

General Terms and Conditions - Business Customers

Valid from 25 May 2018

I. GENERAL PROVISIONS

1. Validity

- 1.1 Contracts regarding all services provided by Claranet GmbH, Hanauer Landstraße 196, 60314 Frankfurt am Main, Germany, ("Claranet") are concluded on the basis of these General Terms and Conditions (hereinafter referred to as T&Cs), provided that the contractual partner ("Client") is an entrepreneur, a legal entity under public law or a public law Special Fund. These T&Cs regulate the conditions at which Claranet offers its services, in addition to the provisions of order forms (OF) or quotes, and Service Descriptions (SD). Performance figures are determined in Service Level Agreements (SLA). More specific agreements in SDs, OFs, quotes and SLAs shall take precedence over more general provisions.
- 1.2 These T&Cs shall apply to all future business relations, even if this is not explicitly agreed. The provisions of these T&Cs shall be considered as accepted no later than the first-time services are provided. Contrary provisions of the Client based on references to its own terms and conditions of business or purchase are hereby contradicted.
- 1.3 A contract takes effect with the acceptance of the order in the form of an order confirmation by Claranet GmbH.
- 1.4 Deviating agreements must be made in writing.
- 1.5 The provisions laid down in section II - VI apply in addition and with precedence over the general provisions of this section.

2. Services

- 2.1 Claranet shall render the services stated in the order documentation and warrants the product specific performance in accordance with the contractual OF or quote, SD and SLA.
- 2.2 As Claranet in a number of cases is dependent on the provision of services by third parties such as for example, Deutsche Telekom AG or an associated subsidiary (Telekom) or other carriers and as such has no influence on this service provision by third parties, dates and deadlines for the commencement of service provision are only binding if these are explicitly confirmed in writing by Claranet and the Client itself fulfils all prerequisites for the provision of services by Claranet which lie within the Client's sphere of influence in a timely manner. All dates and deadlines are subject to timely delivery by Claranet's suppliers.
- 2.3 Claranet reserves the right to make changes or additions to the services if such changes and additions are made to improvement the service or to adapt to technological developments. However, such changes or additions shall be made only insofar as is reasonable for the Client. The service offer can also be modified or adjusted under the provisions stipulated here in the event of legislative changes or significant decisions by the German Federal Network Agency (Beta).
- 2.4 If parts of the service offering are subject to misuse or excessive use, including by third parties, resulting, in significant detriment to the performance capability of Claranet's service, Claranet shall be entitled after notifying the Client to restrict or discontinue the affected services or parts of the service or to request that the Client remove the services.
- 2.5 In the event that hardware provided to the Client as part of the services is no longer available or no longer corresponds to the state of the art, Claranet shall endeavour to provide the Client with an adequate replacement. This can lead to additional costs which shall be borne by the Client. Claranet shall inform the Client of any additional costs without delay.

3. Client's Duties

- 3.1 The Client is obliged to use the services provided by Claranet appropriately. The Client is in particular obliged
 - a) To pay the agreed remuneration in accordance with the respective valid price list plus any applicable taxes;
 - b) At the end of the contract, to return hardware provided by Claranet including accessories within ten (10) working days in flawless condition including accessories to Claranet or to a logistics partner named by Claranet at their own expense. If Claranet needs to uninstall equipment the Client is obliged to allow Claranet or a third party authorized by Claranet to remove this equipment. If the Client does not comply with the above duties Claranet may assert a claim for damages arising inter alia the costs for procuring comparable replacement equipment or hardware and accessories. In the event of termination of contracts Claranet is authorised to uninstall and remove all equipment provided to the Client by Claranet;
 - c) Not to use the services offered for abusive purposes. Abusive purposes are in particular dissemination, downloading or publishing data, making calls or sending e-mail messages that violate or could infringe rights of third parties or that serve to threaten or intimidate third parties. Additional abusive purposes are in particular data espionage or interception and the corresponding preparatory acts, the illegal use of peer-to-peer services, dissemination of unsolicited mass mailings, overloading services or the network or sections of services or the network and their access points in excess of the extent contractually agreed to be used or operated, denial-of-service attacks (DoS),

operating botnets, port scans, mail bombing and crossposting, publishing and disseminating content that fosters religious hatred, elicits criminal acts, glorifies violence or makes it appear harmless, that has as its object the sexual abuse of children or is apt to cause severe moral endangerment to children or young people or have an adverse effect on their well-being, or is illegal for any other reason;

- d) Not to allow the services provided by Claranet to the Client to be used by third parties without written approval from Claranet. "Third parties" does not include the Client and companies associated with the Client as defined by §§ 15 ff. of the German Public Companies Act nor companies or persons acting on their commission or their legal successors if any, provided they continue to provide the services previously provided by the Client. Claranet shall not refuse approval arbitrarily;
 - e) To immediately notify Claranet of defects or damage in respect of services or devices that are provided. Notification must be made by phone, e-mail or fax to Claranet Business Support. The Client's Order ID must always be given;
 - f) To grant Claranet and persons authorised by Claranet the required entry and access rights required to allocate and provide the services and to rectify faults, in particular to grant access at agreed times to devices provided and other equipment and rooms and to provide or convey documents and information required by Claranet to provide services in a timely manner and to timely perform all other measures for cooperation agreed upon between the parties;
 - g) to comply with the additional duties of disclosure and to provide information resulting from the product provided / the contractual relationship;
 - h) Not to use any devices, equipment, software or data that could result in changes to the physical or logical structure of the Claranet network or the terminal provided for use;
 - i) Without undue delay report to Claranet any change in its name, registered business address or billing address, its legal form and in case of a SEPA-Business-to-Business-Direct-Debit authorisation its bank information;
 - j) to comply with recognised data protection principles and in particular to keep passwords assigned by Claranet secret, to use such passwords properly, to immediately change or take action to change such passwords if there is suspicion that an unauthorised third party may have knowledge of them.
- 3.2 If the Client violates the duties specified in § 3.1 letters c, d and g Claranet shall immediately, and in the case of violations against § 3.1 letters f, h and i after an unsuccessful warning, terminate the contractual relationship without notice.

4. Payment Conditions / Default / Price Increase

- 4.1 With the start of the contract term (§ 11) begins the price obligation.
- 4.2 The following provisions apply to invoicing and payment periods:
 - a) Payment for installation and making service available shall be invoiced upon completion of the installation as reported to the Client by Claranet, payable within ten (10) days of receipt of invoice.
 - b) Monthly payments for services shall be invoiced in advance in accordance with the billing period (monthly, quarterly, bi-annual or annual payments depending on the contract). Claranet will invoice the Client for the difference between the advance payment made by the Client and the actual higher fee at the beginning of the invoicing period following the advance payment which is payable by Client within ten (10) days of receipt of the corresponding invoice. Any difference to the benefit of the Client will be credited.
 - c) Advance payments shall be invoiced by Claranet on the day they are prepared, dated and sent.
 - d) Single payments shall be invoiced in advance.
- 4.3 All invoices become payable immediately and without discount upon receipt. If the Client has set up a SEPA-Business-to-Business-Direct-Debit instruction Claranet shall collect the invoice amount no sooner than five bank working days after the invoice date and advanced notice from the agreed upon account using the direct debit scheme. If the Client has not set up a SEPA-Business-to-Business-Direct-Debit the invoice amount must be credited to the account specified by Claranet in the invoice at the latest on the tenth (10th) day after receipt of the invoice.
- 4.4 If an amount owing has not been received by Claranet within ten (10) days of the invoice date, the Client's payment is late. When a payment is late, Claranet is entitled to collect interest on that sum in the amount of eight (8) percentage points above the base rate of the European Central Bank. The assertion of further claims for late payment is not excluded. If it is not possible to collect the direct debit, so that the amount is claimed back from Claranet and if the Client is responsible for this the Client agrees to pay compensation for damages incurred by Claranet but at least in the amount of €15. The Client is free to demonstrate that Claranet did not incur any or lesser damage.
- 4.5 If the Client is late with the payment due in for two (2) months or with payments at least equal to the amounts owed for two (2) months of basic payments, Claranet may terminate the contractual relationship without observing a notice period or however retain the contractually required service

