

## General Terms and Conditions of GNX B.V.

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### 1. GENERAL APPLICABILITY

1.1 These General Terms and Conditions ("Terms") are applicable to all requests for a quotation, offers, quotations or acceptances regarding any and all Agreements whereby GNX engages in business with another party.

1.2 GNX explicitly declines the applicability of any deviating or competing general terms or conditions that the other party in a quotation, order confirmation, correspondence or otherwise refers to, unless GNX explicitly accepts these general terms and conditions in writing.

1.3 In the case of any conflict(s) among these Terms and GNX's Acceptable Use Policy ("AUP" or "Policy"), which is hereby expressly incorporated herein, and any other agreements to which GNX is a Party, the order of governance of such documents shall apply in the following order of precedence, unless expressly agreed upon otherwise:

1.3.1 Customer Service Order (CSO);

1.3.2 Service Level Agreement (SLA);

1.3.3 Master Service Agreement (MSA);

1.3.4 Terms and AUP.

The foregoing documents constitute the entire agreement between the parties and, to the extent that they are consistent, shall be construed together as a single Agreement. Only in the event of conflicting terms shall the component parts supersede the earlier arrangements on the same subject matter in accordance with the order of governance as set forth in this Clause.

### 2. DEFINITIONS AND INTERPRETATION

2.1 In these Terms, the following words and phrases have the following meanings, unless the context requires otherwise:

**"Agreement"** shall mean any Agreement between GNX and another party other than these General Terms and Conditions.

**"Business Day"** shall mean, in respect of a Service, every day excluding Saturdays, Sundays and any national holidays in the jurisdiction where the Service is provided.

**"Confidential Information"** shall mean all information (in whatever format) which: (i) relates to the Terms; (ii) is designated as confidential by either Party; or (iii) relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of either Party (including, in the case of the Customer, Customer Data) and which may reasonably be regarded as the confidential information of the disclosing Party.

**"Customer"** shall mean, for a Service, jointly and severally, the Customer and its Customer Affiliate(s) that delivers a signed Service Order to GNX pursuant to Clause 3.1.

**"Customer Affiliate"** shall mean: (i) any entity or person, either wholly or partially owned, whether directly or indirectly, by the Customer as at the date of the Terms or other Agreement; or (ii) any other entity or person as agreed by the Parties from time to time.

**"Applicable Taxes"** means all taxes, levies, fees, imposts, duties, charges, surcharges, assessments or withholdings of any kind or

nature levied or imposed upon Provider or Customer, arising from or relating to the provision by Provider of the Services to Customer (including, without limitation, sales, excise taxes, universal service fees, together with any penalties, fines or interest (resulting from Customer's failure to pay Applicable Taxes hereunder after being invoiced for such) by any government, state, provincial or local government, public authority, including its agencies, commissions and tribunals, or their designated agents, having jurisdiction over this transaction. The provider will specify Applicable Taxes in each invoice.

**"Customer Data"** shall include, but not be limited to, data transmissions (including the originating and destination numbers and IP addresses, date, time and duration of voice or data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of the Customer, its employees or authorized users of the Services, and other data provided to or obtained by GNX and their respective agents in connection with the Services.

**"Regulated Customer Data"** shall mean that Customer Data whose use, processing or transfer is regulated by law or regulation as "personal data" where GNX or their agents are in possession of such Customer Data.

**"Customer Premise Equipment"** shall mean hardware, software, systems, cabling and facilities provided to the Customer and used in conjunction with the Service Equipment in order to receive the Service.

**"Customer"** the (legal) person that delivers a signed Service Order to GNX pursuant to Clause 3.1.

**"Customer Site"** shall mean a site or sites specified in a Service Order at which a Service is to be provided.

**"Emergency Works"** means works, the execution of which, at the time it is proposed to execute them, is required to put an end to, or prevent, the arising of circumstances then existing or imminent that are likely to cause: (i) danger to persons or property; (ii) the interruption of any service provided by the Network or the network generated by a third party; (iii) substantial loss to

GNX or any third party; and such other works as in all the circumstances it is reasonable to execute with those works.

**"Planned Maintenance"** means maintenance performed by GNX, or anyone performing works on behalf of GNX, to ensure that any Services GNX provides are operating optimally.

