

1. WHEN DO THESE TERMS APPLY?

- 1.1 These Terms apply to all Service Contracts you enter into with us.

2. WHAT DO CERTAIN WORDS MEAN AND HOW ARE THESE TERMS INTERPRETED?

2.1 In these Terms:

"Affiliate" means any person Controlled by, Controlling or under common Control with a party and "Control" means the power to direct, directly or indirectly, the management of another person or entity;

"Annual Extension Period" means a period of 12 calendar months following the date of expiry of the Initial Term or previous Annual Extension Period as the case may be;

"Charges" means the charges for the Services together with any other monies payable by you pursuant to a Service Contract;

"Confidential Information" means all information disclosed (in any form) by either of us to the other which is marked confidential or which it is reasonably apparent should be treated as confidential, including information relating to the disclosing party's products, operations, processes, plans or intentions, know-how, design rights, trade secrets and business affairs;

"Credit Limit" means how much you can, in total, be in debt to us. If you pay by direct debit your credit limit is €5,000. If you do not pay by direct debit we will tell you what this limit is. We may change it from time to time. If we have not told you what your Credit Limit is, it is nil;

"Initial Term" means the minimum period of time during which we will supply the Services to you. It will usually be set out in the Order Form, but if it is not, the default period is 12 months;

"IPR" means any registered or unregistered intellectual property rights existing anywhere in the world from time to time, including copyright, know-how, trade marks, patents, design rights and database rights. It also means any application for such rights;

"Order Acceptance" means either: (a) a notice from us confirming that we accept the relevant Order Form; or (b) a notice communicating to you the expected installation date; or (c) the Order Form itself, if we have countersigned it, and if you receive more than one such document from us, the date of Order Acceptance shall be the later (or latest) date of such documents provided that the date of Order Acceptance shall in no circumstances be later than the RFU Date;

"Order Form" means an order, on our standard form, placed by you for Services;

"our Equipment" means any equipment provided by us, or any third party on our behalf, to you for the purposes of providing you with the Services;

"party" means you or us as the case may be and "parties" means both you and us;

"RFU Date" means the date we tell you that the Service is ready for use or if earlier the date that you commence using the Service other than for testing purposes;

"Service" means each of the services we supply to you under a Service Contract. These will be set out in the Order Form;

"Service Contract" means the Order Acceptance and these Terms together with the applicable Order Form, the Service Description(s), any applicable Service Specific Terms and Conditions and the Service Level Agreement, in each case in the form existing as at the date of the Order Form;

"Service Description" means the document setting out the description of the Service(s) referenced in the Order Form;

"Service Level Agreement" or "SLA" means the document setting out the service levels to which we commit to provide the Services referenced in the Order Form;

"Service Specific Terms and Conditions" means any additional terms and conditions which apply to a particular Service. The Order Form will state whether or not there are any Service Specific Terms and Conditions;

"Terms" means these general terms and conditions;

"we", "us" and "our" all mean COLT Telecom Austria GmbH, a company incorporated under the laws of Austria at the court of commerce in Vienna whose registered number is FN 175379K and whose registered office is at Kärntner Ring 10-12, A1010 Vienna, Austria (VAT number is ATU 45766309);

"you" and "your" both mean the customer identified on the Order Form; and

"your Equipment" means any equipment belonging to or under your control and which is not part of our Equipment.

2.2

In these Terms, unless the context otherwise requires: (a) the headings are for convenience only and do not affect interpretation; (b) where appropriate, words denoting the singular include the plural and vice-versa and words importing one gender include the other gender; (c) reference to any document, including any statute or statutory provision, is a reference to the document at the relevant time, as amended, extended or re-enacted; and (d) the words "includes" or "including" should be read as being followed by the words "without limitation".

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2.3 If there is any conflict between any of the documents which make up a Service Contract, the following order of precedence applies with those documents listed first taking precedence over the documents listed after them: (a) the Order Acceptance; (b) the Order Form; (c) any applicable Service Specific Terms and Conditions; (d) these Terms; (e) the Service Level Agreement; and (f) the relevant Service Description.

