General Conditions

for Services

IMPORTANT: the original Dutch text of the conditions is binding under all circumstances.
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DEFINITIONS

Agreement : means arrangements agreed by KPN and Contracting Party in a form, a document or some other way under which KPN provides one or more Services.

Application : means functionality for one particular Application. Applications may functionally and/or physically form an integral part of Software and/or Hardware.

Application Software : means the entirety of Software used to implement Applications.

Contracting Party : means the party with whom KPN has entered into an Agreement subject to these General Conditions.

Documentation : means descriptions, user manuals and other manuals accompanying the Hardware and Software, including the functional and technical specifications contained therein.

Facilities : means all Hardware, Software and other information carriers owned or used by KPN, which KPN uses as part of the agreed Service and have been installed or provided at locations of Contracting Party.

Hardware : means products for which KPN and Contracting Party have concluded an Agreement, with the exception of Software and/or Documentation.

KPN : KPN B.V.;

Maintenance Release : means Software containing alterations or solutions to imperfections within the specified functionality of the most recent version in which the Software was released

Modification : means the alterations that KPN performs preventively on Hardware in order to safeguard the functionality as described in the manual of the Hardware.

Network of Lines : means the entirety of facilities of the Contracting Party suitable for transporting voice and/or data traffic, with a connecting point to the telecommunications infrastructure.

Network Management Software : means Software used to manage a telecommunications network.

Network Operating System : means Software enabling the basic function of a telecommunications network.

Operating System : means Software used to implement Applications.

Overhaul : means complete or partial disassembly or reassembly work necessary to make the Hardware function in accordance with the agreed technical and functional specifications, such work being unnecessary for the purpose of rectifying faults occurring as a result of normal usage.

Patch : means a facility to restore the functionality of Software as far as possible. A patch may be a temporary facility, pending a Maintenance Release, or a permanent facility.

Service(s) : means the service(s) provided by KPN under the Agreement between KPN and Contracting Party subject to these General Conditions.

Software : means machine-readable or translatable computer programs (software) for which KPN and Contracting Party have concluded an Agreement, with a distinction being made between Application Software, Operating System, Network Operating System and Network Management Software.

Version : means the first original commercial issue of Software, or Software that includes an enlargement or modernisation of the specified functionality.

ARTIKEL 02

GENERAL PROVISIONS

2.1 The Agreement shall be subject to these General Conditions.

2.2 Parties shall agree for each type of Hardware and/or Service whether or not Contracting Party shall arrange the presence of at least one appropriately skilled member of staff during performance of work and the times when he/she shall be present.

2.3 Prior to commencement of the Agreement KPN shall have the right to examine Hardware, Software and/or the Network of Lines and/or non-KPN goods before deciding whether to provide certain Services.

2.4 The examination referred to in Article 2.3 shall be for the purpose of determining whether Hardware, Software and/or the Network of Lines are technically suitable for provision of the Service by KPN.

2.5 The examination of Software shall consist of determining whether the Software is the required Version or, as the case may be, the required Maintenance Release.

2.6 KPN shall cease to be under obligation to provide the Services if the Hardware and/or Software:

a has been repaired, altered or expanded by parties other than KPN without its written permission;
b has been neglected in the opinion of KPN or has been used and treated carelessly and/or injudiciously;
c has mutilated, missing and/or altered type numbers and/or serial numbers;
d has defects caused by external circumstances.

2.7 Contracting Party shall be responsible for the use and configuration of the usage possibilities offered by the Hardware and/or Software, also in instances where KPN performs the work.

ARTIKEL 03

OBLIGATIONS OF KPN

3.1 KPN shall use appropriately skilled personnel to perform its work under the Agreement.

3.2 On request KPN shall inform Contracting Party in writing beforehand about work under the Agreement that will be contracted out to third parties. KPN shall remain fully responsible and liable for such work performed by third parties, subject to the liability provisions made in the Agreement with regard to work performed by third parties.