**"Force Majeure Event"** means an event which cause is beyond a Party's reasonable control affecting the performance of its obligations, including but not limited to, fire, flood, explosion, accident, war, acts of terrorism, strike, embargo, fiber cuts, governmental requirement, civil or military authority, an act of God, changes to laws or regulations, inability to secure materials or services, industrial disputes and acts or omissions of other providers of telecommunications services.

**"GNX"** shall mean, in respect of a Service, GNX or GNX Affiliate providing the Service under the Service Order.

**"GNX Affiliate"** shall mean any entity or person controlled by, controlling, or under common control with GNX, including, if different, GNX.

**"Installation Charge" or "Non-Recurring Charge (NRC)"** shall mean the one-time charge for installation of a Service (including installation of any Service Equipment) payable in accordance with Clause 5.

**"Internet"** shall mean the international interconnected network of networks using the TCP/IP protocol to exchange data communications.

**"Internet Service"** shall mean a service providing access to the Internet together with any related Service Equipment or support services, and as more particularly described in the relevant CSO.

**"IP Network"** shall mean the points of presence, network hubs, and host computers owned, operated or used by GNX or GNX Affiliate in connection with the provision of an Internet Service.

**"Monthly Recurring Charges (MRC)"** means amounts payable by the customer to Provider for the Service on a monthly basis during the Term, specified in detail in the CSO for such Service.

**"Network"** shall mean the Telecommunications Network and the IP Network.

**"Party"** shall mean, in respect of a Service, each of GNX and the Customer, and "Parties" shall be construed accordingly.

**"Ready for Service (RFS) Notification"** means a notification that may be provided in accordance with Clause 4.1 that, with respect to GNX obligations hereunder, the Service is ready for use.

**"Service"** shall mean the specific telecommunications service or Internet Service provided by GNX to the Customer, and as may be further described in the relevant CSO.

**"Service Activation Date"** or **"Acceptance Date"** shall mean, in relation to a Service, the date a Customer accepts or is deemed to accept a Service in accordance with Clause 4.2.

**"Service Equipment"** shall mean the hardware, software, systems, cabling, and facilities provided by GNX at the Customer Site in order to make available the Service to the Customer. Service Equipment shall not include the Network or any hardware or software which is the subject of a separate supply contract between GNX or GNX Affiliate and the Customer.

**"Service Order"** shall mean a request for a specific Service delivered by the Customer to GNX and accepted by GNX in accordance with Clauses 3.1 and 3.2.

**"Service Term"** in relation to a Service, shall mean the total period for which the Service is provided pursuant to a CSO.

**"Initial Service Term"** shall mean the (initial) service term from the Service Activation Date or Acceptance Date as stated on the Service Order or, if not stated, one year from the Service Activation Date or Acceptance Date.

**"Telecommunications Network"** shall mean the telecommunication system(s) that are owned, operated or used by GNX or a GNX Affiliate from time to time.

**"Usage Charges"** shall mean the usage-based charges for Internet Services payable in accordance with Clause 5.

2.2 Unless the context otherwise requires, in these Terms, a reference to:

2.2.1 a person includes a reference to a body corporate, association or partnership;

2.2.2 a person includes a reference to that person's legal personal representatives, successors and permitted assigns;

2.2.3 any statute or statutory provision includes references to that statute or provision as amended, modified or re-enacted; and

2.2.4 a document is a reference to that document as supplemented or varied from time to time.

### 3. SERVICE

3.1 The CSO shall be binding on both Parties only after it is accepted by GNX in written form, such acceptance to include the carrying out to GNX's satisfaction of appropriate credit checks against the Customer. Each CSO issued and accepted pursuant to the Terms shall create an individual contractual relationship between the Parties to provide and receive the Service for the Service Term. That contractual relationship shall be governed by these Terms, together with any more specific terms contained in such relevant CSO, as well as any SLA and/or MSA to which terms the Parties have further agreed, in accordance with the order of governance of such agreements as described in Clause 1.3 herein. In addition to these Terms, the Services shall be subject to all mandatory legal requirements in the jurisdiction where the Service is to be provided, including but not limited to the regulatory and data protection requirements in the respective countries. In the event of any conflict between the terms of the CSO and these Terms, the terms of the CSO shall take precedence.

