

SERVICE REGULATIONS

FOR SERVICES BY

SWITCH, WERDSTRASSE 2, 8021 ZÜRICH (“SWITCH”)

VERSION 1.1

1. Legal basis

1.1. Content of regulations

These regulations govern the general conditions for purchase of services from SWITCH (basic services and other services according to 2.1 and 2.2 below) by **organisations** in the **SWITCH community** and their **end users** and **end customers**. Services which have their scales of charges fixed by other clients, e.g. domain names, are not included.

The **organisations** in the **SWITCH community (hereinafter: Organisations)** are teaching and/or research organisations which exist on a legal basis and/or under a government mandate. A full list of the categories of these Organisations is given in Appendix 1.

End users are members of the Organisations, particularly employees and students, who use a SWITCH service indirectly via the Organisations.

End customers are members of the Organisations, particularly employees and students, who purchase a service directly from SWITCH at their own expense.

1.2. Conditions for purchase of services

These **regulations**, the current **scale of charges** (with the **features** of the individual services) and the current **service descriptions** are part of the SWITCH service. In the event of discrepancies, these regulations have priority over the

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1.3. Assignment and set-off of claims

The Organisations shall not transfer their claims against SWITCH under these regulations, the scales of charges and/or the service descriptions to third parties without prior written permission from SWITCH, unless otherwise stated in the service description concerned.

Set-off pursuant to Article 120 of the Code of Obligations is prohibited, unless otherwise stated in the service description concerned

1.4. Acceptance of the conditions for purchase of services

Use of the services constitutes acceptance by the Organisations of the conditions governing them, as defined in these Regulations, and of the current scales of charges and service descriptions.

The Organisations are responsible for ensuring that the SWITCH services are used by them and the end users appertaining to them in accordance with these regulations, the current scales of charges and service descriptions and the applicable legal regulations.

End customers who are supplied directly with services shall also agree acceptance of the relevant SWITCH service descriptions.

2. SWITCH services

2.1. Basic services

SWITCH offers a package of basic infrastructure and basic services (hereinafter: **Basic Services**) to the Organisations. The Board of Founders decides the scope of the **Basic Services** and the associated scales of charges. The Organisations are obligated to purchase and pay for the Basic Services.

The Board of Founders may remove individual services from the package of Basic Services or add new ones.

2.2. Other services

Other services not included in the Basic Services may be purchased by the Organisations as required.

2.3. Systems, hardware and software

All systems, hardware and software supplied to the Organisations for use of the services remain the property of SWITCH and the Organisations do not obtain any rights of disposal or copyright. The Organisations are not permitted to modify the systems, hardware or software without permission from SWITCH; they are liable for damage caused to them by misuse by their employees or third parties.

2.4. Restriction in provision of services by SWITCH

SWITCH takes the measures detailed in the service descriptions and any others which it considers appropriate to protect its services from harmful outside influences (viruses and other malicious code, unauthorised access to systems and data, etc.). SWITCH cannot guarantee that these measures are effective in every case and therefore the Organisations cannot rely solely on the measures by SWITCH to protect their systems and data. The Organisations have a responsibility to take their own measures against harmful outside influences.

2.5. Agents and third parties

SWITCH may provide its services using agents and third parties and gives the same guarantee of their services and conduct as for its own services, unless otherwise provided in the service descriptions concerned.

2.6. Default by SWITCH

If SWITCH fails in its duty of cooperation, the Board of Founders may take appropriate action. The provisions of liability law shall apply.

3. Improper use

3.1. Definition

Improper use is any use of a SWITCH service contrary to these regulations, the scales of charges, the service descriptions and the applicable law, particularly if such use

- a) interferes with or damages other Organisations or their end users, end customers or service providers,
- b) adversely affects operation of the services of SWITCH and/or its partner networks,
- c) is exclusively for private or commercial purposes. The Organisations issue rules on how far partial private and/or commercial use is allowed in the context of the teaching and research,
- d) is for purposes of sending unsolicited advertising or other mailings (spamming) (Article 3 para. 1 o in conjunction with Article 23 Unfair Competition Act), or
- e) is for purposes of preparing or carrying out illegal activities or unauthorised access to systems, services, data or information. This applies particularly to misuse of the SWITCH services to commit or support criminal activities, including but not limited to unauthorised data acquisition, unauthorised hacking into data processing systems, data damage, fraudulent misuse of a data processing system, money laundering, distribution and/or retrieval of illegal or indecent content such as representations of violence, hard core pornography, incitements to crime or violence, attacks on religious freedom or freedom of worship, racial discrimination or unauthorised use or exploitation of copyrighted works (cf. Articles 135, 143, 143b, 144b, 147, 197

subparagraph 3, 259, 261, 261b and 305b of the Swiss Criminal Code, Articles 67/68 of the Copyright Act).

