



## INCAMAIL – TERMS OF SERVICE

Thank you for using IncaMail. IncaMail is a secure email platform for secure and verifiable electronic message exchange that helps you to exchange email messages with confidential content (“**IncaMail**”). The IncaMail Services are provided to you by **Post CH Communications Ltd.** (*registered seat: Wankdorfallee 4, 3030 Bern, Switzerland*, hereinafter referred to as the “**Service Provider**”).

This Terms of Service document is a legally binding agreement (the “**Agreement**”) between you (the “**Customer**”) and the Service Provider and governs the access and use of IncaMail and any related services, including websites and relating Software (the “**Service**”). If you agree to this Agreement not as an individual, but on behalf of your organization, then the “Customer” also means your organization. In this case, this Agreement will also bind your organization, unless your organization has a separate agreement in effect with us.

You confirm that you have the necessary authority to enter into this Agreement as the Customer or on behalf of the Customer before proceeding.

If you are given access to the Services by a Customer (for example by your employer), i.e. you are a Company Administered Customer, please note that in addition to this Agreement, your access and use of the Services is subject to your organization’s control.

Any reference to persons in this Agreement applies to individuals of all gender identities and to more than one person.

**Please read this document carefully. If you sign up for, access or use the IncaMail Services, you agree to this Agreement. Please do not use the IncaMail Services if you are barred from doing so under applicable law.**

### 1. The Service

- 1.1. **Scope:** This Agreement governs the access and use of IncaMail products and services offered by the Service Provider, including websites and technologies or functions and relating Software (the “**Services**”). You may access and use the Services in accordance with this Agreement. This Agreement includes, the applicable Feature-Specific Terms, the [Acceptable Use Policy](#), the [Privacy Policy](#) and the [Data Processing Addendum](#) (if applicable).
- 1.2. **Feature-Specific Terms:** Certain services or functionalities may be subject to additional terms specific to the relevant service or functionality as specified in the Feature-Specific Terms. By accessing or using the relevant service or functionality covered by the Feature-Specific Terms, you also agree to the Feature-Specific Terms. In case of any discrepancies between the Feature-Specific Terms and these terms, the provisions of the Feature-Specific Terms shall prevail.
- 1.3. **Resellers:** As a Customer, you may purchase a subscription directly from a third party (“Reseller”). In such a case, in addition to this Agreement, separate terms and conditions with the Reseller may apply to your access to the Services. You expressly acknowledge and agree that the Service Provider is entitled to enforce this Agreement against you and that Resellers are not authorized to make any promises or commitments on behalf of the Service Provider. The Service Provider is not bound by any obligations other than what is specified in this Agreement and the documents referred above in clause 1.1.
- 1.4. **Changes in Service:** We are always looking for ways to make the Services better and more secure. To live up to that, we may need to modify features and functionality from time to time. If we change the Services during the term of this Agreement in a manner that materially reduces functionality or limit access to certain features, we



will notify Customers at the email addresses associated with their accounts. After receiving the notice, as a Customer, you may terminate this Agreement within thirty days. In such a case, you will be provided with a pro-rata refund of any pre-payment. This termination right will not apply to updates made to features provided as Beta Services.

## 2. Subscriber conditions

- 2.1. **Use of the Services without registration:** Without registration, Customers may use the Services for the following purposes only: (i) reading IncaMail messages by using a security code, and (ii) sending messages to such IncaMail Customers, who have activated this Service, by using a mail gateway integration. The Agreement between the Service Provider and the Customer who uses the Services without registration shall automatically come into effect upon completion of the online Customer confirmation. Within 180 days as of the last use of IncaMail, returning Customers do not have to accept this Terms of Service again, on the condition that this Terms of Service has not changed meanwhile. The Service Provider may at any time extend or limit the use of the Services without registration.
- 2.2. **Use of the Services with registration:** To open an IncaMail account and be able to consequently use the Services, Customers must first register with the Service Provider at the [www.incamail.com](http://www.incamail.com) website, by using their e-mail addresses. An activation code is then sent to each Customer's e-mail address and Customers must use the code to verify their data to the Service Provider within 30 days. The Service Provider may waive its right to the verification in case of Customers who have already been verified by other means (e.g. with a Swiss ID registration, with a Microsoft or Google registration). Customers signing up for IncaMail Premium by using the eGov registration, must provide their postal addresses, too for the verification by the Service Provider.
- 2.3. The online registration described in 2.2 constitutes a legally binding offer for the Customer to conclude a legally binding agreement with the Service Provider to access and use the Services, however, the Agreement shall not come into effect until the IncaMail account will be activated by the Service Provider. Customers must confirm their customer accounts to the Service Provider by completing the verification process, before the activation is completed by the Service Provider. The Service Provider is entitled to refuse any registration applications without giving any reasons or only grant limited access to the Services (i.e. by use of the Services without registration in accordance with Clause 2.1).
- 2.4. **Access to IncaMail:** The IncaMail Services can be accessed via [www.incamail.com](http://www.incamail.com), following the successful authentication of the Customer. The access tools specified by Customer for IncaMail (username and password) are needed for the purpose of authentication. The Service Provider may accept other access tools (e.g. SwissID, Canton of Geneva ID, etc.). The use of these tools shall be in accordance with the provisions of the relevant services offered and is not the subject of this Agreement.