3.2 Without releasing GNX from any of its obligations, GNX shall be entitled at any time, and without notice, to use GNX Affiliates and/or subcontractors to perform some or all of such obligations.

3.3 GNX reserves the right from time to time to change the configuration of the Network or the Service Equipment.

3.4 GNX is entitled to modify the technical properties of a Service. GNX will announce such a modification in writing, with due observance of a reasonable period, unless this is not reasonably practicable. If, in the reasonable opinion of the Customer, the modifications referred to in this Article result in such a substantial change in the procedure at its business and/or the functionality of the Service, it will be entitled to terminate the Terms in accordance with Clause 8 herein.

## 4. SERVICE ACTIVATION

4.1 Prior to the provision of the Service, GNX shall conduct such tests as it considers to be appropriate to determine that all necessary work has been done to provide the Service to the Customer and, upon successful completion of such tests, GNX shall use reasonable endeavors to deliver a RFS Notification to the Customer.

4.2 The Customer shall be deemed to have accepted the Service upon the earlier of either (i) the date of delivery of the relevant RFS Notification or, (ii) where no RFS Notification is received by the Customer, upon the date the Customer first uses the Service. Such date for a particular Service may be further described and defined in the relevant CSO.

## 5. BILLING, PAYMENT, TAXES AND GOVERNMENTAL CHARGES

5.1 Fees. All service charges shall be exclusive of Applicable Taxes unless explicitly mentioned otherwise. The MRC are due monthly, in advance of the provision of Service. All Fees must be paid in EUROS unless agreed otherwise.

5.2 Applied Exchange Rates. Unless agreed otherwise, the actual NRC and MRC invoiced to the Customer are in the currency specified on the CSO. If it was agreed on the CSO that the billing currency is not the same as the contracted currency on the CSO the actual invoice amounts are derived from the local in-country currency, multiplied by the local currency exchange rates ("Local Exchange Rate") as provided by Open Exchange Rates ([www.openexchangerates.org](http://www.openexchangerates.org)), on the 1st day of the applicable month (or the

last banking day prior to the 1st, in case the 1st is not a banking day).

5.3 Billing Principles. The following billing principles shall apply for Services unless otherwise expressly provided for in a superseding Agreement:

1. Non-Recurring Charges shall be invoiced by GNX after acceptance of the CSO.
2. Recurring charges shall be invoiced monthly in advance; and
3. Usage-based charges and charges based on times and material rates shall be invoiced monthly in arrears.

5.4 Billing start date. Billing start date shall be the RFS date, also referred to as the Service Handover Date, except as otherwise set out in these Terms.

5.5 Payment Term. All charges are payable within thirty (30) days of the invoice date by transferring the invoiced sums into the relevant bank account designated on the invoice, without any set-off or deduction. GNX reserves the right to charge:

1. interest of three percent (3%) per month on all invoiced amounts which remain unpaid after such thirty (30) calendar days period; and
2. all reasonable collection costs including but not limited to attorneys' fees and other associated costs.

5.6 Credit Allowances. All Service credit allowances payable to Customer shall be credited on the invoices for the recurring charges of Customer in the month following the request for such Service credit by Customer. Any and all such credit allowances shall only be credited to Customer if Customer is not in default of the payment obligations set out in this Clause.

5.7 Disputes. Customer shall be entitled to partially withhold payment of an invoice which Customer disputes in good faith, provided however that Customer shall notify Provider in writing within thirty (30) days of the invoice date of the dispute and of the grounds thereof, and provided that Customer shall only be entitled to withhold payment up to the amount disputed in good faith by Customer.

5.8 Service Charges. Service Charges mentioned in quotes and CSOs, do not include Applicable Taxes, as applicable, in connection with the furnishing of such Service.

5.9 Exemption Evidence. If Customer believes itself to be exempt from payment of or liability for any Applicable Taxes and does not want to get invoiced for these Applicable Taxes, it must provide Provider with the relevant Certificate(s) demonstrating its eligibility for exemption.

5.10 Survival. Customer's obligation to pay Applicable Taxes, if applicable, under this Clause will survive the expiration or early termination of these terms and conditions.

