

**WHOLESALE REFERENCE OFFER  
OF CODITEL**

**TV SERVICES OVER CABLE**

**ANNEX 1 – GENERAL TERMS & CONDITIONS**

## Inhoudsopgave

<b>1</b>	<b>GENERAL INFORMATION .....</b>	<b>3</b>
<b>2</b>	<b>GLOSSARY.....</b>	<b>4</b>
<b>3</b>	<b>CONTRACT PROCEDURE.....</b>	<b>76</b>
3.1	REQUEST BY THE BENEFICIARY .....	76
3.2	CONCLUSION, ENTRY INTO FORCE AND DURATION OF A CONTRACT AND/OR AGREEMENT .....	76
<b>4</b>	<b>SERVICES COVERED BY THESE GENERAL TERMS AND CONDITIONS .....</b>	<b>98</b>
<b>5</b>	<b>OBLIGATIONS OF THE PARTIES .....</b>	<b>109</b>
5.1	OBLIGATIONS OF THE BENEFICIARY .....	109
5.2	OBLIGATIONS OF CODITEL .....	1140
<b>6</b>	<b>FINANCIAL CONDITIONS .....</b>	<b>1342</b>
6.1	BILLING AND PAYMENTS .....	1342
6.2	FINANCIAL GUARANTEES .....	1342
<b>7</b>	<b>PRINCIPLES.....</b>	<b>1746</b>
7.1	RETAIL PRICING & BILLING .....	1746
7.2	BRANDING.....	1746
7.3	USER TERMS AND CONDITIONS .....	1746
<b>8</b>	<b>COORDINATION BETWEEN THE PARTIES .....</b>	<b>1817</b>
8.1	SINGLE POINTS OF CONTACT .....	1817
<b>9</b>	<b>LIABILITY .....</b>	<b>1918</b>
9.1	GENERAL RULES .....	1918
9.2	FORCE MAJEURE .....	1918
9.3	ACCIDENTS AT WORK AND SAFETY RULES .....	2049
<b>10</b>	<b>OPERATIONAL MATTERS AND NETWORK MANAGEMENT .....</b>	<b>2120</b>
<b>11</b>	<b>AMENDMENTS AND REVISIONS .....</b>	<b>2221</b>
<b>12</b>	<b>TERM, TERMINATION AND SUSPENSION .....</b>	<b>2322</b>
<b>13</b>	<b>CONFIDENTIALITY .....</b>	<b>2624</b>
13.1	REQUEST FOR INFORMATION .....	2624
13.2	CONFIDENTIAL INFORMATION .....	2624
13.3	NON-DISCLOSURE .....	2725
13.4	DISCLOSURE TO PERSONNEL, ADVISORS OR SUPPLIERS .....	2725
13.5	DISCLOSURE REQUIRED BY LAW .....	2826
<b>14</b>	<b>DISPUTE RESOLUTION AND APPLICABLE LAW .....</b>	<b>2927</b>
14.1	DISPUTE RESOLUTION PROCEDURE.....	2927
14.2	APPLICABLE LAW AND JURISDICTION .....	2927
<b>15</b>	<b>MISCELLANEOUS .....</b>	<b>3029</b>
15.1	GENERAL PRINCIPLES .....	3029
15.2	WAIVER .....	3029
15.3	FRAUD.....	3029
15.4	INDEPENDENT PARTIES – APPROVAL .....	3029

## 1 GENERAL INFORMATION

1. This document constitutes an integral part of the Wholesale Reference Offer TV and Broadband Services over Cable (hereafter referred to as the “WRO”) communicated to Belgian Institute for Post and Telecom (here-after the BIPT). It includes the general terms and conditions applicable to the provision of Wholesale TV and Broadband Services over Cable. For easy use reference will always be made to TV and Broadband Services, although the latter is not necessarily included in a specific contract.
2. These Wholesale Services over Cable are provided in conformity with the relevant laws and decrees in effect. The present Terms and Conditions shall remain applicable until they are replaced by other terms and conditions.
3. A distinction should be made between the following:
  - 3.1. The Main Body: This document provides a description of the Wholesale TV and Broadband Services offered by Coditel.
  - 3.2. The Annex 1, “General Terms and Conditions” (current document): The General Terms and Conditions list the rights and obligations of Coditel and the Beneficiary with regard to the provision of the Wholesale TV and Broadband Services.
  - 3.3. The Annex 2, “Technical Specifications”: The technical conditions define the technical specifications and the quality standards of the Wholesale TV and Broadband Services.
  - 3.4. The Annex 3, “Planning & Operations”: The Planning & Operations Manual describes the conditions of delivery of the Wholesale TV and Broadband Services.
  - 3.5. The Annex 4, “Service Level Agreement”: The Service Level Agreement defines the Terms and Conditions upon which Coditel will deliver installation and maintenance for the Wholesale TV and Broadband Services.

Was not received by Coditel at this stage.

## 2 GLOSSARY

4. The capitalized terms in the present General Terms and Conditions have the meaning as defined below:

Beneficiary	An Authorized Operator with whom one or more Contracts were concluded for the delivery of one or more Services.
Authorised Operator	<p>It is to be understood as an entity entitled to provide distribution services under the applicable legislation.</p> <p>“Dienstenverdelers” under the Flemish Media Decree of 27 March 2009,</p> <p>“Distributeur de services” under the Decree of 27 February 2003 on Radio diffusion, amended by the Decree of 5 February 2009,</p> <p>“Operator” under the Law regarding electronic Communications networks and services and the execution of broadcasting activities in the bilingual region of Brussels Capital of 30 March 1995</p> <p>“Betreiber” under the Decree of 27 June 2005 on Radio diffusion and movie performances</p>
Contract	An agreement concluded between Coditel and a Beneficiary following the negotiations between Coditel and the Beneficiary on the basis of the present General Terms and Conditions, technical, operational, billing, planning and financial conditions for one or more Services as described in the Coditel WRO.
CRC Decision	Decisions of 1 July 2011 adopted by the Conference of Regulators for the electronic Communications sector (CRC) concerning the analysis of the broadcasting market in Belgium.
Service	This is a service that Coditel provides up until and including the Demarcation Point and is described in the Coditel WRO. Four main wholesale services are offered: cable analog TV

(CATV), standalone digital TV (DTV)<sup>1</sup>, interactivity<sup>2</sup> and broadband internet services<sup>3</sup>.