3.2. Measures in the event of unauthorised use

In the event of unauthorised use, SWITCH holds consultations with the Organisation. SWITCH takes into account the proportionality of any action to be taken.

In such cases the Organisations, end users and end customers are required to assist SWITCH and third parties working with it with the investigation of cases of unauthorised use, particularly action on criminal offences and cases of damage.

In urgent cases where grounds exist for reasonable suspicion of unauthorised use as defined in 3.1, SWITCH may immediately, and without prior notification to the end user, end customer and/or Organisation(s) affected, delete the relevant data (e.g. pirated copies, messages with illegal content), suspend supply of the service in question to the end user(s), end customer(s) and/or Organisation(s) affected and/or cut off access for the end user(s) or end customer(s), or connectivity to the Organisation(s) affected.

The end user(s), end customer(s) or Organisation(s) have no right to compensation or further claims in such cases.

3.3. Liability of the Organisations and end customer for unauthorised use

The Organisations may be held responsible or found liable for damage caused to SWITCH or third parties by unauthorised use of the SWITCH services by them and/or the end users appertaining to them. The end customer is liable directly towards SWITCH.

4. Cooperation by the Organisations

4.1. Duty of cooperation of the Organisations

To enable SWITCH to provide its services, the Organisations shall create and pay for the administrative, organisational, technical and legal conditions necessary on their part, such as: appointment of contact persons, assistance with evaluation of faults, assistance with use and further development of the existing services, particularly by reporting on operational requirements and technical parameters, evaluating quantity structures, actively commenting on current matters of interest and submitting reports, queries and results of work, from accommodating SWITCH installations to providing services for the SWITCH Community.

The Organisations shall take the necessary action to ensure compliance with the requirements of these regulations and the service descriptions and prevention of unauthorised use of SWITCH services. The Organisations agree in particular to obtain an undertaking from the end users appertaining to them to comply with the provisions of these regulations and the SWITCH service descriptions.

Joint projects require each individual Organisation to make the appropriate contribution.

4.2. Default by the Organisations

If the Organisations fail in their duty of cooperation, the Board of Founders may take appropriate action. The right to pursue claims for damages in the civil courts is reserved.

5. Prices, billing and terms of payment

5.1. Billing at scale rate

Management issues the scale of charges giving the prices and features of the Basic Services and other services.

The scale of charges is approved by the Board of Founders when the budget is agreed and is normally valid for one year. The prices are exclusive of value added tax.

5.2. Billing at cost

Services without a scale of charges which are provided by SWITCH under a written order from the Organisation concerned may be billed on the basis of actual time spent plus expenses at the current SWITCH fee and expense rates.

The office decides the fee and expense rates.

5.3. Billing

The billing for Basic Services is defined by the Board of Founders in each scale of charges. The billing for other services is defined by Management in each service description.

5.4. Terms of payment

SWITCH invoices are payable 30 days from date of billing. If payment is not made on time, the Organisation is automatically in arrears, in which case it is liable for default interest of 5%. Other legal default rights are reserved.

6. Period of services

The starting date for the provision of services will be notified by SWITCH to the Organisations on receipt of the order for the service concerned.

The services will normally be provided by SWITCH for an indefinite period. The Board of Founders may suspend or change a service at any time. When discontinuing a service, the Board of Founders will consider the needs of the Organisations affected and stipulate reasonable transition periods.

The basic services may be cancelled by the organisations by giving a three years notice of termination to expire at each December 31.

Other services may be cancelled by the Organisations by giving six months' notice of termination in writing to expire at the end of a quarter, unless otherwise stated in the service description.

7. SWITCH warranty and liability

7.1. Warranty

SWITCH supplies state of the art services with due care, within the limits of its financial and human resources. SWITCH cannot guarantee either that its services will achieve a specific result or that their provision will be uninterrupted and correct. SWITCH makes every effort to meet the service targets defined by the Board of Founders. Failure to meet the service targets does not constitute grounds for a claim to reimbursement of payments made or other claims by the Organisations. If the service targets are repeatedly not achieved for any Organisation, the Board of Founders may take appropriate action. The Organisations themselves shall adopt protective measures against the consequences of service errors and interruptions. SWITCH is not obliged to carry out data protection and back-up unless otherwise expressly stated in the service description and subject to different warranty clauses in the scales of charges or service descriptions.

In principle, the services are available to the Organisation 24 hours a day, 7 days a week, unless otherwise stated in the scales of charges and service descriptions and subject to faults which result in the services being downgraded. SWITCH agrees to initiate and implement measures to correct service faults and malfunctions during its normal working hours. Normal working hours are weekdays, Monday to Friday, 08.00 to 17.00, excluding federal, cantonal and city of Zurich public holidays and the period from 24 December to 2 January inclusive. Depending on the urgency, SWITCH will also take action to maintain good service quality outside these periods but makes no contractual commitment to do so.

