

Terms and Conditions

These general terms and conditions apply between (1) Instant Dedicated B.V., established in Rotterdam, the Netherlands, and registered with the Chamber of Commerce under file number 54038812, hereinafter referred to as "Supplier", and (2) the person or company that wishes to make use of Supplier's Services and/or to receive goods from Supplier, hereinafter referred to as "Customer".

Supplier offers Hosting Services, Installation Services, Managed Colocation Services, Intermediate Services, various related services to the forementioned to its customers and offers Equipment for sale. Customer wishes to make use of Supplier's Services or obtain Equipment from Supplier. The Supplier is willing to provide such Services or sell such goods to Customer under the Terms and Conditions set out in these Terms, the Order(s) and any applicable Data Processing Agreement and/or Service Level Agreement (jointly, the "Agreement").

1. Definitions

1.1. In the Agreement the following capitalized terms shall have the meaning as set out below:

Agreement: the agreement between the Supplier and the Customer which consists of the Order(s), these Terms and Conditions, the Data Processing Agreement (DPA), Privacy Statement, the Service Level Agreement (if applicable) and any appendices to the aforementioned documents.

Applicable Law: means all laws and regulations including but not limited to directions of a regulator in effect in any jurisdiction.

Cancellation Fee: means a specific fee, stated in the Agreement, which must be paid by the Customer to the Supplier to cover Supplier's set-up costs in case of early termination of the Agreement.

Colocation Space: means the racks, footprints, cages, cabinets, suites and/or other areas, designated as such by Supplier within a datacentre which Supplier may from time to time designate and specify in the Order or otherwise.

Data Controller: the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.

Data Processor: the party which, in its capacity as an ICT supplier, processes Personal Data on behalf of its Customer as part of the performance of the Agreement.

Data Processing Agreement: a document concluded between the Data Processor and the Customer governing data processing. Along with the Privacy Statement (or similar such information), it constitutes the data processing agreement within the meaning of Article 28.3 of the GDPR. The document can be found online at <https://instantdedicated.com/gpdr/data-processing-agreement/>

Data Subject: a natural person who can be identified, directly or indirectly.

Data Traffic: all data, generated directly or indirectly by Customer, moving across the computer network of Supplier and consisting of incoming and outgoing data.

Equipment: means any physical Equipment, including but not limited to computer hardware and telecommunications hardware.

GDPR: the General Data Protection Regulation.

Hosting Services: means Services relating to the usage of Equipment from the Supplier by the Customer for storage and/or receipt and/or forwarding of data including but not limited to web hosting and email services.

Installation Services: means installing and/or configuring Equipment at the request of Customer and in accordance with the written instructions of Customer.

Intellectual Property: means any know-how (not in the public domain); invention (whether patented); design; trademark or copyright material (whether registered).

Intermediate Services: means Services provided by Supplier acting as intermediary which may include but are not limited to Services in relation to software, domain names and IP addresses. The Services may include but are not limited to application, licensing, registration, renewal, transfer, modification, bundling, unbundling and deletion, by Supplier acting as intermediary.

Losses: means any and all losses, damages, costs, fines, penalties, expenses (including but not limited to legal fees) and other liabilities of any kind, whether foreseeable or not.

Managed Colocation Service: means Service(s) provided by the Supplier regarding the installation and retainment of Equipment from the Customer in the Colocation Space and related additional management and support Services provided by the Supplier.

Order: means an order for the provision of Services or the sale of Equipment by Supplier to Customer; Orders are to be agreed in writing by email, digital messaging services, via the electronic ordering process on the Website, or

they may be agreed orally in which case they must be confirmed by Supplier in writing.

Parties: means the Supplier and Customer, each a "Party".

Privacy Statement: A Statement issued by the Supplier in which it provides information on the intended use of its products or Service, any security measures which have been implemented, sub-processors, data-breach, certification and dealing with the rights of Data Subjects, among other things. The document can be found online at:

<https://instantdedicated.com/privacy>

Reselling: reselling, relenting, sub-leasing or otherwise providing (against payment or otherwise) (part of) the Services to third parties by the Customer.