Demarcation Point	The point (NTP) in the house where the coax cable enters and to which the in-home-network is connected. This point, which is part of the Coditel Network, ensures the separation of responsibilities between Coditel and the Beneficiary. The Beneficiary is responsible for the in-home-network, Coditel is responsible for the Coditel Network.
Associated Services	Services, measures and information systems which are provided by Coditel for the Beneficiary in order for him to make use under normal conditions of one or more Services.
VRM	Vlaamse Regulator voor de Media
CSA	Conseil Supérieur de l'Audiovisuel
Medienrat	Medienrat der Deutschsprachigen Gemeinschaft Belgiens
BIPT	Belgian Institute for Postal services and Telecommunications
NRA(s)	(Collective) name for the relevant media regulator(s), i.e. VRM, BIPT and CSA.
Party / Parties	Depending on the context, Coditel and/or the Beneficiary entering into a Contract, together ("Parties").
Valid Request	The Beneficiary's demand allows him to deliver one or more Services as described in the Coditel WRO.
Working Day	Mondays to Fridays from 09h00-17h00 and except for national legal holidays in Belgium and other days/hours that are specified by Coditel through its Webapplication.
WRO	The General Terms and Conditions, Main Body, Technical Specifications, Planning and Operations, Service Level Agreement, Pricing and Billing, jointly constitute the Wholesale Reference Offer TV and Broadband Services over Cable.
End User	End-Customer to whom the Beneficiary provides one or more Services.
Coditel Network	The technical infrastructure, and all elements/components and attached systems thereof, that are managed and

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<sup>1</sup> This service will not be provided to Belgacom (pursuant the Decisions of the "CRC").

<sup>2</sup> The services of "Video on demand" are dependent on "Numericable France" and should be obtained from her or should be offered OTT via internet.

<sup>3</sup> This service will not be provided to Belgacom (pursuant the Decisions of the "CRC").

operated by Coditel, based on which Coditel provides one or more Services up until and including the Demarcation Point.

#### Webapplication

The electronic systems, which are part of the Associated Services, made available by Coditel to the Beneficiary, in order for the Beneficiary to manage correctly the relevant Service(s).

### **3 CONTRACT PROCEDURE**

#### **3.1 REQUEST BY THE BENEFICIARY**

5. In order for the Beneficiary to be able to start delivering a Service, a request has to be submitted to the Wholesale Department of Coditel by completing and signing the appropriate order form or submitting an order request in electronic format (depending on the type of Service), pursuant to the rules described in the Annex 3 "Planning & Operations". The terms and conditions for delivering the Services are described hereafter.
6. Coditel may not refuse to execute the Beneficiary's request except on one of the following grounds:
  - 6.1. the Beneficiary or his authorized agent refuses to provide Coditel with the confirmation of the fulfillment of the conditions prescribed in the CRC decision, the WRO or its Annexes;
  - 6.2. in an emergency situation, for the purpose of ensuring the safe operation of the Coditel Network, after all necessary measures taken by Coditel to ensure access to the service are without effect;
  - 6.3. following the Beneficiary's failure to observe obligations arising from the CRC decision, the WRO, its Annexes and/or the present General Terms and Conditions for the use of the Service.
  - 6.4. for the purpose of maintaining network integrity or the interoperability of the services or for any other technical reasons that must be indicated by Coditel based on clear motivation;
7. In the event of a refusal on one of the grounds listed above, Coditel shall notify within 10 working days the Beneficiary of its decision and the grounds for the decision by ordinary mail. A copy will be sent to the BIPT in the same delay.

#### **3.2 CONCLUSION, ENTRY INTO FORCE AND DURATION OF A CONTRACT**

8. The provision of a Service is subject to the conclusion of a Contract between a Beneficiary and Coditel according to the WRO, the present General Terms and Conditions and the negotiations between the Parties.

9. Notwithstanding the application of article 12 ( "Term, Termination and Suspension"), the Service is made available to the Beneficiary for an indefinite term, though this term cannot exceed the continuance of the obligations as imposed in the decision of the CRC of July 1, 2011. The Beneficiary will however be able to terminate the Contract after having provided Coditel with a written notice of at least three (3) months.



#### **4 SERVICES COVERED BY THESE GENERAL TERMS AND CONDITIONS**

10. Coditel shall grant to Beneficiary, without prejudice to the rights granted by the applicable regulatory framework to Beneficiary, the possibility to resell one or more Services depending on the WRO. A Service is accompanied by a number of Associated Services in order to allow the Beneficiary to correctly make use of the Service.
11. Coditel remains the owner of the infrastructure up until and including the Demarcation Point.
12. A Service shall be implemented in accordance with the Service descriptions provided in the relevant annexes.
13. The Service shall be implemented by Coditel in conformity with the applicable (technical) conditions.
14. In this respect Coditel will inform the Beneficiary of any modification of the technical specification, enabling a modification of the services offered, at the latest 3 (three) months before the commercial launch by Coditel of a commercial service based on these technical specifications.
15. Within the limits of what is permitted under the applicable regulatory framework, both Parties shall exchange appropriate operational information (including, in particular, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government and such other information as the Parties shall mutually agree).
16. In case the Beneficiary's End User cancels a Service, this Service will not be anymore provided by Coditel to this Beneficiary's End User.