3.3 KPN shall endeavour to offer Contracting Party a suitable alternative if KPN is unable to fulfil its obligations owing to stagnation or absence of deliveries of tools or parts required for the Service.

ARTIKEL 04

OBLIGATIONS OF CONTRACTING PARTY

4.1 Contracting Party shall ensure that throughout the agreed period of provision of Services the environmental conditions satisfy the specifications laid down by KPN. If no specifications have been laid down, the environmental conditions shall satisfy specifications that may reasonably be deemed applicable.

4.2 Contracting Party shall ensure at its expense that KPN has the availability of the necessary electrical facilities during the performance of work. The electricity required for performance of work shall be determined by KPN in consultation with Contracting Party. Electricity required for the functioning of the Services shall satisfy functional requirements laid down by KPN.

4.3 Contracting Party shall treat carefully and in accordance with the purpose for which provided all Facilities made available to him and/or present at his premises for the purpose of carrying out the provision of Services. Contracting Party shall observe the directions for use provided by KPN.

4.4 Contracting Party shall bear the risk of damage to or loss of Facilities made available to him.

4.5 Contracting Party guarantees that KPN shall be able to use his in-house telecommunications facilities at any time to the extent necessary to perform the Service. KPN shall not be under obligation to fulfil the Agreement if Contracting Party fails to meet this obligation.

CO-OPERATION OF CONTRACTING PARTY

05 ARTIKEL

Contracting Party shall co-operate in performance of the Agreement to the extent reasonably necessary. Among other things, Contracting Party shall provide KPN with essential data. Contracting Party shall afford access to places where work must be performed to employees of KPN or third parties engaged by KPN who on request shall show means of identification. Contracting Party shall take all measures necessary to allow KPN to perform such work properly.

SECURITY AND SAFETY

06 ARTIKEL

6.1 In consultation with Contracting Party, personnel of KPN or of third parties engaged by KPN shall have access to the location and rooms where work must be performed.

6.2 Personnel of KPN and/or of third parties engaged by KPN shall comply with requirements and conditions Contracting Party makes known in writing with regard to security measures, insofar as such measures may reasonably be imposed. Contracting Party shall submit such requirements and conditions to KPN prior to commencement of work.

6.3 KPN reserves the right to suspend provision of the Service for such time as in its opinion circumstances exist that expose personnel of KPN and/or of third parties engaged by KPN to safety or health risks.

6.4 Contracting Party shall ensure the safety of rooms and materials made available for the purpose of performance of the Services.

REMOTE SERVICING

07 ARTIKEL

7.1 KPN shall have the right to install Facilities at the location of Contracting Party to enable remote performance of Services.

7.2 Contracting Party shall provide at its expense telephone and/or data communication lines necessary for remote servicing such that KPN can set up a direct connection with the Hardware. Contracting Party shall further pay the line rental and call charges of such telephone lines.

INTERNAL/EXTERNAL RELOCATIONS

08 ARTIKEL

8.1 If Contracting Party relocates internally or externally any Hardware and/or Software associated with the Services without such relocation being carried out by or on behalf of KPN, Contracting Party shall inform KPN in writing about the changes of location, stating the type of Hardware, serial numbers and the old and new locations.

8.2 After such internal or external relocation, KPN shall have the right to examine the Hardware and/or Software associated with the Services in accordance with the provisions made in article 2.

CHARGES

09 ARTIKEL

9.1 Contracting Party shall owe KPN the agreed charges for the delivered Service. Charges may consist at the discretion of KPN of non-recurring amounts, monthly amounts, other amounts owed periodically and amounts related to actual usage by Contracting Party.

9.2 Contracting Party shall owe the amounts described in this article from the date Contracting Party has the use of the delivered Services.

9.3 The data kept by KPN shall be decisive in determining the usage charges owed by Contracting Party, unless the data are demonstrated to be incorrect.

