

## SWK-wireless Terms and Conditions of Use

### I. Preamble

1. We are delighted that you have decided to use “SWK-wireless”, the wireless network of Stadtwerke Kaiserslautern. The SWK-wireless project is sponsored in its entirety by SWK Stadtwerke Kaiserslautern GmbH. Stadtwerke Kaiserslautern are thus the sole responsible authority pursuant to Sec 3 para. 7 of the German Federal Data Protection Act (BDSG). With the help of its collaboration partners, Stadtwerke Kaiserslautern are offering free access to the Internet at selected, geographically restricted locations. With this offer, Stadtwerke Kaiserslautern want to provide their customers with the possibility of wireless access to the Internet using their own Wi-Fi-capable devices at dedicated hotspots offered by its collaboration partners.
2. Acceptance of these Terms and Conditions of Use is the prerequisite for the use of SWK-wireless. Note: Solely for the sake of linguistic simplicity is the female form not used throughout this text. When the male form is used, both genders are always meant.

### II. Subject of Use

1. Stadtwerke Kaiserslautern provide their own contents to the user free of charge, via the wireless network of K-Net GmbH.
2. Stadtwerke Kaiserslautern offers the users the possibility to access the Internet via the wireless network of K-Net GmbH from certain locations where access points (hotspots) are located.
3. The provider roles are distributed as follows:
  - a) To carry out this service, K-Net Telekommunikation GmbH, Barbarossastraße 64, 67655 Kaiserslautern, Germany, HRB 3283 of the Kaiserslautern District Court (Federal Network Agency registration no. 99/180), as the access provider provides all technical prerequisites for the public wireless network.
  - b) Storage space as well as databases are provided by the host provider, DEMANDO GmbH, Europaallee 10, 67657 Kaiserslautern, Germany, HRB 4096 of the Kaiserslautern District Court (Federal Network Agency registration no. 14/040).
  - c) Stadtwerke Kaiserslautern as content provider offers their own content to the user.

### III. Services

1. The user shall get access to the Internet through K-Net GmbH subject to technical and operational feasibility. No guarantee is given that the usage will be free of interference and disruption. Temporary disruptions, for example due to force majeure, maintenance work, or similar issues, cannot be ruled out. With the help of wireless technology, wireless transmission of data shall be effected between the hotspot and the user’s Wi-Fi-capable device. The transmission speed of the wireless network is dependent on the network utilization of the Internet backbone, the number of users at the respective location, and the transmission speed of the respective server of the content providers.
2. There shall be no obligation to guarantee access at the respective site or to provide the service at particular locations or at additional hotspots. As the service is offered free of charge, Stadtwerke Kaiserslautern reserve the right to suspend, restrict, or modify the service at any time. No justification shall need to be provided for this.
3. Furthermore, Stadtwerke Kaiserslautern reserve the right to block or restrict access at any time in cases of suspected disproportionate uploads or downloads and/or illegal usage.
4. Usage restrictions imposed by the web filters of DEMANDO GmbH, which block access to certain possibly illegal or criminal websites and which prevent risks originating from malware

and viruses stemming from the Internet, must be accepted. Any attempt to circumvent the technical filter blocks may lead to the withdrawal of usage permission.

5. No minimum bandwidth guarantee is given.

#### **IV. Usage / Usage Prerequisites**

1. For the use of the public wireless network, a ready-to-use Wi-Fi-capable device (laptop, tablet, or smartphone) is necessary. In addition, a suitable operating system, web browser, up-to-date driver software for the Wi-Fi hardware, and an appropriate IP network protocol must be installed, and the system must be configured as a DHCP client. Creating the prerequisites for usage is the responsibility of the user.
2. Users can make use of the Wi-Fi service offered by K-Net GmbH as soon as they have read and accepted the mandatory field "Terms and Conditions of Use" on the landing page of Stadtwerke Kaiserslautern and have registered using their email address, the MAC address of their device(s), and the password of the device(s). The user is allowed to use SWK-wireless free of charge for a data volume of 1GB per month.
3. Every user is free to terminate an Internet session by simply disconnecting from the hotspot. No reimbursement is possible for any remaining credit.
4. Every user (SWK customer) can activate a maximum of two devices for each of his electricity and/or gas contracts, provided direct debit authorization has been granted to SWK for the respective contract.

