully, to provide it with the signature of an authorized representative with an account authorization and to transmit the original to IBASIS without delay. The Partner is obliged to notify IBASIS immediately of any changes regarding the SEPA Direct Debit Mandate. In the event of changes to the bank details, the Partner is obliged to immediately transmit the SEPA direct debit mandate provided by IBASIS in an amended form to IBASIS in the original.

6.5. Subsequent price changes by IBASIS will be sent electronically to the Partner's e-mail address specified in the Order Agreement (e-mail of the contact person). The price changes will take effect immediately upon receipt of the official notification by email. Price changes will be communicated from Monday to Friday (excluding public holidays). The Partner is obliged to keep the contact details provided in the order valid and up-to-date at all times. Missed price change notifications as a result of non-fulfilment of this obligation shall be borne by the Partner.

6.6. Interest on arrears in the event of late payment.

a. In the event of a delay in the payment of an invoice due, IBASIS may charge Partner interest on arrears at the rate of 6% (six percent) per annum and all costs from the due date, as well as the costs of the damage caused by the delay and the associated costs, including but not limited to the costs incurred in the course of enforcing the claim, Fees and Expenses. Payments received by IBASIS from the Partner are first used to settle interest and costs, then to settle the outstanding principal receivables, starting with the oldest.

b. While the Partner is in default, IBASIS shall have the right to suspend the provision of the Business SMS Services until the outstanding amount has been paid in full, without prejudice to the right of IBASIS to terminate the Agreement pursuant to point 7.3.a of these BSMS Terms and Conditions.

c. The Partner expressly acknowledges the right of IBASIS to initiate an order for payment procedure against the Partner in the event that the Partner defaults on any of its payment obligations to IBBASIS. In this context, the Partner acknowledges that it is not only required to pay the applicable reminder fees, but is also obliged to reimburse all costs incurred by IBASIS in connection with the collection of the outstanding amounts.

6.7. Invoice objections.

a. Objections to amounts invoiced by IBASIS shall be sent by the Partner in writing within 14 (fourteen) days of receipt of the invoice by e-mail to the e-mail address specified in the Order Agreement for invoice objections from Ibasis. Upon expiry of this period and provided that no objections have been raised, the Partner confirms the correctness of the claims of IBASIS contained in the invoice in terms of the reason and amount.

b. The partner is not entitled to withhold amounts based on an objection.

c. *Threshold amount*. Objections cannot be raised in the case of a disputed amount of up to 1% (one percent) of the total invoice amount or the equivalent of EUR 125.00 (i.e. one hundred and twenty-five euros) in the currency indicated on the invoice, whichever is lower.

6.8. Taxes. The fees for the Business SMS Services and other amounts due under the contractual relationship are exclusive of any applicable taxes imposed by law, statute or regulation of any government agency or agency, such as VAT, sales tax, duties, fees, levies or surcharges (including, where applicable, a universal service fund or similar surcharges), all of which are the sole responsibility of the Partner and are due on the due date of partners must be paid immediately. In addition, the Partner undertakes to indemnify and hold IBASIS harmless from any liability in this regard.

7. CONTRACT DURATION & TERMINATION

7.1. The Agreement shall enter into force on the date of countersignature of the Order Agreement by the last party and shall be concluded for an indefinite period of time.

7.2. Ordinary termination. Either party may terminate the contractual relationship with a notice period of 1 (one) month to the end of each calendar month without giving reasons by giving written notice to the other party.

7.3. Extraordinary termination. The parties have the right to terminate the contractual relationship with immediate effect for good cause in writing. An important reason exists, among other things, if the other party:

a. is in default of payment or breaches any material provision of this Agreement that remains uncured after the expiration of 7 (seven) calendar days after receipt of written notice from the terminating party describing the breach with full details and requesting that it be remedied (if it is remediable).

b. the rights or obligations arising from the contractual relationship in violation of the provisions of point 12.4 assign these BSMS Terms and Conditions in whole or in part to a third party.

c. commits a criminal offence in connection with the use of the Business SMS Services or there is a reasonable suspicion that a criminal offence may have been committed.

d. is no longer an operating company, is over-indebted or insolvent or bankruptcy or other insolvency proceedings are opened against it or such an opening is rejected for lack of assets.

