

## Terms of Service

NForce Entertainment B.V. (referred to as NE) agrees to furnish services to the CUSTOMER, subject to the following TOS (Terms of Service). Use of NE Service constitutes acceptance and agreement to NE AUP (Acceptable Use Policy), NE TOS (Terms of Services) and its annexes, as well as all other policies that apply to the specific services.

All provisions are subject to the AUP, TOS and its annexes, and all other policies of NE. These may be changed from time to time at the discretion of the Company. CUSTOMER understands that changes by NE shall not be grounds for early contract termination or non-payment. This agreement shall be construed in all respects in accordance with the laws of The Netherlands.

1. Offer and Agreement
  - 1.1. These General Terms and Conditions shall apply to all offers, legal relationships and Agreements under which NE provides goods and/or services of whatever nature to CUSTOMER. Deviations from and additions to these General Terms and Conditions shall only be valid if they have been expressly agreed in writing.
  - 1.2. All offers and other statements by NE shall be without obligation, unless NE expressly indicates otherwise in writing. CUSTOMER warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data on which NE bases its offer and which have been stated by or on behalf of CUSTOMER to NE.
  - 1.3. The application of CUSTOMER's purchasing or other terms and conditions is expressly ejected.
  - 1.4. If any provision of these General Terms and Conditions is null and void or annulled, the other provisions of these General Terms and Conditions shall remain in full force.
  - 1.5. NE may always state additional requirements concerning communication between the Parties or performance of legal acts by e-mail.
  
2. Payment for services
  - 2.1. Establishment of this service is dependent upon receipt by NE of payment of stated charges. Subsequent payments are due on the date that is mentioned on the invoice for that service.
  - 2.2. All accounts and services provided by NE are subject to the current tax rate as imposed by The Netherlands which is currently 21% (as of the 1st of October 2012).
  - 2.3. CUSTOMER reserves the right to dispute in good faith all or any portion of any invoice received from NE and to withhold payment of such disputed amounts, provided that CUSTOMER provides written notice of the amount of and reasons for the dispute at the time payment is withheld. NE must receive written notice of any dispute from CUSTOMER within fourteen (14) days after the date of the relevant invoice; otherwise, CUSTOMER shall be deemed to have waived its right to dispute such invoice. In the event of a dispute, CUSTOMER shall pay the undisputed portion of the invoiced charges. Notwithstanding anything in the agreement or any to the contrary, CUSTOMER failure to pay any charges due as a result of an unresolved dispute shall not be deemed a breach of either the Agreement.
  - 2.4. Any amount not paid by CUSTOMER within fourteen (14) days after the date of the relevant invoice, absent any good faith dispute regarding the unpaid portion, will be subject to a late charge in the amount of one and two percent (2,0%) per month or the maximum amount allowable by law, whichever is less. Such interest shall accrue from the day after the date on which payment is due up to and including the date on which NE receives payment. This interest charge shall be payable notwithstanding any and all damages which NE may otherwise claim in respect of CUSTOMER failure to make payment when due. CUSTOMER agrees to pay NE reasonable expenses, including attorney and collection agency fees, incurred by NE in enforcing its rights under the Agreement and the attached Annexes.
  - 2.5. Unless otherwise agreed by NE and CUSTOMER, CUSTOMER is solely responsible for the payment of any local access or other telecommunications charges related to or arising out of CUSTOMER connection to and use of NE network and services. CUSTOMER is responsible for paying any fees, obtaining any required approvals and complying with any laws or usage policies applicable to transmitting data beyond the Network and/or through other public and private networks. NE is not responsible or liable for performance or non-performance of such networks or their inter-connection points.
  - 2.6. Credit cards that are declined for any reason are subject to a €1.00 declination fee. Service will be interrupted on accounts that reach their invoice due date. Service interrupted for nonpayment is subject to a €100 reconnect charge, if requested within 24 hours of termination. Accounts that are not collectable by NE may be turned over to an outside collection agency for collection. If your account is turned over for collection, you agree to pay the company a "Processing and Collection"

Fee of not less than €50 nor more than €150. If you desire to cancel your account, please follow the proper procedure to do this as outlined in this TOS.