## 5 OBLIGATIONS OF THE PARTIES

### 5.1 OBLIGATIONS OF THE BENEFICIARY

17. The Beneficiary must be an "Authorised Operator", entitled to provide the relevant services on (a part of) the Belgian market under the applicable legislation.
18. In respect of the necessary interventions of Coditel, the Beneficiary will communicate in good faith to Coditel, in relevant cases and in a sufficiently timely and complete manner, all information needed by Coditel for performing repair on the deliverables set up in the frame of the WRO. Beneficiary may refuse to communicate confidential data for which Beneficiary motivates it is not relevant for the requested purpose. Coditel may ask to BIPT the communication of this data if Coditel believes this information to be necessary and the demand reasonable.
19. In respect of the offering of a TV and Broadband Product to his End users based on a Wholesale Service delivered by Coditel pursuant to the provisions of the Contract, Beneficiary is responsible:
  - 19.1. To communicate Wholesale TV and Broadband Service related problems to Coditel; however, to ensure that first all appropriate investigations on Beneficiary, End user and broadcaster side have been carried out before raising an issue towards Coditel;
  - 19.2. To handle responsibility related to network, equipment or signal issues that aren't related to Coditel;
  - 19.3. To be the single and only point of contact of his End users with regard to the TV and Broadband Products offered by the Beneficiary to his End users, and abstain from redirecting this End user towards Coditel in any circumstance for any problem related to the TV and Broadband Products;
  - 19.4. To pay to Coditel the prices pursuant to the Contract.
20. The Beneficiary shall be liable to Coditel for ensuring that the equipment connected to the Coditel Network by Beneficiary's End Users complies with the requirement of the applicable legislation and applicable technical conditions and certifications (see Annex 2).
21. In respect of the offering of a TV and Broadband Product to his End users based on a Wholesale Service delivered by Coditel pursuant to the provisions of the Contract, Beneficiary is responsible:

- 21.1. To seek and take all the prior arrangements with the Right holders to authorize and enable Coditel to act as the technical facility on behalf of Beneficiary in the framework of the Contract(s);
- 21.2. For acquiring all appropriate intellectual property rights and authorisations regarding the content used in the context of delivering Wholesale Services to Beneficiary; Beneficiary guarantees that he is duly authorised by the Right holders to use the content for which he has requested from Coditel to make the signal available;
- 21.3. Beneficiary shall bring proof of these authorisations at the moment of Request for activation of the shared TV channel(s) concerned;
- 21.4. To maintain these authorisations for the duration of the Contract(s), and make sure that these authorisations are updated in conformity with any change in the Wholesale TV and Broadband Services;
- 22. In any case, the Beneficiary will not make any publicity or remarks to the detriment of Coditel or its image. The Beneficiary will in all circumstances stay neutral.

## **5.2 OBLIGATIONS OF CODITEL**

- 23. Coditel will accept the Order and provide the Wholesale TV and Broadband Services, as described in the WRO, insofar the conditions and limitations described in the CRC decision, the present General Terms and Conditions and the WRO are respected.
- 24. Coditel shall respect all service levels, timers and other guarantees mentioned in the WRO, or otherwise shall conform to the applicable penalties.
- 25. For any changes which may have a significant impact on the system (new types of messages or new exchange process), the Beneficiary shall be notified, to the extent possible, at least 6 months in advance with a high level description of the impact and with a structure of the documentation. Coditel will provide detailed impact and documentation, to the extent possible, 3 months prior start of the modifications. For smaller changes, the Beneficiary shall be notified, to the extent possible, at least 3 months in advance with a high level description of the impact and with a structure of the documentation. Coditel will provide detailed impact and documentation 1 month prior start of the modifications.
- 26. Coditel shall use all reasonable endeavours to correct any trouble affecting the quality of the service of Coditel. In this respect in case of urgency and acting in good faith, Coditel shall be entitled to disconnect a Service immediately and without prior consultation with the Beneficiary, provided that Coditel can identify and prove that the Service has caused a breakdown of networks or services. Coditel will immediately inform the Beneficiary, about the disconnection.

27. Only Coditel may carry out service works on equipment belonging to Coditel. Coditel shall act in accordance with the general standard of integrity that it has internally developed and enforced. In case of application of this provision, Coditel will immediately inform the Beneficiary about the operation before its execution.
28. In any case, Coditel will not make any publicity or remarks to the detriment of the Beneficiary or its image. Coditel will in all circumstances stay neutral, in accordance with the technical nature of its intervention. This provision does not prevent Coditel to make comparative publicity between its offers and those of the Beneficiary, provided that the legal conditions of this comparative publicity are fulfilled.
29. Coditel will not undertake customer handling of the Beneficiary's End Users.

## 6 FINANCIAL CONDITIONS

### 6.1 BILLING AND PAYMENTS

30. In consideration for the Service(s) provided by Coditel under the respective Contract, the Beneficiary shall pay the charges and fees provided in the WRO.