7.4. In the event of termination, IBASIS will settle the outstanding amounts by invoicing all services already provided to the Partner for which no invoices have been issued at the time of termination, all such amounts being due and payable within 7 (seven) calendar days of receipt of the invoice.

7.5. Except as expressly provided herein, termination of the contractual relationship shall not affect or diminish the terminating party's right to damages or other remedies to which it may be entitled in respect of the event giving rise to the termination, or any other rights to damages or other remedies to which a party may be entitled in respect of any breach of this Agreement at or prior to the date of termination. However, the Partner shall not be entitled to claim any amount based on the replacement of IBASIS as a contractor due to the termination of this Agreement, for any reason whatsoever.

7.6. Unless otherwise agreed, any termination of the contractual relationship must be in writing and signed by the duly authorized representative(s) of the terminating party. The letter of termination can also be scanned and sent by e-mail to the party to be terminated, provided that the original letter is forwarded by registered mail or courier service. For the duration of the notice period and the validity of a termination of the contractual relationship, the time of receipt of the termination letter in the area of disposal of the respective party is decisive. The reasons for the termination of this Agreement shall be stated by reference to the relevant provisions of this Agreement.

8. PRIVACY

8.1. General.

a. IBASIS takes data protection very seriously and therefore treats the information provided by the Partner (including personal data) in accordance with the provisions of this point 8 (data protection)

and in accordance with the applicable data protection laws with the utmost care and confidentiality. Within the framework of the contractual relationship, it is expressly agreed and clarified between the parties that:

i. the Partner is the Controller, and

ii. IBASIS the processor

of the data provided by the Partner to IBuBasis is the data provided by the Partner.

b. For the purposes of this point, 8 (Data Protection) means

i. *"Data Protection Laws"* means the data protection laws and regulations applicable in a country and in a jurisdiction relevant to the provision of the Services.

ii. *"GDPR"* means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

iii. *"Operator"* means the MNOs, including other telecommunications operators or providers (e.g., Internet Service Providers) with whom IBASIS (as Processor) cooperates to provide the Business SMS Services to the Partner (as Controller).

iv. *"Sub-Processor"* means a natural or legal person, public authority, agency or other body engaged by the Processor to process Personal Data in accordance with this Section 8 (Data Protection) to the extent permissible.

v. Any term not expressly used in this point 8 (data protection) (inter alia *"Controller"*, *"Affected"*, *"personal data"*, *"Personal data breach"*, *"Order processing"*, *"Processor"*, *"Supervisory authority"*, etc.), has the meaning assigned to it in the GDPR.

8.2. Data processing.

a. This point 8 (Data Protection) is relevant for the processing of personal data provided by the Partner to IBASIS in connection with the use of the Business SMS Services.

b. The processing of personal data by IBASIS (and accordingly by any sub-processors of IBASIS) shall be carried out exclusively in accordance with the provisions of this point 8 (Data Protection) and in accordance with the Partner's documented instructions, taking due account of the nature, purpose and duration of the order processing, the type of personal data, the categories of data subjects and others referred to in this point. 8 (Data Protection) and in Appendix 1 to these BSMS T&Cs (Details of the Processing of Personal Data).

c. The Parties shall comply with their respective obligations in connection with the Processing of Personal Data under the Contractual Relationship, whether as Data Controller or as Data Processor, in accordance with applicable Data Protection Laws and shall not knowingly undertake or permit any action that could lead to a breach of the applicable Data Protection Laws by themselves or by the other Party.

8.3. Partner's responsibilities as controller.

a. The Partner is solely responsible for ensuring that the admissibility and lawfulness of the personal data it provides to IBASIS for processing is guaranteed, including safeguarding the rights of the respective data subjects. The Partner is therefore responsible and expressly guarantees that a legally prescribed basis for the processing of the personal data provided to IBASIS is ensured, which in any case includes the right to make the personal data available to IBASIS as a processor for processing.

b. The Partner warrants that its instructions on the basis of which IBASIS processes the Personal Data are lawful, so that the processing of the Personal Data by IBASIS in the provision of the Business SMS Services will not result in IBASIS violating any applicable laws, regulations or rules, including applicable data protection laws, as well as the rights and freedoms of data subjects.

c. Partner shall indemnify IBASIS against any liability or damage that IBASIS may incur as a result of a breach of Customer's obligations under this Section 8 (Data Protection) or applicable data protection laws. This provision shall also apply to all cases in which such liability or damage is attributable to acts or omissions of third parties on whose behalf the Partner processes the personal data provided to ISBASIS.