3. Refund and disputes
  - 3.1. All payments to NE are nonrefundable. This includes the one time setup fee and subsequent charges regardless of usage. All overcharges or billing disputes must be reported within 60 days of the time the dispute occurred. If you dispute a charge to your credit card issuer that, in NE sole discretion is a valid charge under the provisions of the TOS and/or AUP, you agree to pay NE an "Administrative Fee" of not less than €50 and not more than €150.
  
4. Service rates
  - 4.1. CUSTOMER acknowledges that the nature of the service furnished and the initial rates and charges have been communicated to CUSTOMER. CUSTOMER is aware that NE may prospectively change the specified rates and charges from time to time. The promotional offer is contingent upon NE achieving and maintaining its cost of service goals including but not limited to rates charged to company by its suppliers.
  - 4.2. If CUSTOMER notices the product is offered for a lower pricing on the website of NE, CUSTOMER may contact NE to request a price update.
    - CUSTOMER may change maximum once every 3 months.
    - A one-time administrative change fee of 25 euro applies.
    - Is only valid when no contract is currently active.
  - 4.3. CUSTOMER may request an upgrade of CUSTOMER services at any time. CUSTOMER will be charged from the day the upgrade has been completed.
  
5. Suspension of service or cancellation
  - 5.1. NE reserves the right to suspend network access to CUSTOMER if in the judgment of the NE network administrators the customer service is the source or target of the violation of any of the other terms of the AUP or for any other reason which NE chooses. If inappropriate activity is detected, all accounts of the customer in question will be deactivated until an investigation is complete. Prior notification to the customer is not assured. In extreme cases, law enforcement will be contacted regarding the activity. CUSTOMER will not be credited for the time services were suspended.
  - 5.2. NE reserves the right to amend its policies at any time. All Sub-Networks, resellers and customers of NE must adhere to the policies. Failure to follow any term or condition will be grounds for immediate cancellation. You will be held responsible for the actions of your clients in the matter described on these terms and conditions. Therefore, it is in your best interest to implement a similar or stricter terms and conditions or otherwise called acceptable terms of Use Policy.
  
6. Termination
  - 6.1. In the event that (a) CUSTOMER fails to pay any undisputed sum of money within seven (7) days after its receipt of notice of nonpayment from NE; (b) CUSTOMER fails to perform any of its obligations under the Agreement, provided such failure is not remedied within fourteen (14) days after CUSTOMER receipt of notice from NE; (c) CUSTOMER makes any general assignment for the benefit of creditors; (d) the filing by or against CUSTOMER of a petition to have CUSTOMER adjudged a bankrupt, unless, in the case of a filing against CUSTOMER, such filing is vacated, stayed or dismissed within thirty (30) days after filing; or (e) the appointment of a trustee or receiver to take possession of all or substantially all of CUSTOMER assets, provided that such appointment is not vacated or discharged within thirty (30) days, NE may terminate the Agreement by written notice to CUSTOMER.
  - 6.2. No termination or expiration of the Agreement shall affect either party's rights or obligations with respect to any at that time existing defaults under the Agreement or such Annex or the obligation to make any payment for Services rendered prior to the date of termination or expiration.
  - 6.3. Upon expiration or termination of this Agreement all of CUSTOMER payment obligations under this Agreement will become due in full immediately and within ten (10) days, CUSTOMER will remove all of CUSTOMER Equipment and any other property from NE's premises and return the Co-

location space to NE in the same condition as it was prior to CUSTOMER installation. If CUSTOMER does not remove such property within the ten (10) day period, NE, at its option and at CUSTOMER expense, may remove and store any and all such property, return such equipment to the CUSTOMER, or dispose of such equipment without liability for any related damages. In addition, NE reserves the right to hold any CUSTOMER equipment until it has received payment in full. NE reserves the right to sell any CUSTOMER Equipment in case CUSTOMER does not pay the invoice within two (2) months after the invoice date.