5.11 Change in Fees due to Regulatory Changes. Provider shall be entitled to vary the Fees at any time if there is a regulatory change which results in an increase in the costs to Provider or any other Provider Affiliate providing the Services to the Customer.

5.12 Indexation. The provider is entitled to change the prices of the Service(s) annually in accordance with the applicable Consumer Price Index (CPI). In the Netherlands, it is the CPI of the Centraal Bureau voor de Statistiek.

## 6. SERVICE PERFORMANCE

6.1 In performing its obligations under these Terms, GNX shall exercise the reasonable skill and care of a competent public telecommunications operator or a provider of Internet related services, as the case may be.

6.2 GNX shall use reasonable endeavors to ensure that each Service conforms to any service descriptions and/or service levels as set out, or referred to, in the applicable CSO and/or any applicable ancillary SLA or MSA, in accordance with the order of governance of such documents as set forth in Clause 1.3 herein.

6.3 The periods for delivery of the Services as notified by GNX are indicative only. Any failure to meet such periods for delivery shall not result in default. In such case, the Customer may request delivery within a reasonable period. If GNX does not deliver within a reasonable period, the

Customer may rescind the relevant CSO in writing for the part that GNX has not delivered. However, if Customer defaults Customer has no such right.

6.4 Except as expressly set out in these Terms, all warranties, representations or Agreements, with respect to the provision of a Service or otherwise, whether oral or in writing, express or implied, either by operation of law, statute or otherwise, are excluded to the extent permitted by law.

## 7. SERVICE SUSPENSION

7.1 GNX may, at its sole discretion and without prejudice to any right which it might have to terminate a Service and/or the Terms, elect to immediately suspend the provision of a Service (or part thereof) if:

7.1.1 GNX has reasonable grounds to consider that it is entitled to terminate the Service and/or the Terms pursuant to Clause 8;

7.1.2 GNX is obliged to comply with an order, instruction or request of a court, government agency, emergency service organization or other administrative or regulatory authority;

7.1.3 GNX needs to carry out Emergency Works or Planned Maintenance to the Network or Service Equipment (in the case of Planned Maintenance, GNX will provide Customer with notice no less than seventy-two (72)-hours prior to any service suspension);

7.1.4 GNX has reasonable grounds to consider that the Service is being used fraudulently or illegally or in violation of Clause 9.5;

7.1.5 GNX has reasonable grounds to consider that the Customer will not or is unable to make any payment which is due or is to fall due to GNX hereunder; or any payments are overdue by 90 days or more;

7.1.6 GNX has reasonable grounds to consider that the Customer is or has been involved or connected with criminal activity or other activity, which is or may be detrimental to GNX;

7.2 In the event that GNX exercises its right(s) pursuant to Clauses 7.1.2 or 7.1.3 it shall, whenever reasonably practicable, give prior

notice of such suspension to the Customer, such notice to state the grounds of such suspension and its expected duration. GNX shall in such circumstances use all reasonable endeavors to resume the Service as soon as is practicable.

7.3 If the Service (or part thereof) is suspended as a consequence of the breach, fault, act or omission of the Customer, the Customer shall pay to GNX all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Service.

7.4 GNX shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension made pursuant to Clause 7.1, except to the extent that such suspension is made pursuant to Clause 7.1.3 and for reasons which are solely and directly attributable to the negligence of GNX.

## 8. TERM AND TERMINATION

8.1 These Terms shall take effect from either the date that the first CSO is accepted by GNX in accordance with Clause 3.2, or the date the Customer first uses a Service, whichever of these earlier occurs, and shall continue in force unless and until terminated in accordance with this Clause 8.

8.2 Either Party may terminate a Service:

8.2.1 on twenty-five (25) Business Days' notice to take effect on or at any time after expiry of the relevant Initial Service Term, and, in the case of termination by the Customer, such notice to be delivered to the GNX team at [cancellations@gnx.net](mailto:cancellations@gnx.net) with a copy to the GNX Sales representative via [sales@gnx.net](mailto:sales@gnx.net);

8.2.2 immediately by notice if, in relation to that Service, the other Party has committed a material breach which is incapable of remedy;

8.2.3 immediately by notice if, in relation to that Service, the other Party has committed a material breach capable of remedy, but which it fails to remedy within ten (10) Business Days of having been notified of such breach; or

8.2.4 immediately by notice if, in relation to that Service, a Force Majeure Event subsists for a continuous period exceeding three (3) months.