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- and may make continuation of the contractual service dependent on prepayment of all additional compensation agreed upon in the future for the duration of the contract.
- 4.6 In the event bankruptcy proceedings are opened against the Client's assets, Claranet is entitled to make its claim payable immediately. Then Claranet is also entitled to perform services still outstanding only in return for advance payment or against issuance of sureties.
- 4.7 In the event of unwarranted incidents reported by the Client, Claranet shall be entitled to pass on any resulting costs to the Client. Costs are determined in accordance with the following:
- Hourly rate for Claranet staff: €90 per hour commenced
 - Resulting documented third party costs shall be passed on to the Client.
 - Any further resulting direct costs may be likewise passed on to the Client.
- Unwarranted incident reporting is defined as follows:
- The incident was caused by the Client or a third party engaged by the Client.
 - The incident occurred as a result of improper use by the Client or a third party engaged by the Client.
- Claranet is entitled to increase monthly payments according to the following stipulations:
- a) The payments may be modified or adjusted in the case of changes to legislation (e.g. an increase in VAT), significant decisions of the German Federal Network Agency or rulings of the courts. Claranet shall inform the Client in writing immediately of any such changes and shall explain why the adjustment is necessary, including a demonstration of the change in the underlying contracts which form the basis of the adjustment.
- b) Claranet is also entitled to adjust the monthly payments accordingly a maximum of once per quarter with effect from the beginning of the following quarter in the event of changing market conditions, namely significant changes to procurement costs or other unforeseeable alterations over which Claranet has no influence. Alterations will not be made for other reasons. The Client will be informed of the changes in writing at least two (2) months before they come into effect. If the Client does not object to the modified prices within one (1) month after notification of the changes is received in writing, the changes shall take effect as described in the notification. If the Client objects, Claranet is entitled to extraordinary termination of the contract with a notice period of three (3) months from the end of the current month. Notice of termination is to be given in writing within one (1) month from receipt of the written notice of object.
5. **Objections**
The Client must carefully verify invoices from Claranet. The Client must present objections to Claranet in writing regarding the amount of the invoice no later than thirty (30) calendar days after receipt of the invoice. This shall not affect the due date. In the absence of timely objections, invoices shall be considered as approved. Claranet shall make special reference in each invoice to objection periods and the legal results of failing to respond within the objection period. In case of justified objections raised in a timely manner, Claranet shall issue a credit or offset against payment claims.
6. **Warranty**
- 6.1 Claranet shall provide the contractually required service at the latest state of technology and from the point in time agreed upon in the product contract (ready-for-service date) If this date is exceeded, Claranet shall owe a contractual penalty in accordance with the SLA if the SLA provides for such a penalty.
- 6.2 Claranet warrants a product-specific availability for the respective service based on the calendar year. Down time as a result of planned maintenance work, access issues not caused by Claranet at the end customer's location or due to the Client's hardware and technical alterations to Claranet's equipment or other measures and problems which are outside the interaction of Claranet's network is not to be taken into consideration when determining non-availability.
- 6.3 The contractual parties shall inform each other without delay and within the agreed upon response times when performance defects occur.
- 6.4 Claranet shall begin as soon as it is informed to analyse the performance defect and to investigate the cause within the framework of the service-specific reaction times as per the SLA and shall eliminate the performance defect within a reasonable amount of time. Elimination of the defect may also consist of Claranet pointing out to the Client acceptable ways to avoid the effects of the defect for a reasonable transition period.
- 6.5 If more than one performance defect occurs at the same time, the Client is entitled to assign priorities for eliminating them. Claranet shall inform the Client on an ongoing basis about the status and success of the process to eliminate the defects. If the performance defect is not eliminated within a reasonable amount of time, Claranet shall provide an auxiliary or workaround solution at its own expense. Providing such a solution does not release Claranet from its obligation to eliminate the performance defect within a reasonable amount of time. Each time after a performance defect is eliminated, Claranet shall send the Client a detailed report.
- 6.6 If it is possible and reasonable to make up for the deteriorated contractual items that were affected by the performance defect, Claranet shall make up after the performance defect is eliminated. If it is impossible to eliminate the performance defect or if the attempt to do so fails even after a reasonable additional period of time, the Client is entitled to a price reduction or to immediate termination of the contract for cause. The right to claim compensation for damages is unaffected by the rights stated above.
- 6.7 A discovered defect must be eliminated by the Client at its own expense if the Client is responsible for the deficiency.
- 6.8 The following shall apply to hardware provided by Claranet:
- a) The Client shall give notice of defects immediately.
- b) Defects shall be eliminated either by repair or by Claranet providing a replacement device, at Claranet's discretion. Claranet shall be allotted an appropriate amount of time for this purpose. For the period during which the usability of the hardware is reduced or unavailable due to a defect the Client shall pay a reasonably decreased rent or will be exempted from paying rent for the hardware. The right to claim compensation for damages is unaffected by the rights stated above.
- c) The warranty as per the above letter b is excluded for the Client if the Client makes changes to the hardware or has changes made without the approval of Claranet and the changes are demonstrably responsible for the defect.
- d) The right to claim compensation for damages is unaffected by the rights stated above.
7. **Limitation of Liability**
- 7.1 The parties are liable in accordance with the statutory provisions for intent, gross negligence and liability under the Product Liability Act and for damage to life, body and health.
- 7.2 The liability of the parties is excluded for slight negligence insofar as neither a significant contractual obligation which is especially important to achieving the purpose of the contract (so-called "cardinal obligation") has been violated nor it is a case of default or impossibility. The parties' liability for damages is thereby limited in cases of compensation claims to compensation for typically foreseeable damages, but in any case to the amount of €25,000 for each individual case and a maximum of €250,000 per year.
- 7.3 If a damage causing-event occurs on a carrier's transmission routes, the provisions which apply to the relationship between the carrier and Claranet shall also apply to Claranet's liability to its Client, provided that the Client is made aware of these provisions applying to the relationship between the carrier and Claranet when the contract was concluded.
- 7.4 Events which prevent the provision of services in particular due to roadworks, repair work, building work, traffic diversions, street closures etc. for which Claranet is not responsible do not establish any claims for damages. This does not hereby affect the Client's right to claim a price reduction. Claranet is obliged to take all appropriate measures to minimise the disturbance as much as possible.
- 7.5 Claranet is not liable for loss of profit, loss of goodwill, loss of savings and other indirect damages or consequential damages (including losses or damage which the Client incurs due to claims brought by third parties) and also not if the damages were typically foreseeable or if Claranet was not notified for the possibility that the Client may suffer such damage.
- 7.6 The Client shall indemnify Claranet upon the first request from corresponding claims of third parties including costs of litigation. The Client must point out every possible case of liability to Claranet without delay, even if the third party has not yet filed any claims of compensation for damages. If possible, the Client must exercise care to avert or reduce damage. Claranet's directions in the matter must be heeded. If the Client recognises a liability to third parties, this must not have any influence on recognition of damages in the context of the liability relationship between the Client and Claranet.
- 7.7 Claranet undertakes no liability for damages resulting from the use of the Client's own software. No support in accordance with section 6.4 of this contract shall be provided to eliminate these type of problems resulting from the use of the Client's own software.
8. **Force Majeure**
- 8.1 The contractual parties are not responsible for losses, damage, non-fulfilment or delayed fulfilment of all or some obligations arising from this contract due to fire, flood, earthquake, strike (the parties' own or other employees), employee riots, war (declared or undeclared), embargo, blockades, legal prohibitions, revolts, riots, insurrections or other circumstances for which the party not fulfilling its obligations is not responsible and which prevent or make it impossible to fulfil the obligation in question (force majeure). In such cases the affected contracting party shall notify the other party immediately upon occurrence of the force majeure and shall confirm this notification in writing within five (5) working days together with a description of the causes.
- 8.2 As long as such an event of force majeure lasts, both contractual parties are released from their mutual obligations to provide services. Both contractual parties shall work together to eliminate the status of service interruption caused by force majeure as quickly as possible, at least by a temporary solution. If a temporary solution is created, the Client shall pay to Claranet the