8.4. Obligations of IBASIS as a Processor.

a. *Purpose of Processing.* IBASIS processes the personal data provided by the Partner exclusively in accordance with these BSMS GTC and in particular for the purposes listed and defined in Appendix 1 of these BSMS GTC (Details of the Processing of Personal Data). Unless required by law or separately agreed in writing by the parties, IBASIS does not acquire any rights to the personal data provided by the Partner.

b. *Partner's Instructions.* IBASIS processes the personal data provided by the Partner at all times exclusively in accordance with this point 8 (Data Protection), the documented instructions of the Partner and the provisions of these BSMS Terms and Conditions, in each case in accordance with the Data Protection Laws. In this sense, and unless otherwise agreed between the parties and/or unless otherwise instructed by the Partner, IBASIS shall refrain from

i. exercise control over such personal data, transfer it to third parties or purport to do so.

ii. use or use the personal data for purposes other than those specified in Appendix 1 to these BSMS GTC (Details of the Processing of Personal Data).

iii. process the personal data for its own purposes or integrate it into products or services offered to third parties.

c. *Messages.*

i. Should

- an applicable legal provision prevents IBASIS from adopting the 8.4.b these BSMS T&Cs, or
- a change in the processing processes at IBASIS is necessary or ordered,

IBASIS informs the Partner in writing (e-mail is sufficient) of the legal obstacle and/or the change in process prior to further processing activities, unless such notification would contradict objective security considerations or violate applicable law or a court or administrative order.

ii. Furthermore, IBASIS will also notify the Partner if an instruction from the Partner - in the opinion of IBASIS - is otherwise not feasible.

iii. For the avoidance of doubt, it is expressly stated that IBASIS has the right to suspend the provision of its services to the Partner until an agreement has been reached with the Partner on how to proceed.

d. IBASIS ensures that access to personal data is limited only to those employees who need to access it in order to provide the business SMS services. IBASIS further ensures that those employees who have access to personal data are appropriately required to maintain confidentiality and secrecy of the data prior to processing it, or are otherwise required to maintain confidentiality by the provisions of applicable law.

e. It is expressly stated that IBASIS is entitled to provide its professional third-party advisors with such personal data as they need to fulfill and/or enforce their contractual obligations and rights under the contract. In doing so, IBASIS is obliged to ensure that the 8 (data protection) is duly observed.

f. *Data security*. For the duration of the contractual relationship, IBASIS will ensure that it complies with appropriate and sufficient technical and organizational measures to protect personal data against accidental loss, destruction, damage, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and/or against all other unlawful forms of processing.

g. Without prejudice to any other security standards agreed by the parties, IBASIS will take appropriate technical and organizational measures to ensure the security of the processing of personal data in accordance with the standards set out in Article 32 GDPR. These measures shall include, in particular:

i. Pseudonymization and encryption.

ii. the ability to ensure the confidentiality, integrity, availability and resilience of the processing systems and the services in perpetuity.

iii. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident.

iv. a procedure for periodically reviewing, evaluating and evaluating the effectiveness of the technical and organisational measures taken to ensure the security of processing.

h. IBASIS is required to continuously implement and improve the technical and organizational measures it employs to ensure the security of personal data and to preserve, identify and control any unauthorized or illegal access or use of personal data.

i. *Enquiries from data subjects*.

i. IBASIS will assist the Partner in fulfilling its obligations in relation to the rights of data subjects, such as the right to information, rectification, erasure, data portability or objection, within the time limits prescribed by applicable data protection law. At the Partner's request, IBASIS shall provide the Partner with all data that is reasonably required for this purpose.

ii. Should a request exercising the right of a data subject be addressed to IBBASIS, IBASIS will forward this request to the Partner for further processing without undue delay (email will suffice). Notwithstanding the foregoing, IBASIS may, at its sole discretion and after consulting with the Partner, respond on Partner's behalf.