### 6.2 FINANCIAL GUARANTEES

#### 6.2.1 General principle – Pre-payment

31. Coditel will send on a monthly basis a pre-invoice at least on the 2nd Working Day after the starting of the considered month of service. For the Beneficiary that is in service, the first preinvoice shall be based on the average of the invoices for Services issued by Coditel during the last three months. For the Beneficiary not yet in service and concluding a new Contract, the first pre-invoice shall be based on the valuation of the average of the invoices for Services to be issued by Coditel within the first three months of services and, in particular, on the costs that include for Coditel the implementation of the service requested by the Beneficiary and the enforcement of the decisions of the CRC of July 1, 2011 (refer to “5.1 Macro Planning” of the section “5 Etablissement d’un service de revente).
32. The amount of the pre-invoice shall be adapted on a quarterly basis, i.e. increased or lowered as the case may be, based on the amounts due by the Beneficiary for the Services provided under the Contract during the previous quarter.
33. The Beneficiary agrees to pay the amount of the pre-invoice at the latest the 20th calendar day from the date of the pre-invoice.
34. Within 15 calendar days after sending the final invoice, Coditel will send a credit note regarding the pre-invoice.
35. If for the same month the amount of the pre-invoice is higher than the amount of the final invoices, Coditel shall reimburse the balance.
36. If for the same month the amount of the pre-invoice is lower than the amount of the final invoices, the Beneficiary will pay the surplus.

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37. Within 20 calendar days following the final invoice, the Beneficiary will make the payment by wire transfer. If payment is not received by Coditel on or before this due date, Coditel will be entitled to an interest calculated on the basis of the interest rate fixed in accordance with article 5 of the law of Augustus 2, 2002 on combating late payment in commercial transactions, in accordance with Article 3, § 1 d) of the Directive 2000/35 of June, 29 2000 which provided that the interest rate, in case of a delay of payment in a commercial transaction, is equivalent to the reference rate increased by seven percentage points and rounded to the half point of the next percentage, without prejudice to administrative costs and potential recovery costs.
38. If the Beneficiary disagrees with an invoice received from Coditel, it must notify in writing by registered letter Coditel thereof before the due date of such invoice in accordance with the relevant provisions of the Contract. The registered letter should clearly mention the reason(s) for disputing the relevant amount. Each invoice that is not disputed within the applicable payment period will be considered accepted by the Beneficiary.
39. Without prejudice to other legal or contractual remedies and notwithstanding anything to the contrary in the Contract, in the event the Beneficiary fails to pay on due time any undisputed amount due under the present Prepayment terms and conditions, Coditel shall be entitled to:
  - 39.1. - Suspension of any Service Levels obligations;
  - 39.2. - Refusal in writing of any new Services,.
  - 39.3. - Suspension of the existing Services.
40. The invoice for the Service(s) will be sent by email to the Beneficiary.
41. The final invoice for the recurring fees per Beneficiary's End User will be sent to the Beneficiary the month after the Service(s) was/were provided. All amounts due by the Beneficiary for the recurring costs will be invoiced as one total amount. The calculation of the amount due will be based on the proportion of the invoicing period in which a Service is provided to the relevant Beneficiary's End Users.
42. The final invoice for the one-time fees per Beneficiary's End User will be sent to the Beneficiary the month after the period in which the Service(s) was/were provided.
43. The amount due by the Beneficiary for one-time fees will be invoiced as one total amount.
44. Corrections to invoices are made by issuing credit notes or an additional invoice.

### 6.2.2 Payment & payment terms

45. All invoice payments by the Beneficiary are due in EURO by the transfer to the Coditel bank accounts using the structured reference as mentioned on the invoice.
46. In case of non-payment or incorrect payment by the Beneficiary, the invoice is considered unpaid.
47. All invoices need to be paid within 20 calendar days after the invoice date. When the payment is not received by Coditel within 20 calendar days after the invoice date, a conventional default interest of the annual interest rate provided by article 5 of the law of Augustus 2, 2002 on combating late payment in commercial transactions, which is equivalent to the reference rate increased by seven percentage points and rounded to the half point of the next percentage, will be added to the pending invoice amount. This conventional default interest will be calculated starting the maturity date of the invoice and run until the full payment date, without prejudice to Coditel's right to demand a higher amount.
48. In case of dispute, the disputed amount(s) will be deferred until the dispute is resolved. This deferral only applies to disputed amounts and has no effect on the payment period for the non-disputed amounts.
49. In case of recurring non or late payment by the Beneficiary, Coditel will have the right to:
  - 49.1. - suspend the Service(s) to the Beneficiary until full payment is received;
  - 49.2. - reject request for Service provision for other Beneficiary's End Users.

### 6.2.3 Disputes

50. The Dispute procedure may only start when Coditel receives a registered letter from the Beneficiary in which the disputed amount and the reasons for disputing the amount are mentioned.
51. Following the receipt of the registered letter Coditel will respond to the Beneficiary by registered letter. In this letter Coditel will, depending on the case, qualify the Beneficiary's claim as correct or unfounded. The latter will be correctly motivated by Coditel.
52. In case of a correct claim by the Beneficiary, Coditel will modify the invoiced amount(s), accompanied by a credit note or an additional invoice.

In case the claim of the Beneficiary is not correct or founded, the Beneficiary will be liable to pay the invoiced amounts and the interests to Coditel. The interest rate as provided by article 5 of the law of Augustus 2, 2002 on combating late payment in commercial transactions, is equivalent to the reference rate increased by seven percentage points and rounded to the half point of the next percentage. The interests are calculated from the maturity of the invoices and could be increased by the compensatory damages, administrative and recovery costs.

53. In the event the Beneficiary does not accept Coditel's reaction, i.e. no agreement exists between Parties regarding the dispute, it should confirm this by registered letter to Coditel within 15 Working Days after Coditel's reaction. When this is the case each Party will designate a contact person for the further resolution of the dispute, with the objective to find a solution through bilateral negotiations.
54. When no solution is found within 15 Working Days, or any other period mutually agreed upon by both Parties, after the Beneficiary's reaction, in which Coditel's reaction is rejected, the dispute may be submitted to the Courts of Brussels.