Service: any service that the Supplier provides as stated in the Order or otherwise, which may include Hosting Services, Managed Colocation Services, Intermediate Services and Installation Services.

Service Level Agreement or SLA: a written document concluded between Supplier and Customer containing specific details and/or applicable terms of the provided Services.

Sub-Processor: a legal person, public authority, an agency or other body that acts under the instructions of the processor, meaning that they may process individuals' personal data on behalf of the processor.

Terms and Conditions: the present document.

Website: www.Instantdedicated.com.

2. Structure of the Agreement

- 2.1. These Terms and Conditions shall apply to all Orders, and to all requests and offers relating to the provision of the Services and the sale of Equipment by Supplier to Customer.
- 2.2. The description of the Services and/or the Equipment given in the Order is binding.
- 2.3. Save where expressly provided to the contrary, the terms and conditions of one Order shall not apply to any other Order.
- 2.4. The Order is prepared on the basis of information provided by the Customer. The Customer warrants that all information provided by the Customer is correct, complete and not misleading. This is a material obligation of the Customer and if the information provided by the Customer proves to be incorrect, incomplete or misleading, the Supplier has the right, notwithstanding any other right or remedy, to adjust the terms and/or prices set out in the Order and the terms of the Agreement accordingly.

2.5. Terms and conditions used by the Customer do not apply to the Agreement and the applicability thereof is rejected. The Supplier reserves the right to change or to supplement these Terms and Conditions at any time by notification to Customer.

2.6. In the event of inconsistency of provisions in the Agreement the following order of precedence applies:

- the Order;
- these Terms and Conditions;
- a Service Level Agreement;
- the Data Processing Agreement.
- the Privacy Statement

3. Provision of the Services

- 3.1. The Supplier shall provide the Services on a commercially reasonable efforts basis.
- 3.2. The Supplier has the right to subcontract performance of (parts of) the Services.
- 3.3. The Supplier does not accept any liability for services provided by third parties.
- 3.4. If applicable to the Services provided to the Customer, the Supplier shall provide the Customer with a user name and password to an administrative account and/or a management tool. The Customer must use the account and the tool to manage delivery and receipt of the Services, to create accounts for individual users and to set options and restrictions for these individual users of the Services. The Customer shall not disclose the login information of any of the accounts of Customer to any third party.
- 3.5. Any act or omission under the accounts managed by Customer will be regarded as taking place under the responsibility and at the risk of the Customer.
- 3.6. All delivery times specified by the Supplier are indicative estimates only.

4. Prices

- 4.1. Unless otherwise stated, all prices payable for the Services and Equipment as communicated by the Supplier are exclusive of turnover tax (VAT) and other levies. Taxes that must be withheld at source in the country where the Customer resides are for the account of the Customer. This means that the amount payable on the invoice is to be considered an amount after source taxes.
- 4.2. If the Customer exceeds any maximum that has been agreed with the Supplier as part of the Services, such as a maximum storage space or a maximum quantity of Data Traffic, the Supplier shall be entitled, unless otherwise agreed, to charge an increased amount starting from the

