

# Standard Terms and Conditions for the JonDonym Service

of

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hereinafter referred to as the "Operator".

## §1 Scope and Subject Terms

- (1) Unless otherwise agreed, these Standard Terms and Conditions shall apply to each contract for the use of the anonymisation service JonDonym (hereinafter referred to as "the Contract") allocated and awarded by the Operator to the contractor (hereinafter referred to as the "Customer").
- (2) The Operator expressly rejects the inclusion of any and all Standard Terms and Conditions of the Customer, unless the Operator has, pursuant to § 126 of the German Civil Code ("BGB"), formally confirmed them in written form. The written form may thereby neither be replaced by simple nor qualified electronic form. These Standard Terms and Conditions are exclusively valid even if the Operator performs its services unreserved in knowledge of conflicting Standard Terms and Conditions of the Customer.
- (3) The Operator provides the Customer the connection to so-called Mix server processes (short: Mixes) as a part of Mix Cascade services, which enable the Customer to use telemedia (e.g. websites) with a pseudonymous IP address.
- (4) No assignment, transfer or license of any Intellectual Property Rights of either party shall arise. The software for accessing the Operator's Mixes is produced by the JonDos GmbH. Their terms of use are not part of the Operator's Standard Terms and Conditions.

## **§2 Operator Responsibilities**

- (1) The Operator assures the Customer to pseudonymise the IP address of his connections led over the Operator's Mixes using the JonDonym technology. Moreover, the Operator neither stores the Customer's IP address nor does he forward it to third parties unless this is required by any imperative legal obligations. However, the Operator may perform an anonymised storage for statistical purposes at any time.
- (2) As far as the Operator is familiar with general legal obligations in Germany or at the location of his Mix servers which may, by court or police order, force him to store or forward the Customer's connection data, he publishes them at the following web address:

<https://www.jondos.de/en/legalOpinions>

- (3) The Customer may view the details of the Operator's public operational obligation at the following web address:

<https://www.jondos.de/en/operationalAgreement>

## **§3 Customer Responsibilities**

- (1) The Customer is obliged not to violate applicable law in his country by using the Mix servers of the Operator.
- (2) The Customer assures to use the Operator's Mixes according to the intended protocol. This obligation is sufficiently met by using the program JonDo provided by the JonDos GmbH.

## **§4 Term and Termination**

- (1) The Contract is concluded sine die by using a Mix Cascade which contains at least one Mix of the Operator.
- (2) The Customer may terminate the Contract with immediate effect. This does not result in reimbursement of paid services.
- (3) Either party may terminate the Contract immediately by notice to the other party if the other party breaches or defaults in the performance of any material provision of the Contract and such breach or default is not cured within 7 days after notice thereof is received by the breaching party.
- (4) An effective cancellation needs to be in textual form (e.g. letter, fax, e-mail). After cancellation, the Customer has to deactivate usage of the Operator's Mixes in the program JonDo. The Operator, on his part, may block the Customer's access after effective termination. Notwithstanding any termination

of the Contract, the provisions of these Standard Terms and Conditions regarding prices and payment, warranty and limitation of liability will survive.

## **§5 Prices and payment**

- (1) The Operator may on his behalf offer Mix services for free or may levy a fee from the Customer. If the Customer makes use of the services in return of payment, the Operator is not obliged and shall not issue an invoice to the Customer.
- (2) In case of a Mix usage based on a volume tariff, the Customer pays the amount of data transferred. For this purpose, the Customer keeps a settlement account in data volume at the JonDos GmbH. On each connection to a Cascade, the Operator is entitled to settle 3 MByte from this account in advance. A Customer's claim for reimbursement of volume settled in this way does not exist.
- (3) A non-volume based flat rate tariff valid for the Operator entitles the Customer to use the Operator's Mixes registered therefor, unless other Operators with Mixes in the very same Cascade do not accept this flat rate tariff.
- (4) Access data can be acquired directly in the program JonDo via the accounting services of the JonDos GmbH. Moreover, the Operator himself may offer the Customer access data over own sales channels. JonDonym services with costs may only be used after paying the arranged fee and after receiving the access data. Other payment methods need a separate arrangement between Operator and Customer.
- (5) In case of default, the Operator charges pursuant to § 288 (1) BGB an interest per year of five percentage points above the basic rate of interest, and moreover has the right to disable the Customer's access to the service and the Customer's access data at once. If the Customer defaults with his payment obligations, he is liable to pay damages. Any rights of the Operator to request any additional damages shall remain unaffected.