3. WHAT IS THE ORDER PROCESS?

3.1 You may order Services from us under these Terms only if you are doing so in a business capacity. Consumers should ask us for our special consumer terms of business.

3.2 You may order Services either: (a) by completing our standard Order Form and sending this to us; or (b) if such functionality is available, on-line by completing and submitting an electronic Order Form via our web ordering portal. In each case, your order shall be deemed to be an offer.

3.3 You agree that any delay or failure by you to provide us, when requested, with complete and accurate technical details necessary for us to complete the installation may lead to an extension of the lead times set out in the SLA and we shall have no liability for any resulting late delivery in such circumstances.

3.4 We will not be bound by an Order Form until and unless we send you an Order Acceptance.

4. HOW ARE THE SERVICES ACCEPTED?

4.1 You have the right to reject a Service within 5 working days from the RFU Date. You need to do this by notice to us. If you: (a) do not reject the Service within that time; or (b) use the Service other than for testing purposes, the Service will be deemed accepted.

5. WHEN DO SERVICE CONTRACTS START AND FINISH?

5.1 Each Service Contract starts on the date of the Order Acceptance and continues for the Initial Term. The Initial Term starts on the date that the Service is accepted in accordance with clause 4.1 or, if more than one Service or multiple locations are set out in an Order Form, the date on which the last Service or location is accepted in accordance with clause 4.1, unless otherwise agreed between parties.

5.2 A Service Contract will automatically continue after the Initial Term until terminated by either party pursuant to clauses 11, 16 or 19.

5.3 Any Charges will accrue and be payable from the RFU Date of the relevant Service or location irrespective of the date of commencement of the Initial Term for such Service in accordance with clause 5.1.

6. WHAT ARE OUR RESPONSIBILITIES?

6.1 Subject to clause 6.2, we promise to supply the Services: (a) in accordance with the terms of the applicable Service Contract; (b) using reasonable care and skill; and (c) in accordance with the applicable legal and regulatory framework.

6.2 We do not undertake or guarantee that any Service will be fault free or uninterrupted. However, our Service performance commitments are set out in the applicable SLA. You accept that we may suspend the Services without liability during any planned or emergency maintenance and/or outage. We will give you reasonable advance notice of planned outages.

7. WHAT SERVICE USAGE RESTRICTIONS APPLY?

7.1 You promise that you will, and that you will make sure that each end user to whom you make available any Service will, for the duration of the Service Contract:

- (a) comply with the terms of the Service Contract;
- (b) not use the Services for any fraudulent or unlawful purposes, nor allow others to do so;
- (c) not use the Services for any purposes which are offensive, indecent, obscene, menacing or defamatory nor allow others to do so;
- (d) comply with all applicable laws and regulatory requirements;
- (e) configure, connect and design your network and IT infrastructure (including the security and integrity thereof) in accordance with recognised best practice to mitigate the risk of it being a target or a source of disruptions or network defects or attacks;
- (f) not use the Services to gain, or attempt to gain, unauthorised access to any system (including network probing, network mapping, vulnerability scanning or exploitation of system mis-configurations);
- (g) inform us immediately if you are aware of or believe that: (i) any security breach has occurred in connection with the Services; and/or (ii) any of the passwords that we have given you have or are likely to become known to any unauthorised person. In addition, you will not disclose, and shall take all necessary organisational and technical measures to prevent the disclosure, to any unauthorised person any user names, passwords or security certificates and you may not retain any key or pass allowing you access to our premises;
- (h) comply with our reasonable instructions relating to the Services from time to time;
- (i) only connect to COLT's network such equipment and/or networks that comply with all relevant laws, standards and regulatory requirements and in such a way as is appropriate for the purposes for which it is connected and so that it will not interfere with our Equipment nor the equipment of our other customers and, further, shall comply with all reasonable instructions which we may issue from time to time in relation to COLT's network or in relation to our Equipment or our other customers' equipment; and

- (j) provide us access and reasonable cooperation or make sure that third parties provide us access to all sites and reasonable cooperation necessary for us to provide the Services, including to install any of our Equipment or your Equipment. We may require you to provide written evidence of our right to access such sites.