- moment the Customer exceeds such maximum consisting of 125% of the applicable fees.
- 4.3. The Customer acknowledges and agrees that, unless agreed otherwise, when Customer uses certain payment methods offered by the Supplier to the Customer, applicable gateway costs charged to the Supplier by such third party payment provider will be passed on by the Supplier to the Customer. These include but are not limited to additional costs charged by third party payment providers such as PayPal and credit card schemes.
 - 4.4. Where Supplier is required to perform additional Services outside of the scope as envisaged by the Order, the Customer shall reimburse all reasonable expenses as are properly incurred by Supplier in fulfilling these additional Services. Such expenses include, but are not limited to, travelling, subsistence, goods and services purchased on the Customer's behalf, communications, stationery, and report and presentation material. All such expenses shall be subject to the prior written approval of the Customer.
 - 4.5. All invoices sent to Customer by Supplier are payable in Euro, without any deduction or set-off for whatever reason, by Customer within 14 days of the invoice date unless otherwise agreed in writing. The Customer shall be automatically in default as soon as a payment term is exceeded. The Customer will not be entitled to withhold payment of any amounts payable to Supplier in terms of the Agreement to satisfy any claim of the Customer arising from this or any other agreement.
 - 4.6. In the event of late payment of an invoice payable by the Customer to the Supplier, the amount payable by the Customer will be increased with a rate equal to the Dutch statutory commercial interest rate (*wettelijke handelsvertragsrente*), which shall be calculated and due starting from the payment term and ending on the date on which effective payment is made.
 - 4.7. Supplier may increase the prices payable for the Services by Customer (i) by applying an annual indexation every year in accordance with the CPI Index "CBS Consumer Index for Households", and (ii) if Supplier's own costs for the acquisition of third party services or goods that are included in the Services increase, including but not limited to the costs of electricity. The Supplier shall notify the Customer of rate changes in advance.
 - 4.8. Where Supplier employs the services of attorneys or other debt-recovery agencies in respect of any outstanding amounts owing by the Customer then the Customer undertakes to pay on demand all legal costs incurred on the scale as between attorney and own client and including related costs such as collection, commission and tracing fees.
 - 4.9. Disputed invoices shall be reported by Customer to Supplier within fourteen (14) days of the invoice date subject to the forfeiture of rights.
5. **Refunds**
 - 5.1. Unless the Customer is in breach of the Agreement, has already generated Data Traffic or a Cancellation Fee is applicable, the Supplier shall refund to the Customer the full amount (100%) of payment by Customer for a provided Service if the Customer terminates the applicable Service within 24 hours of first receiving such Service and the Customer makes a written request for such refund.
 - 5.2. Unless otherwise agreed by the Parties, no refunds of prepaid fees shall be made to Customer in connection with any termination or expiration of (part of) the Agreement.
 6. **Sale of Equipment**
 - 6.1. Any Equipment sold by Supplier to Customer will be delivered on the delivery date and at the delivery location specified in the Order. Customer acknowledges that the delivery date is a target date.
 - 6.2. Delivery of the Equipment shall be completed on the delivery of the Equipment at the delivery location, after which the Equipment shall be for the risk of Customer. Title to the Equipment passes to Customer on the receipt by Supplier of payment of the corresponding invoice for such Equipment.
 - 6.3. The Customer shall notify the Supplier in writing within 7 days of the date of delivery of the Equipment of any complaints or issues, in the absence of which Customer shall be deemed to have accepted the Equipment and the Equipment shall be deemed in compliance with the requirements agreed on in the Order.
 - 6.4. If the Equipment shows a deficiency in respect of which a complaint or issue has been communicated in time in accordance with article 6.3, then the Supplier shall either replace the defective Equipment free of charge or refund the amount paid by the Customer in relation to the defective Equipment, at the sole discretion of the Supplier. This constitutes the sole remedy of Customer in case of defective Equipment. Article 7:17 of the Dutch Civil Code is excluded.
 7. **Hosting Services**