9.4 KPN shall have the right to amend the charges payable for the Service once per calendar year in line with the index mentioned in the Agreement. If application of such index would result in a greater change than would occur with application of the most recent January index issued by the Central Bureau for Statistics for negotiated monthly wages of adult workers in the steel and electrical industries, or if the Agreement does not specify an index, KPN shall amend the charges in line with the aforementioned index for negotiated monthly wages of adult workers in the steel and electrical industries.

9.5 KPN shall be entitled to require advance payment of owed charges.

9.6 The applicable statutory taxes and levies shall be added to all charges Contracting Party owes KPN.

ARTIKEL 10

PAYMENT

10.1 KPN shall render an invoice for charges owed by Contracting Party. Contracting Party shall make payment into the bank or giro account stated by KPN in the way and within the term specified on the invoice. A payment term of thirty days shall apply if the invoice does not state a term.

10.2 Contracting Party shall be in default without further notice in the event of failure to pay on time.

10.3 KPN shall have the right to charge interest at the prevailing statutory rate plus reasonable extra-judicial costs for debt recovery from the date of default by Contracting Party.

10.4 Contracting Party shall owe a charge that makes allowance for the guarantee period if Hardware and/or Software are added to the Service or if other changes are carried out.

10.5 Contracting Party shall owe KPN call-out charges plus any investigation costs if KPN goes to the address of Contracting Party to no avail after receiving a report from and/or making an appointment with Contracting Party. Contracting Party shall owe KPN the costs of investigation if Hardware is taken to a KPN office for work and the Hardware is found to be in proper working condition.

10.6 Contracting Party shall pay the costs of an examination within the meaning of article 2 plus subsequent costs for putting the Hardware and/or Network of Lines into good technical condition or for upgrading the Software to the correct Version/Maintenance Release. Contracting Party shall be billed the costs for making Modifications or installing a Maintenance Releases and/or new Versions for Hardware and/or Software that was neither supplied nor made available in some other way by KPN, except in instances where KPN has agreed with Contracting Party that such costs shall be covered by the charges owed for the agreed Service.

10.7 The costs of an Overhaul performed by or on behalf of KPN shall be determined from case to case and shall be payable by Contracting Party.

ARTIKEL 11

SECURITY

If facts or circumstances give KPN legitimate doubt as to whether Contracting Party shall meet its obligations, KPN shall have the right to request security or extra security. Contracting party shall meet such requests within a term specified by KPN.

ARTIKEL 12

CONFIDENTIALITY

12.1 Each party shall refrain from disclosing to third parties in any way whatsoever any confidential information obtained from the other party.

12.2 Each party shall use information subject to the confidentiality clause solely for the purpose for which it was obtained from the other party.

12.3 The obligations referred to in 12.1 and 12.2 shall not apply if:

a the information was already in the public domain or accessible to the public for reasons other than violation of the confidentiality obligation contained in 12.1;

b there is a legal requirement to disclose the information.

ARTIKEL 13

OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

13.1 The Agreement does not provide for transfer of any property and Software and/or of any intellectual property rights attached to property and Software that KPN uses and/or makes available to Contracting Party for the purpose of providing the Service.

13.2 The intellectual property rights attached to all software and data provided by KPN to Contracting Party, such as reports, recommendations and documentation, shall be held by KPN or the third party that authorised KPN to make the software and data available to Contracting Party. Contracting Party shall obtain a non-exclusive and non-transferable right to use the software and data solely for the purpose for which they were provided.

13.3 If third parties seek to invoke rights or take measures such as seizure with regard to the property, Software or data mentioned in 13.2, Contracting Party shall immediately inform them of the rights held by KPN and shall notify KPN forthwith.

TRANSFER OF CONTRACT

14 ARTIKEL

Contracting Party shall not transfer the rights and obligations under the Agreement to a third party without the prior written permission of KPN. KPN may attach conditions to such permission.

LIABILITY AND INDEMNIFICATION

15 ARTIKEL

15.1 KPN shall not have any liability for establishment or performance of the Agreement, except as provided for in the following clauses of this article.