7.2. Liability of SWITCH

SWITCH is liable towards the Organisations for direct personal injury and material damage caused culpably, up to a maximum of the total annual sum payable by the Organisation concerned for Basic Services in the year of the claim, as shown in the current scale of charges. SWITCH is liable up to the same amount for personal injury or material damage caused by its agents. All further or other liability on the part of SWITCH or its employees and agents is expressly excluded if the law so allows. Data security, provision of alternative solutions and the results obtained during use of the services provided are the responsibility of the Organisations. With the proviso of cases of compulsory liability by law, therefore, SWITCH and its employees and agents are not liable for data loss or damage, losses which are purely pecuniary, direct and indirect damage, consequential damage, loss of income or failure to make savings.

8. Software, particularly

8.1. Licences

The supply or licensing of products from a third party (producer) or SWITCH is governed primarily by the supply, licensing and warranty conditions of the producer or SWITCH which are binding on the Organisations and their end users or end customers and are supplied to them in suitable form. The licence may be revoked in the event of gross or persistent violation of the licence conditions.

8.2. Intellectual property

All rights, particularly copyright and other intellectual property rights (patent, trademark, design rights), associated with the SWITCH services remain the property of SWITCH or the producer. The same applies to the rights to the results obtained by SWITCH and/or its agents from project work in collaboration with the SWITCH Community, analysis of software or problems of the Organisations, programming work etc. SWITCH is entitled to exploit these results. The Organisations are granted only a non-exclusive right of use for themselves and their end users to the SWITCH services and the results obtained by SWITCH and/or its agents, as necessary for the use allowed under these regulations and the current scales of charges and service descriptions. The Organisations shall not transfer this right of use to third parties.

8.3. Individual production

The results of services (including software developments) which are supplied individually by SWITCH for an Organisation become its property on full payment, together with the transferable industrial property rights. SWITCH may continue to use the ideas, processes and know-how contributing to the development, without charge.

9. Confidentiality

SWITCH and the Organisations undertake to treat the data, documents and information obtained from the other party in connection with the SWITCH services as confidential and to give them appropriate protection from unauthorised access by third parties.

Data, information and documents from the Organisations may be used within SWITCH on a need to know basis. The Organisations require the prior written consent of SWITCH to transfer SWITCH data, information and documents to third parties.

Data, documents and information which are mutually exchanged at SWITCH information and training events and are not in the public domain are also subject to the duty of confidentiality.

10. Data protection

The Organisations agree that SWITCH may forward data about them and their end users to domestic or foreign representatives, licensors etc. for processing. This includes personal data such as IP addresses and all data necessary for performance of contracts with SWITCH service providers, particularly in cases of misuse.

SWITCH and the Organisations guarantee compliance with the relevant provisions of data protection legislation in all cases and for all activities.

The Organisations are responsible for the protection and security of the personal data of third parties (including their personnel) processed on their systems. SWITCH will not meet any special requirements over and above the general data security and protection measures unless they are expressly agreed in writing with the Organisation concerned.

11. Final provisions

11.1. Entry into force, amendment and cancellation of these regulations

These regulations are issued on the basis of the resolution of the Board of Founders of 20 November 2008 and enter into force on 1 January 2009.

These regulations replace the previous General Rules for Use of SWITCH Services dated 10 December 1999 and the General Service Conditions, version 5/1996.

The Board of Founders may amend these Service Regulations, their appendices and the scales of charges at any time. The service descriptions with their technical specifications and the legal conditions associated with the performance characteristics are decided by SWITCH Management and may be amended at any time.

11.2. Continued application of individual provisions

The provisions on liability and warranty, confidentiality, industrial property rights and law and jurisdiction continue to apply for an indefinite period after completion of the service.

11.3. Partial invalidity

Should any provision of these regulations, a scale of charges or a service description be or become invalid or legally ineffective, the other provisions continue to apply. The invalid or legally ineffective provision shall then be replaced by a valid and legally effective provision which comes as close as legally possible in its economic effect to the invalid or legally ineffective one.

11.4. Choice of law

These regulations are governed by the laws of Switzerland.

11.5. Jurisdiction

The legal venue for all disputes is Zurich.

Berne, 19 November 2009

Chairman of the Board of Founders

Vice-Chairman of the Board of Founders

Dr. Andreas Dudler

Prof. Dr. Chapuis Gervais

Appendix 1

The following categories of Swiss organisations belong to the SWITCH community:

- Cantonal universities
- Federal Institutes of Technology [ETH]
- ETH Research Facilities
- Technical Colleges
- Teacher Training Colleges
- Public Research Institutions
- University Hospitals

Date: 19 November 2009