## 3. Legal effect and admissibility of electronically transmitted messages

- 3.1. **General:** The information in this section 3 is not binding or exhaustive. It is the exclusive responsibility of the Customer to undertake due diligence concerning the legal effect and admissibility of electronically transmitted messages in individual cases. The legal effects of electronic messages sent and received via IncaMail shall be governed in each individual case by the statutory provisions and judicial and institutional practice of the national jurisdiction responsible for adjudication, as well as by any private agreements which may exist. The use of IncaMail, including, in particular for the purpose of adhering to time limits, shall be exclusively for the benefit and at the risk of the Customer. In relation to adhering to time limits, it must be noted that delays may occur with electronic transmission.
- 3.2. **Electronic transmission of legal communications with authorities in Switzerland:** In Switzerland, IncaMail is a recognized platform for secure delivery in proceedings to which the Swiss Civil Procedure Code (CPC), the Debt Enforcement and Bankruptcy Act (DEBA), the Swiss Criminal Procedure Code (CrimPC) or the Federal



Administrative Procedure Act (APA) apply. The details are set forth in the relevant statutes and implementing provisions. The addresses of the participating authorities are published in the directory of the Federal Chancellery ([www.ch.ch/ejustice](http://www.ch.ch/ejustice)). The Customer acknowledges that generally (a) only an IncaMail message sent as “Registered” is permitted for the proper service to authorities, as defined in the said statutes; and (b) it is mandatory for communications to be sent with a qualified electronic signature pursuant to the Federal Act on Electronic Signatures. Additional preconditions for admissibility may be stipulated in the relevant laws and implementing provisions. Products for creating qualified electronic signatures are not the subject of this Agreement. The Customer may obtain corresponding products e.g. at [www.swissid.ch/en](http://www.swissid.ch/en) or <https://tresorit.com/esign>

- 3.3. **Foreign law provisions:** The Customer acknowledges that the exchange of data with a (qualified) signature and/or encrypted data outside Switzerland is subject to foreign jurisdictions and therefore different effects may occur which may be more or less extensive than in the cases under Swiss law. The exchange of encrypted messages is also subject to statutory restrictions in certain foreign states.

#### 4. Customer Content

- 4.1. **Confidentiality:** The Service Provider warrants that any messages sent via IncaMail have the following characteristics: integrity, non-repudiability, confidentiality and authentication ([www.incamail.com](http://www.incamail.com)). The Service Provider warrants that the messages sent via IncaMail within the contractual term can be decrypted for 24 months from the date on which they are sent. The Service Provider may, if it informs the Customer accordingly, allow decryption after the mentioned period, or in exceptional cases shorten the period due to security reasons.
- 4.2. **Limited Permission:** This Agreement does not grant the Service Provider any ownership over the Customer Content or Customer's intellectual property, except for the limited rights that are reasonably necessary for the Service Provider to provide the Services in accordance with this Agreement, in particular, to store, backup or transfer Customer Content and Service Data (as set out in clause 4.3).
- 4.3. **Content:** The Customer understands that he/she is fully and solely responsible and accountable for his/her use of the Services, including the content of messages, i.e. the Customer Content.

#### 5. Data processing and transfer

- 5.1. **Personal Data:** In order to operate and provide the Services, the Service Provider processes certain information ("Service Data") that may include Personal Data. Further information about how the Service Provider collects, uses and discloses Personal Data is set out in the IncaMail Privacy Policy and the Data Processing Agreement (if applicable).
- 5.2. **Sub-processors:** The Customer agrees that the Service Provider will engage its Affiliate and authorized service providers in the provision of the Services to process Service Data ("Sub-processors"), including and without limitation, any associated Personal Data under this Agreement within the EEA, the United States and in other countries and territories. The list of the Sub-processors is available at: [Legal Information – IncaMail](#).
- 5.3. **Data transfers:** The Customer agrees that the Service Provider and its Sub-processors may transfer Service Data between their servers, to the devices of Company Administered Customers, and as a result, the Company Administered Customers may have access to the Service Data in locations other than Customer's country.
- 5.4. **Data Processing on behalf Customer:** If the Customer has an account for business purposes, by entering into this Agreement the Customer instructs the Service Provider to process Personal Data on its behalf. The Service Provider provides the Services in accordance with the IncaMail features and functionalities. or as further documented by mutually agreed upon written instructions given by Customer and accepted by the Service Provider. The Customer acknowledges that its Company Administered Customers' use of the Services is subject to the IncaMail Privacy Policy and understands that the Privacy Policy identifies how the Service Provider



collects, stores, and uses certain information. The Customer will make its Company Administered Customers familiar with the IncaMail Privacy Policy.

- 5.5. **Data Processing Agreement:** If the Customer has an account for business purposes and is subject to EU or Swiss Data Protection Laws, the Customer agrees to the Data Processing Addendum.

