

**NON-BINDING CONVENIENCE TRANSLATION**

Annual Financial Statements as of December 31, 2014 and Management Report

AGICOA Urheberrechtsschutz-Gesellschaft mbH, Munich

## Table of contents

Balance Sheet as of December 31, 2014	1
Profit and Loss Statement for the year ended December 31, 2014	2
Notes for the Fiscal Year 2014 included	3
Management Report 2014	4
Audit Opinion	5
General Engagement Terms	6

Balance Sheet as of December 31, 2014

<b>Assets</b>					<b>Liabilities and Shareholders' Equity</b>		
		31.12.2014		31.12.2013			
		EUR	EUR	EUR	EUR	EUR	EUR
<b>A. Fixed assets</b>							
<b>I. Intangible assets</b>							
Software			83.849,59		105.047,46		
<b>II. Tangible assets</b>							
Office equipment			4.592,00		2,00		
			<u>88.441,59</u>		<u>105.049,46</u>		
<b>B. Current assets</b>							
<b>I. Accounts receivable and other assets</b>							
1. Accounts receivable		1.682.653,22		3.374.748,34			
2. Accounts receivable due from shareholders		0,00		1.881.874,22			
3. Other assets		151.852,76	1.834.505,98	252.420,35	5.509.042,91		
<b>II. Cash on hand and cash in banks</b>			56.748.838,63		60.628.987,29		
			<u>58.583.344,61</u>		<u>66.138.030,20</u>		
<b>C. Deferred charges</b>			25.193,14		24.784,48		
			<u>58.696.979,34</u>		<u>66.267.864,14</u>	<u>58.696.979,34</u>	<u>66.267.864,14</u>
<b>A. Shareholders' equity</b>							
Capital subscribed						25.564,59	25.564,59
<b>B. Reserves and accrued liabilities</b>							
1. Pension reserves						146.690,00	133.782,00
2. Reserves for rightholders						57.293.513,64	62.684.333,73
3. Other accrued liabilities						29.500,00	29.900,00
						<u>57.469.703,64</u>	<u>62.848.015,73</u>
<b>C. Liabilities</b>							
1. Accounts payable						308.266,22	2.401.966,78
2. Accounts payable due to shareholder						26.549,14	0,00
3. Other liabilities						866.895,75	992.317,04
						<u>1.201.711,11</u>	<u>3.394.283,82</u>

## Profit and Loss Statement for the Year ended December 31, 2014

	2014		2013	
	EUR	EUR	EUR	EUR
1. Revenue cable retransmission	20.383.932,70		23.760.465,12	
2. Other operating income	24.200,54	20.408.133,24	10.693,75	23.771.158,87
3. Personnel expenses				
a) Salaries	-255.523,33		-251.906,53	
b) Social security, pension --thereof for pensions EUR 6.551,00 (i. Vj. EUR 5.151,00)--	-20.314,12	-275.837,45	-18.604,76	-270.511,29
4. Depreciation and amortization		-38.342,21		-36.727,52
5. Other operating expenses		-375.297,92		-369.078,37
6. Interest income		59.608,93		91.379,40
7. Interest expenses		-6.357,00		-6.225,00
8. Result from the ordinary operations		19.771.907,59		23.179.996,09
9. Provision for reserves for rightholders		-19.771.907,59		-23.179.996,09
11. Net income		0,00		0,00

## AGICOA Urheberrechtsschutz-Gesellschaft mbH, Munich Notes for the Fiscal Year 2014

### **I. Application of the 'Handelsgesetzbuch' [German Commercial Code (HGB)] and the 'Urheberrechtswahrnehmungsgesetz [German Act on the Administration of Copyrights and Neighboring Rights (UrhWG)]**

The accounting, audit and publication regulations pursuant to Section 9 (4)-(6) UrhWG and Section 238 et seq. HGB and especially Sections 264 et seq. HGB apply to the Company except where the particularities resulting from the tasks of a collecting society do have to be considered. In the year under review, the Company was to be regarded as a "medium-sized" corporation within the meaning of Section 267(1) HGB. Nonetheless, the format of the balance sheet and the profit and loss statement accords with the provisions applicable to a "large" corporation. The Company also supplied the data in accordance with Section 285(4) HGB in the notes to the financial statements.

### **II. Accounting and valuation methods**

The intangible assets and tangible fixed assets are carried at acquisition cost less scheduled depreciation according to use. Depreciation is recorded straight-line over a useful life of five years, in the year of addition on a pro rata temporis basis. Foreign currency additions were converted at the exchange rates applicable at the time of payment.