iii. In the event that a data subject mistakenly considers IBASIS to be the controller in a request addressed to IBBASIS, IBASIS will forward this request to the Partner without undue delay (e-mail is sufficient). The Partner is obliged to immediately clarify the incorrect opinion of the Data Subject and to inform the Data Subject that the Partner is the Controller and IBASIS acts as a Data Processor.

j. *Requests from government agencies and regulators*. Except where prohibited by applicable law, IBASIS will notify Partner without undue delay of any request made by a public authority or supervisory authority in relation to the Personal Data provided by Partner. IBASIS will support and assist Partner in complying with the requirements of applicable data protection law (in particular Articles 32 to 36 GDPR) and will assist Partner in data protection audits carried out by public authorities or supervisory authorities in relation to the personal data processed under these BSMS T&Cs.

k. *Inspections and controls*.

i. IBASIS agrees to provide the Partner with all information necessary to demonstrate compliance with the requirements set out in this clause. 8 (Data Protection) and facilitates and contributes to audits, including on-site inspections, conducted by Partner or a third party engaged by Partner (and accepted by ISBASIS) at Partner's own expense. The third party commissioned by the partner must be under a documented obligation to maintain confidentiality.

ii. The intention to carry out an audit must be notified to IBASIS in writing at least 14 (fourteen) days in advance. The right to conduct an audit may generally only be exercised once per calendar year during normal business hours, with the slightest disruption to IMBASIS's business operations and subject to reasonable confidentiality and/or security requirements by ISBASIS. The audit is also carried out on the basis of a mutually agreed audit plan.

l. *Personal Data Breach*. IBASIS shall notify the Partner of a personal data breach in writing without undue delay, but no later than 48 (forty-eight) hours after it becomes aware of the breach (e-mail is sufficient). This notification shall be sent to the e-mail address of the Partner's Data Protection Contact specified in the Order Agreement and shall contain at least the following information:

i. Description of the nature of the personal data breach, including (where possible) the categories and approximate number of data subjects, the categories affected and the approximate number of personal data records affected.

ii. Name and contact details of the person responsible for data protection at IBASIS or any other contact point from which further information can be obtained.

iii. Description of the likely consequences of the personal data breach.

iv. Description of the measures taken (or proposed) by IBASIS to remedy the personal data breach and (if applicable) measures to mitigate its potential adverse effects.

8.5. Subcontracting/Sub-Processors.

a. IBASIS has the right to appoint sub-processors to perform obligations related to the processing of personal data arising from the contractual relationship. Such engagement of a Sub-Processor shall be made on the basis of a written contract or other legal instrument in accordance with applicable data protection law, which imposes on the Sub-Processor substantially the same obligations as in this Point 8 (Data Protection).

b. In the context of the performance of its obligations, IBASIS is expressly entitled to engage as sub-processors only operators and technical service providers who enable IBASIS to provide the services in the countries selected by the customer for the provision of the services by placing a specific order with them to transmit a specific message to the recipient. IBASIS is also entitled to engage other persons who are necessary for the provision of the Business SMS Services.

c. IBASIS shall be liable to the Partner for the non-fulfillment of such obligations and requirements by a Sub-Processor.

d. Before commencing the processing, IBASIS shall ensure compliance with the provisions of this 8 (Data Protection), in particular compliance with the agreed technical and organisational security measures by the Sub-Processor.

8.6. International Transfer of Personal Information. Where the processing of personal data is carried out by a sub-processor outside the European Economic Area, IBASIS shall take all steps reasonably necessary to ensure that such personal data is adequately protected in accordance with applicable data protection laws, in particular the standards set out in Articles 44 to 49 of the GDPR, including the conclusion of the rules set out in Decision 2010/87/EU of the European Commission standard contractual clauses.

8.7. Return of personal data.

a. Upon termination or expiration of the Agreement - for any reason whatsoever - or upon the Partner's expressly documented instruction at any time, IBASIS will delete or return all Personal Data to Partner, as well as delete all existing copies, unless applicable law requires IBASIS to continue to store such Personal Data, or deletion is practically impossible due to technical limitations. In this case, the personal data will be blocked for further use.

b. Where applicable, IBASIS shall contractually ensure that sub-processors engaged by it comply with the sub-processors referred to in point 8.7.a in accordance with these BSMS Terms and Conditions.

