

**STANDARD TERMS AND CONDITIONS  
FOR COMMUNICATIONS SERVICES BY  
Garnier Projects BV (NETHolding Hosting Facilities)**

**1. GENERAL**

1.1 NETHolding Hosting Facilities provides communications services ("Services") pursuant to these terms and conditions (the "Terms and Conditions") and the order form, which may include, but is not limited to, a SORF (the "Order"), which is attached and incorporated into these Terms and Conditions. The Services provided by NETHolding Hosting Facilities will be detailed in the Order.

1.2 Any additional terms and conditions applicable to specific Services purchased by Customer or service level agreements will be attached to the Order. The parties executing subsequent Order forms may order additional services under these Terms and Conditions.

1.3 If there is a conflict between or among the documents, the order of precedence will be: (1) the Order and (2) the Terms and Conditions.

**2. CHARGES**

2.1 During the term of any Order, Customer will pay NETHolding Hosting Facilities at the prices set forth in the Order or an attached pricing sheet to the Order. Unless otherwise specified in the Order or Customer notifies NETHolding Hosting Facilities in writing at least 10 days prior to the delivery date (provided Customer is liable for any third party charges), NETHolding Hosting Facilities will begin billing Customer in full for all the non-recurring charges and recurring charges on the later of:

(i) the date the Services are installed and available per Section 4.1 or  
(ii) the delivery date specified in the Order ("Activation Date"). If NETHolding Hosting Facilities cannot install and deliver the Services by the delivery date specified in the Order because of Customer premises related problems, NETHolding Hosting Facilities reserves the right to commence billing to Customer on the delivery date.

2.2 NETHolding Hosting Facilities rates and charges for Services do not include taxes. Except for NETHolding Hosting Facilities income taxes, Customer will pay all taxes, imposed on or based upon the provision, sale or use of Services.

**3. PAYMENT TERMS**

3.1 **Payment Date.** Customer will pay NETHolding Hosting Facilities monthly invoices in full in € (Euro) in which the invoice presents the charges by the invoice due date, which will not be later than thirty days from the date of invoice receipt.

3.2 **Interest Charges.** If Customer fails to pay charges for Services when due, NETHolding Hosting Facilities will charge Customer interest on those charges equal to Libor + 2% per month of the outstanding balance or the maximum rate allowed by law.

3.3 **Offset.** NETHolding Hosting Facilities reserves the right to set off any amounts that are past due from Customer under this STaC against any amounts that NETHolding Hosting Facilities or any of its affiliates or related companies owe to Customer under a separate service agreement. This right of set-off shall only be exercisable upon at least 5 days' prior written notice (during which Customer will have the opportunity to cure and avoid the implementation of the impending set-off), and is not applicable to amounts past due but subject to a bona fide dispute. The rights of NETHolding Hosting Facilities invoking set-off pursuant to this Section are in addition to other rights and remedies that NETHolding Hosting Facilities may possess.

#### **4. PROVISION OF SERVICES**

4.1 **Acceptance of Services.** NETHolding Hosting Facilities will notify Customer when the Services are installed, tested and available. Following NETHolding Hosting Facilities's notification, Customer will have five business days in which it may reject the Services' readiness. Customer may only reject a Service that fails to meet NETHolding Hosting Facilities's performance, operation or maintenance requirements for the NETHolding Hosting Facilities provided equipment and network. **Credit Approval.** The provision of Services under each Order is subject to NETHolding Hosting Facilities's credit approval of Customer.

4.2 **Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, NETHOLDING HOSTING FACILITIES DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, NOT EXPLICITLY STATED IN THESE TERMS AND CONDITIONS, AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES RELATED TO EQUIPMENT, MATERIAL, SERVICES OR SOFTWARE. THE SERVICES AND ANY MATERIALS OR EQUIPMENT ARE SUPPLIED "AS IS," TO THE FULL EXTENT PERMITTED BY LAW.

#### **5. USE OF NAME, SERVICE MARKS, TRADEMARKS OR TRADE SECRETS**

5.1 Neither party will use nor will have any license to the service marks, logos, trademarks, trade secrets, or carrier identification code ("CIC ") of the other party or any of its affiliates for any purpose including, but not limited to resale of NETHolding Hosting Facilities services without the other party's prior written consent.

## **6. USE OF SERVICES**

6.1 Customer will not make any illegal use of the Services and will conform to NETHolding Hosting Facilities's current acceptable use policy, which is available on request.

6.2 Customer will not permit or allow others to: (i) abuse or fraudulently use Services, including, but not limited to, unauthorized or attempted access, alteration, or destruction of NETHolding Hosting Facilities's customers or other authorized user's information; (ii) use Services in such a manner that causes interference, or tampers with another customer's or authorized user's use of the NETHolding Hosting Facilities network; or (iii) use Services in a manner that violates NETHolding Hosting Facilities's acceptable use policy.

6.3 If Customer fails to comply with this Section, Customer releases NETHolding Hosting Facilities from all liabilities or obligations (including any warranty or indemnity obligations) and Customer will indemnify NETHolding Hosting Facilities for all third party claims, costs or damages that NETHolding Hosting Facilities incurs as a result of Customer's failure to comply with this Section or services provided by Customer.