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- price agreed upon or otherwise the typical local fee for the temporary solution. When the force majeure is no longer present, Claranet shall provide the original services again within a reasonable amount of time. From this point on the general provisions of the contract shall apply again. If any statutory regulations or official requirements and conditions related to contractually agreed use change after the Client has made use of the service, the Client shall have no claims against Claranet.
- 8.3 With the exception of obligations affected by the event of force majeure, the contractual parties remain obliged to fulfil the terms of the contract. If fulfilment of an obligation of the contractual parties is delayed for a period of at least thirty (30) days or prevented due to force majeure, the other contracting party shall be entitled to extraordinary termination of the contract without notice.
- 9. Data Protection**
- 9.1 Claranet agrees to observe the basic principles of proper data processing and to monitor compliance therewith. The Client is entitled
- to obtain information about its personal data saved by Claranet at any time;
 - to rectification of incorrect data or to have incomplete personal data completed;
 - to the erasure of stored data, insofar as no legal or contractual retention periods or other legal obligations or rights for further storage must be complied with;
 - to the restriction of the processing of data; and
 - to request the transfer of data.
- Furthermore, the Client has the right to lodge a complaint with the supervisory authority and the right to object at any time, for reasons arising from its particular situation, to the processing of personal data relating to the Client that is based on Art. 6(1)(e) or (f) GDPR; this also applies to profiling based on these provisions.
- 9.2 Within the scope of its business activities, Claranet collects, processes and uses the Client's data required for the conclusion, performance or termination of a contract with the Client. These data usually comprise the Client's contact details (e.g. company name, first and last name of the contact person, address, e-mail address, fax number and payment data) as well as the Client's inventory and communications data (Art. 96 paragraph 1 of the German Telecommunications Act) and usage data (Art. 15 of the German Telemedia Act). The legal basis for this is Art. 6(1)(b) GDPR. We store the data collected for fulfillment of the contract until the expiry of any statutory or potential contractual warranty and guarantee rights. Upon expiry of this period, we retain information concerning the contractual relationship required by commercial and tax law for the applicable periods specified by law. During this period (regularly ten years from the conclusion of the contract), the data will be subject to processing again solely in the event of an audit by the tax authorities.
- 9.3 Claranet evaluates the traffic data stored for the establishment and maintenance of telecommunications and for billing purposes (number of secured gigabytes for backups, amount of storage quota used, etc.) for its own purposes and also uses this data to design services to meet requirements or to provide services with additional benefits. The processing of personal data in the context of the foregoing use is based on Art. 6(1)(f) GDPR. Claranet's interest in optimizing services is deemed to be legitimate within the meaning of the aforementioned provision.
- 9.4 Claranet processes the Client's personal data for advertising purposes. The GDPR provides that such data processing on the basis of Art. 6(1)(f) is fundamentally plausible and comprises a legitimate interest. The retention period for data used for advertising purposes is not based on rigid principles and is rather determined on the basis of whether continued retention is necessary for purposes of promotional contacts. In light of the existing contractual relationship, Claranet processes the Client's postal contact details outside of the scope of any specific consent in order to send it information about new products and services by this method. **The Client may object to the processing of data for the aforementioned purpose at any time, and free of charge, with future effect. To do so, it is sufficient to send an e-mail to widerruf@claranet.de or a letter by post to our address "Claranet GmbH, Hanauer Landstraße 196, 60314 Frankfurt am Main", keyword "Data Protection".**
- 9.5 Claranet processes the Client's e-mail address in order to send it information about Claranet's own similar services, e.g. via the newsletter, outside of the scope of any specific consent. **The Client may revoke this use of its e-mail address for this purpose at any time with future effect by sending an e-mail to widerruf@claranet.de or by using the "Unsubscribe Newsletter" link in any e-mail. There are no other costs for this other than the transmission costs as per the fee schedule.** If the Client submits a revocation, the contact address concerned will be blocked for further promotional data processing.
- 9.6 If personal data is collected, processed or used by Claranet at the Client's request, Claranet is acting as an agent as defined by Art. 28 GDPR (processor). In this case the specific subject of the commissioned data processing and the respective rights and duties of the parties are regulated by the provisions of the agreed written individual agreements regarding commissioned data processing.
- 9.7 In the case of a delay in payment, Claranet will send the necessary Client data to the company engaged to collect payment provided all other applicable legal requirements have been met. The legal basis for this is Art. 6(1)(b) and Art. 6(1)(f) GDPR. The assertion of a contractual claim is deemed to be a legitimate interest within the meaning of the second provision referred to above. The Client shall be informed in writing that a collection agency or third party has been retained to collect the debt.
- 10. Creditworthiness Check**
- 10.1 Claranet is entitled to transmit the Client's inventory data (e.g. name, address, legal form or other data required to establish a contract) to credit agencies cooperating with Claranet for verification of the Client's creditworthiness and to receive information for this purpose. Claranet is furthermore entitled to use a scoring process as part of the creditworthiness check. Scoring makes use of mathematical calculations to determine the probability that the Client will satisfy its payment obligations in accordance with the contract. These scores thereby aid Claranet, for example in assessing creditworthiness, and represent a component of risk management. Calculations are made on the basis of recognised and proven mathematical / statistical processes and are performed on the basis of data provided to us by the Client. Processing is performed on the basis of Art. 6(1)(f) GDPR in light of Claranet's legitimate interest in taking precautions against payment defaults given that it performs in advance. **The Client has the right to object to this processing of personal data concerning it on the basis of Art. 6(1)(f) GDPR at any time with future effect by sending notice to Claranet.** However, the provision of such data is necessary to conclude a contract. The failure to provide such data means that a contract cannot be concluded with the Client.
- 10.2 The Client may request information from Claranet at any time regarding the names and addresses given to credit reporting agencies as part of the creditworthiness check. The Client can request the information on file for it from the credit reporting agencies concerned.
- 11. Term of the Contract / Termination**
- 11.1 The contract shall have a minimum term of 12 months unless otherwise agreed. The contract is automatically extended for the agreed term / 12 months if notice of termination is not given no later than three (3) months before the end of the contract term. Once terminated a contract shall end at the end of the month regardless of the date on which the contract began.
- 11.2 The term of the contract begins on the day the approval confirmation is sent by Claranet or the Ready-for-Service date unless otherwise individually agreed. In the absence of an approval confirmation from Claranet the contract term shall begin at the latest when Claranet has made the contractual service available. This is not dependant on actual use by the Client of the services made available.
- 11.3 To terminate the contract notice must be given in writing and signed (own hand) in order to be valid and is to be sent to Claranet by fax, by post or by email (as PDF file with handwritten signature). The electronic form is excluded. This requirement for notices of termination to be in writing and signed can only be revoked by an agreement which is in writing and signed.
- 11.4 This shall not affect the right to extraordinary termination. An important reason for extraordinary termination of the contract is present especially if one contractual party infringes a fundamental contractual duty. An important reason for which Claranet is entitled to extraordinary termination of the contract is present in terms of § 3.2 and furthermore if:
- a) an application to open bankruptcy proceedings over the assets of the Client is made;
 - b) the Client has ceased operations or is unable to pay;
 - c) Claranet cannot continue to permanently provide the services under this contract or can only do so at considerable additional cost due to the discontinuation or significant alteration of third party advance provisions on which Claranet is dependent in order to fulfil their performance obligations under this contract and Claranet has no influence on the provision of these.
- 11.5 If the contractual relationship is terminated prematurely through extraordinary termination and if the termination is based on the Client's acts in violation of the Contract, the Client agrees to compensate Claranet for resulting damages. The damages to be compensated by the Client are a minimum of seventy-five (75%) percent of the contractual remuneration up to the point at which a proper termination ended the contractual relationship. The entire amount of remuneration to be paid is due as soon as notice of termination is received. The Client is free to demonstrate that Claranet suffered less damage or no damage through premature termination. Claranet is free to demonstrate that higher damages were incurred.
- 12. Offsetting and Retention Rights / Transfer of Contract / Contractual Lien**
- 12.1 The Client may settle claims against Claranet only with undoubted or legally binding claims.