- 6.4. If NE terminates the Agreement during the initial or renewed term, CUSTOMER shall pay to NE, as liquidated damages and not as a penalty, an amount equal to the sum of (a) one hundred percent (100%) of the total amount of services fees that would have become due during the period from the effective termination date to the expiration date of the initial or renewed term, and (b) the amount of any services fee discounts granted to CUSTOMER by NE in consideration of the length of the Initial Term ("Termination Charge"). CUSTOMER shall pay the termination charge to NE within five (5) business days of the termination date. CUSTOMER payment of the termination charge shall not prevent or limit NE from pursuing any and all other available remedies against CUSTOMER.
- 6.5. NE may temporarily deny service or terminate this agreement upon the failure of CUSTOMER to pay charges when due. Such termination or denial will not relieve subscriber of responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees.
- 6.6. CUSTOMER acknowledges that the service provided is of such a nature that service can be interrupted for many reasons other than the negligence of the NE and that damages resulting from any interruption of service are difficult to ascertain. Therefore, CUSTOMER agrees that NE shall not be liable for any damages arising from such causes beyond the direct and exclusive control of NE. CUSTOMER further acknowledges that NE liability for its own negligence may not in any event exceed an amount equivalent to charges payable by CUSTOMER for services during the period damages occurred. In no event shall the NE be liable for any special or consequential damages, loss or injury.

#### 7. Service cancellation

- 7.1. Requests for canceling services must be made in writing or email and received by NE before the renewal date. Authorized accepted resellers may do this on the renewal date. These requests have to be sent to [administration@nforce.com](mailto:administration@nforce.com).
- 7.2. NE reserves right to cancel customers rights under this contract at anytime without further obligation.

#### 8. Disclosure to law enforcement

- 8.1. The AUP specifically prohibits the use of our service for illegal activities. Therefore, CUSTOMER agrees that NE may disclose any and all subscriber information including assigned IP numbers, account history, account use, etc. to any law enforcement agent who makes a written request without further consent or notification to the subscriber. In addition NE shall have the right to terminate all service set forth in this agreement.

#### 9. Sanction statement

- 9.1. NE has taken measurements to comply with the applicable anti-money laundering and anti-terrorism laws, rules and regulations in the jurisdiction in which it operates. This includes the sanctions introduced by the European Union (EU) and, if applicable, the programs managed by the Office of Foreign Assets Control (OFAC, part of the U.S. Treasury Department) and the local sanction laws in force.
- 9.2. Besides external sanction laws and regulations, there are additional regulations in place of a number of sanctioned countries. Specific customer orders and transactions (including payments) are not authorised under these regulations. These sanctioned countries are subject to far-reaching EU and/or OFAC sactions regimes. Countries currently subject to additional regulations include Cuba, Iran, Myanmar, North Korea, Sudan, South-Sudan and Syria.
- 9.3. Sanctions are subject to change; the most of up date information on sanctions is available on the website of the Dutch government (Rijksoverheid) and the OFAC.

10. Performance

- 10.1. NE shall, to the best of its ability, do its utmost to perform the services with due care and, where appropriate, in accordance with the agreements and procedures recorded in writing with the Customer. All of NE services shall be performed on the basis of a best efforts obligation, unless and insofar as NE has expressly promised a result in the written Agreement and the result concerned has also been described with sufficient definiteness. Any agreements concerning a service level must always be expressly agreed in writing.
- 10.2. If it has been agreed that the services shall be provided in stages, NE shall be entitled to postpone the start of the services, which are part of a stage, until CUSTOMER has approved the results of the preceding stage in writing.
- 10.3. In performing the services, NE shall only be obliged to follow timely and sensible instructions of CUSTOMER if this has been expressly agreed in writing. NE shall not be required to follow instructions which change or supplement the substance or scope of the agreed services; if such instructions are followed, however, the work in question shall be compensated pursuant to Section
- 10.4. If a particular person has entered into a services agreement with a view to performance, the Supplier shall always be entitled to replace this person after consultation with CUSTOMER with one or more other persons with the same qualifications.
- 10.5. In the absence of an expressly agreed invoicing schedule, all amounts relating to services provided by NE shall be owed once every calendar month in advance.