The accounts receivable, other assets, cash on hand and cash in banks are carried at their nominal value. They contain all claims for which the Company received statements prior to preparing the financial statements and which have been performed by the balance sheet date. The deferred charges contain expenses in 2014 which constitute expenditure after the balance sheet date.

The pension reserves correspond to the settlement amount pursuant to Section 253(1) sentence 2 HGB. The bases for calculation are the "2005 G guiding tables" of Prof. Dr. Klaus Heubeck. The interest rate is 4.53% per annum. The relief provision pursuant to Art. 67(1) sentence 1 EGHGB has not been used in prior year. As a result, the interest result has been burdened by an additional amount of EUR 6k.

The reserves for rightholders take account of distribution commitments to rightholders and liabilities of still uncertain amount, the latter estimated in accordance with prudent business principles.

The other accrued liabilities comprise all identifiable risks and uncertain obligations in an amount required in accordance with prudent business principles.

All reserves are carried at the settlement amounts required in accordance with prudent business principles. In the case of reserves with a residual term of more than one (1) year, the valuation pursuant to Section 253(2) sentence 1 HGB has no impact in terms of amount since the interest income must be added to the relevant distribution reserve in view of the non-profit organization of the Company prescribed in Section 2(2) of its articles of association.

The respective interest income is set off against the respective expenditure incurred for the addition to the reserve so as to give a fair and true picture of the earnings situation of the Company.

The liabilities are carried at their repayment amount. They comprise all liabilities for which statements were received with a date prior to the balance sheet date which were paid in the first three (3) months of the new fiscal year.

To the extent that revenues were received in foreign currency, they were converted at the exchange rates applicable at the time of receipt.

### **III. Notes to the financial statements**

#### **Balance sheet**

The development of the fixed assets is represented in the statement of fixed assets in the Appendix hereto.

The accounts receivable as of December 31, 2014 have been collected in the meantime to a large extent. All accounts receivable are due in one or less than one year. The accounts payable to shareholders of EUR 27k (2013 accounts receivable: EUR 1.882k) are based on compensation. The other assets mainly include tax receivables and value of the reinsurance to EUR 126k (2013: EUR 115k). The term of the cash surrender of the value of the reinsurance is more than five years; the term of the remaining other assets is one or less than one year.

The capital stock registered in the Commercial Register amounts to DM 50,000. It is fully paid in. The mathematical conversion was made at the fixed conversion rate of 1.95583 DM/EUR. The capital stock has not yet been changed over to Euro.

The reserves for rightholders are obligations to rightholders, including the social fund and the film promotion fund. The other accrued liabilities in the amount of EUR 30k (2013: EUR 30k) relate mainly to outstanding invoices and financial statements costs.

Accounts payable relate primarily to liabilities owed to rightholders under the settlements (also advance payments) made in 2014 and the preceding years for the periods 1991 until 2013. The accounts payable to shareholders to EUR 27k were based on statements of account and/or offsetting. The full amount of liabilities is due within one year.

The other liabilities are mainly made up of liabilities for taxes.

#### **Profit and loss statement**

Of the revenue cable retransmission, an amount of EUR 20.285k (2013: EUR 23.660k) is attributable to cable retransmission rights Germany. An amount of EUR 99k (2013: EUR 100k) is attributable to countries other than Germany.

Income not relating to the period under review is included in the revenues cable retransmission in an amount of EUR 455k (2013: EUR 3.496k) and in the other operating income in an amount of EUR 4k (2013: EUR 3k) as a result of release of reserves.

The provisions for reserves for rightholders, shown in a separate item of the profit and loss statement, correspond to the addition to reserves for rightholders. An amount of EUR 26.272k (2013: EUR 16.517k) has been distributed or paid to the rightholders in the year under review.

#### **IV. Other information**

##### **Management**

In the year under review, Prof. Dr. Ronald Frohne, Rechtsanwalt [Attorney-at-Law], Berlin, and Dr. Gertraude Müller-Ernstberger were the managing directors each holding power of individual representation.

The protective clause pursuant to Section 286(4) HGB is applied.

##### **Advisory board**

Pursuant to Section 11 of the articles of association, the Company has an advisory board consisting of six (6) persons who represent the interests of the rightholders. The advisory board received no remuneration in the fiscal year.

##### **Employees**

The Company had no (salaried) employee besides the managing directors in the fiscal year under review.

##### **Appropriation of net income**

In accordance with the object and purpose of a collecting society, the Company showed no net income in the year under review. The amounts not yet distributed to rightholders or the like are included in the reserves established for this purpose (see above).

