

## Terms of Contract and Use "Software as a Service" Model

These Terms of Contract and Use of Netviewer AG, Erzbergerstr. 117, D-76133 Karlsruhe (hereinafter: Netviewer) apply to the acquisition of rights to use the Netviewer Standard Software by the Customer, and for the access to the Netviewer Server Infrastructure and its use within the scope of the "Software as a Service" model.

### A – Definitions and Subject Matter

#### 1. Defined Terms

- 1.1. **"Standard Software"** within the meaning of these Terms of Contract and Use is the software as defined in the [Product Data Sheets](#) [Netviewer Meet](#), [Netviewer Webinar](#), [Netviewer Support](#) and [Netviewer Admin](#).
- 1.2. **"Netviewer Server Infrastructure"** within the meaning of these Terms of Contract and Use is the server including the corresponding software as described in the [Product Data Sheet](#) under "Technical Operation".
- 1.3. **"Named User"** within the scope of these Terms of Contract and Use is the natural person named and registered by the customer, who is entitled to use the Standard Software according to the provisions of these Terms of Contract and Use. The Named User is thus entitled to access the Standard Software from any chosen workplace computer at any chosen time, by entering his personal user data. The Named User can conduct a maximum of one concurrent Netviewer session. He is not bound to any particular workplace. The Named User is only entitled to access the Standard Software in person and is not entitled to pass its login data to other persons.

For the case that the designated Named User leaves the Customer's enterprise, or if his work field changes in such manner that the Customer no longer considers the access of the Standard Software by the Named User as being necessary, the Customer shall be entitled to replace the registered Named User without prior consent of Netviewer by a new Named User, and to register the same for use of the Standard Software.

- 1.4. **"Concurrent Session"** within the meaning of these Terms of Contract and Use is a team license that entitles several natural persons named and registered by the customer to access the Standard Software on the basis of these Terms of Contract and Use. Depending from the acquired Concurrent Session license (team license) a specific number of users can be registered. Each of these registered users is entitled to access the Standard Software by entering its personal user data from any workplace at any chosen time. The number of the concurrent Netviewer sessions, however, depends on the number of acquired team licenses and the aligned rights of use.

## 2. Subject Matter of the Terms of Contract and Use

The subject matter of these Terms of Contract and Use is the regulation of the rights and obligations of the Customer and of Netviewer (hereinafter jointly: Parties) regarding the use of the Standard Software by the Customer and the enabling of access to the Netviewer Server Infrastructure and its use within the scope of the Software as Service Model.

### B - Licence

## 3. Use of the Standard Software

- 3.1. Netviewer grants the Customer and its communication partners for the duration of the respective contract according to the Offer the non-exclusive right to use the Standard Software. In this respect, the Customer is obliged to use the latest versions and updates of the Standard Software as provided by Netviewer. In the event that the Standard Software is substantially changed by a new version, the Customer might be required to perform implementation works. Netviewer reserves the right to cease to provide older versions of the Standard Software after a reasonable period of time after provision of the respective latest version.
- 3.2. If the Customer within the scope of an offer acquires several similar rights of use of a particular Standard Software, these individual rights of use shall be technically consolidated. The corresponding features of the acquired rights of use (e.g. virtual conference rooms, remote support services, users that can be registered, hosts) will be technically added up.
- 3.3. The Customer is not entitled to transfer the rights granted under the respective contract to any third party. The Customer is furthermore not entitled to grant any sub-licences to these rights.
- 3.4. The Customer is not entitled to process, further develop or in any other manner alter the Standard Software.
- 3.5. Exclusive place of performance is the domicile of the customer.

## 4. Provision and Use of the Netviewer Server Infrastructure

- 4.1. As long as the Customer has concluded a service agreement with Netviewer relating to the Standard Software, or a contract on the occasional use of the Standard Software ("lease"), Netviewer is obliged to provide the Customer with access to the Netviewer Server Infrastructure for the use of the Standard Software for the duration of the respective contract according to the Offer.
- 4.2. Netviewer grants the Customer and its communication partners for the duration of the respective contract according to the Offer the non-exclusive right to use the Netviewer Server Infrastructure.

- 4.3. The Customer does not have a claim for a dedicated Netviewer Server Infrastructure, unless the Parties agreed otherwise in writing.