7.2 You promise to compensate us for any additional costs we incur because of any delay or failure by you to perform your obligations or responsibilities under the Service Contract. We will be entitled to charge you for logged faults that are ultimately diagnosed as being your responsibility or caused by you breaching any of your obligations or failing to perform your responsibilities, including any repair costs.

7.3 You will use all reasonable endeavours to give us advance notice if, at any time, as a result of your marketing activities or otherwise, you anticipate a significant increase in the traffic being conveyed via the Services.

7.4 You are solely responsible for the choice and use of the Services (and any results thereby generated) and, as such, it is your responsibility to review and decide whether the Services will meet your business objectives.

8. WHAT ARE YOUR OBLIGATIONS IF WE HOST YOUR EQUIPMENT AT OUR SITES?

8.1 If we host your Equipment at our sites, you promise that:

- (a) you will not maintain or seek to maintain that a relationship of landlord and tenant is created or that you enjoy any right to occupy our premises or part thereof. You hereby acknowledge and agree that no such relationship or right exists;
- (b) you will maintain adequate all risks insurance for your Equipment;
- (c) you will make sure that anyone entering our sites on your behalf: (i) does not injure or damage any person or property; (ii) carries identification at all times; (iii) does not interfere with any other equipment on our sites; (iv) gives us at least 1 working day's notice of their entry; and (v) complies with any reasonable health and safety measures and other site access rules that we advise to you or them from time to time; and
- (d) on termination of the relevant Service Contract, you will promptly remove your Equipment and, should you fail to do so, we will be entitled to charge you additional storage charges at our then prevailing rates.

9. WHAT TERMS APPLY IF WE SELL YOU EQUIPMENT?

9.1 If we agree to sell equipment to you, we will provide it to you "as is" without warranty, guarantee, condition or other terms unless prevented by law from so doing. In addition to any warranties which are mandated by law, we will try to pass the benefit of any warranties

offered by the manufacturer or distributor of the equipment on to you but we cannot promise to do so.

9.2 The risk of loss and damage to the equipment will pass to you on delivery. The title and property in the equipment will only pass to you when you have paid in full everything you owe us under the relevant Service Contracts. We may be required to register this right and, to the extent that you are required to consent to such registration, you hereby give such consent. Until then, clauses 10.1, 10.2 and 10.3 apply to the equipment as if it were our Equipment.

10. WHAT ARE YOUR RESPONSIBILITIES IN RESPECT OF OUR EQUIPMENT?

10.1 If we install our Equipment at your sites, you promise that you will, for the duration of the Service Contract:

- (a) provide, free of charge, appropriate, safe and secure, equipment space, environment, ducting and electrical power for the installation and maintenance of our Equipment and comply with any reasonable instructions which we may issue in relation to the same;
- (b) notify us of any health and safety hazards at your sites of which we should be aware;
- (c) not allow our Equipment to be repaired, maintained, upgraded or tested other than by one of our authorised representatives;
- (d) not damage, add, modify or in any way interfere with our Equipment or its performance;
- (e) not sell, lease, pledge, charge, mortgage, part with control of or otherwise deal with our Equipment and not allow others to do so; and
- (f) keep our Equipment in its original condition (allowing for fair wear and tear).

10.2 We may, subject to our acting reasonably, modify, substitute, renew or add to our Equipment from time to time other than where expressly forbidden from doing so by law. The Equipment may only be used by you for the purposes for which it is provided under the Service Contract.

10.3 Property and title in our Equipment remains with us and you will ensure that any landlord of your sites waives any rights they may otherwise enjoy over our Equipment. Upon termination of a Service Contract for whatever reason, we shall be entitled to have immediate access to, and may remove, our Equipment from your sites.