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- 12.2 The Client is entitled to exercise the right of retention only for counterclaims arising from the same contractual relationship. In the event the right to retention is exercised improperly, the contractual parties agree to an interest rate for the amount of money retained of eight (8) percent above the base interest rate of the European Central Bank.
- 12.3 Each party may only transfer the rights and obligations resulting from this contract with the written approval of the other party. This shall not apply to transfers to associated companies as defined by §§ 15 ff of the German Public Companies Act (AktG).
- 12.4 Claranet shall hold a contractual lien on contractual objects held by Claranet on the basis of this contract in relation to contractual receivables. The contractual lien may also be claimed in relation to receivables from services previously rendered insofar as they are associated with the objects of the contract. The contractual lien only applies to other claims from the business relationship insofar as these are uncontested and legally binding.
- 13. Acceptance of Project Services**
- 13.1 Acceptance of project services requires a successful functional test of five (5) days by the Client. The Client shall begin the functional test based on the service features defined in the SOW after Claranet has given notice that the service is "ready for Acceptance". The results of the functional test shall be retained in a joint test protocol. If the test cases were processed properly and no errors (para. 3) of error class one (1) or no significant number of errors of error class two (2) are documented, the functional test is considered to be successfully completed. The number of errors of error class (2) is considered significant only if the number of errors is such that the service cannot be used economically by the Client.
- 13.2 The service is deemed to be accepted if productive use of the service is commenced by the Client or at the latest on successful completion of the functional test without the need for an explanation of the Client. The Client may only prevent automatic acceptance if timely, written notification of class 1 errors or a significant number of class two (2) errors is sent.
- 13.3 If no other provisions are made in individual cases, the following error classes are considered to be agreed upon:
- Error class one (1) – errors which prevents acceptance: the error is such that the product or service or a significant part thereof cannot be used economically by the Client. If an error of this type is present, the contractual service obligations of Claranet have not been provided to the extent that the Client can refuse acceptance.
 - Error class two (2) – errors which do not prevent acceptance: an error of this type is present if the service deviates from functionalities described in the services section, but the deviation does not result in use of the service that prevents reasonable financial usage. An error of this type shall be eliminated by Claranet within the framework of defect rectification.
- 13.4 Any lack of documentation or SLAs is not an error within the meaning of para. 3. In this case approval shall be conditional. This shall not affect the due date of the fee agreed.
- 14. Granting of Rights**
- 14.1 All rights to intellectual property such as copyright, other industrial protection rights or Know-how which were in existence before this agreement was concluded are retained by the contractual party who held them before this contract was concluded. No intellectual property rights are granted to any party by the other party through this contract. In particular, Claranet explicitly retains all rights to standard commercial software programs used by Claranet and especially software tools (programs, scripts etc.) created by or for Claranet to operate system environments and adaptations or modifications to them.
- 14.2 If, as part of providing services as specified by this contract, Claranet delivers software programs (updates; new releases, software changes/adaptations, etc.), Claranet grants to the Client receiving these software programs the non-exclusive right without temporal, spatial or material restrictions for the duration of the contract to make full use of the program for internal purposes. The granting of rights extends to all companies associated with the Client as defined by §§ 15 ff. of the German Public Companies Act.
- 14.3 The Client is granted a non-exclusive usage right (licence) for no longer than the term of the contract for Claranet software and external software (software that was developed by a software provider independent of Claranet) provided by Claranet for operation, as well as corresponding documentation and additions to it and other materials for the purpose of receiving services constituting contractual items. All other rights in software and documentation, including copies and subsequent additions, are retained by Claranet or the software supplier. Assigning of sub licences is not permitted. The Client is not entitled to copy the software to a public or distributed network or to decode it.
- 14.4 To the extent it is necessary to provide service, Claranet shall install and operate components of Claranet software or external software on systems that are not operated by Claranet. This shall not affect the agreement regarding usage rights in such Claranet software or external software. Provisions governing the granting of such usage rights can be made in the relevant service agreements.
- 14.5 Claranet is not prevented by this contract from developing such work results (especially Know-how), from marketing and ceding to third parties work results similar to those of the Client. The consent of the Client is required in the area of applications developed especially for the Client on the basis of a separate project order. This consent may be regulated in the relevant project order. If consent is not explicitly regulated the basic principle shall apply that all usage rights arising from that project order shall be retained by the Client.
- 14.6 The Client agrees to ensure that usage rights as described above are observed in its contracts with third parties.
- 15. Rights of Third Parties**
- 15.1 Claranet warrants that all deliverables in accordance with this contract shall be free of protected rights of third parties and that there are no other rights restricting or excluding usage in accordance with this contract. In the event such rights are asserted, Claranet shall wholly indemnify the Client.
- 15.2 If a third party asserts violation of protected rights or other rights through use of the program, the Client is obligated to bring the matter to Claranet's attention immediately. In this case Claranet is entitled and obligated to conduct all legal disputes resulting from such claims at its own expense or after all its legal means are exhausted to exempt the Client from resulting expenses and claims. The Client agrees to provide assistance and support Claranet to a reasonable extent in the course of the legal defence.
- 15.3 If usage in accordance with the contract is negatively affected by protected rights or other rights of third parties, Claranet agrees after consultation with the Client either to modify the contractual services so that they fall outside of the protected area but still meet the terms and conditions of the contract or to effect authorisation so that the services can be used without restriction or any additional expenses for the Client and in accordance with the contract. If Claranet is unable to eliminate the negative effects due to rights of third parties, the Client is entitled to reduce the fee or to terminate the contract.
- 16. Blockage**
- 16.1 Claranet is entitled to impose a partial or complete blockage to prevent all services from being used by the Client without written notice and without observing a waiting period if
- the safety of Claranet's equipment or public security is threatened
 - the Client has infringed the duties laid down in § 3.1 letter c (Misuse and Permitting third party use without consent) and/or
 - the Client has otherwise given cause for immediate termination.
- The Client shall be informed immediately of the blockage and the reasons for it.
- 16.2 Claranet is entitled to impose a partial or complete blockage to prevent all services from being used by the Client after written notice and observing a waiting period of two (2) weeks, if
- a chargeback occurs when Claranet receivables are collected, unless the Client is not responsible for the chargeback,
 - a Client violates § 3.1 letter h and this hereby endangers a proper invoice adjustment and
 - the Client has defaulted on payment as per § 4.4.
- The sending of a payment request (reminder) is considered as a preannouncement for blocking.
- 16.3 Notice of a blockage in accordance with the preceding paragraphs can be sent to the e-mail address named by the Client of the administrative contact or another e-mail address named in writing by the Client. Claranet is free to send a written notification instead.
- 16.4 In case of a blockage, the Client remains obligated according to this section to pay all contractually agreed upon payments.
- 17. Contract Change Management**
- 17.1 Deviations/expansions or other changes to the services defined in the relevant SCs shall be handled as part of the Contract Change Management process described below.
- 17.2 If the Client or Claranet desires or considers necessary an additional service or expansion (referred to collectively hereinafter as "changes in services") Claranet shall create a separate offer.
- 17.3 If Claranet can make a credible case that extensive preparatory work (for example a feasibility study or analysis workshop) is required to test and create a corresponding offer, Claranet is entitled to require compensation. Claranet shall not begin to create the quote until the Parties have reached agreement regarding compensation for the work involved.
- 17.4 The quote regarding the Contract Change will generally include
- A description of additional services to be provided and/or a detailed description of how the original service is being changed
 - A statement regarding the effects in terms of technology, time and finances of making the Contract Changes on the ongoing project and fulfilling previous contractual responsibilities for Claranet
 - A schedule and fee for the Contract Change being offered.
- 17.5 A Contract Change is only valid if a documented agreement has been made in writing between the two Parties regarding the modified services, especially regarding the price and effects of the Contract Change or other services. If this agreement is not present, Claranet shall continue to perform services without change in accordance with the existing SC.