#### C - Fee

### 5. Fee for the Granting of the Rights to Use

For the granting of the rights to use the Standard Software and for the provision of the possibility to access the Netviewer Server Infrastructure, the Customer shall pay the fee agreed in the Offer.

#### D - Warranty

### 6. Representations and Warranties

- 6.1. Netviewer warrants that the Standard Software is suitable for the respective contractually agreed purpose and shows the contractually agreed features set forth in the applicable Product Data Sheet as amended from time to time.
- 6.2. Netviewer furthermore warrants that the provided Netviewer Server Infrastructure is suitable for the respective contractually agreed purpose and shows the contractually agreed features set forth in the Product Data Sheets.
- 6.3. In the event that the Standard Software considerably deviates from the features set forth in the Product Data Sheets, Netviewer shall be obliged to remedy this defect without undue delay. If Netviewer fails to remedy the deviations by subsequent improvement within a reasonable period of time, or to bypass them in such manner that the contractually agreed use of the Standard Software is possible, the Customer can either request a reduction of the fee agreed in the Offer, or terminate the respective contract without prior notice.
- 6.4. In the event that the Netviewer Server Infrastructure considerably deviate from the features set forth in the Product Data Sheets, Netviewer shall be obliged to remedy this defect without undue delay. If Netviewer fails to remedy the deviations by subsequent improvement within a reasonable period of time, or to bypass them in such manner that the contractually agreed use of the Netviewer Server Infrastructure is possible, the Customer can either request a reduction of the contractually agreed fee, or terminate the respective contract without prior notice.
- 6.5. The Customer is obliged to provide Netviewer with comprehensible and verifiable documents and information on the kind and scope of the deviations from the contractually agreed features according to the Product Data Sheets, and to use its best efforts to support Netviewer in the elimination and localisation of errors.

## E - General Provisions

### 7. Support and Service

- 7.1. Netviewer offers the Customer support and service in compliance with the provisions set forth in the Service Specifications.
- 7.2. For the performance of the support and service, the Customer shall pay to Netviewer the fee set forth in the Offer.

### 8. Terms of payment

- 8.1. For the granting of rights to use the Standard Software, the Customer is obliged to participate in direct debit or credit card collection (Visa or Eurocard/Mastercard), unless the initial term of contract is more than 7 months and the Customer at the same time opts for payment upon invoice.
- 8.2. The fee for the granting of the rights to use, the provision of the Netviewer Server Infrastructure and the performance of the support and services is due and payable within 14 days. After issue of the invoice on the fee to be paid, the amount to be paid will be collected from the Customer's account within 7 days of dispatch of the invoice. If the Customer's registered office is abroad, the fee owed is collected via credit card (Visa or Eurocard/Mastercard). The Customer is obliged to state the correct credit card data to Netviewer. In the case of an initial term of contract of more than 7 months, the amount to be paid can be settled by remittance within 14 days of receipt of invoice, if the Customer has opted for this method of payment.
- 8.3. If the Customer raises any objections against the invoiced amounts, the Customer has to notify this to Netviewer in writing, within 7 days of receipt of the invoice. Any omission of timely objections is deemed an acknowledgement. Statutory claims of the Customer in the case of legitimate objections after expiry of the time period shall remain unaffected.
- 8.4. For each dishonoured direct debit or unsuccessful credit card transaction, the Customer shall reimburse to Netviewer the incurred costs to the extent as the Customer is responsible for the event that caused the costs.
- 8.5. The Customer is obliged to notify Netviewer without undue delay in writing of any change of its name, address, bank details, credit card data, or invoice recipient.
- 8.6. In commercial transactions, Netviewer shall in the case of the Customer's default in payment be entitled to charge default interest in the amount of 8 percentage points above the applicable base rate as a minimum damage. The right of Netviewer to claim further damage or higher interest for other legal cause shall remain unaffected.

- 8.7. The Customer can set-off towards Netviewer only against undisputed claims or claims established by non-appealable judgement. The Customer can base retention rights only on such claims to which it is entitled against Netviewer under the respective contract.

## 9. Liability

- 9.1. Netviewer maintains a sufficient product liability insurance at its own costs.
- 9.2. Any liability of Netviewer for own slight negligence and the slight negligence of vicarious agents is excluded. The exclusion of liability does not apply to such claims which are based on injury to life, body or health, refer to guarantees, or result from the Product Liability Act. The exclusion of liability does also not apply to slightly negligent violation of material obligations whose fulfilment is required to enable proper performance of the contract.
- 9.3. In cases of slightly negligent violation of material obligations, the amount of liability shall be limited to the typical damage occurring in comparable transactions of this kind, which were foreseeable upon conclusion of the contract or at the latest upon violation of the obligation.