8.3 Either GNX or the Customer may terminate the Terms immediately upon notice:

8.3.1 in the event of a material breach by the other Party, which has application to all Services then provided under the Terms, and which is incapable of remedy;

8.3.2 in the event of a material breach by the other Party, which has application to all Services then provided under the Terms, and which is capable of remedy, but which the other Party fails to remedy within ten (10) Business Days of having been notified of such breach;

8.3.3 if the other Party has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business, or undergoes or is subject to any analogous acts or proceedings under any foreign law;

8.3.4 in the event of a Force Majeure Event, which has application to all Services then provided hereunder, and which subsists for a continuous period exceeding three (3) months; or

8.3.5 where, after expiry of any applicable Service Term(s), no Services have been provided under the Terms for a continuous period exceeding three (3) months.

8.4 GNX may terminate the Terms (or the relevant Service) immediately by notice if a suspension of a Service pursuant to Clauses 7.1.4, 7.1.5 or 7.1.6 has continued for a period of at least two (2) consecutive months.

8.5 If GNX has reasonable grounds to consider that there has been a violation of Clause 9.5.2, GNX may notify the Customer and require it to remedy the violation:

8.5.1 in the event of an incident involving a violation of public law or regulation or an

imminent threat to the IP Network, immediately;  
or

8.5.2 in all other cases, within forty-eight (48) hours.

8.6 If the Customer fails to notify GNX that such a remedy has been effected in accordance with this Clause 8.5 or if GNX reasonably determines that the violation is continuing or is likely to occur again, GNX may terminate the Terms (or relevant Internet Service) immediately upon notice to the Customer.

8.7 Notwithstanding the provisions of Clauses 8.2 and 8.3, GNX may terminate the Terms (or the relevant Service) on five (5) Business Days' notice if the Customer fails to make any payment, when due, in accordance with the Terms.

8.8 Without prejudice to any accrued rights or obligations, upon termination of the Terms:

8.8.1 all CSO and accompanying Services shall terminate immediately;

8.8.2 notwithstanding the provisions of Clause 5, all accrued Charges not yet invoiced shall become due and shall be paid by the Customer immediately on receipt of an invoice; and

8.8.3 each Party shall promptly return to the other Party all copies of the other Party's Confidential Information and, if requested, verify to the other Party that it has done so.

8.9 Termination of these Terms shall not affect the continuation, to the extent necessary, of any other Clauses herein.

## 9. CUSTOMER OBLIGATIONS

9.1 The Customer shall grant or shall procure the grant to GNX of such rights of access to each Customer Site, including any necessary licenses, waivers or consents to enable it to perform its obligations or exercise its rights under the Terms. The Customer shall advise GNX in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at the Customer Site, and GNX shall use all reasonable endeavors to observe and ensure that its employees and authorized representatives observe such regulations and

requirements as advised whilst at the Customer Site.

9.2 The Customer shall provide GNX with such facilities and information as GNX may reasonably require, to enable it to perform its obligations or exercise its rights under the Terms.

9.3 The Customer warrants and undertakes that it shall:

9.3.1 use the Service Equipment only for the purpose of receiving the Service and in accordance with GNX's reasonable instructions from time to time and/or any software license that may be provided with the Service Equipment;

9.3.2 not move, modify, relocate, or in any way interfere with the Service Equipment (or any words or labels on the Service Equipment) or the Network;

9.3.3 not cause the Service Equipment to be repaired or serviced except by an authorized representative of GNX;

9.3.4 insure and keep insured all Service Equipment installed at each Customer Site against theft and damage;

9.3.5 not create or allow any charges, liens, pledges or other encumbrances to be created over the Service Equipment. Title to the Service Equipment shall at all times belong and remain with GNX, a GNX Affiliate or their subcontractor;

9.3.6 permit GNX to inspect, test, maintain and replace the Service Equipment at all reasonable times;

9.3.7 comply with GNX's reasonable instructions in relation to the modification of the Customer Equipment to enable the Customer to receive the Service, at its own expense; and

9.3.8 upon termination of a Service, allow GNX access to each Customer Site to remove the Service Equipment. Should any construction or alteration to the Customer Site have occurred to facilitate any Service, GNX is not obliged to restore the Customer Site to the same physical state as prior to Service delivery.