Munich, June 17, 2015

AGICOA Urheberrechtsschutz-Gesellschaft mbH  
Management Board

Prof. Dr. Ronald Frohne

Dr. Gertraude Müller-Ernstberger

## Statement of Fixed Assets in Fiscal Year 2014

	At cost				Accumulated depreciation				Net book value	
	1 Jan 2014	Additions	Disposals	31 Dec 2014	1 Jan 2014	Depreciation fiscal year	Disposals	31 Dec 2014	31 Dec 2014	31 Dec 2013
	EUR	EUR	EUR	EUR	EUR	EUR	EUR	EUR	EUR	EUR
<b>I. Intangible assets</b>										
Software	1.360.955,62	15.614,34	0,00	1.376.569,96	1.255.908,16	36.812,21	0,00	1.292.720,37	83.849,59	105.047,46
<b>II. Tangible assets</b>										
Office equipment	24.060,81	6.120,00	0,00	30.180,81	24.058,81	1.530,00	0,00	25.588,81	4.592,00	2,00
	1.385.016,43	21.734,34	0,00	1.406.750,77	1.279.966,97	38.342,21	0,00	1.318.309,18	88.441,59	105.049,46



## AGICOA Urheberrechtsschutz-Gesellschaft mbH, Munich Management Report 2014

### **Preamble**

In the fiscal year 2014, the activities of the Company comprised, as in the past, the administration of cable retransmission rights in Germany in compliance with the articles of association.

### **Course of business**

In the period under review, the Company recorded revenue cable retransmission of EUR 20,285k for the area cable retransmission in Germany and EUR 99k for the area overspill of German TV-stations in Denmark. In addition, there has been an interest income of EUR 53k.

These revenues and income compared with expenses of AGICOA Urheberrechtsschutz-Gesellschaft mbH of EUR 665k after offsetting of income from increase of the cash surrender value of the reinsurance (EUR 11k), the release of reserves for outstanding invoices and costs of the annual financial statements (EUR 4k) and the remaining other operating income (TEUR 9). The remaining amount of EUR 19,772k has been allocated to the reserves for rightholders, i.e. for distribution to rightholders so that a net income for the year of zero is reported in compliance with the articles of association.

The received remuneration is invested at interest - as far as possible in the present market environment - until distribution to the rightholders.

As reported in previous years, the global cable agreement between the cable network operators and the rightholders – without private broadcasting stations – dated November 21, 1991 entered into force again for the period from January 1, 2003 to December 31, 2006 with a fixed remuneration of EUR 49 million *per annum* having been agreed upon. The film collecting societies received a share of EUR 17.85 million out of the annual fixed remuneration. The terms of the distribution of the remuneration for 2003 through 2006 internally as between the film collecting societies have been agreed upon at the end of 2004/at the beginning of 2005. The distribution largely corresponded to the distribution made previously. The distribution had to be adjusted after the joining of the collecting society TWF (Treuhandgesellschaft Werbefilm), which represents rights of advertising film producers, and the 1.3%-share of TWF in the share of the collecting societies.

In April 2009, the following understanding has been reached on the cable global agreement for the years 2007 through 2012: a fixed remuneration of EUR 49 million has been agreed upon with the ANGA (Verband Deutscher Kabelnetzbetreiber e.V., Berlin) for 2007. For 2008 through 2012, the amounts to be finally paid will be determined after submission of the audited revenue cable retransmission of the cable network operators (3.3% and 3.1% respectively of the revenue cable retransmission) with a minimum remuneration of EUR 54 million *per annum* having been planned for 2009 through 2011. No notice of termination of the agreement has been given and, therefore, its term has been extended until December 31, 2015. However, ARD and ZDF terminated the broadcasting agreements with the cable operators effective January 1, 2013. It is not expected that other participants will give notice of termination. As a result of this, the cable operators no longer pay the

contractually owed remuneration in full for the broadcasting period from January 1, 2013 on; however, the involved collecting societies were not affected by this. As a result, the collecting societies changed their internal distributions for the broadcasting years from January 1, 2014 on which, however, resulted only in a minor reduction of the share of the company.

Therefore, the agreed amounts for the cable retransmission rights 2014 have been received in the fiscal year 2014. Furthermore, the Company received late statements for 2010 through 2013.

The collecting societies AGICOA Urheberrechtsschutz-Gesellschaft mbH, GÜFA, GWFF, VG Bild-Kunst, VFF and VGF formed ZWF. The purpose of ZWF is the administration of the rights of secondary exploitation of films – administered by the individual shareholder-societies of ZWF – as far as the operator of a distribution system simultaneously makes the receivers available to the users (e.g. hotel TV systems, hospitals, prisons). On the basis of the new distribution formula applied as between the collecting societies, the company receives 67.17%. The revenue cable retransmission 2014 includes payments by ZWF for the period 2014 in the amount of EUR4,542k.