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18. Confidentiality

- 18.1 The contracting parties undertake to treat all written and oral confidential information which they particularly become aware of during negotiations regarding or the implementation of a contract as strictly confidential and to solely use it for contractually agreed purposes.
- 18.2 There is no confidentiality obligation regarding such information which:
- is trivial or widely known
 - was already in that Party's possession without thereby constituting a violation of the conditions of this provision or
 - is generally public knowledge without thereby constituting a violation of the conditions of this provision.
- The Contracting Party which is appealing to the conditions cited above is responsible for proving that they apply.
- 18.3 If a public body requires confidential information the Contracting Party shall immediately inform the other Contracting Party before providing the information to the public body.
- 18.4 The Contracting Parties hereby mutually undertake to carry out all measures that are required to ensure that the provisions of this section are observed by their employees, vicarious agents, subcontractors or other third parties who are under their control and who are involved in processing it.
- 18.5 Both Contracting Parties are obligated to properly store all business and operating documents as well as all other written materials related to the affairs and business operation of the other Contracting Party that are made available to them (including records, drafts, etc.), and to ensure in particular that no third parties are permitted to view them. These documents and/or written materials shall be returned during the duration of the contractual relationship upon request or upon termination of the contractual relationship immediately and unsolicited to the other Contracting Party. Any right to retain materials is excluded.

19. Miscellaneous

- 19.1 This contract shall be governed by the law of the Federal Republic of Germany. To the extent UN commercial law is applicable in this case, it is waived to the greatest extent legally possible.
- 19.2 The exclusive place of jurisdiction for all claims arising from and based on this contract as well as all disputes between the contractual parties regarding the creation, execution or termination of the contract shall be Frankfurt am Main. The same applies to all official document and change processes.
- 19.3 If Claranet intends to make amendments to these General Terms & Conditions, Claranet will publish these on its homepage (www.claranet.de). In addition Claranet shall inform the client of the alterations by email or in writing a minimum of 6 weeks before the amendments come into force. The amendments will be valid if Claranet does not receive any objection from the Client within 6 weeks of the date of dispatch of the email from Claranet. If the Client does object Claranet may extraordinarily terminate the contract with a notice period of 4 weeks within 4 weeks of receipt of the objection.
- 19.4 If a provision of this agreement is or becomes invalid or should the contract be incomplete, this shall not affect the content of the remainder of the contract. The parties hereby obligate themselves to replace invalid regulations with an effective regulation which the parties would have agreed if they had knowledge of the invalidity of the agreed provision taking their economic and legal desires into consideration and which comes closest to the purpose of the regulation.

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II. ADDITIONAL PROVISIONS REGARDING ACCESS SERVICES

1. Scope of Services and Duties

- 1.1 An access product can only be installed if a corresponding number of copper twin wires are present and the carrier has confirmed availability. Certain performance features of data services, especially the data rate, can be only determined during commissioning of the relevant connection. If in the framework of the commissioning is determined that the actual bandwidth is permanently 30% lower than the bandwidth ordered the Client may withdraw from the contract with respect of the affected location; this withdrawal does not apply to other locations of the Client contained in the contract which have been provided with bandwidth as per the contract. This right to withdraw from the contract must be exercised in writing within a period of ten (10) working days from the point of installation. If the right to withdraw is not exercised or is not exercised on time, the actual bandwidth shall be considered as contractually agreed. Complaints due to insufficient bandwidth from the beginning or non-applicability of the product contract through exercise of the right to withdraw are excluded. The right of the Client to withdraw from the contract is also excluded if the Client is solely or largely responsible for the bandwidth being permanently below the limit. The Client may as an alternative negotiate an adaptation to the contract with Claranet.
- 1.2 Stated bandwidths are those transfer rates actually available at the network access level. The actual data transfer rate is dependent on many factors (for example customer usage, size of Ethernet frames) and may deviate from the stated values. Claranet guarantees the customer a usable bandwidth of at least 85% of the connection bandwidth.
- 1.3 If a DSL service is subject to an increase in disruptive factors this can in individual cases mean that it is impossible to maintain the service. This may in particular be released by a sub-supplier switching the connection of a third party from an adjacent pair. Claranet has no influence over this. In such a case less bandwidth shall be provided at the customer's request if this is technically possible.
- 1.4 In exceptional circumstances, a written consent from the building owner or a building owner's declaration (BOD) is required for installation of the line. The BOD must be provided by the Client within a period of ten (10) working days after the order is placed, but no later than when requested in writing by Claranet. If this BOD is required for order processing Claranet will inform the Client accordingly.
- 1.5 Claranet shall assign IP addresses as it sees fit. The Client has no claim to a particular IP address. Claranet is entitled to alter previously assigned static IP addresses provided there is a technical reason for doing so. The Client shall be immediately informed of this.
- 1.6 The Client hereby declares that they agree with the Fair Use Policy regarding using Claranet's services. "Fair Use" aims to ensure equal distribution of data traffic, which should guarantee a balance for all Clients and the integrity of Claranet's access network. If a line exceeds the average amount of data traffic in comparison to other lines with the same technology in two (2) consecutive months, Claranet reserves the right to charge the Client for the additional value used after giving the Client advanced notice or in cooperation with the Client to increase the capacity of the line using different technology.