11. Equipment

- 11.1. CUSTOMER Equipment is defined as all the Equipment, including hardware, software, applications, scripting, data(bases) and wiring, that is placed in the Rackspace for CUSTOMER (the "Equipment"). CUSTOMER can use the Rackspace by placing Equipment that is property of CUSTOMER (the "Co-located equipment") or Equipment that is property of NE (the "Dedicated equipment").
- 11.2. NE can lease and/or sell Equipment to CUSTOMER. Lease will be based on an Operational Lease; the Equipment will remain NE's property. In case NE sells the Equipment to CUSTOMER, the Equipment will remain NE's property until the applicable invoice for that Equipment has been fully paid for.
- 11.3. Co-located equipment, including all backup media and third-party data/licenses placed on the equipment, shall remain the property of CUSTOMER.
- 11.4. Any malfunction to Equipment being leased by NE to CUSTOMER is covered by NE warranty. NE will replace the malfunctioning hardware; NE cannot guarantee the replacement time.
- 11.5. Any malfunction to Equipment being sold by NE to CUSTOMER is covered by NE limited hardware warranty as defined in this Chapter. NE will replace the malfunctioning hardware at no cost if the malfunction occurs within the warranty period. NE cannot guarantee the replacement time. In case the replacement part cannot be supplied anymore due to shortage and/or end-of-sale, NE shall provide a substitute.
- 11.6. CUSTOMER is responsible for the maintenance and support of CUSTOMER Equipment.
- 11.7. Equipment shall be rack-mountable, meet industry standards and comply with any applicable safety and other legislation and regulations.

12. Damage

- 12.1. CUSTOMER shall be responsible to reimburse NE for the costs of any damage or destruction caused by CUSTOMER, its employees, agents, contractors, or invitees to the Equipment that is not CUSTOMER property. CUSTOMER shall reimburse all such amounts to NE within five (5) business days of receipt of an invoice for such charges from NE. Notwithstanding the foregoing, CUSTOMER shall not be responsible for reasonable wear and tear to the Equipment.
- 12.2. CUSTOMER shall immediately report any damage or destruction to Equipment that is not CUSTOMER property to NE.
- 12.3. NE shall not be liable to CUSTOMER for damage or destruction to CUSTOMER's Equipment unless such damage or destruction is caused by the gross negligence or willful misconduct of NE, its employees, contractors, or invitees.
- 12.4. Any damage or destruction caused by CUSTOMER, its employees, contractors, or invitees to the Equipment that is CUSTOMER property will not be covered by NE's limited hardware warranty. Notwithstanding the foregoing, breakdown due to reasonable wear and tear to the Equipment shall be covered by NE's limited hardware warranty.

13. Modification and additional work

- 13.1. If, at the request of or with prior consent from CUSTOMER, NE has performed work or rendered other performance that goes beyond the substance or scope of the agreed services, CUSTOMER shall pay for that work or performance. Expanding or modifying a system analysis, a design or specifications shall also constitute additional work. The supplier shall never be obliged to satisfy such a request, and it may require that a separate written agreement be concluded.
- 13.2. CUSTOMER accepts that work or performance may affect the agreed or expected time of completion of the services and the mutual responsibilities of CUSTOMER and NE. The fact that additional work (or the demand for it) arises during execution of the Agreement shall never be a ground for CUSTOMER to rescind or terminate the Agreement.
- 13.3. Insofar as a set price has been agreed for the services, NE shall, upon request, inform CUSTOMER in writing in advance about the financial consequences of the extra work or performance.