#### **V. User's Duties and Obligations**

1. The user indemnifies SWK and their agents against all claims made by third parties that are based on any use of the guest access and the associated services by the user (or with his consent) that is in contradiction with these Terms and Conditions of Use or that result from other claims based on privacy, copyright, or other legal issues arising from the use of the SWK customer access portal by the user.
2. If the user realizes or should realize that a violation of this nature is about to occur, he shall notify SWK of this without undue delay.
3. The user shall be obliged
  - a) not to utilize this service for the operation of a server and/or for the permanent connection or linking of locations resp. telecommunication facilities;
  - b) to sufficiently protect access to the service from unauthorized access by third parties;
  - c) to comply with the stipulations of the State Treaty for the Protection of Minors in the Media (Jugendmedienstaatsvertrag) and the Youth Protection Law (Jugendschutzgesetz);
  - d) to observe and comply with the general laws, the penal laws, the Youth Protection Act, the rules of competition, etc.;
  - e) to respect the rights of third parties, such as copyrights, license rights, usage rights, etc.
4. The user shall not
  - a) use works protected by copyright illegally;
  - b) make the free service provided by Stadtwerke Kaiserslautern available to third parties at a charge or gain other benefits from making the access data available to third parties;
  - c) use applications or devices that lead to disruptions / modifications of the physical or logical structure of the hotspot server of K-Net GmbH, the hotspot network of K-Net GmbH, or other networks;
  - d) send unsolicited messages or information for advertisement purposes (spamming);
  - e) disseminate information with illegal or immoral contents. This primarily includes information that, as defined in Sec 130, 130a, and 131 of the German Penal Code (StGB), incites hatred and violence against segments of the population, induces the commission of criminal offenses, or glorifies or trivializes violence, is sexually offensive, is pornographic within the meaning of Sec 184 of the German Penal Code (StGB), is apt to

- seriously endanger the moral welfare of children or juveniles or affect their general welfare, or that could damage the reputation of Stadtwerke Kaiserslautern;
- f) establish illicit contact as defined in Sec 238 of the German Penal Code (StGB) (Stalking);
  - g) invade data networks or devices belonging to others;
  - h) install so-called spyware, dialers, Trojans, viruses, etc. on devices belonging to others.
5. The user shall be responsible himself for assuring sufficient security for his devices. He must ensure sufficient protection of his devices against third-party spyware, such as dialers, Trojans, and viruses.
  6. The user shall also be responsible for encrypting the data sent and received by him.
  7. The user shall indemnify Stadtwerke Kaiserslautern against all claims made by third parties that originate from an illegal action performed by the user. If the user realizes that such an offense has occurred or is about to occur, he shall notify Stadtwerke Kaiserslautern of this without undue delay. If he fails to do so, the user shall be liable to Stadtwerke Kaiserslautern regarding compensation for the damages incurred.
  8. If the user violates any of these duties and obligations, Stadtwerke Kaiserslautern shall be authorized but not obliged to block access to the free service at any time.

## **VI. Data Security**

1. The wireless network of Stadtwerke Kaiserslautern is encrypted and user-defined. Hence, it cannot be ruled out that other persons might gain access to the transmitted data. The user himself is responsible for encrypting his data (e.g., via https, VPN).
2. K-Net GmbH as well as DEMANDO GmbH store the user's legally defined data for 6 months in accordance with Sec 113 of the German Telecommunications Act (TKG). Any request for disclosure of these data requires a court order.
3. Stadtwerke Kaiserslautern shall not be liable if messages or data sent by the user are read, intercepted, or altered during transmission, do not stem from the purported sender, or do not reach the intended recipient.

## **VII. Responsibility for Contents and User Liability**

1. The user of the wireless network shall be responsible to Stadtwerke Kaiserslautern and to third parties for all contents transmitted or otherwise disseminated with the help of the wireless network.
2. The user shall also have the sole responsibility regarding any contents transmitted or disseminated due to unauthorized access to the user's device by a third party.

## **VIII. Liability**

1. The use of K-Net is provided to the user free of charge for private use only. No guarantee can be given for uninterrupted or permanently error-free usage.
2. The user shall ensure that no actions are performed that might harm himself or any third party.
3. In the case of violations of these Terms and Conditions of Use, SWK shall be exempt from liability, with the exception of intent on the part of SWK.
4. Stadtwerke Kaiserslautern shall only be liable to the user for damages resulting from violations of contractual obligations as well as for tort in the case of intent or gross negligence on the part of Stadtwerke Kaiserslautern, its legal representatives, or its agents.
5. This limitation of liability shall not apply in the case of harm to the life, limb, or health of the user, claims relating to breach of contractual obligations, i.e., of obligations resulting from the nature of the contract and whose violation jeopardizes the attainment of the contract purpose, compensation for damages related to delay (Sec 286 of the German Civil Code (BGB)), as well as for liability under product liability law. In this regard, the liability of Stadtwerke Kaiserslautern shall be unlimited.

6. In the event of culpable infringement of key contractual obligations that is neither intentional nor grossly negligent, liability shall be limited to compensation of losses that are foreseeable and typical for this type of contract. The maximum amount shall be 1000.00 euros.
7. Stadtwerke Kaiserslautern shall not be liable for damages caused by gross negligence resulting from the loss of data.
8. Charges or fees that may arise for the user when leaving the Wi-Fi network SWK-wireless cannot be paid by SWK Kaiserslautern GmbH.

## **IX. Other**

1. If individual provisions of this contract are invalid or non-executable or become invalid or non-executable after the contract has been concluded, the validity of the remaining provisions of this contract shall be unaffected. The invalid or non-executable provision shall be replaced by a valid and executable provision whose effects best approximate the economic objective that the contract parties had intended with the invalid or non-executable provision. The above provisions shall also apply in the event that the contract is found to be incomplete.
2. No oral modifications, amendments, or ancillary agreements exist for this contract.
3. The laws of the Federal Republic of Germany shall apply. Unless a different place is mandatory under statutory law, the place of jurisdiction shall be Kaiserslautern.

11/03/2015, SWK Stadtwerke Kaiserslautern GmbH