In the fiscal year 2014, it has been possible to prepare the cable retransmission statement for the broadcasting year 2013. In addition, in 2014, payments on account of solved double registrations 1987 through 2012 and late claims for 2010 through 2012 have been made. After reserves for films not yet registered have been set aside and after the allocations to the social fund and the film promotion fund, a total of EUR 25,163k has been paid to the rightholders.

Within the framework of the statements, the reserves for films not yet registered, for the social fund and for the film promotion fund have been set aside as prescribed by law and by the articles of association.

AGICOA Urheberrechtsschutz-Gesellschaft mbH, Munich, efficiently fulfils the tasks required by law through a small team. The Company has no staff other than the two (2) managing directors. The work is otherwise performed by employees of the affiliated collecting society GWFF which have the required know-how. Substantial synergies and cost savings are realized in this manner.

### **Financial and earnings situation**

The earnings situation of the Company is determined by its statutory status as non-profit organization as prescribed by law for collecting societies. Furthermore, it is inherent in the system that most of the revenue cable retransmission is relating to different periods because the amounts to be distributed are received, and passed on to the Company, by the administering institutions for different periods and the Company then issues the respective statements to the rightholders with time-lag. The balance arising from all income and expenditure in a fiscal year is, as provision for reserves for rightholders, shown in full as reserves for rightholders in accordance with the articles of association.

As a result of the requirements of the law, the balance sheet and thus the financial situation of the Company are determined by items channelled through. The balance sheet is thus characterized by high cash amounts and receivables from the institutions administering the funds while the fixed assets and the remaining current assets are of secondary importance. The main item on the liabilities side are the reserves for rightholders while the remaining reserves and accrued liabilities and also the subscribed capital are secondary items.

## **Material risks and chances**

The new collecting society TWF attempts to increase its share of the revenue of the collecting societies for the benefit of the film authors of advertising clips represented by it which would lead to a probably marginal reduction of the share of the company.

On February 26, 2014, the EU Commission issued the Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. This Directive also contains extensive regulations on the organization of the collective rights administration by collecting societies; it is to be implemented by the Member States by April 10, 2016. The concrete chances and risks are not foreseeable yet. Therefore, the management will wait for the draft bill of the German Federal Ministry of Justice on the implementation of the Directive in German law and present any modifications of the articles of association and the collection agreement of the company, which may become necessary, to the relevant bodies for approval.

There is the risk of new additional collecting societies being formed in future which might lead to a further reduction of the Company's share; in particular since the aforesaid EU Directive provides that collecting societies from other EU countries are admitted in Germany.

The main risk inherent in the business operation of the Company is still the possibility of a change in the legal outline conditions regarding the remuneration claims for cable retransmission over the medium or long term.

The management still notes with concern the heavy lobbying of the cable operators to remove the cable retransmission remuneration at the national and European levels as well as the attempts of broadcasters to acquire the cable retransmission rights directly from the producers. The Company endeavors to counter these attempts with arguments both at the national level and the EU level. In addition, the management is concerned that Section 20b UrhG might not cover further forms of retransmission such as IPTV, ADSL or retransmission via satellite platforms. The Company vehemently advocates a "functional" interpretation of Section 20b UrhG and endeavors to bring about a respective clarification by the legislator. Until deleted in April 2013, this technology-neutral form of Section 20b UrhG was provided for in the bill "use of orphan works and further changes of the copyright law and of the Copyright Administration Act". It is not to be expected that a technology-neutral form of Section 20b UrhG will be achieved still in the current legislative term. The Upper House of the German Parliament nevertheless demanded in its opinion of May 3, 2013 to ensure a technology-neutral form in further legislative procedures. This has not yet been implemented.

A ruling of the German Federal Supreme Court on the so-called hotel-TV was published on November 12, 2009. The German Federal Supreme Court held that hotels are not obligated to pay remuneration pursuant to Section 20b UrhG in any case if and when they adopt without change the supplied program of the cable operator. The ruling has no impact on the Company so far. By the ruling of the European Court of Justice of March 15, 2012, the obligation of hotels to pay a reasonable remuneration has been established.

The possibility of the producers presently represented by the Company choosing to be represented by other collecting societies cannot be excluded. However, the Company succeeded in persistently enlarging the group of rightholders in the last years; no change is expected in this respect.