- 7.1. The Customer hereby grants the Supplier a license to distribute, save, forward and copy all of the materials distributed by the Customer using the systems of the Supplier as reasonably necessary or required for the fulfilment of the Agreement by the Supplier.
- 7.2. The Customer is aware and acknowledges that the Supplier is entitled to report material of the Customer if it suspects such material breaches any Applicable Law or the provisions in the Agreement. This includes but is not limited to information published without the consent of the copyright holder(s), information of a libellous, intimidating, offensive, racist, inflammatory or discriminatory nature, information containing child pornography, information that violates the privacy of third parties or results in any form of stalking, and also hyperlinks, torrents or other references to such information on sites of third parties anywhere in the world.
- 7.3. The Supplier shall employ a complaints procedure that allows third parties to submit a complaint regarding a breach by Customer of Applicable Law. If such a complaint is justified in the sole discretion of the Supplier, or in order to comply with an instruction to that effect from a competent authority, the Supplier is entitled to, notwithstanding any other rights, remove or block material of the Customer. The Customer is aware and acknowledges that the Supplier is entitled to provide personal details of the Customer and details of use of the Services by the Customer to a reporting party or the competent authorities.
- 7.4. If the Hosting Services include the provision of a back-up of Customer's data, in the event of any loss of or damage to Customer's data, the Supplier shall, as a sole remedy, restore Customer's data from the latest available back-up. If the Customer did not purchase a back-up as part of the Hosting Services, Customer's sole and exclusive remedy in the event of any loss or damage to Customer's data shall be that the Supplier shall use commercial reasonable efforts to restore the lost or damaged Customer data.
- 7.5. Notwithstanding the previous section, Customer is responsible for making regular back-ups of and retaining copies of Customer data for business, legal, compliance or any other reasons.
- 8. Intermediate Services**
 - 8.1. Customer understands and acknowledges that the application for, and other acts such as assignment, registration, licensing, renewal, transfer, modification, bundling or unbundling, and any use of a license, domain name and/or IP address, are dependent on and subject to the discretion and applicable rules and procedures of the registration authorities concerned, including but not limited to the SIDN and RIPE. The Customer shall comply with the rules of the applicable registration authorities.
 - 8.2. Customer acknowledges and agrees that the Intermediate Services provided by the Supplier do not entail any kind of warranty assurance that an application for or any other actions taken by the Supplier on request of the Customer in respect of a domain name and/or IP address will be successful.
 - 8.3. For evidence of registration of a domain name or IP address, the Customer may only rely on a letter of confirmation from the Supplier which states that the domain name or IP address requested has been registered. An invoice for registration fees does not constitute a confirmation of registration.
 - 8.4. If the Supplier registers a domain name in the Supplier's name on behalf of the Customer, if reasonably possible, the Supplier shall cooperate with requests of the Customer to assign, renew, transfer, modify, bundle or unbundle, transfer or cancel such domain name.
 - 8.5. The Customer is responsible for any use by or on behalf of the Customer of a license, domain name or IP address subject to the Intermediate Services, and shall indemnify the Supplier and its affiliates and hold the Supplier and its affiliates harmless from and against any claims and all Losses suffered or incurred by them arising out of or in relation to the use of a license, domain name or IP address by the Customer or any of its clients or end users in breach of Applicable Law.
 - 8.6. The Customer agrees to comply with all terms imposed by third party suppliers in its use of Intermediate Services including but not limited to software licenses, domain names, IP addresses including any such terms appended to the Agreement.
- 9. Managed Colocation Services**
 - 9.1. The Supplier reserves the right to relocate any Equipment and any other goods of the Customer from the Colocation Space from time to time and the Customer shall cooperate with such relocation. The Customer acknowledges that the Managed Colocation Services will be temporarily suspended during such relocation. The Supplier shall notify the Customer of such relocation as soon as possible. All costs of any relocation initiated by the Supplier will be completely covered by the Supplier. Relocation will be