## 6. Business Administrators

**Administrator rights:** In the case of certain Service Plans, the Customer may appoint selected Company Administered Customer(s) as "Administrator(s)" and may change this role at any time. Administrators may have the ability to monitor usage detailed statistics of the "Company Administered Customer", restrict or terminate access to accounts relating to the Customer's subscription ("Company Administered Customer Accounts"). In addition, Administrators may be entitled to request different or additional services (including setting up policies and two-step verification for Customer accounts), assist in third-party product integrations, and accept notices, disclosures, and terms and conditions.

## 7. Customer responsibility

- 7.1. **Eligibility to use:** You represent and warrant that: (i) you are competent to agree to this Agreement and (ii) you have validly entered into this Agreement and have a legal power to do so.
- 7.2. **Compliance:** As between the parties, the Customer is responsible for compliance with the provisions of this Agreement and the Acceptable Use Policy. Customer is solely responsible for compliance with laws and regulations applicable to Customer's use of the Services, in particular for ensuring not to send messages with illegal content, viruses or spam when using IncaMail. Customer maintains all responsibility for determining whether the Services are accurate or sufficient for its purposes.
- 7.3. **Consequences of non-compliance, indemnification:** Customer shall be liable for loss or damage incurred by the Service Provider or third parties because of the content of the electronic messages transmitted by the Customer using the Services or as a result of the misuse or the non-contractual or illegal use of the Services. If, as a result of culpable breaches by the Customer of the obligations as set out in clause 7.2, third parties make claims directly against the Service Provider, the Customer undertakes to fully indemnify the Service Provider in particular for litigation costs. The Service Provider shall inform the Customer immediately if such claims are made.
- 7.4. **Careful retention of the access tools:** Customer is responsible for maintaining the confidentiality of passwords and Customer accounts. In particular, Customers must keep their usernames and passwords separate from each other and ensure that both they and any devices that are used are not misused by third parties. If third parties have access to the customer account in question, Customer must be liable for the actions of these third parties in the same way as they are for his own actions. If Customer has a reason to believe that an unauthorized third party knows or can access the access tools, Customer must change the password immediately or notify the Service Provider thereof. The Customer, and not the Service Provider, is responsible for the internal management or administration of the Services. The Services support logins using two-step authentication.
- 7.5. **Embargoed Countries:** The exchange of encrypted messages might be subject to statutory restrictions under the laws of the country in which the Customer intends to use the Services. It is the Customer's sole obligation and responsibility to check such limitations before using the Services and to comply with such restrictions and limitations.

Customer shall not access or use the Services if Customer is located in any jurisdiction in which the provision of the Services, the Software or other components is prohibited under the laws of Switzerland, the United States or the European Union or other applicable laws or regulations and Customer shall not provide access to the Services to any government, entity or individual located in any Prohibited Jurisdiction. Customer represents and



warrants that (i) Customer is not prohibited from receiving Swiss, EU or US exports; (ii) Customer is not a national of, or a company registered in, any Prohibited Jurisdiction; (iii) the Customer shall not permit the Company Administered Customers to access or use the Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (iv) Customer shall comply with all applicable export laws regarding the transmission of technical data.

7.6. **Internet connection:** The Customer understands that certain functions of the Services require Internet connection. The Customer is responsible for procuring and maintaining the network connections that connect your network to the Services, including, but not limited to, "browser" software that supports protocols used by the Service Provider. The Customer is responsible for obtaining and maintaining all connectivity, computer software, hardware and other equipment needed for access to and use of the Services.

## 8. Third-party disclosure

8.1. **Searchability:** Customers may register with the directory "eGov Directory Switzerland" and can adjust the searchability settings.

8.2. **Third-party request:** Except for the case as set out in clauses 8.1 and 9, no information in connection with the Services will be disclosed to third parties, unless the Service Provider is required to do so by law or in response to a lawful request of a competent authority or a law enforcement agency.

## 9. Involvement of third parties

**Subcontractor:** Customer authorizes the Service Provider to engage its Affiliates ("**Permitted Third Party Provider**") and other third parties as third-party service providers any time into the provision of the Services, this also applies in particular to the product development and functionalities, furthermore, the maintenance and support of the Services (specifically by Tresorit Kft.) The list of the third parties is available here: [Legal Information – IncaMail](#).

## 10. Fees

10.1. **Service Plan:** Service Provider is offering both free and paid Services. If Customer subscribes to a paid Service directly through the subscription flow of the Service Provider, then the prices, price models and features of the Services depend on the Service Plan selected, as well as any changes instigated by the Customer. The Service Provider's actual prices and features and the Service Plans are published on the Service Provider's website: [www.incamail.com](http://www.incamail.com).

10.2. The Fee of the messages that are undeliverable for reasons which are not attributable to the Service Provider (e.g. typos in the e-mail address, unavailable receiver system) shall be borne by the Customer.

10.3. **Fees, payment methods, currency:** The Customer will pay to the Service Provider or the relevant Reseller all applicable fees ("Fees") for the Services, in the currency quoted at the time of the purchase. Customer authorizes the Service Provider or Permitted Third Party Provider to charge Customer for all applicable Fees using Customer's selected payment method. The use of these payment methods is offered by the Service Provider or Permitted Third Party Providers shall be the subject of the relevant services offered, and it is not subject to this Agreement. The Customer acknowledges that, if the provided payment is made by credit card, the Service Provider shall be authorized to assign its claims to the corresponding credit card company. The provisions of the credit card agreement shall apply in this case. Fees are non-refundable, except as required by law or as otherwise specifically permitted in this Agreement.