## **§6 Warranty and Limitation of Liability**

- (1) Except as, and only to the extent expressly provided in these Standard Terms and Conditions, services and products are provided "as is". The Operator disclaims all warranties related to service, products and software.
- (2) The Operator is liable for any damages caused by grossly negligence or willful misconduct of his own, his legal representatives, employees or agents.
- (3) In case of damages caused by ordinary negligence, the Operator is only liable, if a fundamental contract obligation (cardinal obligation) has been breached. Cardinal obligations are duties of central importance for the Contract in a way that a violation of those deprives the other party of what he is entitled to expect under the Contract. The Operator's liability for simple negligence shall be hereby excluded.

- (4) Notwithstanding anything to the contrary contained in this Standard Terms and Conditions any liability of the Operator for damages which affect injury to life body or health, the breach of cardinal obligations caused by the Operator or its vicarious agents or duties of which the Operator has no control of, warranted characteristics or damages under the German Product Liability Act ("ProdHaftG") shall remain unaffected hereby. In any case the Operator's liability amount is limited to the damage that could have been reasonably foreseen by the Operator at the time of conclusion of the Contract.
- (5) In particular, the Operator is not liable for damages resulting from the disclosure of the Customer's identity or the outage of individual Mix servers, respectively, which the Operator did not cause by gross negligence or willful misconduct. The Operator stresses that, in order to prevent the disclosure of the Customer's identity, in addition to the use of JonDo further precautions such as a secure configuration of the Customer's web browser, operating system and computer are necessary.
- (6) The Operator is not liable for damages resulting from loss or misuse of the Customer's access data. In particular, the Operator is in this case not obliged to refund previously paid fees to the Customer.

## **§7 Data Protection**

- (1) The Operator collects, processes and uses personal data without further acceptance by the Customer only as far as needed for the conclusion and handling of the Contract as well as for accounting reasons.
- (2) In particular, the Operator does not store any other personal data on his Mixes than needed for the service, as long as he is not obliged to according to §2 (2) of these Standard Terms and Conditions.
- (3) The Operator's general privacy policy is published at the following web address:

[http://www.anonmix.mbyte.eu/data\\_protection](http://www.anonmix.mbyte.eu/data_protection)

## **§8 Venue / Applicable Law**

- (1) Exclusive venue for all disputes arising from this Contract is, if the Customer is merchant, legal person governed by the public law, special property under public law or inland without place of jurisdiction, Langewiesen. Moreover, the Operator has the right to sue the Customer at his own venue.
- (2) The Contract between the Operator and the Customer shall be governed, construed and interpreted in accordance with the laws of the Federal Republic of Germany. The regulations of the United Nations convention on contracts for the sale of movable goods (CISG) shall be expressly excluded.

## **§9 Notice of Cancellation**

**(1) You may cancel your declaration of contract within one month without giving reasons in textual form (e.g. by mail, fax, e-mail). The cancellation period shall commence at the earliest on receipt of this notice of cancellation. To meet the deadline it will suffice to send the notice of cancellation on time. The notice of cancellation has to be sent to**

**Martin Behrens**

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**98704 Langewiesen**

**Deutschland**

**E-Mail: anonmix (at) mbyte (dot) eu**

**(2) In case of an effective cancellation, the benefits received on both sides have to be returned, and, if necessary, interest has to be released. If you cannot return to us the benefit received as a whole or partially, or in a declined condition only, you have to, if necessary, pay compensation for the value.**

**(3) Your right of cancellation expires prematurely if you have utilised the service upon your explicit approval before the end of the cancellation period, or if you have arranged this usage by yourself.**

## **§10 Severability Clause**

If any provision of these Standard Terms and Conditions or the application thereof to any person or circumstances is fully or partially invalid, unlawful or unenforceable, all remaining provisions or application of these provisions shall remain unaffected thereof. An invalid, unlawful or unenforceable provision shall be regarded as replaced by a valid, lawful and enforceable provision that as closely as possible reflects the economic background and meaning of the replaced provision. § 139 BGB is not applicable.

Langewiesen, 29th of January 2009