2. Extraordinary Termination

Claranet may terminate the contract for the location at any time for cause.

Such significant cause is present in particular, but not exclusively,

- a) if termination of a subscriber connection line is made effectively by Telekom;
- b) if operation of fixed telecommunication connections and/or providing telecommunication services causes faults in the public telecommunication network of Claranet or of Claranet's carrier suppliers;
- c) if operation of fixed telecommunication connections and/or providing telecommunication services disturbs interferes with providing other telecommunication services on subscriber connection lines of Telekom;
- d) if Telekom of another carrier supplier requires the removal of access equipment from the main distributor location or some other impossible situation for which Claranet is not responsible arises. These include in particular, but not exclusively, unsubstitutable loss of availability of Internet access or unsubstitutable loss of a supplier of advance provisions.

3. Relocation

- 3.1 Cable or earth-bound access services are not available everywhere and the line provided is tied to a certain place (installation location on the order form). The contract concluded applies for the agreed contract term at the agreed installation location. Relocation to a place where access services are insufficiently available will be at the sole decision of the Client and does not entitle the Client to extraordinarily terminate the existing contract.
- 3.2 In the event of a move to an address where the agreed access product is available through and deliverable by Claranet, a one-off fee shall be levied for the relocation. In addition the monthly payment may alter as a result of

- relocation. The term of the contract, unless otherwise agreed, shall be twelve (12) months from when the new line is made available at the new address.
- 3.3 The monthly payment calculated by Claranet for the new address may also include any cancellation fees imposed by sub suppliers for early termination.
- 3.4 The relocation request must be conveyed to Claranet in writing a minimum of three (3) months prior to the required relocation date in order to provide the connection at the new location on time.
- 3.5 The price of the old line is also to be paid by the Client until the new line is definitively ready for use.

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III. ADDITIONAL PROVISIONS REGARDING DIRECTIONAL RADIO (WLL) SERVICES

1. Scope of Services and Duties

- 1.1 A precondition for the connection via directional radio is a successful LOS (Line of Sight) check. If the LOS check is positive, the directional radio antenna will be properly installed by technology partners of Claranet at a suitable place. Written consent of the building owner or a building owner's declaration (BOD) is required for installation of the directional radio antenna. The BOD must be provided by the Client within a period of ten (10) working days after the order is placed, but no later than when requested in writing by Claranet. The Client shall receive from Claranet, for the duration of the term of the contract, a directional radio system consisting of an Indoor Unit (IDU) and an Outdoor Unit (ODU) with antenna. The IDU together with the router forms the network transfer to the Client. The installation of the ODU with antenna and 100 metres of antenna supply cable including laying is included in the connection price. Additional metres of cable and the charge for laying them shall be invoiced separately. The antenna installation is prepared for integration into the lightning protection system in accordance with currently applicable requirements. Integration of the antenna into the site lightning protection system is not included in the basic price. If the building does not have a lightning protection system, costs for integration or for creating the diversion of current are not included in the basic price.
- 1.2 The Client shall be responsible separately for other additional expenses that are incurred due to specific local features (for example longer cable routes, a larger antenna, drilling core holes, etc.). The Client must ensure that the preconditions required for technical equipment (space, cable shafts, power supply) are available for Claranet at no cost. The necessary set-up and installation work shall be performed during Claranet business hours (Monday to Friday from 08:00 to 18:00, excluding public holidays).
- 1.3 Claranet is freed from the requirement to provide service if the necessary official permits are not issued or are revoked. The same applies in case of any conflicts with neighbourhood regulations or other legal remedies of third parties against the radio installation.
- 1.4 The Client is obligated to uninstall and remove technical equipment provided by Claranet or a company authorised by Claranet at the end of the contract. If the Client does not comply with these duties Claranet may invoice the Client the costs of procuring new equipment.

2. Extraordinary Termination

- 2.1 Claranet is entitled to extraordinarily terminate contracts regulating services based on WLL technology for cause if:
 - a) the wireless connection between the relevant Claranet WLL base station and the reception antenna at the Client's site is negatively impacted or interfered with, even temporarily, because of constructional changes or other external effects in the area of the radio link or
 - b) the contract for operating the WLL base station between Claranet and the owner of the building used for this purpose is terminated.
- 2.2 The Client is granted a special termination right if the WLL connection is permanently interrupted by constructional or similar measures. If Claranet is not responsible for the interruption, all claims by the Client due to elimination of the contract are excluded, in particular claims for a refund or compensation for damages.

3. Relocation

- 3.1 The Client is aware that WLL is not available everywhere and that the connection provided is tied to a certain place (installation location on the order form). The contract concluded applies for the agreed contract term at the agreed installation location. Relocation to a place where WLL is insufficiently available will be at the sole decision of the Client and does not entitle the Client to extraordinarily terminate the existing contract.
- 3.2 In the event of a move to an address where the agreed WLL product is available through Claranet, a one-off fee shall be levied for the relocation. In addition the monthly payment may alter as a result of relocation. The term of the contract, unless otherwise agreed, shall be twelve (12) months from when the new line is made available at the new address.
- 3.3 The monthly payment calculated by Claranet for the new address may also include any cancellation fees imposed by sub suppliers for early termination.
- 3.4 The relocation request must be conveyed to Claranet in writing a minimum of three (3) months prior to the required relocation date in order to provide the connection at the new location on time.
- 3.5 The price of the old line is also to be paid by the Client until the new line is definitively ready for use.

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IV. ADDITIONAL PROVISIONS REGARDING HOSTING SERVICES

1. Scope of Services and Duties

- 1.1 During implementation and operation of the services the Client shall
- a) assist in formulating requirements and fine-tuning suitable solutions;
 - b) formulate adequate requirements for server configurations as may be necessary in reference to applications;
 - c) install the Client's own applications independently as required, or assist with the installation as agreed.
 - d) operate the Client's own applications independently or by making use of service providers or, if the parties have mutually agreed on transferring technical operation to Claranet, draw up a corresponding and suitable operating concept if the product contract so stipulates;
 - e) develop and maintain the Client's own applications and scripts independently if the product contract so stipulates;
 - f) and, unless otherwise agreed, independently provide and maintain the content of the website.
- 1.2 Furthermore, the Client must ensure that only the Client or general subcontractors commissioned by the Client and persons authorised by them have access to Claranet Business Support for accepting, prequalifying and bundling problems and requests from the Client and third parties.

2. Transfer of the System Environment upon Termination of the Contract

- 2.1 Claranet shall provide a quote to the Client in the retransition phase, which shall enable the Client to make a comprehensive calculation of costs that will be incurred by the Client from Claranet for a retransition or extension of services to a third party. When performing this task, Claranet agrees to offer standard market prices, taking into consideration the basis for calculation of contractual services provided at that time.
- 2.2 Especially during the period of any intended retransition at the end of the contract, Claranet agrees to train employees or external consultants to be named by the Client to work with the operating manual and systems described by the manual so that they will be sufficiently qualified and capable of ensuring and continuing operation. The Client shall be responsible for resulting expenses.
- 2.3 Claranet agrees to work closely and cooperatively with a third party to be named by the Client while transferring system operation. This applies especially to comprehensive and qualified instruction of this third party in system operation and the Client's systems. The Client shall be responsible for the resulting additional expenses before and after termination of this contract incurred and documented by Claranet.
- 2.4 If Claranet has entered into agreements with third parties to fulfil its obligations, Claranet shall provide help to the Client if requested in making corresponding agreements with these third parties.
- 2.5 Upon termination of the contract, Claranet shall return all documents it has received in connection with executing the contract or shall demonstrate that such documents have been properly destroyed. Existing data inventories and programs must be physically deleted. Documentation that serve to demonstrate that data was properly processed must be retained by Claranet beyond the end of the contract according to the relevant retention period.