10.4. **Default of payment:** If a payment is due, the debtor shall be in default as soon as a formal reminder is issued, unless no formal reminder is required for the default to occur. The statutory provisions shall apply. Customer shall owe a flat fee of CHF 20 as compensation for expenses in each case for the second formal reminder and for any further action to collect the debt. The option of claiming additional costs (such as debt



collection and legal costs) shall remain open. The Customer is permitted to demonstrate that the Service Provider did not suffer any damage or that the damage was considerably lower than the flat fee demanded. The Customer may not offset claims by the Service Provider with any counterclaims.

- 10.5. **Licenses:** Subject to any limitation on the number of individual Company Administered Customer accounts available under the applicable Service Plan(s) to which the Customer has subscribed, access to and use of the Services is restricted to the specified number of individual Company Administered Customers permitted under Customer's subscription.
- 10.6. **Subscription Period:** When subscribing to a paid service in accordance with clause 2.2, Customer may elect the term of its Service Plan ("Subscription Period").
- 10.7. **Billing:** Customer must provide current, complete, accurate and authorized payment method information (e.g. credit card information). The Service Provider may bill: (i) in advance; (ii) at the time of purchase; (iii) shortly after the purchase; or (iv) on a recurring basis.
- 10.8. **Auto-renewal:** Fees will automatically be charged monthly or annually, for each month, partial month or year, depending upon the billing period selected by the Customer for the subscription. Customer agrees that its subscription is automatically renewed for the same period at the end of each billing period (but for no longer than a year), and the Service Provider may charge automatically at the end of the trial or the renewal, unless Customer notifies the Service Provider in advance that Customer wants to cancel.
- 10.9. **Downgrade and cancellation:** No refunds or credits for Fees or payments will be provided to Customer if Customer elects to downgrade or cancel its Service Plan. Please consider the relevant changes carefully as downgrading the Service Plan may cause loss of content, features, or capacity of the Services, and the Service Provider does not accept any liability for such loss.
- 10.10. **Changes:** the Service provider uses reasonable commercial efforts to implement changes to the Service Plan or features instigated by the Customer as soon as possible. If Customer decides to downgrade or cancel, changes will take effect the day after the last day of the then current Subscription Period.
- 10.11. **Taxes:** Fees are exclusive of taxes and the Customer is responsible for all taxes. The Service Provider will invoice the Customer for such taxes if the Service Provider believes that it has a legal obligation to do so and Customer agrees to pay such taxes if so invoiced. If Customer is exempt from paying any taxes, Customer must provide the Service Provider with a valid exemption certificate for all relevant jurisdictions, and the Service Provider will not collect the taxes covered by the relevant certificate.
- 10.12. **Changes of fees:** In cases where the Service Provider offered a specific duration and Fee for use of the Service, the Fee will remain in force for the relevant Subscription Period. However, the Service Provider does not represent or warrant that a particular Service Plan will be offered indefinitely and reserves the right to change the prices for or alter the features and options in a particular Service Plan. The Service Provider may revise the relevant Fees by providing Customers with at least thirty days' notice. Subject to applicable law, the Customer's use of the Service will be charged at the then-current Fee(s) after the relevant period ends, unless Customer cancels the subscription at the end of his current subscription period.
- 10.13. **Purchase from a Reseller:** If you, as Customer purchase IncaMail from a Reseller, then the scope of the Services and the specifics of your payment obligations are stated in your agreement with the Reseller. In such a case, you owe payment to the Reseller as agreed between you and the Reseller, but you acknowledge that Customer's rights to use the Services may be suspended or terminated if the Service Provider does not receive the corresponding payment from the Reseller.





## 11. Promotions and free services

- 11.1. **Promotions:** Customer may receive or be eligible for certain pricing structures, discounts, features, promotions, and other benefits (collectively: "Promotions"). Any and all such Promotions may be modified or terminated without notice. It will be the Service Provider's sole decision as to whether any eligibility requirement has or has not been met and the Service Provider may require evidence or confirmation for such a purpose. All Promotions are subject to availability, are non-transferable and non-exchangeable.
- 11.2. **Free Services:** If Customer uses the Services without registration in accordance with clause 2.1, or the Customer registers for a free service, free trial, promotional offer, or other type of limited offer for use of the Services ("Free Service"), Customer may need to accept additional terms and conditions upon registration. Any such additional terms and conditions are hereby incorporated into this Agreement by reference and are legally binding.
- 11.3. **Trial:** If the Service Provider allows a trial, Customer can sign-up for a trial for some of the Services which may require payment preauthorization. The trial period starts on the day when Customer creates the trial subscription. During the trial, Customer may cancel at any time until the last day of the trial. If the trial period ends, the relevant subscription may automatically be converted to a paid subscription and the relating Fee will be automatically charged. For accounts used for business purposes, the Service Provider reserves the right to reduce the term of a trial period or end it altogether without prior notice.
- 11.4. **Disclaimer:** Free Services are provided "AS IS" and "as available" without any warranty that may be set forth in this Agreement, and the Service Provider disclaims any implied warranties including without limitation merchantability or fitness for a particular purpose and the Service Provider's total aggregate liability arising out of or relating to Customer's use of the free trial is CHF 100.