15.2 KPN shall be liable solely for damage caused by a failure imputable to KPN in the cases described below and up to the amounts stated from case to case:

a an amount not exceeding € 500,000 per event for damage arising from death or personal injury;

b an amount not exceeding € 500,000 per event solely for the costs of repair and replacement in the event of damage to property of Contracting Party.

15.3 Contracting Party shall indemnify KPN against third party claims for compensation for damage. The indemnification shall not apply to damage for which KPN is liable under article 15.1.

15.4 Damage within the meaning of this article shall be reported to KPN in writing as soon as possible and in any event within four weeks of its occurrence. Damage not reported to KPN within this period shall be excluded from compensation, unless Contracting Party demonstrates it was unable to report the damage earlier.

CHANGES TO THE CONDITIONS AND CHARGES

16 ARTIKEL

16.1 KPN shall have the right to change these General Conditions and the charges payable for the Service.

16.2 KPN shall not introduce a change within the meaning of this article earlier than one month after making it known by means of an announcement.

16.3 Amendments to the Agreement may be agreed only in writing, at which time they shall become an integral part of the Agreement, without prejudice to the provisions of articles 16.1 and 16.2.

CHANGES TO THE SERVICE

17 ARTIKEL

KPN shall have the right to change the composition and content of the Service in connection with new technologies, services or products that become available, without prejudice to the provisions of article 18.6 of these General Conditions. Unless otherwise agreed, KPN shall inform Contracting Party of a change that will result in the Service differing fundamentally from the agreed Service at least three months before the change will be made.

TERM AND TERMINATION OF THE AGREEMENT

18 ARTIKEL

18.1 The Agreement shall commence on the date of signature by both parties and shall remain in force for the period stated in the Agreement, subject to a minimum term of one year.

18.2 Parties shall tacitly renew the Agreement one year at a time at the end of the agreed period of service and at the end of every renewal period, unless the Agreement is terminated in accordance with the provisions of this article.

18.3 Unless otherwise agreed, each party shall have the right to cancel the Agreement in writing with effect from the end of the agreed period of Service mentioned in article 18.1, or with effect from the end of a renewal period, subject to notice of at least three calendar months, without prejudice to the provisions of articles 18.5 and 18.6.

18.4 If Contracting Party cancels the Agreement in the interim, KPN shall have the right to make a charge as defined in article 19.

18.5 If Contracting Party declines to accept a change to these General Conditions or to the charges within the meaning of article 16, or a change within the meaning of article 17 of these General Conditions, Contracting Party shall have the right to cancel the Agreement in writing with effect from the date of introduction of the new General Conditions or charges, or the date on which a change within the meaning of article 17 comes into effect. Timely notice shall be provided of such cancellation. KPN shall only accept a cancellation as timely if such notice is received before aforementioned date. The provisions of this article shall apply only to the extent that the changes are to the disadvantage of Contracting Party.

18.6 KPN shall have the right to end the Service, subject to a reasonable period of notice, if necessitated by technical or business economics reasons. Existing Agreements shall end not later than the date on which the Service will be ended. Where possible KPN shall offer Contracting Party a replacement Service in such cases.

18.7 In addition to the dissolution grounds that exist at law, each party shall have the right to dissolve the Agreement, in full or in part, with immediate effect, if:
a the other party has petitioned for or been granted a suspension of payments;
b the other party has been declared bankrupt or is the subject of a petition for bankruptcy.

ARTIKEL 19

SETTLEMENT ON INTERIM CANCELLATION

If Contracting Party cancels the Service after its commencement, KPN shall have the right to require payment of the remaining charges that would have been owed had the Agreement for the Service not been cancelled prematurely. Contracting Party shall immediately pay KPN this amount at its first request.

ARTIKEL 20

APPLICABLE LAW

20.1 Dutch law shall govern the Agreement.

20.2 A party that wishes to place a dispute before a court of law shall submit the dispute to a court with jurisdiction in The Hague.

20.3 Parties may agree an alternative way of resolving disputes.

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