The Customer shall be liable for any and all damage to Service Equipment or the Network which is caused by (i) the act or omission of the

Customer or the Customer's breach of the Terms; or (ii) malfunction or failure of any equipment or facility provided by the Customer or its agents, employees, or suppliers, including but not limited to the Customer Equipment, nor shall GNX be liable for any costs incurred by Customer arising out of any malfunction or failure of any such equipment or facility, including Customer Equipment.

9.4 The Customer warrants that it holds and shall continue to hold such licenses and/or other authorizations as are required under the Act or any other relevant legislation, regulation or administrative order, to receive the Services and to run and connect the Customer Equipment to the Network and Service Equipment. GNX reserves the right to disconnect any Customer Equipment where the Customer has failed to comply with the provisions of this Clause 8.4 and GNX shall in no event be liable in respect of the Customer's failure to comply with this Clause 9.4.

9.5 The Customer warrants and undertakes it shall, in its use of:

9.5.1 the Services, comply with any relevant legislative and regulatory provisions and shall not use the Services for any illegal or immoral purpose; and

9.5.2 any Internet Service, comply with these Terms as well as the then current version of GNX's AUP. These Terms and the AUP shall be available at the following URL: [www.gnx.net](http://www.gnx.net). The Customer shall, prior to commencing its use of the Internet Service, read and understand these Terms and the Policy. GNX reserves the right to change the Terms and Policy from time to time, effective upon posting of the revised Terms and/or Policy at the URL stated in this clause or by other notice to the Customer as GNX deems appropriate.

The Customer shall indemnify GNX and GNX Affiliates in respect of any and all losses, damages, costs or expenses resulting from or arising out of any breach of the warranties set out in this Clause 9.5 and/or any third party claim or allegation arising out of or relating to the use of the Service, and which relates to any act or omission of the Customer which is, or if substantiated would be, a breach of this Clause 9.5.

## 10. LIABILITY

10.1 Subject to Clause 10.5 but otherwise notwithstanding anything else in the Terms, each Party's total liability to the other (and, in the case of GNX, "Party" in this Clause 10 refers to GNX and each respective GNX Affiliate providing Services under the Terms) in contract, tort (including negligence or breach of statutory duty) or otherwise arising in connection with the Terms, except in respect of any liability arising pursuant to the Customer's obligations set out in Clauses 5 and 9.5, shall be limited to:

10.1.1 €1,000,000 (one million euros) per event or series of connected events; and

10.1.2 notwithstanding Clause 10.1.1, a maximum of €2,000,000 (two million euros) in aggregate in any twelve (12) month period.

For the avoidance of doubt, for the purposes of this Clause 10.1, the limits on liability expressed above are cumulative and apply across all Services.

10.2 Subject to Clause 10.5 but otherwise notwithstanding anything else in the Terms, neither Party shall in any event be liable to the other for indirect or consequential losses or otherwise for harm to business, loss of revenues, loss of anticipated savings or lost profits, whether or not reasonably foreseeable at the time when the Terms were entered into by the Parties.

10.3 The Customer acknowledges that GNX is unable to exercise editorial or other control over any content placed on or accessible through the Customer's use of the Services and GNX shall have no liability as to the quality, content or accuracy of information received through or as a result of the use of the Services.

10.4 In the event that the Customer does not meet any liability to GNX arising out of or in connection with the Terms and/or any of the CSO (including but not limited to the payment of the Charges), the Customer acknowledges and agrees that it is jointly and severally liable to GNX in respect of any such liability and GNX may demand that the Customer satisfies such liability in whole or in part.

10.5 Nothing in the Terms shall serve to limit either Party's liability in respect of death or



personal injury caused by or arising from its negligence.