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V. ADDITIONAL PROVISIONS REGARDING DOMAIN ADMINISTRATION

1. Web Interface Usage Conditions for Domain Registration and Administration

1.1 The following usage conditions regulate the provisions on which Claranet makes an application to responsible domain registrar (DENIC, SWITCH, NIC.AT, inter alia) or intermediary registrar to register or transfer a domain and/or to transfer the administration of a registered domain on behalf of the Client. The guidelines of the respective TLD domain registry are also applicable to the following provisions.

- In this contract 'registering' is deemed to mean the new registration of a domain (REG).
- In this contract 'transfer' is deemed to mean the transfer of an already registered domain from another provider to Claranet's administration (KK or TRANSFER).
- In this contract 'administration' is deemed to mean the forwarding of declarations of the domain holder to the domain registrar or intermediary registrar regarding an alteration to the data of the domain (UPDATE), a change of the domain to a provider other than Claranet (KK/CHPROV/TRANSFER) and the termination / deletion of the domain (CLOSE) and other administrative measures regarding the domain, in particular the implementation of an internal provider change whereby the domain remains administered by Claranet.

The Client may also use the contractual services as a reseller. No contractual relationships are formed between Claranet and the end customer as a result of the contract.

1.2 Claranet will deal with the responsible domain registrar or intermediary registrar in respect of declarations made by the end customer to have a domain registered or transferred and administered or is administered (hereinafter also the "future domain holder" or "domain holder"). The registration contract between the domain registrar or the intermediary registrar is hereby regulated in accordance with the respective registration guidelines and provisions and price lists of the named organisations. Claranet shall advance the registration and administration fees to the domain registrar or the intermediary registrar.

1.3 Individual contracts will thereby come into force in that the Client sent Claranet a binding order using the contractually agreed method of ordering and Claranet begins, in particular to forward of the applicable data to the respective domain registrar or intermediary registrar to implementation of the contract. Binding orders received by Claranet cannot be cancelled. The implementation of individual contracts for the registration or transfer of domains is subject to the availability of the respective domain. By multiple orders the unenforceability of individual orders do not affect the validity of implemented single orders. No liability is assumed in respect of information regarding the availability of domains on Claranet's website. In particular Claranet advise that this information is only the data status of the databases of the respective domain registrar or intermediary registrar forwarded on which will be adjusted at different times in relation to the legal allocation of domains.

1.4 Claranet will execute the contracts as fast as possible without however being able itself to guarantee the implementation by the domain registrar or intermediary registrar in this connection. Claranet may at any time make the implementation of contracts conditional upon the prior payment of the fees owed.

1.5 Claranet shall provide the required support to the Client during Claranet's normal business hours for the implementation of the above stated services. The Client's end customers do not have any right to direct support as above from Claranet.

1.6 Claranet will provide two (2) name servers as a free of charge service for domains registered by Claranet for the duration of the registration (DNS service). Claranet reserves the right to cease the provision of this free of charge DNS service at any time, in whole or in part or to continue the service in return for payment of an additional fee. Claranet shall give the Client notice of the cessation of the free of charge DNS service or the change to a chargeable additional service with a notice period of at least one (1) month. If Claranet comes to know that a domain points to a web page whose content infringes legal prohibitions or third party rights Claranet is entitled to block the usage of the name server for this domain at any time without needing to give notice. The same applies if the registration of a domain would be such a violation. Claranet has the same rights if such an infringement is asserted by a third party vis-a-vis Claranet and if there is reasonable suspicion of such an infringement. Claranet will immediately inform the domain holder of the blockage.

2. Processing Domain Orders and Invoices

2.1 The Client will exclusively use the web interface provided by Claranet for all communication with Claranet (in particular for all legally binding orders for new registration, transfer, transfer approval declarations, requests, domain termination and updating) insofar as this is technically possible and possible in terms of content. The web interface is at: <http://domainorder.claranet.de/>.

If this is not available to the Client the Client will issue a written order to Claranet.

2.2 The Client declares that it is in agreement with order being invoiced in accordance with the domain pricing through the release of an order using the web interface provided.

2.3 Claranet is furthermore entitled at any time to block access to all functions of the above online ordering system if the Client is late with payment and a reasonable grace period for payment given by Claranet to the Client is not adhered to.

3. Fees for Domains

The first payment-relevant administration period begins on successful registration or transfer of a domain or on the successful implementation of an internal provider change. If the contract is prematurely terminated (also on premature deletion of the domain or premature transfer of provider) the Client is liable for the full fee for the contractually agreed administration period.

4. Client's Duties and Obligations

4.1 The Client shall transfer the complete, accurate and valid domain contract in accordance with complete and accurate data required by the domain registration guidelines and provisions to Claranet for registration by or transfer to Claranet. Alterations to the data required by the respective domain registration guidelines or provisions and to the technical data required to connect to the domain (UPDATE) and all relevant declarations of the domain holder for the domain contract between the domain registrar or intermediary registrar and the domain holder, all administrative and technical contact persons or the zone administrator shall be given to Claranet by the Client immediately and within three (3) working days at the latest. The above time period commences on receipt of the request or declaration in question from the domain holder by the Client. If Claranet itself should have a written declaration from the domain holder, Claranet is entitled but not obligated to pass on the therein contained alterations to data or the declaration from the domain holder to the respective domain registrar or intermediary registrar without asking and independent of their approval. The Client shall be subsequently immediately informed thereof. When using means of communication as per Chapter 2.1 of this clause this information will generally be passed on automatically and (except for deletion request) without delay. Claranet may however any at time request the stated written consent of the domain holder from the Client with a reaction time of one (1) working day. Declarations given by administrative contact persons (e.g. WHOIS Admin C) carry the same weight as declarations made by the domain holder unless there is a contradictory declaration of intent from the domain holder.

4.2 The Client is therefore responsible that all alterations to domain data and declarations of the domain holder it passes on to Claranet are made in the name of and on behalf of the domain holder. The Client is furthermore therefore responsible that it has an original or faxed copy of a concrete declaration of consent personally signed by the domain holder or by Admin C at the time of requests to transfer to Claranet, other requests to change provider or approval for this, requests to change the domain holder or approval for this and requests to delete a domain. In these situations Claranet is entitled but not obligated to forward all requests or approvals to the respective domain registrar or intermediary registrar without the need for Claranet to possess this written declaration of consent from the domain holder itself.

4.3 The Client is liable for the unauthorised use and misuse of the contractual ordering system insofar as it is responsible for this. The Client must hereby ensure that the user IDs and passwords provided to it are kept secret and to take steps to ensure their confidentiality.

5. Term of the Contract, Termination and Change of Provider

5.1 The Client may only terminate the contract for the provision of administrative services for a domain if the Client thereby simultaneously conveys the request of the domain holder for deletion or KK of the domain to another registrar. If deletion occurs at the end of the administration duration Claranet may bring about the deletion at the point of expiry of the respective termination notice period insofar as this is required in order to avoid an extension of the administration duration at the responsible domain registrar or intermediary registrar. The Client shall ensure that the end customer as domain holder is in agreement with this procedure. If the contract to administer a domain comes to an end without a deletion request from the domain holder (e.g. due to the end of this contract) and no request to change provider is made in time before the expiry of the administration period despite prompting the Client or if Claranet is no longer able to reach the Client, Claranet is entitled to pass the domain to the administration of the domain registrar or the intermediary registrar and/or to enquire with the domain holder or their provider whether further registration of the domain or a provider change is required and/or in emergencies to delete the domain. The Client shall ensure that the end customer as domain holder is in agreement with this procedure.