11. WHAT ARE THE CHARGES?

11.1 You promise to pay the Charges set out, incorporated or referred to in: (a) the Order Form; and (b) these Terms. The Charges include:

- (a) rental Charges for the Services, which may be invoiced monthly, quarterly or (unless prevented by law) annually in advance; and
- (b) any installation Charges, monthly usage based Charges (e.g. voice services),

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consultancy Charges or other Charges which will be invoiced monthly in arrears.

- 11.2 Where stated in the relevant Order Form, we may invoice you for reasonable out-of-pocket expenses incurred by us.
- 11.3 Unless otherwise stated in the Order Form, all Charges shall be in Euro and are exclusive of: (a) any applicable transaction, sales, consumption or other value added tax; and (b) any regulatory fees or surcharges which for each of (a) and (b) shall be payable by you and which shall be added to each invoice.
- 11.4 You will pay the Charges free and clear of all deductions or withholdings unless this is specifically required by law. If any such deduction or withholding is required by law, you will pay us such additional amount so that the net amount we receive from you is equal to the full amount for the Charges which we would have received had such deduction or withholding not been made.
- 11.5 Without prejudice to clause 19.2, we may revise the Charges at any time after the expiry of the Initial Term (or other agreed pricing period), but will give you 30 calendar days' notice before we do so (and, in the case of an increase, you may terminate affected Service Contract(s) by serving notice on us within those 30 calendar days, such notice to expire at the end of that 30 calendar day period). Should we be required to revise the Charges in order to comply with any change in applicable law, regulation or code of conduct, we will give you as much notice as is reasonable in the circumstances, in both cases, the notice shall include any information which is prescribed by law (including any right to terminate).
- 12. WHAT ARE THE PAYMENT TERMS?**
- 12.1 You promise to pay all Charges within 30 days of the date of the invoice, by direct debit unless agreed otherwise.
- 12.2 If you breach clause 11 or this clause 12, we may by notice to you require you to: (a) pay the Charges by a particular method; (b) pay a deposit to us; (c) procure a guarantee from a guarantor acceptable to us to guarantee your performance (including payment obligations) under any or all Service Contracts with us; and/or (d) pay all Charges in advance.
- 12.3 We may charge daily interest on overdue sums at 4% above the base lending rate of the European Central Bank from time to time or such other central bank in the jurisdiction where Services are provided as we may specify at our discretion.
- 12.4 If: (a) you do not pay an invoice when due; or (b) your Credit Limit is exceeded, we may, without prejudice to any other right or action we might have against you, suspend the Services, but we will give you 5 days' notice before we do so (provided however that if a longer period of notice is required to comply with local law, such longer period of notice shall be given).
- 12.5 If we, acting reasonably, consider that your credit risk to us has increased beyond that which existed at the date at which your then existing Credit Limit was set,

we may, by notice to you, require you to, within 5 days of our request: (a) make a pre-payment to us; (b) pay an amount to us by way of a security deposit; (c) procure a guarantee from a guarantor acceptable to us to guarantee your performance under any and/or all Service Contracts with us; or (d) revise your payment terms to a lesser period than that set out in clause 12.1.

- 12.6 In the event of us requiring a pre-payment, security deposit or guarantee in accordance with clause 12, the amount of such requirement shall not exceed the total Charges which we might reasonably expect you to incur during the following 12 month period. If the sum of all invoiced Services as yet unpaid and the Services provided but not yet invoiced exceeds the amount of any provided security deposit, the deposit will be deemed exhausted.
- 12.7 A failure to provide any pre-payment, security deposit or guarantee in accordance with clause 12 shall be deemed to be a material breach which is incapable of remedy.
- 12.8 If you wish in good faith to dispute any sum invoiced by us, you need to provide us with detailed information of the dispute in writing within 30 days of the date of the invoice, otherwise we will be entitled to treat the invoice as having been accepted by you.
- 12.9 We may set off any sums owed by us to you against any sums you owe us. You may only set off sums we owe you against sums you owe us which have been expressly accepted by us in writing or upon which a final adjudication has been made. This clause 12.9 shall apply notwithstanding clause 11.4.
- 12.10 We do not accept payments in cash, bankers cheques or other cash equivalent instruments or payments from any third party made on your behalf including payments made by any of your Affiliates on your behalf. Any purported payment made in such manner will be refused by us and we will proceed on the basis that payment has not been made. Further, the direct debit payment (or bank transfer if agreed) must be made via a bank located in the country in which you are incorporated.