#### 6.2.4 Financial Guarantees

55. The Beneficiary has provided Coditel with an irrevocable and unconditional bank guarantee on first demand issued by a reputable bank or financial institution established in the EU. That bank guarantee will be issued for a period equivalent to the term of the present contract, i.e. for an indefinite term and for at least three years and for an amount equal to an estimate of six months of amounts due by the Beneficiary for the Services rendered in accordance with the Contract and/or Agreement and with a minimum of 500.000,00 EURO. Based on the evolution of the amounts due for the Service(s), Beneficiary and Coditel will have the right to require an adaptation of the amount of the bank guarantee every three months. Upon the request for adaptation of the amount of bank guarantee, necessary steps will be taken to ensure adaptation within 5 Working Days. Upon expiration of the bank guarantee or after that Coditel has called upon the bank guarantee, the Beneficiary shall provide Coditel with a pre-payment or with another financial guarantee as defined in the present article within five (5) Working Days of the request of Coditel.



## **7 PRINCIPLES**

### **7.1 RETAIL PRICING & BILLING**

56. Unless otherwise provided in the Contract and without prejudice to the applicable regulatory framework, the Beneficiary shall be responsible for the setting of the tariffs that Beneficiary will apply to the Beneficiary's End Users.
57. Except as provided otherwise in the Contract, no deductions or reductions shall be made from the payment of any charges or fees due for a Service for any bad or unpaid debts or any unrecoverable claims (including, in particular, claims arising from fraud cases) that the Beneficiary may have against Beneficiary's End Users or any other third parties in relation with the Service.

### **7.2 BRANDING**

58. The Parties agree not to offer any Service under any brand, including any trademark, trade name or company name, of the other Party unless the use of the brand(s) of the other Party is explicitly provided under the Contract. Such use of the brand will then be strictly limited to the Service at stake.
59. Notwithstanding the foregoing, Parties acknowledge that the installation of equipment on the site after the Demarcation Point of the relevant Beneficiary's End Users who have subscribed to an offering of a Beneficiary, can never be realized by Coditel personnel. Both Parties agree that Coditel shall have no obligation to unbrand or rebrand its service technicians or trucks. Coditel will act in accordance with its general standard of integrity that it has internally developed and enforced. This provision does not apply if the parties agree to an intervention of Coditel after the Demarcation Point nor if the End User retains any service directly from Coditel.

### **7.3 USER TERMS AND CONDITIONS**

60. The Beneficiary shall ensure that the terms and conditions governing Beneficiary's contractual relationships with Beneficiary's End Users are compliant with the rules and principles set out in the WRO.
61. The Beneficiary shall indemnify Coditel against all losses, claims or liability suffered by Coditel due to the fact that Beneficiary will have failed to incorporate the above mentioned rules and principles in his terms and conditions.

## **8 COORDINATION BETWEEN THE PARTIES**

### **8.1 SINGLE POINTS OF CONTACT**

62. The Beneficiary and Coditel will both appoint an individual as their respective single point of contact ("SPOC") who will act, within its organization, as the other Party's contact person.
63. The SPOC of either Party will have full authority to act and decide on behalf of the respective Party on all technical and operational matters regarding the day-to-day management of the performance of their Contract. Except as otherwise expressly provided by the relevant Party, each Party's SPOC will have no authority to act outside the day-to-day management of the performance of the Contract.
64. Each Party will be authorized to replace its SPOC by notice sent to the other Party. Such notice will have immediate effect.

## 9 LIABILITY

### 9.1 GENERAL RULES

65. Taking into account the nature of the respective activities of the Parties, the risks associated with these activities and the consideration obtained by each Party from the Contract, Parties expressly agree that their respective liability shall be limited as follows.
66. If either Party is held liable to the other Party (including such other Party's employee(s) and (sub-)contractor(s)) under the Contract, that liability shall be limited to the following:
  - 66.1. if such liability results from any conduct attributable to the relevant Party, which is, under Belgian law, characterized as being gross negligence (faute lourde – zware fout) or intentional negligence (dol – bedrog), then such liability shall be subject to no limitation, except as provided by law;
67. In addition, notwithstanding the above and the application of the force majeure described in article 70 the Beneficiary will indemnify Coditel against any claim or loss related to the illegal use, or the use for illegal purpose of a Service by the Beneficiary or the Beneficiary's End users. Finally, when it is established that the Beneficiary has not correctly followed the (technical) requirements associated to a Service, Coditel has the right, next to claiming damages depending on the case, to terminate the Contract.

### 9.2 FORCE MAJEURE

68. Neither Party will be liable for any delay or failure to fulfill its obligations under the Contract arising from any event beyond its reasonable control (all such events being hereafter referred to as "Force Majeure"). The use of the service for an unlawful purpose, including the piracy by the End-User of the Beneficiary does not constitute an event beyond the reasonable control of the Beneficiary.
69. The Party claiming Force Majeure shall as soon as possible send to the other Party a Notice of the Force Majeure. Such Notice shall contain adequate evidence of the occurrence and extent of the Force Majeure, as well as an estimate of the expected duration of the Force Majeure. As soon as practicable after receipt of such Notice, the Parties shall consult with each other in order to find an equitable solution to the problems and difficulties caused by the Force Majeure.
70. The Party claiming Force Majeure shall use all reasonable endeavours to minimise the consequences of such Force Majeure, and to ensure, in as far as reasonably possible, the continuity of the services provided under the Contract, and shall perform those of its obligations not affected by a Force Majeure.