- executed by the Supplier for and on behalf of the Customer, unless agreed otherwise in writing.
- 9.2. The Parties are of the view that the use or provision (as appropriate) of the Managed Colocation Service will not create a relationship of lessor/landlord and tenant between the Parties.
- 9.3. The Customer may not access the datacentre sites from which the Managed Colocation Services are provided without prior approval and supervision by the Supplier. If the Customer wishes to access its Equipment and other goods, the Customer may from time to time request the Supplier to accompany the Customer to the relevant datacentre site, and the Customer shall comply with and ensure that he is aware of any house rules, procedures and policies in effect from time to time at the relevant datacentre site, including but not limited to with regard to safety, security, and adherence to instructions of the datacentre.
- 9.4. Customer's Equipment shall at all times be at Customer's risk, unless damage to or destruction of the Equipment is caused by gross negligence or wilful misconduct of Supplier. The Customer is responsible at its own expense to insure and to keep insured Customer's Equipment and other goods in the Colocation Space against loss, theft, damage or destruction however arising.
- 10. Reselling**
- 10.1. In the case of Reselling, the Customer shall act in its own name, for its own account and for its own risk and the Customer is not entitled to conclude agreements for or on behalf of the Supplier, or to create the impression that the Customer is the agent or representative of the Supplier.
- 10.2. The Customer shall ensure that its Resell clients comply with the Agreement, and the Customer is responsible for the actions and omissions of its clients using the Resold Services as if these were the actions and omissions of the Customer.
- 10.3. The failure of clients of the Customer to pay or pay on time does not discharge the Customer from the Customer's payment obligations to the Supplier.
- 10.4. The Supplier shall not seek contact with clients of the Customer through the Customer, unless the Supplier has an urgent reason for approaching these clients directly or the Customer gives its consent for direct contact. (Impending) damage and nuisance for third parties as a result of the activities of clients of Customer is in any event an urgent reason and in such situation Customer will provide Supplier with contact information of their client upon first request.
- 10.5. The Customer is not entitled to use any trade name, brand name, logos or marks of the Supplier in promotional or commercial communication with a view to using the goodwill or good name of the Supplier for the canvassing of clients by the Customer. The Customer may however communicate in a business-like manner that it uses products and/or services of the Supplier.
- 10.6. The Customer is at all times fully liable for everything that the Customer's clients do, or fail to do, using the systems or networks of the Supplier or those of its suppliers.
- 10.7. The Customer is not permitted to Resell Supplier's Services, unless otherwise agreed between the Customer and the Supplier in writing.
- 11. Availability of the Service**
- 11.1. The Supplier shall use its commercially reasonable efforts to achieve uninterrupted availability of the Supplier's systems and networks and to provide access to data stored by the Supplier, but does not provide any warranties regarding availability.
- 11.2. In the event of unavailability of the Service due to faults, maintenance or other causes, the Supplier shall inform the Customer of the nature and the expected duration of the interruption.
- 11.3. If in the opinion of the Supplier continued provision of the Services puts the operation of the computer systems or the computer networks of the Supplier or of third parties at risk, in example (but not limited to) as a result of excessive sending of email or other data, poorly protected systems or activities of viruses, Trojan horses and similar harmful software, the Supplier is entitled to take all steps that the Supplier reasonably considers necessary to avert or prevent this risk, including but not limited to the suspension of the Services.
- 11.4. The Customer is responsible for the consequences of any failure to process data if any agreed maximum related to the Service has been exceeded.
- 12. Maintenance, relocation and support**
- 12.1. The Supplier reserves the right to temporary suspend the Services and/or Customer's right of access to its Equipment in the Colocation Spaces for the purposes of maintenance and/or relocation.
- 12.2. The Supplier shall use its commercial reasonable efforts to arrange for maintenance and/or