14. Confidentiality

- 14.1. CUSTOMER and NE hereby agree that if either party provides confidential information to the other party ("Confidential Information"), such Confidential Information shall be held in confidence by the receiving party for no less than one (1) year after the date of its disclosure, and shall be afforded the same care and protection afforded to the receiving party's own confidential information (which in any case shall be not less than reasonable care) to avoid disclosure to or unauthorized use by any third party. The terms and conditions of the Agreement constitute Confidential Information, and all information, including, without limitation, technical, financial, business, marketing, sales, employee, rate, traffic routing, and traffic flow information disclosed by either party to the other in connection with the Agreement shall be Confidential Information.
- 14.2. All data provided by NE to CUSTOMER regarding the performance of NE Network shall also be Confidential Information. Confidential Information shall remain the property of the disclosing party, shall be used by the receiving party only for the intended purpose, and, if in writing, shall be returned to the disclosing party or destroyed after the receiving party's need for it has expired or upon the request of the disclosing party. Confidential Information shall not be reproduced except to the extent necessary to accomplish the purpose for which it was disclosed.
- 14.3. Section 1 above shall not apply to any Confidential Information which (a) becomes publicly available other than through the recipient, (b) is independently developed by the receiving party; (c) becomes available to the receiving party without restriction from a third party; (d) is disclosed with the prior written consent of the disclosing party; or (e) is required to be disclosed by a governmental or judicial law, order, rule or regulation; provided, however, that the receiving party required to make a disclosure pursuant to this subsection (e) shall promptly inform the other party of the requirements of such disclosure.
- 14.4. Notwithstanding section 1 and 2 above, either party may disclose Confidential Information to its employees, agents, and legal, financial, and accounting advisors to the extent necessary or appropriate in connection with the negotiation and performance of the Agreement or its obtaining of financing, provided, however, that each such employee, agent or advisor is notified of the confidential nature of the Confidential Information and is subject to or agrees to be bound by similar restrictions on its use and disclosure.

15. Intellectual Property; Restrictions on Advertising

- 15.1. The parties agree that all patents, trademarks, copyrights, trade secrets, registered designs, service marks, trade names, logos, inventions and all other intellectual property shall remain the property of the person or party originating the same and that nothing in the Agreement grants either party any ownership, license, or any other right, either express or implied, in the intellectual property of the other.
- 15.2. Neither party shall use any advertising, sales, promotions, or other publicity materials (including, without limitation, publicity regarding the Agreement) that use the other party's name, logo, trademarks or service marks without the prior written approval of the other party, which may be granted or withheld in that party's sole discretion.

16. Cooperation by CUSTOMER



- 16.1. CUSTOMER shall always furnish the NE in a timely manner with all data or information which is useful and necessary to execute the Agreement properly and provide full cooperation, including furnishing access to its buildings. If CUSTOMER utilizes its own employees in cooperating in the execution of the Agreement, these employees shall possess the necessary know-how, experience, abilities and characteristics.
  - 16.2. CUSTOMER shall bear the risk of selecting, using and applying in its organization the equipment, software, websites, databases and other products and materials and the services to be provided by the NE, and shall also be responsible for the monitoring and security procedures and proper system management.
  - 16.3. If CUSTOMER furnishes software, websites, materials, databases or data to the NE on a data carrier, this carrier shall meet the specifications prescribed by the NE.
  - 16.4. If CUSTOMER does not provide the NE with the data, equipment, software or employees necessary to execute the Agreement, or does not provide this in a timely manner or in accordance with the agreements made, or if CUSTOMER otherwise does not fulfill its obligations, NE shall be entitled to suspend execution of the Agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to NE right to exercise any other legal right.
  - 16.5. In the event that employees of CUSTOMER perform work on-site at NE, NE shall provide the facilities reasonably desired by those employees free of charge, such as a working space with computer and telecommunications facilities. The working space and facilities shall comply with all applicable statutory and other requirements and provisions concerning working conditions.
  - 16.6. CUSTOMER shall indemnify NE against claims by third parties, including the NE employees, who, in executing the Agreement, suffer injury which is the result of acts or omissions by CUSTOMER or of unsafe situations in its organization.
  - 16.7. If telecommunications facilities are used in executing the Agreement, NE shall be entitled to assign access or identification codes to CUSTOMER. NE may change the assigned access or identification codes. CUSTOMER shall treat the access codes as confidential and with due care and shall only disclose them to authorized employees. NE shall never be liable for damage or expenses resulting from misuse of access or identification codes.
  - 16.8. CUSTOMER will comply with the obligations as set forth in the AUP and TOS which is published on the website of NE at [www.nforce.com](http://www.nforce.com).
  - 16.9. CUSTOMER will keep in full force and effect during the term of the Agreement appropriate levels of insurance.
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17. Delivery periods
    - 17.1. NE shall use commercially reasonable efforts to ensure that the Services will be ready for CUSTOMER use on a date to be agreed upon by NE and CUSTOMER (the "RFS Date"). If NE determines that the Services will not be ready for CUSTOMER use on the RFS Date, NE shall give notice of the expected duration of such delay prior to the RFS Date. NE notice of delay shall state a new RFS Date. CUSTOMER acknowledges that the RFS Date is a target date, and that NE shall not be liable to CUSTOMER for any loss, damage, cost or expense to CUSTOMER arising out of any delay in the RFS Date.
    - 17.2. The actual RFS date is the date on which NE enables CUSTOMER to use the Services that NE provided to CUSTOMER. CUSTOMER accepts the actual RFS date by using the Services. CUSTOMER shall notify NE within two (2) days of the actual RFS date if the Services are not according this agreement.
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18. Licenses, use of service
    - 18.1. CUSTOMER warrants and represents that it has obtained all of the necessary licenses, permits, and authorizations to use and/or resell the Services (the "Licenses"), and shall maintain the Licenses throughout the term of the Agreement. In the event that CUSTOMER fails to maintain any of the Licenses, NE may terminate the Agreement upon written notice to CUSTOMER.
    - 18.2. CUSTOMER shall not use the Services for any improper or unlawful purpose, nor permit any third party to do so. CUSTOMER will cooperate in any investigation of CUSTOMER alleged illegal use of NE facilities or other networks accessed through NE. If CUSTOMER fails to cooperate with any such investigation, NE may suspend CUSTOMER's Service. Additionally, NE may modify or suspend CUSTOMER Service in the event of illegal use of the Network or as necessary to comply with any law or regulation.