## 12. Software

- 12.1. **Customer's rights:** The Service Provider or Permitted Third Party remain the owner of the Software at all times. The Service Provider or Permitted Third Party grants you a limited non-exclusive, non-transferable license to use the Software in connection with the Services and in accordance with this Agreement. The Service Provider and its licensors retain ownership of all copies of the Software even after installation on your devices.
- 12.2. **Software updates:** The Software may be updated automatically from time to time. You may need to download and install the latest version of the Software. Any updates provided by the Service Provider shall be deemed to be subject to this Agreement unless the Service Provider indicates otherwise. Depending on the update, you may not be able to use the Services until you have downloaded the latest version of the Software and accepted any new terms. If you skip updating for more than 6 months, the Service Provider may suspend or terminate this Agreement and the relevant Company Administered Customer's account with fifteen days' notice.
- 12.3. **Open-Source:** You acknowledge that the Software may contain third-party, open- source software components ("Open-Source Component"). To the extent required by the licenses covering Open-Source Components, the terms of such licenses will apply in lieu of this Agreement with respect to that component of the Software. The list of the Open-Source Components of the Software is available on the IncaMail website ([Legal Information – IncaMail](#)).

## 13. Intellectual Property

- 13.1. **Reservation of Rights:** Each party shall retain all rights, title and interest in and to all its respective patents, inventions, copyrights, trademarks, domain names, databases trade secrets, know-how and any other intellectual property and/or proprietary rights (collectively, "Intellectual Property Rights"). Except as expressly



set out in this Agreement, this Agreement does not grant any right, title, or interest to you with respect to the Services or in any Service Provider's Intellectual Property Rights.

- 13.2. **Use of the Services:** The Services are the property of the Service Provider and/or Tresorit Kft., as Permitted Third Party Provider or licensors. The Service Provider and/or Tresorit grants you limited, non-exclusive, revocable permission to make use of the Service during the term of this Agreement. You agree to abide by the Acceptable Use Policy and not to use the Services in any manner not expressly permitted by this Agreement or the Acceptable Use Policy.
- 13.3. **Feedback:** The Service Provider may use any feedback, ideas, comments, enhancement requests, recommendations or suggestions ("Suggestions") that you send or share with the Service Provider without any obligation to you. You hereby grant to the Service Provider a world-wide, royalty free, irrevocable, perpetual license to use and otherwise incorporate any Suggestions.
- 13.4. **Identifying Customer:** Unless otherwise instructed by Customer in writing, the Service Provider may publish and identify Customer as a user of the Service, and Customer grants to the Service Provider a non-exclusive, fully paid-up license to use its logos and trademarks and agrees that the Service Provider may use any logo and/or name associated with Customer on the Service Provider's website and other marketing materials. The Service Provider agrees to comply with all reasonable guidelines and directions of the Customer regarding the form, manner and application of such logos and trademarks. Customer can request the Service Provider to stop identifying the Customer as a user of the Service anytime by sending a written notice to [support@incamail.ch](mailto:support@incamail.ch).

#### 14. Disclaimer

- 14.1. **Availability** The Service Provider ensures a high level of availability of the Services / IncaMail platform, but it cannot guarantee either unlimited or specific availability. If Customers send communications via IncaMail that are subject to deadlines, they must take steps to ensure that the deadlines can still be adhered to, even if there is a system interruption. Minor maintenance work can be performed at any time without prior notice outside business hours. Business hours shall be deemed to be Monday to Friday from 8 a.m. to 5 p.m. CET. The Customer shall be informed of the upcoming maintenance work where it can be anticipated by the Service Provider that the downtime caused by the maintenance work will last more than 3 hours.
- 14.2. **Beta Services:** From time to time, the Service Provider may release products and features that are still subject to testing and evaluating ("Beta Service"). Despite anything to the contrary in this Agreement: (a) you may choose to use Beta Services at your sole discretion and use beta services at your own risk; (b) Beta Services may not be supported and may be changed at any time without notice; (c) Beta Services may not be as reliable or available as the Services; (d) Beta Services have not been subjected to the same security measures and auditing to which the Services have been subjected. The Service Provider will have no liability arising out of or in connection with Beta Services.
- 14.3. **Provided as-is:** If Customer has a paid subscription, the Service Provider promises that it will try to operate the Service with reasonable care and skill and will use reasonable commercial efforts to promptly remedy any faults of which the Service Provider is aware. However, the Service Provider provides the Service "as is" and "as available", without express or implied warranty or condition of any kind and you shall use it at your own risk. To the maximum extent permitted by applicable law, also disclaims any warranties of merchantability, fitness for a particular purpose or non-infringement or any warranty that the Service is of any particular quality or purpose.
- 14.4. **Limitation of liability:** the Service Provider's and its affiliates, resellers, officers, employees, agents, suppliers or licensors liability is excluded to the maximum extent permitted by the applicable law. This limitation of liability does not apply for caused intentional or gross negligent breach of obligations and for death or personal injury for defects in cases of a guarantee and for fraudulently concealed defects, as well as for any other liability that may not, under applicable law, be limited or excluded. In no event will Service Provider be liable for any lost





profits, revenues, or business opportunities, loss of use, loss of data, loss of confidential or other information, business interruption and any other direct, indirect, special, incidental, criminal, subsequent or consequential damages whatsoever, whether based on contract, tort, negligence, product liability or otherwise, arising out of or in any way related to the use of or inability to use the Service or the support and maintenance services (if any), regardless whether the Service Provider has been advised or should have had knowledge of the possibility of such damages. The above limitation of liability shall apply in respect of any claims against the Service Provider and its affiliates, resellers, officers, employees, agents, suppliers or licensors.