13. HOW IS IPR TREATED?

- 13.1 Nothing in these Terms affects our rights or your rights in pre-existing IPR.
- 13.2 We have all rights, title and interest in all IPR developed solely or jointly by us, our subcontractors or third parties on our behalf in performance of the Services. You promise to do everything necessary to ensure that such IPR vests in us on and from creation.
- 13.3 Subject to clause 13.4, we grant you a royalty-free, non-exclusive and non-transferable licence for the term of each Service Contract to use our IPR as necessary to use and enjoy the Services in accordance with any conditions which we advise you of from time to time. You promise that you and your end-users will not remove any copyright or proprietary notices on any software or documentation supplied by us. Save to the extent permitted by applicable law, you promise that you and your end-users will not

reverse engineer or decompile any software nor copy any software or manuals supplied by us. Should we need it to provide the Services, you grant us an equivalent licence in respect of your IPR.

- 13.4 You may not use any of our trade marks or service marks without our prior written agreement.

14. HOW IS LIABILITY LIMITED?

- 14.1 Nothing in these Terms or in any Service Contract excludes or limits: (a) either party's liability for death or personal injury caused by its negligence; (b) either party's liability for gross negligence or wilful misconduct; (c) either party's liability for fraud or fraudulent misrepresentation; or (d) any other liability which cannot be excluded or limited by applicable law.
- 14.2 Subject to clauses 14.1 and 14.3, our and our Affiliates' aggregate liability to you for all causes of action arising in each calendar year (i.e. 1 January to 31 December inclusive) whether in contract (including arising under any indemnity), tort (including negligence) or otherwise, arising out of, or in connection with a particular Service Contract is limited in aggregate to an amount equal to the lower of: (a) 100% of the monies actually paid and monies which would have been paid but for early termination in each case by you to us during such calendar year under such Service Contract; or (b) €250,000.
- 14.3 Subject to clause 14.1, we will not be liable to you for any loss of profits; loss of anticipated savings; loss of business; loss of opportunity; loss of revenue; loss of time; loss of goodwill or injury to reputation; loss of or harm to data (including corruption to and reinstatement of any data); punitive damages, or any indirect, consequential or special loss or damage howsoever caused and whether foreseeable or not.
- 14.4 Subject to clause 14.1, we will not be liable to you for (a) any event beyond our reasonable control, including the default or failure of a third party, government action, failure in the supply of a third party network; or (b) any other event of force majeure as defined by applicable law.
- 14.5 Except as expressly set out in these Terms or in any applicable Service Contract, all conditions, representations, warranties and other contract terms are hereby expressly excluded to the extent permitted by law.
- 14.6 You promise to indemnify and hold us and our Affiliates harmless against all losses, liabilities, costs (including legal costs) and expenses which may be incurred as a result of: (a) any breach by you of any Service Contract; (b) any third party claims based either on your content and content controlled by you or your use of the Services generally; (c) any third party IPR infringement claims arising from your use of the Services other than as specifically contemplated by the Service Contract; or (d) damage to our Equipment for which you are responsible, fair wear and tear excepted.