## 11. FORCE MAJEURE

11.1 Notwithstanding anything herein to the contrary, neither Party shall be liable to the other for any delay or failure in performance of any part of the Terms (other than for payment obligations set out in Clause 4) to the extent such delay or failure is attributable to a Force Majeure Event. Subject to Clauses 8.2 and 8.3, any such delay or failure shall suspend the Terms until the Force Majeure Event ceases and the affected Initial Service Term(s) shall be extended by the length of the suspension.

## 12. INTELLECTUAL PROPERTY

12.1 The Customer acknowledges:

12.1.1 that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, which are used in connection with the Service and/or Service Equipment, shall remain the sole property of GNX or GNX Affiliates; and

12.1.2 without limitation to the foregoing, that the Customer shall not be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of GNX or GNX Affiliates without GNX's prior written consent.

12.2 The Customer warrants that any domain name registered or administered on its behalf will not contravene the trademark or other intellectual property rights of any third party and that it shall comply with the rules and procedures of the applicable domain name authorities, registries and registrars. The Customer shall indemnify GNX and GNX Affiliates in respect of any and all losses, damages, costs and expenses arising from or in connection with breach of this Clause 12.2. The Customer irrevocably waives any claims against GNX or GNX Affiliates which may arise from the acts or omissions of domain name registries, registrars or other authorities.

12.3 Any Internet Protocol ("IP") addresses assigned to the Customer by GNX in connection

with an Internet Service shall be used solely in connection with the Internet Service. If such Internet Service is discontinued for any reason (including termination of the Terms or the Internet Service), the Customer's right to use the IP addresses shall immediately cease and the IP addresses shall be returned immediately to GNX. Any breach of this Clause 12.3 is a material breach of the Terms.

12.4 If the Customer does not move the domain name(s) registered by GNX to another Internet provider within one month after termination of the Terms and/or the Internet Service, GNX reserves the right to terminate the domain name(s) registered by GNX for the Customer with the applicable domain name authorities, registries and registrars.

## 13. CONFIDENTIALITY

13.1 Subject to Clause 13.2, GNX, the Customer, and each Party hereunder, shall:

13.1.1 only use Confidential Information for the purposes set forth by the Terms;

13.1.2 only disclose Confidential Information to a third party with the prior written consent of the other Party (except that GNX or GNX (if different) may disclose Confidential Information to GNX, its Affiliates or to its employees, agents or contractors, including professional advisors or auditors, and Customer may disclose Confidential Information to Customer Affiliates for purposes of complying with the Terms); and

13.1.3 ensure that any third party to whom Confidential Information is disclosed executes a confidentiality undertaking substantially similar to the terms of this Clause 13.

13.2 The provisions of Clause 13.1 shall not apply to any Confidential Information which: (i) is in or comes into the public domain other than by breach of this Clause 13; or (ii) is or has been independently generated by the recipient Party; or (iii) is properly disclosed pursuant to a separate written consent or a statutory obligation, the order of a court of competent jurisdiction or the requirement of a competent regulatory body.

## 14. ASSIGNMENT

14.1 Neither Party may assign, charge, transfer or otherwise dispose of the Terms, any CSO, or any rights or obligations therein in whole or in part, without the written consent of the other Party (which consent shall not be unreasonably withheld or unduly delayed), except that GNX may assign any and all of its rights and obligations hereunder: (i) to any GNX Affiliate; (ii) to a third party pursuant to any sale or transfer of substantially all the assets or business of GNX or a GNX Affiliate; or (iii) to a third party pursuant to any financing, merger, or reorganization of GNX or a GNX Affiliate.

## 15. MISCELLANEOUS

15.1 **Rescission.** The Terms may be rescinded but not in respect of Services already properly provided and amounts due in respect thereof.

15.2 **No Waiver.** Failure or delay by either Party to exercise or enforce any right or benefit conferred by the Terms, including GNX's right to deliver invoices in accordance with Clause 5, shall not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

15.3 **Relationship.** Nothing in the Terms and no action taken by the Parties pursuant to the Terms shall constitute or be deemed to constitute between the Parties a partnership, agency, association, joint venture or other co-operative entity.

15.4 **Third Party Beneficiaries.** Except as otherwise contemplated by the Terms, nothing herein will create or confer any rights or other benefits in favor of any person other than the Parties.