The chance of the Company consists primarily in the extension of its scope of administration to cover also further forms of retransmission, e.g. IPTV, ADSL etc. AGICOA Urheberrechtsschutz-Gesellschaft mbH, Munich, entered into agreements with Zattoo (Web TV), Magine- und Couchfunk, with Telekom and Vodafone for mobile TV and for Entertain-to-Go (NetPVR); however, due to the unclear legal classification of these new forms of transmission, it has not granted the MPAA-repertry for all forms of transmission.

In the context of market penetration, the Company endeavors to bring also the negotiations with antenna associations to a conclusion.

### **Presumable development**

It is intended to make the distributions to the rightholders as soon as possible also in the years to come. For 2015, the Company plans to distribute the amounts for the broadcasting year 2014.

### **Material events after completion of the fiscal year**

Apart from the aforesaid implementation of the Directive 2014/26/EU, there are no material events after the balance sheet date.

## Audit Opinion

We issued the following unqualified audit opinion:

We audited the annual financial statements – consisting of the balance sheet, the income statement and the notes – including the accounting records and the management report of AGICOA Urheberrechtsschutz-Gesellschaft mbH, Munich, for the fiscal year January 1 to December 31, 2014. The accountings as well as the preparation of the annual financial statements and the management report in accordance with the German commercial law provisions and the supplementary regulations contained in the statutes are the responsibility of the management of the company. Our function is to give an opinion on the annual financial statements including the accounting records and on the management report on the basis of our audit.

We performed our audit of the annual financial statements pursuant to Section 317 HGB [German Commercial Code], in accordance with the generally accepted German auditing standards established by the Institut der Wirtschaftsprüfer (IDW) [Institute of German Certified Public Accountants]. According to this provision, the audit must be planned and performed in such a manner that any incorrectness or violation which has a material impact on the view of the net worth, financial position and results conveyed by the annual financial statements in accordance with the generally accepted accounting principles and by the management report will be identified with sufficient certainty. The knowledge of the business activity and of the economic and legal environment of the company as well as expectations regarding possible sources of error are taken into account when determining the audit acts. Within the framework of the audit, the effectiveness of the internal accounting control system as well as the supporting documents for the information contained in the accounting records, the annual financial statements and the management report are primarily assessed on a sample basis. The audit includes an assessment of the applied accounting principles and of the essential estimations of the management as well as an appreciation of the overall picture conveyed by the annual financial statements and the management report. We are of the opinion that our audit constitutes a sufficiently secure basis for our assessment.

Our audit has not led to any reservations.

In our judgment based on the findings obtained within the framework of the audit, the annual financial statements are in compliance with the statutory regulations and the supplementary provisions of the statutes and present, in compliance with the generally accepted accounting principles, a true and fair view of the net worth, financial position and results of AGICOA Urheberrechtsschutz-Gesellschaft mbH. The management report is consistent with the annual financial statements, conveys overall a correct picture of the position of the company and correctly presents the chances and risks of the future development.

We, pursuant to Section 9 (5) UrhWG, also issue the unqualified audit certificate provided for therein in the following form:

The accounting records, the annual financial statements and the management report comply with the law and the statutes according to our properly performed audit.

Lindau, June 25, 2015

(Seal of BAY GmbH)

BAY GmbH  
Wirtschaftsprüfungsgesellschaft  
Rechtsanwaltsgesellschaft

(Signature)

Karl-Christian Bay  
Wirtschaftsprüfer

# General Engagement Terms

## for

### Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

#### [German Public Auditors and Public Audit Firms]

#### as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

#### 1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

#### 2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.

(3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

#### 3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer – even without his special request – is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

#### 4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

#### 5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

#### 6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations – especially quantity and cost computations – prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

#### 7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

#### 8. Correction of deficiencies

(1) Where there are deficiencies, the client is entitled to subsequent fulfillment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfill [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfill [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

(3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

#### 9. Liability

(1) *The liability limitation of § ["Article"] 323 (2) ["paragraph 2"] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.*

(2) *Liability for negligence; An individual case of damages*

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) *Preclusive deadlines*

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence.

The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

## 10. Supplementary provisions for audit engagements

(1) A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

(2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.

(3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

## 11. Supplementary provisions for assistance with tax matters

(1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

(2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

(3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client
- b) examination of tax assessments in relation to the taxes mentioned in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)
- e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

- a) the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax
- b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and
- c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

## 12. Confidentiality towards third parties and data security

(1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

(3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

## 13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

## 14. Remuneration

(1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

(2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

## 15. Retention and return of supporting documentation and records

(1) The Wirtschaftsprüfer retains, for ten years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.

(2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

## 16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.