- 18.3. CUSTOMER will at all times comply with and conform its use of the Service to the NE AUP and NE Anti-SPAM Policy (set forth at NE's website), as updated from time to time.
- 18.4. NE may update the NE AUP and/or NE Anti-SPAM Policy from time to time by posting such updates on NE's website. References herein to the NE AUP and/or NE Anti-SPAM Policy shall mean the most updated version of such policies or procedures posted on the website of NE.
- 18.5. CUSTOMER acknowledges that NE exercises no control over and accepts no responsibility for the content of information and communications, in whatever form, transmitted by CUSTOMER over NE Network.
- 18.6. CUSTOMER use of any information obtained via the network is at CUSTOMER own risk. NE specifically denies any responsibility for the accuracy or quality of information obtained through its services.
- 18.7. In the event of any breach of NE policies by CUSTOMER, in addition to any other remedies available to NE, NE shall have the right to suspend the applicable Services without prior notice to CUSTOMER; provided that NE notifies CUSTOMER of the suspension and its justification therefore as soon as practicable after the commencement of the suspension. Such notice shall also serve as notice of breach of the Agreement, and NE may continue the suspension until (a) CUSTOMER cures the breach, or (b) NE terminates the Agreement. CUSTOMER hereby indemnifies and holds NE harmless against any loss, claim, fine, damage, cost or expense caused by CUSTOMER breach.
- 18.8. CUSTOMER non-adherence to the Agreement and/or any NE policy might require a direct action by NE in order to minimize the damage. NE shall charge CUSTOMER for these actions.
19. Support boundaries
- 19.1. NE provides 24 x 7 emergency and normal workday support based on the CE(S)T time zone to our subscribers. The following is our guidelines when providing support: NE provides support related to your server or virtual site physical functioning. NE does not offer tech support for application specific issues such as cgi programming, html or any other such issue. NE does not provide technical support for YOUR customers.
20. Indemnification
- 20.1. NE wishes to emphasize that in agreeing to the NE Acceptable Use Policy (AUP) and Terms of Service (ToS), customer indemnifies NE for any violation of the Acceptable Use Policy (AUP) and Terms of Service (ToS) that results in loss to NE or the bringing of any claim against NE by any third-party. This means that if NE is sued because of a direct or indirect customer activity, the customer will pay any damages awarded against NE, plus all costs and attorney's fees.
- 20.2. NE takes no responsibility for any material input by others and not posted to the NE Network by NE. NE is not responsible for the content of any other websites linked to the NE Network; links are provided as Internet navigation tools only. NE disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person or party's violation of this policy.
- 20.3. NE is not responsible for any damages your business may suffer. NE does not make implied or written warranties for any of our services. NE denies any warranty or merchantability for a specific purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by NE.
- 20.4. NE total liability for imputably failing to perform the Agreement shall be limited to compensating direct damage, up to at most the amount of the price (exclusive of VAT) stipulated for that Agreement. If the Agreement is primarily a continuing performance agreement with a term exceeding one year, the price stipulated for the Agreement shall be set at the total of the fees (exclusive of VAT) stipulated for one year. The total compensation for direct damage shall not, however, in any case exceed EUR 500,000 (five hundred thousand euros). "Direct damage" shall solely mean:
- a. reasonable expenses which CUSTOMER would have to incur to make NE performance conform to the Agreement; this alternative damage shall not be compensated, however, if the Agreement is rescinded by or at the suit of CUSTOMER;
  - b. reasonable expenses which CUSTOMER has incurred out of necessity to keep its old system or systems and related faculties operating longer because NE did not provide delivery on a firm delivery date which was binding for it, minus any savings resulting from the delay in delivery;
  - c. reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these General Terms and Conditions;
  - d. reasonable expenses incurred to prevent or mitigate damage, insofar as CUSTOMER demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these General Terms and Conditions.