5.2 If the Client or its end customer clients possess a transfer request to another provider and the written declaration of consent of the domain holders in accordance with chapter 4.1 of this clause, the Client shall immediately advise Claranet of its approval of the transfer (ACK). If the declaration of

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consent is not provided within three (3) working days the Client is obligated at this time to advise Claranet of the withdrawal the transfer (NACK). If Claranet possesses a transfer request to another provider and the written declaration of consent of the domain holders in accordance with chapter 4.1 of this clause, Claranet may immediately accept the transfer request without asking the Client and independent of the Client's approval or refusal (ACK) and forward this to the domain registrar or intermediary registrar. The Client shall be subsequently immediately informed thereof. If Claranet is informed by a domain registrar or intermediary registrar that a change of provider has been carried out which was not instigated by Claranet, Claranet will immediately forward this notification on to the Client. In addition the provisions of chapter 4.1 apply to transfers / provider changes.

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VI. ADDITIONAL LICENSING / USE OF SOFTWARE

1. Providing Software

1.1 General Information

1.2 Claranet shall provide the Client with the selected software as per the contractual agreements. Claranet shall thereby ensure that the software provided is properly licensed.

In the event of usage-dependent licensing of software, where it is not within Claranet's sphere of influence to monitor the use of the software, the Client is obligated to exclusively use the software in accordance with their contractually granted usage rights. Any other use by the Client is prohibited (section 3.1 c) applies accordingly).

1.3 Providing Customer Software (Third Party Software)

The Client has the opportunity to use their own software within the Virtual Data Centre provided that this use is compatible with the (customer) licence and usage in this way is not prohibited. If software protected by copyright is illegally used by the Client and if Claranet becomes aware of this, Claranet is obligated by law to immediately disable the use of the illegally used software and to prevent such use in future. The Client shall indemnify Claranet from third party claims based on the above illegal use of software; this indemnification shall also include the legal costs.

2. Use of Software Provided for Use by Claranet

Claranet provides their Clients with selected software within the scope of the contractual obligations between Claranet and their software suppliers. If the Client uses MS software within the scope of the provision of contractual services the following provisions also apply:

- 2.1 The Client is prohibited from removing, changing or concealing copyright, trademarks or other references to ownership rights which are in or on the software. Microsoft retains the ownership rights to MS software. The respective manufacturer retains the ownership rights to the software.
- 2.2 The Client is not permitted to alter software in a way which allows the functional, design and assembly principles to be inferred (reverse engineering).
- 2.3 The Client may not generate any source code for the software they are using (decompiling).
- 2.4 The Client shall not reverse engineer the software provided in any way.
- 2.5 Claranet may give administration rights to the Client. This is provided solely for the purposes of maintenance, carrying out tests and administering the products.
- 2.6 If the Client has been granted administration rights, the Client undertakes to only use these for the purposes laid down in the contract. The Client shall not misuse the administration rights, which above all includes removing administration rights from Claranet employees or granting additional administration rights without the prior consent of Claranet.
- 2.7 If the Client has been provided with software keys or installation media by Claranet these shall only be used for the purposes laid down in the contract and be subsequently immediately destroyed/deleted. Any other use of keys or installation media by the Client shall be deemed misuse for which the Client can be held responsible.
- 2.8 When using dedicated servers the Client itself is in principle responsible for the licensing of the software used, unless this software is provided by Claranet.
- 2.9 In addition the current provisions of the End User License Agreement (EULA) of the respective software provider. These shall be provided to the Client by Claranet on request from the Client. The Client is responsible for regularly checking the software provider's EULA for changes and updates.

3. Microsoft Software

Claranet provides their Clients with selected Microsoft software (hereinafter referred to as "MS software") within the scope of Service Provider License Agreements ("SPLA") between Claranet and the Microsoft Corporation (hereinafter referred to as "Microsoft"). If the Client uses MS software within the scope of the provision of contractual services the following provisions also apply:

- 3.1 In addition the current provisions regarding no high risk use in Microsoft's End User License Agreements (EULA) apply.
- 3.2 As an SPLA provider Claranet is obligated to inform Microsoft each month of the number of Microsoft licences actually used by Claranet's Clients. In order to enable this and to guarantee the swift and precise verification of the number of licences actually used in the event of a Microsoft audit Claranet has the right to verify compliance with the usage provisions for Microsoft licences. For this purpose the Client undertakes to grant Claranet appropriate access (e.g. by setting up sufficient admin and/or monitoring permissions).
- 3.3 If the Client terminates services where the Client has been provided with MS software for use for the term of the provision of contractual services, the Client shall:
 - delete the MS software provided to them for use from their own systems at the latest 30 days after the provision of services has ended;
 - return to Claranet and/or make unusable all copies of the MS software provided to the Client or copies made by the Client

within 30 days of the end of the provision of services. If agreed by the Contracting Parties in advance all copies may be destroyed or deleted and this confirmed in writing instead of returning the copies.

4. Reporting and Settlement / Contractual Penalties

- 4.1 Settlement for software provided by Claranet shall normally take place on the basis of the agreed number of licences. The Client has the opportunity to use more licences. If the actual number of licences used is greater than the agreed number of licences the Client shall immediately inform Claranet of this. Additional licences used will be invoiced separately in accordance with the current valid price list.
- 4.2 Prices for licences provided are in line with the price lists of the software manufacturer.
- 4.3 The Client is obligated to inform Claranet of the number of licences actually used in the previous month by the fifth (5th) of the month. Should the Client negligently not comply with this duty Claranet is entitled to impose a contractual penalty in the amount of five times the monthly licence amount for each infringement without prejudicing the right to exercise additional rights. Settlement shall not take place for any damage claims.

5. Using Claranet Portals

5.1 Miscellaneous

Claranet provides their Clients with portals within the scope of their contractual obligations. In using the portal the Client declares their acceptance of all provisions agreed below.

5.2 Performance Features of the Claranet Portals

Claranet offers certain information and services via the client portals. The company reserves the right to make changes or amendments to the client portals or parts thereof without notice.

5.3 Client's Cooperation Obligations

The Client shall be responsible for ensuring the confidentiality of all content and passwords and restricting access to their computers when using the client portals. The Client shall take all measures required to ensure that passwords are kept confidential and are stored securely. Claranet shall be informed immediately if third parties are suspected to have gained knowledge of passwords or have used passwords without authorisation. The Client shall be responsible for ensuring that their details remain correct and are provided in full, and any changes to the information provided are notified to Claranet.

5.4 Availability of Claranet Portals

The content or availability of Claranet portals may be restricted for technical reasons. Claranet shall endeavour to minimise the unavailability of the portals. This, however, does not result in the right to unlimited access to the portals.

5.5 Data Protection and Data Security

All personal data provided in connection with using the Claranet portals is subject to the data protection measures listed in I.9.

Claranet GmbH

Hanauer Landstraße 196
60314 Frankfurt am Main
Managing Director: Olaf Fischer
HRB 50381, AG Frankfurt am Main
Vat-ID de 812918694
www.claranet.de