71. Upon cessation of the effects of the Force Majeure, the Party initially affected by such Force Majeure shall promptly notify the other Party of such cessation and the IBPT.

### **9.3 ACCIDENTS AT WORK AND SAFETY RULES**

72. Each Party hereby undertakes to provide insurance cover against accidents at work for its own employees in conformity with the applicable legal requirements.
73. Each Party shall comply with safety practices and procedures reasonably applicable when entering the premises and installations of the other Party in order to carry out work. Each Party undertakes to ensure that its personnel or its subcontractor personnel, while upon the premises and installations of the other Party, will respect any internal rules and codes of conduct therein applicable, provided that such rules and/or codes shall have been made available to them in advance. Without prejudice to the provisions of the chapter relating to liability, each Party shall indemnify and hold harmless the other Party for any and all damage, costs or expenses incurred as a result of any act or omission of a Party's personnel or a Party's subcontractor personnel while upon the premises and installations of the other Party.

## 10 OPERATIONAL MATTERS AND NETWORK MANAGEMENT

74. A Service provided under the Contract shall be implemented and provided by the Parties in accordance with all applicable (technical) specifications set forth in the relevant Annexes.
75. Both Parties shall cooperate to install and maintain reliable Services. Both Parties shall exchange appropriate information as provided in the Annex 3 "Planning and Operations" (including, in particular, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government and such other information as the Parties shall mutually agree) to achieve this desired reliability.
76. Each Party shall ensure that the network management controls are applied in such a way as to ensure that there is no discrimination in favour of that Party.
77. The Parties shall ensure that the essential requirements, as defined and applicable under the regulatory framework and the WRO, are adequately and sufficiently protected, in as far as the establishment, maintenance and operation of the services offered under the Contract are concerned.
78. It is acknowledged that the present General Terms and Conditions, and the WRO in general contain a number of specific principles and rules that have been developed to ensure the protection of all applicable requirements. Furthermore, the Parties shall consult with each other in order to ensure that all applicable requirements are protected in an adequate and sufficient manner.
79. It is a condition for the provision by Coditel of the Services under the Contract that Beneficiary's request is not detrimental to the operation of the networks and Services in question or to their integrity or interoperability, and that the protection of service and internal data, network equipment, software and stored data, including personal data, confidential information and privacy can be sustained.
80. In exceptional and unforeseeable cases Coditel shall be entitled to cause interruptions or modifications of the Coditel Network and Services to the detriment of the supply of the Services under the Contract in connection with measures that are deemed necessary for technical, maintenance and operating reasons taking into account the balance of the interests of both Parties or that are ordered by the regulatory authorities. Coditel shall give in good faith Beneficiary the longest possible notice of these interruptions and modifications and state the reason for them.

## **11 AMENDMENTS AND REVISIONS**

81. Except as otherwise provided in the Contract, any agreement departing from the Contract shall only be valid if duly agreed upon in writing by the respective representatives of the Parties.

## 12 TERM, TERMINATION AND SUSPENSION

82. The Beneficiary has the right to terminate a Service after having provided Coditel with a written notice of at least three (3) months.
83. Coditel has the right to terminate the contract without ~~giving notice and without~~ paying compensation in case of serious misconduct of the Beneficiary to the contract, including breach of articles ~~6.2.2 (paragraph 47), 6.2.4 (paragraph 54),~~ 7.2 (paragraph 57), 9.3 (paragraph 71) of these general conditions.

Accordance with paragraph 66 above, when it is established that the Beneficiary has not correctly followed the ~~technical~~ requirements associated to a Service, Coditel has the right, next to claiming damages, to terminate the contract ~~with immediate effect~~.

84. In the event Beneficiary uses or allows the use of Services provided under the Contract in an illegal manner or for illegal purposes, or if Beneficiary by its action or omission causes, or could reasonably be expected to cause a damage to the working or the security of the Coditel Network, or acts in contradiction with the provisions of the contract and especially with the Order of reference and the Beneficiary fails to take appropriate measures in order to remedy to the situation within a period of fifteen (15) Working Days from the receipt of a Notice of Suspension sent by Coditel, Coditel will have the right to suspend the provision of the Contracts.
85. Notwithstanding the foregoing, Coditel will have the right to suspend a Service prior to sending the above mentioned Notice in urgent cases where such suspension is necessary under the circumstances. In that case, Coditel will inform the parties involved about the suspension of Services at the latest 1 Working Day after the suspension.
86. If the Beneficiary uses or allows the use of Services provided under the Contract in a manner not corresponding to the Technical Specifications set forth in the Annex 2 "Technical Specifications" and the Beneficiary fails to take appropriate measures in order to remedy the situation, within a period of fifteen (15) days from the receipt of a Notice sent by Coditel, Coditel reserves the right to suspend all or some of the Services.
87. Coditel will have the right to suspend a Service in the event that it is requested to do so by an order of a court or a competent authority. Coditel will inform the Beneficiary as soon as possible of the cause of such suspension.
88. In the event that the Beneficiary fails to pay outstanding invoice(s) for any amount due under the Contract, Coditel shall be entitled, after having duly informed the BIPT, to suspend the service if the total amount due has not been paid within a period of fifteen (15) days following written Notice of suspension.