- 14.5. **Remedy:** you agree that the sole and exclusive remedy for unsatisfactory Service shall be the termination of the Service and a refund of any amount already paid by Customer for the cancelled or damaged message, according to the current price list. Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or personal injury or death which means that some of the above limitations may not apply. In these jurisdictions, the Service Provider's liability will be limited to the greatest extent permitted by law.
- 14.6. **Independent Allocations of Risk:** Each provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages represents an agreed allocation of the risks of this Agreement between the parties. This allocation is an essential element of the basis of the bargain between the parties. Each of these provisions is severable and independent of all other provisions of this Agreement, and each of these provisions will apply even if the warranties in this Agreement has failed of their essential purpose.
- 14.7. **Force Majeure:** The Service Provider will not be liable to Customer or to any other third party for failure to perform or any delay in the performance of the Services due to fire, flood, pandemic, war, riot, strike, explosion, lock out, injunction, natural disaster, interruption of transportation, acts of war, terrorism, labour disputes, acts of civil or military authority, power blackouts, computer viruses, or any other event beyond the Service Provider's reasonable control.
- 14.8. **Third-party Services:** The Service Provider may contain features and functionalities linking to or providing certain functionality and access to third party websites and services. The Service Provider has no influence on the contents of these linked pages and makes no warranty whatsoever with respect to such links, websites, or services.

## 15. Indemnification

To the extent permitted by law, Customer will defend, indemnify and hold harmless the Service Provider, including its employees and affiliates, from and against any claims, incidents, liabilities, procedures, damages, losses and expenses, including reasonable legal and accounting fees, arising out of or in any way connected with the access to or use of the Services by Customer or its Company Administered Customers or the violation of this Agreement by Customer or its Company Administered Customers.

## 16. Suspension

- 16.1. Suspension for cause: the Service Provider may suspend and block access to Services without prior notice and without compensation or restrict its functionality if:
- Customer fails to timely pay any amount owed to the Service Provider;
  - Customer or a Company Administered Customer breach any provision of this Agreement or the documents referred to in this Agreement;
  - The Service Provider has reason to believe that Customer is in breach of any applicable law or regulation;
  - The Service Provider is requested or directed to do so by any competent court of law, government authority, public agency, or law enforcement agency;



- e. Customer is or becomes subject to any bankruptcy or similar proceedings; or
- f. the overall security of the Services, i.e. IncaMail system is no longer guaranteed;
- g. if, in its sole discretion, the Service Provider believes that continued use of the Services by Customer or his Company Administered Customers creates legal risk for the Service Provider or presents a threat to the security of the Services or other customers.

16.2. **Effects of suspension:** If the IncaMail Services are suspended in accordance with clause 16.1 above, Customer remains responsible and liable for all Fees and charges which have incurred up to the date of suspension as well as for any Fees for any Service to which Customer or his Company Administered Customers continue to have access.

## 17. Term

17.1. **Service Term:** This Agreement enters into effect on the date as described in clause 2.1 and 2.2 of this Agreement and continues until terminated either by you or the Service Provider.

17.2. **Effects of termination:** If this Agreement is terminated: (a) the rights and licenses granted by the Service to you will cease immediately; (b) Customer may, prior to termination, request reasonable additional time to export its Customer; and (c) the Service Provider may delete any Customer Content and Service Data relating to Customer's account in a commercially reasonable period of time in accordance with its Privacy Policy. Conflicting legal obligations remain reserved.

17.3. **Company Administered Customer Rights:** Company Administered Customer's rights under this Agreement remain effective until the Customer's subscription expires or terminates, or the Company Administered Customer's access to the Services has been terminated by the Customer or the Service Provider.

17.4. **Survival:** The following sections will survive expiry or termination of this Agreement: 7 (Customer responsibility), 8 (Third-party Requests), 10 (Fees), 13 (Intellectual Property Rights), 14 (Disclaimer), 15 (Indemnification), 17 (Term), 19 (Miscellaneous).

17.5. **Renewal:** Customer acknowledges and agrees that Customer's Subscription will automatically be renewed on a monthly or annual basis, for the same Subscription Period (but for no longer than a year), unless Customer indicated otherwise before the renewal date.

## 18. Termination

18.1. **Termination for convenience of paid Service:** Customer may elect to terminate his account(s) and paid subscription to a Service as of the end of its then current subscription period (i) with an account closing mechanism or (ii) by contacting Service Provider in accordance with clause 19.11 (Notices) below. In this case, the Customer's subscription will not be renewed, but Free Services may be available for the Customer. There is no refund for any pre-paid service. The Service Provider may terminate this Agreement by providing sixty-day notice if it discontinues the Services.

