

**Terminology** ..... 1

**1 Subject matter** ..... 2

**2 Add-on contract module**..... 2

**3 Services and responsibility of Swissmedic** ..... 2

    3.1 General ..... 2

    3.2 Electronic legal transactions ..... 2

**a. Data submissions to Swissmedic** ..... 2

**b. Decisions issued by Swissmedic**..... 2

**4 Obligations and responsibility of the eGov party** ..... 2

    4.1 General ..... 2

    4.2 Electronic legal transactions ..... 2

## Terminology

The following definitions apply:

eMessage	The web-based eGov eMessage service enables eGov parties to electronically submit legally binding data and to receive corresponding legally opened decisions from Swissmedic.
Electronic legal transactions	Official communications by means of legally binding electronic messages, i.e. the electronic transmission of data submissions arising from the issuing of a decision by Swissmedic and decisions issued by Swissmedic as defined in the Ordinance of 18 June 2010 on electronic transmissions in connection with an administrative procedure (VeÜ-VwV, SR 172.021.2).

## 1 Subject matter

These Special Terms of Use regulate only those aspects that are specific to the eGov eMessage service, otherwise the General Terms of Use shall apply.

## 2 Add-on contract module

The eGov party supplements the basic contract for the eGov eMessage service with the eMessage contract module.

## 3 Services and responsibility of Swissmedic

### 3.1 General

A description of the eGov eMessage service can be found in the information sheet "eMessage – Functions".

### 3.2 Electronic legal transactions

Swissmedic provides internet-based eGov services for electronic legal transactions and information and data sharing. These services extend and supplement the communication channels for individual business transactions. Electronic legal transactions with Swissmedic are authorised exclusively for those topics listed in the "eMessage functions" Information sheet after the contract has been concluded and the terms of use accepted.

Legally binding data submissions to Swissmedic and decisions issued by Swissmedic are not usually transmitted via an acknowledged delivery platform as defined in Art. 2 VeÜ-VwV, but via the Swissmedic eGov services. In the context of electronic legal transactions, these services constitute a "different transmission method" as defined by Art. 9 para. 2 VeÜ-VwV.

Swissmedic attaches a digital signature to e-mails sent in connection with electronic data submissions or decisions.

The following arrangements apply in particular.

#### a. Data submissions to Swissmedic

The list published on the internet by the Federal Chancellery ([www.bk.admin.ch](http://www.bk.admin.ch)) provides information about the specific communication channels and data formats that are approved for electronic submissions to Swissmedic (see Art. 4 VeÜ-VwV).

Data submitted electronically will be rejected in the following cases:

The e-mail or documents contained in the e-mail

- are not machine readable or processable or
- contain harmful software (viruses, malware etc.)

In such cases, the eGov party will receive an error message.

Calculation of Swissmedic's time limit then begins on the next business day after delivery.

#### b. Decisions issued by Swissmedic

If the eGov party has declared its consent by checking the corresponding checkboxes in the contract, decisions will usually be opened electronically for it as part of the eGov eMessage service. In justified exceptions, Swissmedic may deviate from this arrangement and issue decisions by post. Detailed descriptions can be found in the "eMessage functions" Information sheet.

Consent to accept electronic delivery can be withdrawn by sending written notification by post or via the eGov service.

Decisions are considered to have been legally delivered when they are opened within a period of 7 days after upload. The time of uploading that determines the 7-day time limit is communicated to the eGov party as an information component of the delivery receipt. If it is not opened within the 7-day time limit, the decision will be delivered by registered mail.

In the event of the repeated failure to acknowledge receipt of decisions on time, Swissmedic can revert from electronic opening to postal opening.

## 4 Obligations and responsibility of the eGov party

### 4.1 General

See, in particular, the "eMessage functions" Information sheet.

### 4.2 Electronic legal transactions

The eGov party is responsible for storing messages and receipts on its system for evidential purposes in such a way that their content and the exchange of messages that took place can, if necessary, be accurately reconstructed. Swissmedic reserves the right to request the original information, data or documents, or paper copies, from the eGov party.

It is the responsibility of the eGov party to ensure that it has a functioning internet connection with sufficient bandwidth to open messages and receipts.

#### a. Data submissions to Swissmedic

The eGov party uses Swissmedic eGov services entirely at its own risk, particularly for the purpose of observing time limits. Accordingly, the eGov party is solely responsible for delivering or collecting data in good time such that any time limits can still be observed even in the event of any planned or unplanned system interruption.

Data can be submitted electronically at any time. However, for the purpose of observing time limits, business hours are considered to be 8.00 a.m. – 5.00 p.m. CET. The next working day is therefore regarded as the time limit for data submitted after these business hours.

Electronic data submissions to Swissmedic do not require an electronic signature. The basic contract on the use of Swissmedic eGov services ensures sender identification and transmission integrity by an alternative suitable method in accordance with Art. 6 para. 2 VeÜ-VwV. A recognised electronic signature as defined in Art. 21a para. 2 VwVG is therefore not required. The eGov party undertakes to preserve signed originals of submission documents that, according to federal law or international standards, have to be signed so that these can, if necessary, be presented or sent by post to Swissmedic (see Art. 4 para. 2 e VeÜ-VwV).

#### b. Decisions issued by Swissmedic

The eGov party undertakes to check the electronic mailbox associated with the party account at regular intervals, but at least once every 5 days working days.