89. In the event that the Beneficiary fails to provide, renew, adapt or reconstitute the financial guarantee as provided in the chapter on Financial Guarantee Coditel shall be entitled to suspend the service if this situation has not been rectified within a period of fifteen (15) days following written Notice of suspension.
90. The provisions in this chapter on Suspension of the Services are without prejudice to any other right or claim for compensation to which one of the Parties may be entitled to in the event of suspension of a Service.
91. In the event of Suspension of Services, the Beneficiary will be responsible to inform the relevant Beneficiary's End Users of the consequences of the suspension of the Contract in a neutral manner.
92. In the event that either Party is declared bankrupt or enters into liquidation, then the other Party may terminate the Service, without any further legal or other procedures, by sending Notice of Termination with immediate effect to the other Party.
93. The provisions in this chapter on Termination of the Services are without prejudice to any other right or claim for compensation to which one of the Parties may be entitled to in the event of termination of the Services.
94. In the case of termination of Services for any reason, Coditel shall be entitled to payment for all Services performed prior to such termination in accordance with the conditions that were applicable between the parties at the time of termination.
95. In the event of Termination of the Services, the Beneficiary will be responsible to inform the relevant Beneficiary's End Users of the consequences thereof.
96. The provisions of the Contract which by their nature are determined to survive the termination of the Services (including, in particular but without limitation, the provisions on Confidentiality and Applicable Law and Jurisdiction), shall remain in full force and effect after termination.
- 94bis. Coditel has the right to terminate the contract with the Beneficiary in case the decision of the CRC of July 1, 2011 is either withdrawn, cancelled, or amended in the sense that all or part of the Service would be exempt from the obligations contained in the decision CRC of July 1, 2011.
- 94ter. Coditel has the right to terminate the contract after having provided the Beneficiary with a written notice of at least three (3) months in case of a substantial modification of the economics of the contract, in particular if the tariffs originally proposed can no longer cover the operating costs of Coditel for the Service provided for the Beneficiary.





## 13 CONFIDENTIALITY

### 13.1 REQUEST FOR INFORMATION

97. Requests for information concerning the WRO and Annexes and/or the Contract can be made in writing by the Beneficiary to its SPOC within Coditel.
98. Every information that will be transmitted by Coditel to the Beneficiary in connection with the performance of this contract shall be deemed to be a confidential information unless the other party can establish that it was freely available to the public before the signing of the contract.
99. The Beneficiary who will have signed a non-disclosure agreement will be entitled to obtain confidential information via a dedicated Coditel Webapplication through a secured access. Information on how to access the mentioned Webapplication can be obtained via the SPOC of the Beneficiary within Coditel.

### 13.2 CONFIDENTIAL INFORMATION

100. For the purpose of this Chapter, the term "Confidential Information" shall mean: Information communicated by one Party (or from any of its Associated Companies) (the "Disclosing Party") to the other Party (or to its employees and advisors) (the "Receiving Party"), or obtained by the Receiving Party in connection with the performance of the Service, provided that such information is, at the time of its disclosure, notwithstanding article 103 below, designated "confidential" or with an equivalent term. If such information was disclosed orally, it shall constitute Confidential Information provided that the Disclosing Party informs the other Party at the time of such disclosure, that such information is confidential and that (i) a written notice containing a summary of the information disclosed orally and mentioning that such information is confidential, is issued by the Disclosing Party to the other within five Working Days from the date of disclosure, or (ii) such disclosure is recorded in minutes of a meeting that are designated, labelled or marked "confidential" or designated, labelled or marked with an equivalent term;
101. "Confidential Information" does not include:
  - 101.1. information that is properly and lawfully in the public domain otherwise than by breach of the Contract or any other obligation of confidence;
  - 101.2. information that was disclosed by a third party to the Receiving Party without restriction on disclosure or use, unless the Receiving Party knew or should reasonably have known that this information was acquired unlawfully or by a breach of contract or fiduciary relationship.

102. Except as specified in writing, by the Disclosing Party at the time of disclosure, Confidential Information shall continue to be deemed as such until the end of a period of five years after its initial communication under the Contract. This provision also apply after the termination of the contract.

### **13.3 NON-DISCLOSURE**

103. The Receiving Party shall refrain from disclosing the Confidential Information to any third party and shall use the Confidential Information only for the performance of the Services offered in accordance with the Contract. In addition, the Receiving Party shall take any reasonable measures to ensure the confidentiality of this information. In any event, the Receiving Party shall use efforts at least commensurate with those that such Party uses for protecting the confidentiality of its own Confidential Information.
104. Notwithstanding the foregoing and without prejudice to the provisions regarding the Disclosure to Personnel, Advisors or Suppliers here-under, either Party shall be allowed to disclose the Confidential Information to third parties provided it has obtained the prior written consent of the other Party. Such written consent will be given case-by-case upon a discretionary basis. Such written consent shall only be valid and enforceable for the specific information listed therein. The written consent to disclose Confidential Information shall identify the third party or parties to which the information can be disclosed and shall set forth the terms and conditions to which such disclosure is subject.
105. The Disclosing Party shall remain free to disclose to any third party Confidential Information disclosed to the Receiving Party.

### **13.4 DISCLOSURE TO PERSONNEL, ADVISORS OR SUPPLIERS**

106. A Receiving Party shall disclose the Confidential Information received from the other only to its directors, employees, suppliers, agents, advisors, resellers, contractors or sub-contractors, who have a need to know such information. Such Party shall ensure that such directors, employees, suppliers, agents, advisors, contractors or sub-contractors are bound by the obligations of confidentiality in respect of the Confidential Information that are set forth in the Contract. For this purpose, the Beneficiary shall conclude a similar non disclosure agreement with the above authorized parties not on his payroll that contains at least the same provisions as the non disclosure agreement the Beneficiary concluded with Coditel.
107. Notwithstanding anything to the contrary in the foregoing provisions, the Receiving Party shall not disclose or use the Confidential Information until the end of a period of five years after its initial communication and with the aim of providing commercial advantage to business divisions of the Receiving Party, or business divisions of the Receiving Party's Associated Companies, which are engaged in activities competing with the other Party. This provision also apply after the termination of the contract.