18.2. **Termination for convenience of Free Service:** Customer may terminate the Free Services subscriptions immediately without cause. The Service Provider shall comply with a notice period of ten days effective at the end of the month.

18.3. **Termination for cause:** Either party may terminate this Agreement with notice if the other party materially breaches this Agreement and such breach is not cured within fifteen days after the non-breaching party provides notice of the breach. Service Provider may terminate the Agreement immediately on notice to Customer if (i) the Customer fails to timely pay any amount owed to the Service Provider; or the Service Provider reasonably believes that (ii) the Services are being used by Customer or its Company Administered Customers in violation



of applicable law, or (iii) continued use of the Services by Customer (or its Company Administered Customers) creates a legal risk for the Service Provider or presents a threat to the security of the Services or other customers; or (iii) Customer or a Company Administered Customer breaches any provision of this Agreement or the documents referred to in this Agreement.

- 18.4. **Notice:** Notice of termination must be given in writing (e.g. using IncaMail) in email sent to [support@incamail.ch](mailto:support@incamail.ch). Deletion of the IncaMail account by the Customer shall be deemed to be notice of termination.
- 18.5. **Effect of termination, expiry of decryption option:** If Customers terminate the Contract or if their conduct is reason for terminating the Contract, any remaining term shall lapse without compensation. Upon termination of the Contract, the options of accessing the IncaMail account and decrypting the messages and acknowledgments of receipt shall lapse. It is therefore the Customers' responsibility to save messages and acknowledgments of receipt on an ongoing basis in unencrypted form on their own systems.
- 18.6. **Termination for cause (Reseller terms):** If Customer purchases the Service(s) through an authorized Reseller, the Service Provider may (i) suspend Customer's account(s) and the use of Services immediately upon notice to Customer; (ii) terminate this Agreement with a fifteen-day notice, if:
- a.) The Service Provider is notified by the Reseller of Customer's failure to pay amounts due to the Reseller with respect to your subscription to the Services;
  - b.) the Reseller fails to pay any amounts due to Service Provider pursuant to the terms and conditions of the agreement between the Service Provider and the relevant Reseller with respect to Customer's subscription to the Service.

Customer hereby consents to these suspension and termination rights; acknowledges and agrees that Service Provider shall have no liability to Customer of any kind with respect to any such suspension or termination. The Customer's sole recourse with respect to any such suspension or termination shall be against the relevant Reseller.

- 18.7. **Inactive Free Accounts:** If Customer is registered for a free service and Customer has been inactive for at least 180 days and within such time period, Customer does not subscribe for paid Services, Service Provider may suspend and/or terminate the Service Provider Services with a fifteen-day notice to Customer.

## 19. Miscellaneous

- 19.1. **Changes in terms:** The Service Provider may revise the terms of this Agreement from time to time, in particular due to changes in the Services or applicable laws and regulations, and the most current version will always be available on IncaMail's website. If, in the Service Provider's sole discretion, an amendment is material, Customers will be notified in writing with thirty days' notice. Other revisions may be posted on the Service Provider's website, and you are responsible for checking that website regularly. If you do not agree to the amended terms, you may terminate this Agreement and your account(s) with a thirty-day notice. By continuing to access or use the Services after the amendment enters into effect, you agree to be bound by the revised Agreement. You will be informed of your rights and the consequences of your decision in the notice about changes in terms. Despite this clause, changes to this Agreement which are (i) more favorable to Customer; (ii) required by law; or (iii) related to the addition of a new service, extra functionality to the existing Services; or (iv) changes which neither reduce your rights nor increase Customer's responsibilities, will come into effect immediately if they are stated in the change notice.
- 19.2. **Governing law:** This Agreement is governed by Swiss law, excluding the Swiss conflict of law rules. The parties specifically exclude applicability of (i) Federal Act on International Private Law (IPRG) (ii) the United Nations Convention on Contracts for the International Sale of Goods (CISG) and (ii) any Incoterms. For the



avoidance of any doubt, if Customer is a consumer and has its habitual residence in the EU, this clause does not affect the protection provided by mandatory provisions of the law of Customer's residence.