- 20.5. NE liability for injury or damage through death or bodily injury or because of material damage to objects shall never exceed EUR 1,250,000 (one million two hundred and fifty thousand euros).
- 20.6. NE liability because of an imputable failure to perform an Agreement shall in all cases only arise if CUSTOMER immediately and properly provides a written notice of default to NE, with a reasonable time period for remedying the failure being given and NE still imputably failing to perform its obligations after that period as well. The notice of default must contain a description of the breach, which is as complete and specific as possible, so that NE can respond adequately.
- 20.7. For any right to damages to exist, CUSTOMER must always report the damage or injury to the NE in writing as soon as possible after it occurs. Any claim to damages against NE shall be extinguished by the mere lapse of 24 months after the claim arises.
- 20.8. CUSTOMER shall indemnify NE against all third-party claims because of product liability ensuing from a defect in a product or system which has been delivered by CUSTOMER to a third party and which partly consisted of equipment, software or other materials delivered by NE, except if and insofar as CUSTOMER proves that the damage or injury was caused by that equipment, software or other materials.
- 20.9. The provisions in this Article shall also apply for the benefit of all legal and natural persons utilized by NE in executing the Agreement.
- 20.10. NE cannot be held liable for any loss of data, loss of revenue or profits, or any incidental, contingent, or consequential damages, howsoever caused either prior, during a service or upon completion of a service. NE liability of any kind with respect to services undertaken, including any negligence on its part, shall be limited to the monthly contract price for the services provided.

## 21. Force Majeure

- 21.1. Neither party shall be liable for any delay or failure in performance of one or more of its obligations due to an event of force majeure, nor its performance of such obligation or obligations shall be excused and extended for the period of such delay. Force majeure shall include, without limitation, acts of God; fire; flood; earthquake; storm; lightning; epidemic; material shortages, unavailability, or delay in delivery not resulting from the responsible party's failure to timely place orders therefore; equipment failures; lack of or delay in transportation; war; outbreak of hostilities (whether or not war is declared); civil disorder; riots; strikes, or other labor unrest; sabotage; failure of a third party to grant a required right-of-way permit, assessment or other required authorization; acts or omissions of vendors or NE; changes in law, regulation or government policy; or any other cause beyond the commercially reasonable control of such party. The party claiming relief shall promptly notify the other in writing of any force majeure event expected to cause a delay or failure in performance and the cessation or termination of said event.

## 22. Credit

- 22.1. Prior to receiving Services pursuant to a Services Annex, CUSTOMER shall, at NE request, complete NE credit application form and return it to NE. NE's receipt and approval of CUSTOMER completed credit application, and the establishment of credit terms governing CUSTOMER payment for Services, are conditions precedent to NE's provision of the relevant Services. NE may terminate the applicable Annex upon written notice to CUSTOMER if it rejects CUSTOMER credit application in its sole discretion. CUSTOMER agrees to be subject to NE's present and continuing credit policies and procedures.