8.8. In the event of a conflict, ambiguity or contradiction between the provisions of this Section 8 (Data Protection) and any other provision of these BSMS T&Cs, the provisions of this Point shall prevail 8 (Data protection) Take precedence over conflict, ambiguity, or inconsistency, unless expressly stated otherwise.

9. CONFIDENTIALITY

9.1. For purposes of this Agreement, all information in any form provided by one party *(hereinafter the "**Disclosing Party**")* and/or any of its affiliates to the other party *(hereinafter the "**Receiving Party**") will be **disclosed** to the other party (hereinafter the "Receiving Party")* and/or its affiliates have been or may be disclosed or to which access is granted, including, but not limited to, any know-how and any business, financial, legal, marketing, organizational and/or technical information that is identified or otherwise designated as either confidential or proprietary to the Disclosing Party, or which by the nature of the circumstances under which it is disclosed in good faith, is to be considered confidential or proprietary; referred to as "***Confidential Information***". Confidential information also includes personal data as defined in point 8 of these BSMS Terms and Conditions (Data Protection).

9.2. All Confidential Information provided by the Disclosing Party and/or its Affiliates to the Receiving Party and/or its Affiliates is and shall remain the property of the Disclosing Party.

9.3. Confidentiality. The parties agree that the contractual relationship is confidential and therefore its terms may not be disclosed to third parties in any way without the prior written consent of the disclosing party.

9.4. With respect to the Confidential Information and subject to the provisions of the Point 9.5 Under these BSMS Terms and Conditions, the Receiving Party undertakes:

a. to treat the Confidential Information disclosed by the Disclosing Party as confidential and to use it exclusively for the purposes contemplated by the contractual relationship.

b. not to disclose or disclose in any part such Confidential Information to any third party without the prior written consent of the Disclosing Party, except:

i. to affiliates, directors, officers, employees, agents, representatives, auditors or professional advisers of the Receiving Party who have a need to know, and provided that, prior to disclosure, the Receiving Party shall ensure that such persons are not only expressly advised of the confidential nature of the disclosure, but are also required by law or contract to disclose the disclosed Confidential Information confidential.

ii. on the basis of the provisions of laws, ordinances or resolutions of official bodies or regulatory authorities, or instructions or applications of official bodies or competent courts.

c. to treat the Confidential Information with the same care as it uses with respect to its own equally important information, which is to be treated as confidential, in order to prevent unauthorized access, use or misappropriation, but in no event with less than reasonable care.

9.5. Exceptions. The confidentiality obligation does not apply to those portions of the Confidential Information that the Receiving Party can demonstrate, on the basis of written records, that:

a. are or have become public knowledge through no fault of the receiving party.

b. have been lawfully received by an independent third party without any restriction.

c. were already known to the Receiving Party when they were disclosed by the Disclosing Party.

9.6. All Confidential Information, including all copies, shall be returned to the Disclosing Party within 7 (seven) calendar days of termination of the Contractual Relationship or upon receipt of a written request from the Disclosing Party, whichever occurs first, or verifiably destroyed (at the request of the Disclosing Party), of which confirmation shall be sent to the Disclosing Party. The Receiving Party shall be entitled to retain a copy of the Confidential Information if required for the purpose of verification or other legal or regulatory requirements, or if such copy is stored on a backup medium and its deletion would result in disproportionate labor or expense. The Disclosing Party shall be promptly notified in writing that a copy of the Confidential Information has been retained and that it will be subject to the confidentiality obligations of the Item, even after the termination of the contractual relationship, until it is returned or verifiably destroyed. 9 these BSMS Terms and Conditions (Confidentiality).

9.7. The Receiving Party acknowledges and acknowledges that in the event of an actual or alleged breach of any of the provisions of Paragraph 9 In addition to (and not in lieu of) any other rights and remedies available to it, the Disclosing Party shall be entitled to seek and obtain injunctive relief (without the need to prove any special harm or similar) to prevent or limit such actual or alleged breach by the Receiving Party. The Receiving Party further agrees to indemnify and hold the Disclosing Party harmless from and against all costs (including reasonable attorneys' fees) incurred by the Disclosing Party in obtaining such injunctive relief.

