

# General Terms and Conditions for the Trustee Service

The domain holder – hereinafter Registrant -

and

PTS GmbH  
Neunkircherstraße 43  
66299 Friedrichsthal

hereinafter Trustee -

hereby agree to the following

## **AGREEMENT**

regarding the ownership on a trusteeship basis of a .de domain

### **I. Contractual object**

Registrant intends to register a domain name in one of the the abovementioned TLDs in his name or already owns such a domain but his residence or place of business is outside Germany. All domains under the .de top level domain must be registered with the registry operator DENIC Domain Verwaltungs- und Betriebsgesellschaft eG, Kaiserstraße 75-77, 60329 Frankfurt, Germany. In accordance with Section VIII. of DENIC's Domain terms and conditions Registrant must designate an administrative contact residing in Germany, who shall also act in the capacity of Registrant's authorized receiving agent for the purposes of Sections 174 et seq. of the German Code of Civil Procedure.

This agreement can only be concluded with domain owners using one of Trustee's partner registrars for the registration or maintenance of their domain name.

With the following general terms and conditions Registrant's and administrative contact's / Trustee's obligations and rights are fixed obligingly.

### **II. Obligations and rights**

#### **1. Registrant's obligations**

- a) Registrant guarantees that he is authorized to register and use the domain and that registration and intended use of the domain violate neither the rights of any third parties (including any trademark rights, rights to a name or copyrights) nor any applicable laws or moral and ethical standards. For the purpose of this contract pornographic contents or right-wing extremist ideas shall especially be assumed to be in violation of such standards..
- b) Registrant shall ensure that the domain will not be used for any illegal activities (including spamming or phishing).
- c) Registrant shall guarantee to provide the domain with an imprint from the date of the commercial commissioning. This obligation also remains if the domain is still mainly under

construction.

d) Registrant shall undertake to comply with Denic's Domain Terms and Conditions and Guidelines ([www.denic.de](http://www.denic.de)).

e) Registrant will inform Trustee in writing or by e-mail on all changes which concern the registration or management of the domain. These involve in particular the change of the domain owner or service provider as well as the threat or introduction of juridical measures by third parties. This agreement shall be automatically terminated upon a change of ownership of the domain name. In case Registrant intends to use the services of the Trustee for the new owner, a new agreement between the new owner and the Trustee must be concluded.

f) Registrant is obliged to respond to all inquiries of Trustee in writing or by e-mail immediately, with receipt by the trustee within a 48 hours period after the inquiry. This time period will be further limited if a third party effectively sets a shorter time limit or an other important reason is given which requires a quicker treatment.

g) Registrant guarantees to keep his contact data up-to-date with the partner registrar. In addition, Registrant authorises the partner registrar to make the data available to Trustee upon request.

h) Registrant shall ensure that Trustee shall no longer be registered as admin-c upon termination of this agreement. In the event that Trustee is still registered as admin-c upon termination of the agreement, Trustee may require Registrant to delete the domain within the response period (Item 2.

d). In the event that Registrant fails to delete the domain, Trustee may request the deletion of the domain.

## **2. Trustee's obligations**

a) Trustee undertakes to fulfill all duties as an administrative contact in trust. He will comply with Registrant's respective instructions provided these instructions do not validate legal obligations or the contractual arrangements.

b) Trustee guarantees to inform Registrant immediately about questions and matters which concern the registration and use of the domain. He will make no decisions without first giving Registrant an opportunity to be heard, unless obtaining a response is not possible for actual or juridical reasons. Provided that Trustee must make a decision in this respect without previous hearing of Registrant, he will make this with its reasonably exercised discretion and to the best of his knowledge.

## **3. Trustee's rights**

a) Trustee is authorized, but not obliged to check the injury of valid right by the domain or their contents. These include in particular the injury of third party rights as well as the violation of criminal regulations.

Provided that Trustee determines the occurrence of such violations, he is entitled in his own judgement and without previous announcement or consultation with Registrant to delete or deactivate the domain or to terminate his registration as a trustee for the domain immediately.

b) If Registrant cannot be contacted via the contact information provided by him or if he does not reply to an inquiry of Trustee within the time limit provided to him, Trustee is authorized to make all necessary decisions and in particular to initiate steps to release the domain in case of third party rights claims.