## 23. Assignment

- 23.1. CUSTOMER shall not assign the Agreement or any Annex without the prior written consent of NE, which may not be unreasonably withheld. Notwithstanding the foregoing, CUSTOMER shall not be relieved of its obligations under the Agreement, these General Terms and Conditions by its assignment of the same. NE may assign the Agreement to any third party or NE affiliate upon written notice to CUSTOMER.

## 24. Survival

- 24.1. The Parties respective representations, warranties, and covenants, together with obligations of indemnification, confidentiality and limitations on liability will survive the expiration, termination or rescission of these General Terms and Conditions and continue in full force and effect.



25. Notices

- 25.1. Unless otherwise provided herein all notices concerning the Agreement and each Annex shall be addressed to the CUSTOMER.
- 25.2. Unless otherwise provided herein, notices shall be sent by email, registered or certified mail, return receipt required, or by prepaid commercial overnight delivery service, or by facsimile transmission confirmed by the receiving party and shall be deemed served or delivered to the addressee when received or refused at the address for notice specified above.

26. Miscellaneous

- 26.1. No waiver of any of the terms of the Agreement or of any breach of those terms shall be effective unless such waiver is in writing and signed by the waiving party. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach.
- 26.2. All provisions contained under the Agreement shall be applied to the extent permitted by applicable law, and if any term, covenant or condition contained in the Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing the Agreement, the remainder of the Agreement or the relevant Annex shall not be affected thereby, and each term, covenant or condition thereof shall be valid and enforceable to the fullest extent permitted by law.
- 26.3. CUSTOMER must at all times provide us with, and keep current, good contact information of customer. E-mail, telephone and postal address contacts are used, in that order of preference. A waiver by the NE of any breach of any provision of this agreement by CUSTOMER shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof. CUSTOMER shall not transfer or assign this agreement without the prior written consent of the NE. NE may update the agreement at anytime without consent from or notice to CUSTOMER.

27. IP address assignment

- 27.1. If NE assigns Customer an Internet Protocol address for Customer use, the right to use that Internet Protocol address shall belong only to NE and the customer shall have no right to use that Internet Protocol address except as permitted by NE in its sole discretion in connection with the services, during the term of this agreement.
- 27.2. NE shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to customers by NE, NE reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion.

28. Bandwidth usage

NE will monitor CUSTOMER bandwidth usage.

- 28.1. CUSTOMER agrees that bandwidth shall not exceed the number of terabytes per month for the Services ordered by Customer and agrees any exceeding usage will be charged to CUSTOMER accordingly.
- 28.2. NE shall have the right to take corrective action if CUSTOMER bandwidth usage exceeds the agreed usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken is in NE sole and absolute discretion. If NE takes any corrective action under this section, customer shall not be entitled to a refund of any fees paid in advance prior to such action. In the event that a customer exceeds the included allocation, NE may, at its sole discretion, collect a deposit, in an amount determined by NE, against customer's credit card on file with NE.

29. Notification of violation

- 29.1. NE is under no duty to look at each customer their activities to determine if a violation of the AUP has occurred, nor do we assume any responsibility through our AUP to monitor or police Internet-related activities.
- 29.2. Any customer who NE determines to have violated any element of this Acceptable Use Policy, shall receive an email, warning them of the violation. The service may be subject at NE discretion to a suspension pending a customer agreement in writing, to refrain from any further violations.

30. Responsibility for content

30.1. CUSTOMER is solely responsible for the content stored on and transmitted over services provided to CUSTOMER.

30.2. If CUSTOMER is providing live video broadcasting services, CUSTOMER has to handle all DMCA and abuse complaints related with these services within 30 minutes. CUSTOMER might need to supply a takedown tool for NE staff and/or the copyright holder. If CUSTOMER cannot guarantee removal within 30 minutes (24x7) and/or supply such takedown tool, then CUSTOMER is not allowed to host its services with NE. NE will do random checks to see if abuse is being dealt with accordingly.

31. Denial of service

31.1. We reserve the right to refuse service to anyone at any time for any reason.