9.8. Enduring provisions. The confidentiality obligations in point 9 of these BSMS Terms and Conditions (Confidentiality) shall remain in force for a period of 3 (three) years after the termination of the contractual relationship.

10. LIABILITY

10.1. Except as otherwise provided by law or expressly set forth in this Agreement, IBASIS shall not be liable to Partner (or any of Partner's customers) for any indirect loss or damage resulting from any failure, deterioration or interruption of the Services on its network or on any other network or connection point involved in the provision of the Business SMS Services.

10.2. Neither party shall be liable to the other, whether contractual or otherwise, under this Agreement for any consequential, indirect or special damages, including, but not limited to, loss of revenue, business, contracts, anticipated savings, profits, data or goodwill. Notwithstanding the foregoing, neither party shall limit its liability to the other party for:

a. fraud or fraudulent misrepresentation;

b. Negligence caused death or personal injury;

c. intentional misconduct or grossly negligent conduct; or

d. if such exclusion or restriction would be contrary to applicable law.

10.3. Indemnification. The Partner indemnifies IBASIS without exception from all liabilities (including damages, costs, reimbursement of regulatory and/or third-party fines, contractual penalties as well as other expenses), actions, proceedings, claims and demands, as well as all alleged claims and demands of any kind (including infringement of intellectual property rights) arising directly or indirectly from the Partner's use of the business SMS services, unless such a claim arises as a result of an act or omission of IPbasis.

10.4. Claims. Any claim by either party shall be barred after the expiration of 12 (twelve) months from the date on which either party would first have been entitled to assert such claim against the other party.

10.5. Limitation of Liability. ISBASIS's total liability for all claims arising out of this Agreement shall be limited to the amount of the fees paid by Customer in the 6 (six) months immediately preceding the date the cause of action arose. If the contract has not been in force for 6 (six) months at that time, the liability limit is calculated by multiplying the monthly average of fees paid during the term of the contract by 6 (six).

10.6. Force Majeure. Under no circumstances shall either party be held responsible for any delay in performance or failure caused by its reasonable control, including, but not limited to, strikes, labor disputes, riots, riots, civil commotion, fires, floods, storms, explosions, acts of God, war, military conflicts, government actions, instructions from authorities, industrial action (including in companies involving the supplying party with fulfilment of its contractual obligations), failures in the infrastructure of the MNOs or their sub-suppliers as well as all other events that are beyond the control of a party and make it impossible or unreasonable for the party to fulfil its contractual obligations.

11. APPLICABLE LAW, DISPUTE RESOLUTION, PLACE OF JURISDICTION

11.1. Governing Law. This contract is governed in its entirety by the laws of the Republic of Austria, with the exception of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and private international law.

11.2. Dispute resolution. The parties shall endeavor in good faith to use all reasonable methods to amicably resolve any dispute or claim arising out of this Agreement or any alleged breach thereof or ancillary agreements. An attempt to reach an amicable settlement shall be deemed to have failed once either party notifies the other in writing or 21 (twenty-one) calendar days have elapsed from the date of either party's notification of such dispute without an amicable settlement having been reached between the parties.

11.3. Place of jurisdiction. The exclusive place of jurisdiction for all disputes between the parties arising out of or in connection with the contractual relationship is the court with jurisdiction in Vienna, Austria.

12. GENERAL PROVISIONS

12.1. Entirety of the agreements and written form. The IBASIS Agreements contain the entirety of the understandings between the parties with respect to the subject matter hereof and supersede and supersede all prior and/or contemporaneous drafts, agreements, understandings and/or understandings of any kind. Each of the parties acknowledges

that no representations, promises, warranties, representations or agreements exist with respect to the contractual relationship made by either party or by any person acting on behalf of a party that are not fully contained in the IBASIS Agreements. Additions, changes or modifications to the IBASIS Agreements (with the exception of the BSMS T&Cs) must be made in writing and are only effective after signature by the duly authorized person(s) authorized to sign of the respective party.

12.2. Attachments. The following appendix forms an integral part of these BSMS T&Cs:

Appendix 1: Details of the Processing of Personal Data.

12.3. Severability. The invalidity of any provision of these BSMS Terms and Conditions shall not affect the validity of the remaining provisions. The parties undertake to immediately agree on a provision that comes closest to the economic purpose of the invalid provision and the purpose of the parties.