- relocation to take place in times of low traffic volume.
- 12.3. The Supplier shall use best endeavours to advise the Customer within a reasonable time of the time and expected duration of such suspension of Service due to maintenance and/or relocation.
- 12.4. Notwithstanding the above, Supplier may suspend the Services without notice should maintenance and/or relocation be necessary in an emergency.
- 12.5. Maintenance and support Services shall be billed, unless otherwise agreed, at the applicable hourly rate. The applicable hourly rate shall be published by the Supplier in advance. Support shall be charged by the hour, minimum purchase being one (1) hour unless otherwise agreed. In the case of requests for support where no specific response time is stated in the Agreement, the Supplier does not give any response time commitments.
- 13. Customer obligations**
- 13.1. With respect to software (sub)licensed or resold or otherwise given into use under the Agreement by the Supplier to the Customer, the Customer warrants that it shall comply with all provisions and compliance requirements, including but not limited to audits, of any end user license applicable to such software.
- 13.2. Customer warrants that it shall:
- use the Services in accordance with all Applicable Laws and regulations including OFAC and EEAS sanctioning regimes and in accordance with the reasonable instructions of the Supplier, and that it shall provide the Supplier with all information reasonably requested by the Supplier in regards to the use by the Customer of the Services in view of possible breaches of Applicable Law;
 - be responsible for the quality, completeness, accuracy, and legality of all data and information processed or provided by or on behalf of Customer to Supplier or via or in connection with Services;
 - be responsible for all non-Supplier hardware and software used by it in combination with the Services; and
 - use best efforts to prevent unauthorized access to or use of any elements of the Services by any person or entity, and notify the Supplier promptly after becoming aware of any such unauthorized access or use.
- 14. Intellectual Property**
- 14.1. Except as expressly provided, nothing in the Agreement shall transfer, assign, license or otherwise grant any Party any right or interest in the other Party's Intellectual Property rights.
- 14.2. As part of the provision of the Services, the Customer may be provided with (access to) software or products owned by third parties subject to a permission of usages (such as a licence) from such third parties. The Customer agrees to comply with all licence/usage terms imposed by such third parties in its use of such software, including any such licence terms appended to the Agreement.
- 15. Liability and indemnity**
- 15.1. No Party shall be liable, whether for negligence, breach of contract, tort, misrepresentation or otherwise, for any indirect or consequential Losses, for any exemplary, special or punitive damages, for any loss of profits, goodwill, production, revenue or business opportunity, or for any missed or anticipated savings, arising under or in connection with the Agreement, including but not limited to Losses as a consequence of: (i) suspension of Services by the Supplier, (ii) delay or failure to deliver the Equipment, or failure to deliver the requested quantities, (iii) removal or blocking of Customer's material in accordance with section 7.2 or 11.3, or (iv) inability to process data if an agreed maximum storage space or Data Traffic limit has been reached.
- 15.2. The Customer understands and agrees that the Supplier is obliged to follow all instructions of governmental authorities and competent courts in regard to the Services and Customer's material and Equipment, and that Supplier shall not be liable for any Losses incurred by Customer as a result of the Supplier following such instructions.
- 15.3. The total cumulative liability of the Supplier for any Losses incurred by Customer or any of its affiliates under or in connection with the Agreement, whether for negligence, breach of contract, tort, misrepresentation or otherwise, shall, in relation to all events occurring in a given calendar year, be limited to an amount equal to one time the aggregate fees invoiced to and paid by Customer under the Agreement in that calendar year.
- 15.4. The exclusions and limitations of liability in this section 15 shall not apply to liability arising out of or in relation to a Party's (or its directors or employees) wilful intent (*opzet*), fraud (*bedrog*) or gross negligence (*bewuste roekeloosheid*).
- 15.5. The Customer shall indemnify the Supplier and its affiliates and hold the Supplier and its affiliates harmless from and against any claims and all Losses suffered or incurred by them

arising out of or in relation to (i) any breach by the Customer of Applicable Law or its obligations under the Agreement, (ii) any material stored or transmitted by or on behalf of the Customer through the Services, and (iii) any claims of whatever nature by Customer's end users or clients, including but not limited to clients to which it Resells Services.

16. Force majeure

- 16.1. If a Party is prevented from or delayed in performing any of its obligations under the Agreement by a force majeure event then its obligations under the Agreement shall be suspended for as long as the force majeure event continues.
- 16.2. In the context of the Agreement, a force majeure event means any event or cause beyond the control of the impacted Party within the meaning of Section 6:75 of the Dutch Civil Code, including but not limited to faults or failure of the internet or the telecommunications infrastructure, network attacks, DoS and DDoS attacks, unavailability of or faults in software, networks or hardware provided by third parties, power failures, internal civil commotion, mobilisation, war, obstruction in transport, strike, lockout, business disruptions, network outages, delay in supply, fire, flood, import and export impediments, and non-performance or late performance of suppliers of the Supplier.