- 19.3. **Disputes:** Any disputes arising in connection with Services and/or this Agreement shall be determined by the competent court in Bern (Switzerland). If Customer resides in a country (for example, in the EU member state or Switzerland) with laws that give consumers the right to bring disputes in their local courts, this clause does not affect those requirements.
- 19.4. **Company Administered Customer disputes:** As a Company Administered Customer, you acknowledge and agree that, as between the Service Provider and the Customer, it is solely the Customer's responsibility to and respond and resolve any dispute with any Company Administered Customer relating to or based on the Customer Files or the Service Data, the Services or Customer's failure to fulfil his obligations under this Agreement.
- 19.5. **Severability; Entire agreement:** The provisions of this Agreement apply to the maximum extent permitted by relevant law. If any court or relevant authority decides that any part of this Agreement is unlawful, unenforceable, or invalid, the remaining clauses will remain in full force and effect. This is the entire contract between the parties regarding the Services. It supersedes any prior contract or oral or written statements regarding your use of the Services.
- 19.6. **Waiver; Remedy:** The failure of either party to enforce a provision of this Agreement is not a waiver of its right to do so later. The waiver by the Service Provider of any breach shall not be deemed a waiver of any subsequent breach of the same or any other term of this Agreement. Any remedy made available to the Service Provider by any of the provisions of this Agreement is not intended to be exclusive of any other remedy.
- 19.7. **Expiration of Claims:** Both parties agree that except for claims related to the indemnification obligations above, all claims arising under or related to this Agreement must be brought within two years after the date the cause of action arose. Mandatory legal provisions remain reserved.
- 19.8. **Assignment:** Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement without the Service Provider's written consent. Service Provider may not assign this Agreement without providing notice to Customer. However, the Service Provider may freely assign its rights and obligations under this Agreement in its entirety to an Affiliate or in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets provided that any such successor agrees to fulfil the Service Providers obligations under this Agreement.
- 19.9. **Independent Contractors; No third-party beneficiaries:** Customer and the Service Provider are independent contractors and are not the agents or representatives of the other. This Agreement is not intended to create a joint venture, partnership, or franchise relationship between the parties. Non-parties do not benefit from and cannot enforce this Agreement. There are no third- party beneficiaries to this Agreement.
- 19.10. **Language:** The Service Provider may provide translations of this Agreement or other terms or policies. This Agreement is drawn up in 4 languages (German, English, French and Italian). Translations are provided for informational purposes only. If there is any inconsistency or conflict between a translation and the German version, the German version will apply.
- 19.11. **Notices:** Notifications, enquiries, cancellations and all types of notices must be made per email or in writing, whereby simple written form (simple electronic signature) is sufficient for digital solutions. All notices, including any questions about this Agreement, pricing, complaints, or other inquiries, shall be addressed to support@incamail.ch. Notices to Customer may also be sent to the applicable account email address and are deemed given when sent. The Service Provider reserves the right to make reasonable steps to verify Customer's or Company Administered Customers' identity before responding to or acting upon the Customer's request.



## 20. Glossary

### 20.1. In this Agreement:

- a. **Administrator** means selected Company Administered Customer(s) designated by Customer who administers the Services on behalf of Customer. Administrators may have the ability to monitor, restrict or terminate access to accounts relating to Customer' subscription in accordance with section 6.
- b. **Affiliate** is a legal entity in which a party has a direct or indirect interest of more than 50% and which it directly or indirectly controls.
- c. **Agreement** means the terms of this document.
- d. **Beta Services** means products and features that are released by the Service Provider and are still subject to testing and evaluating.
- e. **Business Subscription** means a subscription for business purposes.
- f. **Company Administered Customer** means an individual, whether an employee, business partner, contractor, or agent of a Customer, who is being invited and permitted by Customer to use the Services subject to this Agreement.
- g. **Customer:** means any individual, company, authority who/that has access or uses the Services; it also includes any such persons, who are authorized to use the Services pursuant to contracts concluded by third parties (Customer Authorized Customers, for example employees)
- h. **Customer Content** means any electronically transmitted message sent, uploaded and/or shared through the Services.
- i. **Fee** means all applicable fees paid by Customer for the Service Provider or the relevant Reseller for the Services.
- j. **Free Service** means any free trial, promotional offer, or other type of limited offer for use of the Services provided by the Service Provider and the use of the Service without registration as specified in clause 2.1.
- k. **Intellectual Property Rights** means all rights, title and interest in and to all its respective patents, inventions, copyrights, trademarks, domain names, databases, trade secrets, know-how and any other intellectual property and/or proprietary rights.
- l. **Open-Source Component** mean third-party components which the Software may contain and which is released under a license that is considered as free software license by the Free Software Foundation ([Legal Information – IncaMail](#)).
- m. **Personal Data** shall have the same meaning as under (Swiss) Federal Data Protection Act or under the General Data Protection Regulation (Regulation (EU) 2016/679).
- n. **Promotions** means any specific pricing structures, discounts, features, promotions, and other benefits which is offered to Customer.
- o. **Reseller** means a third party authorized to sell IncaMail subscriptions.
- p. **Services** access and use of IncaMail and related services, including websites and relating Software
- q. **Service Data** means information which is processed by the Service Provider (and may contain Personal Data), in order to operate and provide the Services.



- r. **Service Plan:** prices, price models, billing options and features of Services as specified at [www.incaemail.com](http://www.incaemail.com).
- s. **Service Term** means the period of effectiveness of this Agreement, which begins on the date Customer accepts the terms of this Agreement and continues until Customer's subscription expires or its use of the Services ceases, whichever is later.
- t. **Software** means the software provided by the Service Provider (either by download or access through the website) that allows Customer and Company Administered Customers (where applicable) to use any functionality in connection with the relevant Service.
- u. **Sub-processors** mean the Affiliates and authorized service providers, which are engaged by Service Provider in providing the Services, to process Service Data.
- v. **Suggestions** means any feedback, ideas, comments, enhancement requests, recommendations or suggestions Customer sends or shares with Service Provider
- w. **Third-party Request** means any request from a third-party relating to a Customer's use of the Services, including Service Data.