## **4. Procedure for third party rights claims**

In case Trustee is required by a third party to release or delete the domain, Registrant has to provide a detailed response in writing within the designated time period (in Item. 2. d)) whether he agrees to the release or if he wants to defend the domain.

a) Should Registrant agree to the release, Trustee will request the deletion of the domain to the registration authority and will inform the claimant. The agreement between Registrant and Trustee shall be terminated automatically by this declaration without requirement of a separate termination.

b) If Registrant does not respond within the provided period, trustee is authorized to return the

management of the domain to the registry and to relinquish his position as an administrative contact.

c) If Registrant informs Trustee that he wants to defend the domain, he shall within two days cede to Trustee a collateral (cash payment in EUR, bank guarantee of a large German or Austrian bank or savings association (Sparkasse)) in the amount determined by Trustee by reasonable discretion and abutted on the court fees act and the regulations regarding attorney's fees that will secure Trustee's claim for indemnification on the grounds of court fees possibly borne by him.

Registrant shall further within the time period of Item 2.d) name an attorney authorized to represent Registrant extrajudicially and judicially with respect to the third party claim. Should Registrant fail to follow these obligations, trustee is authorized to proceed as specified in Item 4 b).

### **III. Liability**

#### **1. Registrant's liability**

Registrant shall indemnify trustee from all costs, damages and disadvantages arising from third parties asserting claims related to the domain. This claim exists regardless of negligence or fault and also includes the adequate costs of a juridical consultation of Trustee. The compensation will apply to both legitimate and illegitimate claims, and to judicial as well as non-judicial claims.

#### **2. Trustee's liability**

a) Trustee shall only be liable for damages in cases of intent or gross negligence on the part of Trustee or his vicarious agents. By injury of a material contract duty in a manner endangering the purpose of the agreement, the liability is limited to the typical damage normally foreseeable by Trustee at the time of conclusion of the agreement, unless the violation of duties was caused intentionally or by gross negligence.

b) This restriction of liability does not apply to injuries of life, body and/or health. The liability for the substitute of indirect damages, in particular for lost profits, is excluded except for cases of intent or gross negligence with respect to a violation of a material contractual duty in a manner endangering the purpose of the agreement by Trustee or his vicarious agents.

### **IV. Duration, termination and compensation**

#### **1. Duration**

a) This agreement shall be concluded for an indefinite period. The agreement automatically terminates with the discharge of Trustee, a transfer, an owner-change or the deletion of the domain.

b) The existence of this trust agreement inseparably depends on the domain registration through the respective partner registrar of Trustee.

#### **2. Termination**

a) Registrant and Trustee denounce their right of regular termination of contract. This will not effect a termination of contract for important cause or any other causes for terminating the contract as determined by this agreement.

b) Trustee is authorized to transfer all rights and obligations hereunder to another trustee and this register as the new administrative contact, provided this will not create legal disadvantages for Registrant. A consent of Registrant is not necessary for this purpose.

#### **3. Compensation**

a) The compensation shall be paid to the partner registrar of Registrant. The compensation has to be made in advance for each annual term of the contract. Additional payments of Registrant directly to trustee are not required.

b) If the domain is deleted prematurely or transferred, Registrant has no right to proportionate

compensation. The same applies for early termination of this agreement.

## **V. Final regulations**

### **1. Contract changes, assignment**

- a) All contractual changes and modifications need the written form. This also applies to the renunciation of the requirement of written form. No additional agreements on the specific subject matter exist between the parties.
- b) The cession of the rights by Registrant is prohibited.

### **2. Court of jurisdiction, choice of law**

- a) Court of jurisdiction for all disputes from this agreement is Friedrichsthal, Germany if Registrant is a businessman, legal entity of the public right, public law special property or a consumer in Germany without a valid court jurisdiction, as well as in case the legal seat of Registrant cannot be determined at the time of the initiation of legal procedures.
- b) This agreement shall exclusively be governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

### **3. Severability Clause**

Should any provision in this agreement be entirely or partially invalid or later lose its legal validity, such invalidity shall not affect the validity of any other provision. Any provision determined to be unenforceable or invalid shall be replaced by provisions which are valid and enforceable and closest to the original objectives and intents of the original provisions in an economic and legal sense that would have been agreed upon by the parties, had they known of the invalidity at the time of the agreement.