15. HOW ARE SERVICE CREDITS CLAIMED?

- 15.1 If we breach any applicable service levels for which service credits accrue, you may claim those service credits within 30 calendar days of the end of the month in which they accrue. You must do so by sending a written request to our account executive. If there is any inconsistency between your service level data and our service level data, our data will prevail. If one event or series of connected events causes us to fail multiple SLAs, you are only entitled to claim the highest available service credit and you are not entitled to bring multiple service credit claims.
- 15.2 We will credit you with the value of any valid service credit claim. If we do not receive a claim from you within 30 days of termination of any Service Contract, then you shall not be entitled to claim any applicable credit.
- 15.3 Subject to clause 14.1, you accept that the service credits as specified in the applicable SLA are your sole and exclusive remedy for failure by us to provide the Services in accordance with the terms of the Service Contract and the parties agree that such service credits are a genuine pre-estimate of the loss you are likely to suffer.
- ### 16. WHEN CAN A SERVICE CONTRACT BE SUSPENDED OR TERMINATED?
- 16.1 At any time after Order Acceptance and prior to the earliest RFU Date of your Service Contract, you may terminate any Service comprised in such Service Contract for convenience or request that a Service is significantly modified (e.g. changes in address, service type point of presence or presentation) upon notice to us setting out full details of the Service including all circuit details and addresses to be terminated or modified. In such case, we will invoice you and you will be liable to pay the following cancellation charges:
- (a) a percentage of the installation Charges that would have been payable but for such early termination or modification as set out in the table below. If no installation Charges are payable in relation to the Service being so terminated or modified, we may charge a cancellation charge by applying the percentage set out above to our then current standard applicable installation charges for such Service; and
 - (b) any costs incurred by us in relation to the provision of the Service Contract (including costs associated with network or infrastructure builds or obtaining rights of passage); and
 - (c) all costs and expenses including any cancellation costs and charges which we have already incurred, or to which we are committed with third parties in relation to such Service and those arising from such termination, together with a 15% uplift thereon to cover our internal administrative costs.

Working days before RFU Date when we receive notice	Cancellation Charge Payable as percentage of installation Charge (%)
≤ 1	100
> 1 ≤ 5	75
> 5 ≤ 10	50
> 10 ≤ 20	25
> 20	0

- 16.2 At any time on or after the RFU Date and during the Initial Term or any Annual Extension Period, you may terminate the Service Contract at any time, giving us 3 clear calendar months' prior notice, providing full details of the Service Contract including all circuit details and addresses to be terminated, such notice to expire at the end of the calendar month in which the Initial Term or the then current Annual Extension Period ends.
- 16.3 After: (a) the Initial Term; and (b) any subsequent Annual Extension Period, each Service Contract will be automatically extended by an Annual Extension Period unless the parties agree otherwise in writing. Any termination will be subject to the terms of clause 16.2.
- 16.4 Either party may terminate (or suspend the provision of Service thereunder) any Service Contract in whole or in part immediately by notice:
- (a) if the other party materially breaches the terms of any Service Contract (or if such breach is capable of being remedied, if the breaching party has failed to remedy the breach within 30 calendar days of notice to do so) whether or not such material breach relates to the Service Contract(s) to be terminated;
 - (b) unless such termination is prohibited or regulated by law, if bankruptcy, insolvency or other form of winding up proceedings are brought against the other party (or its parent company), the other party ceases business, a receiver or administrator is appointed over any of the other party's (or its parent company's) assets or the other party (or its parent company) goes into liquidation or enters into a voluntary arrangement with its creditors other than for the purposes of reorganisation (or any similar event in its country of incorporation takes place); or
 - (c) if we are unable to supply the Services due to an event falling within the scope of clause 14.4 above for more than 30 calendar days,
- and in each case the party exercising its right to terminate shall include in the notice to terminate full details of the Service Contract including all circuit details and addresses to be terminated.
- 16.5 In addition, we may suspend any Service Contract in whole or in part by notice to you: (a) if we are obliged

to by law, regulation or by any court or regulatory authority; (b) if the Services are being used in breach of clause 7.1 (b)-(i); (c) the Services are used in breach of our then current acceptable use policy available at www.colt.net; or (d) where the Services are being used for, or where we, acting reasonably, believe that they are being used for, fraudulent purposes.