17. Suspension

- 17.1. The Supplier shall be entitled to immediately suspend the provision of any of the Services and/or to suspend Customer's right to access or use its account and/or to suspend Customer's right of access to its Equipment in a Colocation Space, on giving written notice to Customer, in events such as:
- Customer uses the Services in breach of the Agreement or any Applicable Law;
 - Supplier receives an order or ruling or decision to that effect from a court, any law enforcement authority or any (other) governmental authority;
 - If the Customer has provided false or misleading information with regards to the Customer's identity or the identity of its representative(s) and/or with regards to the nature and/or purpose of the activities performed by the Customer for which the Service of the Supplier is used.
 - if the Customer is in default (*verzuim*);
 - if the continued provision of Services may subject the Supplier to incur liability vis-à-vis

third parties, e.g. when the Supplier receives a complaint from a third party regarding a breach by Customer of Applicable Law;

- if in the opinion of the Supplier the operation of the computer systems or the network of the Supplier or third parties and/or of the Services using a network is at risk as set out in section 11.3.

18. Term and termination

- 18.1. The term of the Agreement commences on the effective date as specified in the Agreement and has full effect during the contract term. Unless otherwise agreed, the Agreement shall constantly be automatically renewed for additional equal periods, unless either Party notifies the other in writing that it does not agree to renewal of (part of) the Agreement.
- 18.2. A Party shall be entitled to terminate the Agreement, with immediate effect or with effect from a later date at that Party's discretion, in the following events:
- if an insolvency event has occurred with respect to the other Party;
 - the other Party's business has been discontinued;
 - the other Party is in default (*verzuim*).
- 18.3. The Supplier shall be entitled to terminate the Agreement, with immediate effect or with effect from a later date at the Supplier's discretion, if (i) the Customer is in breach of any warranty obligation, and (ii) the Supplier receives notification that its agreement with the datacentre that provides the Colocation Space, or any other facilities or equipment on which the provision of the Services by Supplier to Customer depends, is terminated and the Supplier will, for any reason, not be able to arrange for alternative and suitable facilities or equipment, such to be determined at Supplier's sole discretion.
- 18.4. Rescission (*ontbinding*) of the Agreement does not oblige the Parties to undo past performance thereof.

19. Consequences of termination

- 19.1. On expiry or termination of the Agreement or part thereof for whatever reason, the Supplier is entitled immediately to delete all stored data on Suppliers Equipment and to close all accounts of the Customer and its end users and clients related to such terminated or expired part of the Agreement. It is the Customer's responsibility to migrate any Customer data to the systems of the Customer before the date of expiry or termination.