## 10. Term and Termination

- 10.1. The respective contract, in particular on the granting of the rights to use, shall enter into effect according to the Offer, for the initial minimum term as set forth in the Offer. Thereafter it shall be renewed as follows:
- in the event of an initial minimum term of 1 month by 1 further month in each case, unless either Party terminates the contract by 14 days' notice to the end of the contract term according to the Offer;
  - in the event of an initial minimum term of 2-3 months by 3 further months in each case, unless either Party terminates the contract by 14 days' notice to the end of the contract term according to the Offer;
  - in the event of an initial minimum term of 4-6 months by 12 further months in each case, unless either Party terminates the contract by 1 month's notice to the end of the contract term according to the Offer;
  - in the event of an initial term of 7-23 months by 12 further months in each case, unless either Party terminates the contract by 3 months' notice to the end of the contract term according to the Offer;
  - in the event of an initial term of contract of 24 and more months by 24 further months in each case, unless either Party terminates the contract by 3 months' notice to the end of the contract term according to the Offer;

The contract is not renewed if the rights of use are exclusively granted within the scope of a provision of the Standard Software for testing purposes against payment of a charge.

- 10.2. Without prejudice to the foregoing provision, both the Customer and Netviewer may terminate the respective contract with a notice period of one month to the end of each month for good cause. Good cause is in particular given for both Parties if
- 10.2.1. one of the Parties violates essential obligations under these Terms of Contract and Use, and if such violation is not ended within 30 days of corresponding written request of the other Party;
  - 10.2.2. insolvency proceedings are initiated against the assets of the contract partner, or if such proceedings are rejected for lack of assets.
- 10.3. Any notice of termination requires written form.

### **11. Consequences of Termination**

All rights granted to the Customer under the respective contract shall expire upon its termination.

### **12. Data protection**

- 12.1. Netviewer and the Customer undertake to comply with all data protection regulations. The Parties shall in particular oblige all persons entrusted with the processing of personal data according to Section 5 Sentence 2 Federal Data Protection Act (*BDSG*) to comply with the data secrecy obligations. They shall in addition take all technical and organisational measures necessary for compliance with the data protection law requirements in the case of the collection, processing and use of personal data.
- 12.2. Insofar as Netviewer processes or uses personal data in connection with the performance of a contract entered into with the Customer, this shall be made on behalf of the Customer within the meaning of Section 11 Federal Data Protection Act. Consequently, Netviewer shall process and use personal data only for the performance of the contract, and only within the scope of the Customer's instructions. If Netviewer is of the opinion that any instruction of the Customer infringes data protection regulations, Netviewer will notify the Customer accordingly.

### **13. Final Provisions**

- 13.1. Rights and obligations under the respective contract and under these Terms of Contract and Use may not be transferred to any third party without the consent of the other Party.
- 13.2. The following documents are integral components of the Terms of Contract and Use, and shall be sent to the Customer or are provided on the homepage of Netviewer AG for download:
- 13.2.1. [the respective Product Data Sheet of the ordered Standard Software](#)
  - 13.2.2. [the Netviewer Offer](#)
  - 13.2.3. [the Netviewer Service Specifications.](#)

- 13.3. Changes of the Terms of Contract and Use require written form. The same applies to a cancellation of this written form requirement.
- 13.4. If one or several provisions of the Terms of Contract and Use are or become invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be replaced, with retroactive effect, by such valid or enforceable provision that comes closest to the economic purpose intended by the Parties. The same applies in the case of a gap in the contract.
- 13.5. The respective contract and these Terms of Contract and Use and all legal relations resulting therefrom are subject to German law, to the exclusion of the UN Convention on the International Sale of Goods and the rules on conflict of laws.
- 13.6. Exclusive place of jurisdiction for all disputes arising from or in connection with the respective contract and these Terms of Contract and Use shall be Karlsruhe. Without prejudice to the foregoing, Netviewer reserves the right to file action against the Customer at the latter's registered office.

These Terms of Contract and Use are accepted by the Customer's signature on the Offer.

**As at November 2010**  
**Netviewer AG, Karlsruhe**