- 16.6 If at any time after the RFU Date, you cease to use the Service or part thereof for a prolonged period of time, we reserve the right to suspend such Service (or part thereof) subject to giving you as much prior notice as is reasonable in the circumstances (and in any event no less than two weeks' notice) in order to prevent "non-use alarms" being generated on our network.
- 16.7 Upon termination of a Service Contract, and without prejudice to clause 16.1, all Charges incurred by you for the use of the Services up to the date of termination will be due and payable in full, immediately.
- 16.8 Termination or expiry of a Service Contract will not affect any accrued rights or obligations or those intended to be of a continuing nature or to come into force upon termination or expiry.
- 16.9 This clause 16 is without prejudice to and in addition to the rights enjoyed by us to suspend any Service in accordance with clause 12.4.

17. HOW IS PERSONAL DATA PROCESSED?

- 17.1 Both parties promise to comply with their respective obligations under applicable data protection legislation or applicable codes. You acknowledge and agree that we may, in the course of performing our obligations under each Service Contract, process personal data in accordance with our Terms of Use (available at www.colt.net). If such personal data is obtained from you, you agree and, you will make sure that any data subject agrees, to such processing by us, including to the transfer of such personal data for processing outside of the European Union.

18. WHAT TERMS APPLY TO CONFIDENTIAL INFORMATION?

- 18.1 Each party agrees to treat all Confidential Information it receives from the other as confidential and only to use it for the purpose of performing its obligations under each Service Contract. This obligation of confidentiality does not apply: (a) where the disclosing party has given its prior written consent; (b) to disclosures by us to our Affiliates, agents and subcontractors or to our auditors and professional advisors; (c) to disclosures which have to be made to comply with legal or regulatory obligations; (d) to information which has been independently generated by the receiving party; or (e) where the disclosing party comes into possession of the information other than by way of breach of this obligation of confidentiality. Where Confidential Information is disclosed to a third party, each party promises to ensure that the recipient gives a confidentiality undertaking which is at least as strict as the terms of this clause 18.

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18.2 This clause 18 survives termination or expiry of the Service Contract or any Services under the Service Contract.

19. WHAT GENERAL TERMS APPLY?

19.1 We reserve the right, on providing you with at least one month's prior notice, to change the terms comprised in any Service Contract provided that such change does not materially adversely affect the applicable Service. Any change to the Charges may only be effected in accordance with clause 11.5. Without prejudice to clause 19.2, we may also change any Service to comply with any applicable law, regulation or code of conduct or any change to any of the same and shall give you as much notice as is reasonably possible in the circumstances.

19.2 You may terminate a Service Contract free of charge, if we make a change to the Service which is materially detrimental to you. You must give us notice of such termination. We will give you at least one month's prior notice (which shall detail the content of the change) before making such change.

19.3 We reserve the right, on providing you with at least 90 calendar days' prior notice, to discontinue any Service for technical or economic reasons provided that we transfer you to a broadly comparable Service.

19.4 The demarcation point for the delivery of the Services is the customer interface at the COLT access equipment and is normally at the base of the COLT cabinet. Internal cabling can be provided at additional cost however this will not change the location of the demarcation point for the Services.

19.5 If specified in the Order Form, we will use reasonable endeavours to secure domain names and assign internet addresses and/or space (subject to availability) for your benefit during the term of the Service Contract. You will be solely responsible for any fees relating to such internet addresses, complying with any legal, technical, administrative billing or other requirements imposed by the relevant domain name registration authority (including any applicable registry terms and conditions) and modifying such domain names if you change service providers. You acknowledge that: (a) neither you nor your end-users shall have the right to route those internet addresses; and (b) upon termination of the Service Contract, you and any users' access and use of such internet addresses shall terminate. If you are transferring a domain name from a different service provider, it shall be your responsibility to contact that service provider to transfer the domain name to us.

19.6 Each Service Contract constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties relating to such matters notwithstanding the terms of the previous agreement or arrangement expressed to survive termination.