- 19.2. If applicable, Customer shall timely request Supplier to remove or, after prior written consent of and while supervised by Supplier, the Customer shall remove all of its Equipment and other goods from the datacentre and shall return the Colocation Space to the Supplier in the same condition it was in prior to Customer's use thereof, for which Customer shall reimburse Supplier on a time and materials basis. If Customer does not timely ensure the removal of the Equipment and other goods in the Colocation Space, the Supplier may - at Customer's expense - remove and store the Equipment or goods, or dispose of such equipment or goods without liability for any related Losses.
- 19.3. The Supplier will have the right to retain any Equipment or other goods of the Customer in the Colocation Space until it has received payment in full of all sums due and payable by Customer to the Supplier. If the Supplier has not received such sums within ninety (90) days after termination or expiration, the Supplier shall be entitled to sell any Equipment or other goods of the Customer as necessary to recoup all sums payable at such price as the Supplier is able to obtain in the open market.
- 19.4. On expiry or termination of the Agreement the Customer shall ensure that all domains which have been registered through the Supplier have been transferred to another registrar. If Customer has not transferred the domains to another registrar ultimately within fourteen (14) days of the date of expiration or termination, the Supplier shall immediately be entitled to deregister or cancel the registration of such (internet) domains without liability.
- 19.5. Notwithstanding the termination of the Agreement, all rights and obligations of the Parties, which by their nature survive the termination of the Agreement shall survive such termination.
- 20. Data Protection**
- 20.1. The Supplier may use and otherwise process data collected and processed on behalf of Customer in accordance with Customer's documented instructions, as a Data Processor, Data Controller or Sub-Processor.
- 20.2. The Data Processing Agreement applies if the Supplier processes Personal Data on behalf of Customer as a Data Processor as defined in the GDPR.
- 20.3. The Data Processing Agreement, if applicable, is a part of the Agreement and the Customer agrees with the content therein.
- 20.4. The Customer has taken notice of the contents of the Privacy Statement and agrees to the content therein.
- 21. Confidentiality**
- 21.1. The Parties shall treat information that they provide each other before, during or after the execution of the Agreement confidentially if this information is marked confidential and when the receiving Party knows or must reasonably assume that the information is of a confidential nature. The Agreement and all information related to the provision of the Services by the Supplier is of a confidential nature. The receiving Party shall not disclose confidential information to any third party without prior consent of the disclosing Party. The receiving Party shall ensure and procure its employees, contractors and other related staff to comply with this section.
- 21.2. The previous section does not prevent a Party from disclosing information that: (i) was already in its possession without an obligation of confidentiality at the time of disclosure, (ii) was already in the public domain at the time of disclosure, or (iii) is required to be disclosed by applicable law.
- 21.3. The Supplier shall not examine data that the Customer stores and/or distributes using the systems of the Supplier, unless this is necessary for proper performance of the Agreement, reasonably required in the context of the complaints procedure referred in section 7.3 or the Supplier is obliged to do so pursuant to a legal provision or court order. The Supplier shall make reasonable effort to limit the examination of the data as far as possible.
- 22. Final provisions**
- 22.1. The Customer shall immediately notify the Supplier in writing of any changes of name, postal address, email address, telephone number, bank account number and any other relevant Customer information.
- 22.2. The version of any communication, measurements (such as but not limited to Data Traffic) and monitoring recorded by the Supplier or received or stored by the Supplier shall be considered complete and correct, subject to evidence to the contrary to be provided by the Customer.
- 22.3. Supplier and/or third parties related to provision of the Services may be obliged to comply with certain statutory provisions. The forementioned compliance with certain statutory provisions may include steps, which would otherwise constitute infringements of the Customer's privacy, such as

- the interception of the Customer's communications or the examination of data. The Customer agrees that no action shall lie against Supplier for any damages howsoever arising because of such steps, and the Customer further indemnifies and holds harmless Supplier in respect of any action brought by a third party resulting from such steps in relation to the Customer's Equipment.
- 22.4. Customer waives its right to set off (*verrekenen*) any amounts due by it under the Agreement, or to suspend (*opschorten*) its performance under the Agreement.
- 22.5. All headings are for reference purposes only and do not affect the interpretation of these Terms and Conditions.
- 22.6. The Supplier may, upon written notice to Customer, transfer and assign the Agreement or any or all of its rights and obligations arising out of the Agreement to any third party. Upon such an assignment, the Supplier shall have no further obligations under the Agreement with respect to the rights and obligations so assigned.
- 22.7. Customer is not permitted to assign or transfer any of its rights or obligations under the Agreement to any third party without the prior written consent of the Supplier. Any attempted assignment in violation of this section 22.7 shall be void and have no legal effect.
- 22.8. Except as expressly provided in the Agreement, only a Party or a Party's permitted assignees or successors may enforce the terms of the Agreement. To the extent that any third party stipulation (*derdenbeding*) is contained in the Agreement, Article 6:254 of the Dutch Civil Code is excluded.
- 22.9. The Agreement is exclusively subject to Dutch law. The provisions of the United Convention on Contracts for the International Sale of Goods are excluded.
- 22.10. All disputes arising from the Agreement shall be submitted to the district court of Rotterdam, the Netherlands.