108. Either Party may disclose Confidential Information that they received from the other Party, to their suppliers or contractors provided and to the extent that such suppliers, contractors or sub-contractors effectively require to have access to such information in order to supply the relevant goods and services. The Parties shall do whatever is necessary in order to impose on the suppliers or contractors which have obtained access to Confidential Information obligations to keep this information confidential, which are at least equivalent to the obligations imposed under the Contract.
109. Each Party shall be liable under the limitations provided in the Chapter relating to Liability, for any unauthorized disclosure or use of the Confidential Information by its directors, employees, suppliers, agents, advisors, contractors or subcontractors. The Party responsible for an unauthorized disclosure or use of the Confidential Information shall, in any event, take any reasonable measures (including but not limited to court proceedings) to mitigate the damage resulting there-from.

### **13.5 DISCLOSURE REQUIRED BY LAW**

110. If the disclosure of Confidential Information to third parties is required by reason of legal, accounting or regulatory requirements beyond the control of the Receiving Party, the Receiving Party may disclose such information to the extent necessary to comply with such requirements. Without prejudice to the application of the foregoing, the Parties shall endeavour to ensure the confidential treatment of the Confidential Information by the third parties receiving such information as a result of such requirement.
111. Without limitation to the generality of the foregoing, either Party will have the right to disclose Confidential Information to the NRAs, whenever required by law, or deemed reasonably necessary in the context of any proceedings or discussions held in front or with the NRAs. If any such disclosure of Confidential Information is made, the Party communicating the information will ensure that the attention of the NRAs is properly drawn to the fact that the information is confidential and that the information needs to be kept confidential.

## **14 DISPUTE RESOLUTION AND APPLICABLE LAW**

### **14.1 DISPUTE RESOLUTION PROCEDURE**

112. The SPOC shall, on an ongoing basis, attempt to solve any dispute, controversy or claim between the Parties concerning the interpretation, application and implementation of the General Terms and Conditions and the WRO in general through discussions held in good faith.
113. In the event that the Parties have been unable to solve any Dispute, then upon Notice of either Party, each of the Parties will appoint a designated senior business executive (other than their respective SPOC) whose task it will be to meet for the purpose of endeavouring to resolve the Dispute. Each Party shall ensure that their respective designated executive has sufficient authority or decision-making power concerning the matter at stake. The designated executives will meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate in connection with its resolution. Such executives will discuss the Dispute and will negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding relating thereto.
114. Except in the cases of urgency, as determined in good faith by the Party calling the Dispute, no formal proceedings for the resolution of a Dispute may be started until the earlier to occur of (a) a good faith conclusion by the designated executives that amicable resolution through continued negotiation of the matter in issue does not appear likely or (b) the Parties have failed to reach an agreement on the Dispute within 15 working days of the escalation of the Dispute.

### **14.2 APPLICABLE LAW AND JURISDICTION**

115. The Services and the Contract, WRO including Annexes shall be governed by Belgian law.
116. Without prejudice to the previous section, any dispute concerning the validity, the interpretation of the Contract, or the performance of the Service, or of subsequent contracts derived here-from shall be finally submitted to the Courts of Brussels, Belgium. This provision is without prejudice to the right of each of the Parties to submit the dispute to the BIPT with a view to reach conciliation or to submit the dispute to the Competition Council.

## **15 MISCELLANEOUS**

### **15.1 GENERAL PRINCIPLES**

117. All the terms and conditions of this WRO, including its Annexes, are agreed upon by the Parties without prejudice to the rights and obligations that either Party may derive from the applicable provisions of the regulatory framework. The fact that either Party has agreed to any provision in this WRO will not be construed as a renunciation by such Party to invoke (i) any right that such Party may derive from any imperative provision of the applicable regulatory framework or (ii) any obligation that may be imposed to the other Party pursuant to any imperative provision of the applicable regulatory framework.

### **15.2 WAIVER**

118. A failure by either Coditel or Beneficiary to insist on the performance of any term of the Contract or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. No waiver shall be valid unless it is in writing and signed on behalf of the Party making the waiver.

### **15.3 FRAUD**

119. The Parties accept to cooperate to the best of their respective abilities in order to prevent and eliminate any kind of fraud which involves Services provided under the Contract. If any of the Parties suspects such kind of fraud, the Parties shall co-operate in order to identify the origin of the fraud and to use any appropriate means in order to eliminate and prevent such fraud as soon as possible. For the purposes of the application of the present provision, fraud shall mean any manipulation of a communications network, including by Beneficiary connected to the Coditel Network in order to obtain one or more services without paying the proper charge for it, or to support other criminal activities (including, in particular, wiretapping, eavesdropping and gathering secret numbers).
120. It is explicitly acknowledged by the Parties that any cooperation in the context of the present provision will need to be in due compliance with the entire regulatory framework.

### **15.4 INDEPENDENT PARTIES – APPROVAL**

121. Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, competent authorities, other operators, and any other persons that may be required in connection with the performance of its obligations under the Contract. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which other Party is responsible.

122. Each of the Parties is and shall remain at all times an independent contractor. Neither Party is authorized and neither of the Parties nor their employees, agents, representatives or subcontractors shall at any time attempt to act or act on behalf of the other Party to bind the other Party in any manner whatsoever to any obligations. Neither Party nor its employees, agents or representatives shall engage in any acts which may lead any person to believe that such Party is an employee, agent or representative of the other Party. Nothing in the Contract shall be deemed to constitute a partnership between the Parties.
123. If any part of the Contract shall be held to be illegal, invalid or unenforceable for any reason, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired thereby.