15.5 **Variation.** The Terms (or any part thereof) shall be modified only by the written agreement of the Parties.

## 16. NOTICES

16.1 Except as otherwise expressly provided for herein, any notice required or authorized to be

given under the Terms shall be delivered by prepaid registered post or by electronic mail (immediately confirmed by post) to the addresses stated in clause 16.2 and shall be deemed to have been served forty-eight (48) hours after such posting or such transmission.

16.2 Notices should be sent to GNX for the attention of the Legal Department (legal@gnx.net), with a copy to the Finance Department (finance@gnx.net).

## 17. ENTIRE AGREEMENT

17.1 These Terms set out the entire and exclusive agreement between GNX and the Customer, and GNX and Customer, as the case may be, superseding all prior or contemporaneous representations, agreements or understandings concerning the subject matter addressed herein. No oral explanation or oral information provided shall alter the interpretation of the Terms. The Customer confirms that, in agreeing to enter into these Terms and/or any CSO, SLA or MSA, it has not relied on any representation except as set out herein and the Customer agrees that it shall have no remedy in respect of any misrepresentation which has not become a part of the Terms, excluding any fraudulent misrepresentation.

## 18. DISPUTE RESOLUTION

18.1 In the event of a dispute concerning these Terms, each Party shall in the first instance promptly bring the dispute to the attention of a Director or similar person in a management position.

18.2 If the Customer wishes to dispute any invoice or part of an invoice falling due in accordance with Clause 5.7, the Customer shall, before the invoice is due, deliver a notice in writing to GNX setting out the nature of its dispute, including: (i) date and number of disputed invoice; (ii) amount in dispute; (iii) reason for dispute; and (iv) supporting documentation, as appropriate. Any undisputed part of a disputed invoice shall be paid by the Customer in accordance with Clause 5.7.

The Parties shall use all reasonable endeavors to resolve such payment disputes as soon as is reasonably practicable.

## 19. CUSTOMER DATA AND PRIVACY

19.1 The Customer acknowledges that GNX, GNX Affiliates and their agents will, by virtue of the provision of Services, come into possession of Customer Data.

19.2 GNX shall implement appropriate technical and organizational measures to protect Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access and against other unlawful forms of processing. The Customer acknowledges that it has the right to access Regulated Customer Data upon written notice and have any agreed errors in such Regulated Customer Data rectified. This Customer Data shall include, but not be limited to, data transmissions (including the originating and destination numbers and IP addresses, date, time and duration of voice or data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of the Customer, its employees or authorized users of the Services, and other data provided to or obtained by GNX, GNX Affiliates and their agents in connection with the provision of Services.

19.3 The Customer acknowledges and agrees that GNX, GNX Affiliates and their agents may use, process and/or transfer Customer Data (including intra-group transfers and transfers to entities in countries that do not provide statutory protections for personal information):

19.3.1 in connection with the provision of Services;

19.3.2 to incorporate the Customer Data into databases controlled by GNX or GNX Affiliates for the purpose of administration, provisioning, billing and reconciliation, verification of Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis, and

19.3.3 to communicate with Customer regarding products and services of GNX or GNX Affiliates by voice, letter, fax or email.

**The Customer may withdraw consent for such use, transfer or processing of Customer Data, unless it is required to (i) provision, manage, administer, account or bill for the Services, (ii) to carry out fraud detection or (iii) comply with any statutory obligation, regulatory requirement or court or other public authority order, by sending written notice to GNX in accordance with the prescribed form, available from GNX on request.**

19.4 The Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of Customer Data as described in this Clause 19.

## 20. GOVERNING LAW AND JURISDICTION

20.1 The Terms shall be governed and construed in accordance with the laws of The Netherlands without regard to choice of law principles of this or any other jurisdiction. The Parties hereto hereby irrevocably agree to the exclusive jurisdiction and venue of the courts in Amsterdam such that any action arising out of or relating to the Terms must be brought exclusively in the courts located in Amsterdam, The Netherlands. Each Party hereby waives any right or entitlement to bring an action in any other venue and agrees that the prevailing party of any resulting litigation shall be entitled to recoupment of all attorneys' fees and any costs associated with the pursuit of any such litigation.