19.7 Each party acknowledges and agrees that in entering into each Service Contract it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether

negligently or innocently made) other than as expressly set out in the relevant Service Contract. Nothing in any Service Contract shall exclude or limit either party's liability for any statement made knowing that it was untrue.

19.8 If any provision of a Service Contract is partly or wholly held by a court or competent authority to be illegal, invalid or unenforceable, this shall not affect the validity of the remaining provisions. In this event, the parties shall replace the void provision by a valid one that most closely approximates the economic intent of the void provision.

19.9 Any waiver of any breach of any Service Contract is limited to the specific circumstances in which it was given.

19.10 No variation of any Service Contract is valid unless it is in writing and signed by or on behalf of each party to such Service Contract.

19.11 Where we provide numbers to you in connection with the Services, we may, for operational, regulatory or other reasons, change the numbers allocated to you, but we will not do so unreasonably. You agree not to sell or assign any number we give you without our prior permission.

19.12 The parties do not intend that any term of any Service Contract should confer a benefit on any third party which is not a party to such Service Contract. A person who is not a party to a Service Contract has no right to enforce any term of such Service Contract.

19.13 Our address for the receipt of notices is our registered office. Your address for the receipt of notices and invoices is as set out on the Order Form or the registered office where you are a registered company.

19.14 Any notice given in connection with a Service Contract must be served in writing by hand, normal first class post, fax or electronic transmission. If you wish to terminate any Service Contract you must send such notice by registered letter or, where such functionality exists, by completing a cease order on our web ordering portal.

19.15 Nothing in any Service Contract shall be construed or have effect as constituting any relationship of employer and employee or partners: (a) between you and us; or (b) between you and any of our personnel; or (c) between us and any of your personnel.

19.16 Neither party may issue any press release or advertisement or make any other public comment relating to any Service Contract or the subject matter thereof without the prior written approval of the other party. However, you consent to us stating in our publicity that you are a customer of ours provided that any such publicity will not contain the value or any material detail of the nature of the Services we provide you without your prior written approval.

19.17 You may transfer a Service Contract with our prior written consent which we will not unreasonably withhold in the case of a transfer to a person of equivalent financial standing and who meets our vetting procedures. We may transfer a Service

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Contract or any rights or obligations under one without your consent by notice.

- 19.18 We may subcontract any of our obligations under any Service Contract from time to time, including to our Affiliates provided that we shall remain primarily responsible to you for the performance of our obligations under any such Service Contract.
- 19.19 We have the right to withhold any of your Equipment which is on our premises until you have paid in full everything you owe us under the relevant Service Contracts.
- 19.20 You will notify us immediately of any change in your company's or business' name, address, legal form or banking details and, in the event of your (or the assets of your company or business) undergoing or suffering any form of insolvency proceeding being levied upon it (or them), shall notify us immediately. In the absence of such notification, any notices served in accordance with a Service Contract shall be deemed successfully served as if no such changes had occurred.
- 19.21 We can be contacted in any of the following ways:
- | | |
|-------------|--|
| (website) | www.colt.net |
| (email) | at.info@colt.net |
| (telephone) | +43 (0)1 20500-0 |
| (post) | COLT Telecom Austria GmbH,
Kärntner Ring 10 – 12, A 1010
Wien, Austria |
- 19.22 In addition to the procedure set out in clause 12.8, the disputes procedure offered by *Rundfunk und Telekom Regulierungs GmbH* set out in section 122 TKG 2003 is also available to you. In the event that you instigate such a procedure, payment of the disputed amounts shall be postponed pending resolution of the dispute provided however that we shall be able to claim from you an amount equal to the average of the 3 invoices preceding the invoice in dispute by way of an interim payment of the disputed amount. Should you instigate this procedure, we too will engage in the procedure and will work with you in good faith to come to a resolution.
- 19.23 Each Service Contract shall be governed by Austrian law and shall be subject to the exclusive jurisdiction of the Vienna Courts, First District, provided that we shall be entitled to commence proceedings in any court in any jurisdiction at our discretion.