12.4. Assignment. The Partner is only entitled to transfer rights and obligations arising from the contractual relationship in whole or in part to third parties with the prior written consent of IBUNUT. However, IBASIS is entitled to transfer rights and obligations arising from the contractual relationship to companies affiliated with Ibasis.

12.5. Relationship of the parties. The parties are independent entrepreneurs and in this respect no provision of the contractual relationship pursues, and should not be considered in this sense, the intention to establish a partnership, agency, franchise, joint venture or employment relationship between the parties. Unless expressly provided otherwise, neither party shall be entitled to act as a representative for the other party or to represent or legally bind the other party.

12.6. Renunciation. The failure of any party at any time to enforce any of the provisions of these BSMS Terms shall not be construed as a waiver of such provision by such party or shall not in any way affect the validity of these BSMS Terms and Conditions.

12.7. Intellectual Property Rights. All intellectual property rights belonging to a party prior to the commencement of the contractual relationship shall remain with that party upon entering into the contractual relationship. Unless otherwise agreed, no intellectual property rights of one party will be transferred to the other party. Unless otherwise agreed, neither party shall have the right to use the other party's trademarks, logos or signs for any purpose without obtaining the party's prior express written consent. However, Partner expressly grants IBASIS the right to use its name and logo for reference purposes in marketing and/or presentation materials.

12.8. Unless otherwise specified, all days specified in these BSMS T&Cs as time limits refer to calendar days.

12.9. Messages. Except as otherwise provided in these Terms and Conditions, all notices, requests, messages, reports or requests required or permitted under this Agreement or by law shall be in writing and shall be deemed to have been duly transmitted if given in person, by courier service, by e-mail (with proof of transmission and read) or by certified postage to the addresses set forth in the Order Agreement (or to other addresses, which the parties may subsequently communicate to each other in writing). A notice shall be deemed to have been served on the day of its service if it is delivered in person or by courier service; no later than 7 (seven) calendar days after its dispatch if it is sent by registered mail; and 1 (one) hour after its dispatch if sent by email, provided, however, that the email was sent before 17:00 CET (+1 UTC) on a business day, otherwise at 09:00 CET (+1 UTC) on the immediately following business day.

12.10. Costs. Each party shall bear its own costs in negotiating, preparing, concluding and executing this Agreement and any associated ancillary costs.

12.11. Legal succession. The rights and obligations of the parties resulting from the contractual relationship are binding on the respective legal successors of the parties.

ANNEX 1
TO THE BSMS TERMS AND CONDITIONS

DETAILS OF THE PROCESSING OF PERSONAL DATA

1. PURPOSE OF PROCESSING

IBASIS processes the personal data provided to it by the Partner exclusively for the purpose of fulfilling the contractual relationship, in particular:

A. to provide the Business SMS Services and to deliver SMS traffic to recipients, and

B. to maintain the customer relationship as well as to communicate with the partner throughout the contractual relationship with regard to the existing business as well as future business opportunities

*(hereinafter the "**Purpose**").*

2. DATA SUBJECTS & CATEGORIES OF PERSONAL DATA

The following categories of data subjects and personal data are processed by IPBASIS:

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

3. PROCESSING ACTIVITIES

IBASIS will process personal data exclusively to the extent necessary for the performance of the contractual relationship. This includes, in particular, the use, transmission, storage and, if requested, the deletion and/or destruction of personal data.

4. DURATION OF PROCESSING / DATA RETENTION

IBASIS will only store and process the personal data provided to it by the Partner for as long as is necessary for the fulfilment of the purpose or the legal and/or regulatory (in particular commercial and tax law) or contractual provisions (e.g. vis-à-vis operators) applicable to IBASIS and its business activities, whichever is longer. Depending on the purpose for which the respective personal data was provided, the respective retention periods will vary.

At the end of the respective period, the relevant personal data will be automatically deleted by IBASIS and all sub-processors, unless deletion is practically impossible due to technical limitations, in which case the personal data will be blocked for further use.

5. CONTACT INFORMATION OF IBASIS (AS PROCESSOR)

Contact person:	Data Protection Officer
Email:	dpo@ibasis.net