6.4 In preparation of the Services, Customer will: (i) at its expense, prepare its sites to comply with NETHolding Hosting Facilities's installation and maintenance specifications; (ii) pay NETHolding Hosting Facilities any applicable charges to relocate any installed Services, when such relocation is requested by Customer; (iii) install, maintain, and pay for cabling that connects the Service to equipment that is not provided by NETHolding Hosting Facilities; (iv) maintain the Customer-provided equipment space and associated facilities, conduits and rights-of-way as safe places to work, and insure such facilities against fire, theft, vandalism and other casualty; (v) ensure that the use of the Customer-provided equipment space and associated facilities, conduits and rights-of-way comply with all applicable laws, rules and regulations, as well as any existing leases or other contractual agreements or rights of others; and (vi) be responsible for all damages to NETHolding Hosting Facilities-provided equipment located on Customer's premises, excluding reasonable wear and tear and damages caused by NETHolding Hosting Facilities.

## **7. CONFIDENTIAL INFORMATION**

7.1 Each party will treat as confidential all non-public information, marked as confidential, provided by the other party, including but not limited to pricing and technical information, business operations, marketing, and terms of any agreement, including any Order, between NETHolding Hosting Facilities and Customer, including the discussions, negotiations, and proposals related to that agreement or Order. Such confidential information will not be disclosed or shared with third parties without the prior written consent of the disclosing party. Customer agrees that NETHolding Hosting Facilities may disclose terms of an Order to an underlying third party provider for the sole purpose of securing pricing from such third party provider.

## **8. LIMITATIONS OF LIABILITY**

8.1 Except as provided in a specific Order or SLA, NETHolding Hosting Facilities will not be liable for any service or network delay or interruption to the other party or that party's customer. In any event, NETHolding Hosting Facilities entire liability for damages caused by any failure to perform its obligations under these Terms and Conditions will not exceed 15% of Customer's average monthly Services Usage Charges multiplied by the number of months in the Term.

**8.2 Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY BREAKDOWN OF FACILITIES OR ANY INTERRUPTION OR DEGRADATION OF SERVICE, EXCEPT FOR CLAIMS FOR WHICH A PARTY HAS AN OBLIGATION OF INDEMNITY UNDER THESE TERMS AND CONDITIONS. Consequential, incidental, and indirect damages include, but are not limited to, lost profits, lost revenues, and loss of business opportunity, and incidental damage to Customer's premises for Service installation, whether or not the other party was aware or should have been aware of the possibility of these damages. This limitation of liability will not apply to claims arising from the parties' confidentiality and indemnification obligations under these Terms and Conditions.

**8.3 Liability for Content.** NETHolding Hosting Facilities is not responsible for the content of any information transmitted by Customer or received through NETHolding Hosting Facilities's provision of the Services.

## **9. TERM AND TERMINATION**

9.1 These Terms and Conditions are effective on the date the initial Order is signed by all parties ("Effective Date") and will not expire until all Orders have either expired or terminated. The date that NETHolding Hosting Facilities will begin providing Services will be set forth in the applicable Order.

9.2 Either party may terminate the Terms and Conditions or discontinue Services if:

- a. either party becomes subject of a bankruptcy, insolvency, administration, reorganization or liquidation proceeding, or any other similar or related company reconstruction, receivership or administration action, whether voluntary or involuntary; or
- b. either party makes an assignment for the benefit of creditors; or
- c. either party fails, after 30 days' advance written notice from the other party, to cure any other material breach of these Terms and Conditions.

Notwithstanding termination of these Terms and Conditions as set forth in this Section, Customer will remain liable for all invoices, charges and fees that remain outstanding, whether or not invoiced by the termination date.

## **10. EARLY TERMINATION BY CUSTOMER**

10.1 If Customer terminates an Order at any time during the first year of the service term for reasons other than a breach of the Terms and Conditions by NETHolding Hosting Facilities, Customer will remain responsible for a) all early termination liabilities imposed on NETHolding Hosting Facilities by third parties, such as local exchange carriers or PTTs, as a result of Customer's early termination, b) any waived installation charges plus c) 100% of the recurring charges for first year of Order Term.

10.2 If, after the first year of the service term, and Customer is current with all payments due to NETHolding Hosting Facilities, Customer may terminate an Order in whole or in part, prior to the expiration of the Order Term, upon 60 days written notice to NETHolding Hosting Facilities, provided Customer will pay to NETHolding Hosting Facilities: a) any early termination liabilities imposed on NETHolding Hosting Facilities by third parties, such as local exchange carriers or PTTs, as a result of Customer's early termination; plus b) any waived installation charges.

## **11. MISCELLANEOUS**

11.1 **Governing Laws.** The Terms and Conditions will be governed by the laws of the Netherlands without regard to choice of law principles. Where applicable, the English version of the Terms and Conditions will prevail over any foreign language versions.

11.2 **Dispute Resolution.** Any controversy or dispute arising out of or related to the Services or these Terms and Conditions that cannot be amicably resolved will be settled in arbitration. All arbitration proceedings will be conducted in the English language pursuant to Rules of the International Chamber of Commerce ("ICC") and will be governed by the laws of the Netherlands without regard to choice of law provisions. The place of the arbitration will be Arnhem the Netherlands.

11.3 **Amendments.** Any amendments to an Order or these Terms and Conditions may only be made by a written amendment signed by both parties.

11.4 **Assignment.** Neither party may assign any rights or obligations under an Order without the other party's prior written consent, except that NETHolding Hosting Facilities may assign its rights under an Order and these Terms and Conditions, after 30 days prior written notice, to a parent company, controlled affiliate, or affiliate under common control.

11.5 **Equipment.** Additional terms and conditions will apply to the provisioning, sale and/or lease of equipment under this Agreement to Customer.