

## General Terms and Conditions - version november 25<sup>th</sup> 2015

### Article 1. Definitions

1. Hostnet: Hostnet bv is established in Amsterdam, the Netherlands and is registered with the Chamber of Commerce under file number 34130993.
2. Client: the natural person or legal entity with whom Hostnet has concluded an Agreement or to whom Hostnet has submitted an offer to that end.
3. General Terms and Conditions: this document.
4. Service: the specific service agreed by Hostnet and the Client, as stated in the Agreement or offer.
5. Agreement: The agreement between Hostnet and the Client, by virtue of which Hostnet shall provide the Service.
6. Website: [www.hostnet.nl](http://www.hostnet.nl)
7. Domain name provider: an Registry or Registrar that in its role as provider for Hostnet provides domain names under one or more specific domain name extensions for the Client.
8. Registry: an organisation that is registered with IANA as a Sponsoring Organisation for one or more specific extensions and as such is authorised to register domain names with these extensions. In the case of all domain names with the extension(s) assigned to the Registry, it is the Registry that administers the central database and zone that make it possible for domain names to be used.
9. Registrar: an organisation that has received an Registry's consent to register or amend domain names directly in the central database.
10. Extension: the suffix of a domain name behind the first dot, such as '.nl' in [hostnet.nl](http://hostnet.nl).
11. Domain name holder: the holder of a domain name according to the Registry.

### Article 2. Offer, proposal and acceptance

1. Hostnet shall draw up an offer, indicating what is included in the Service and which amount shall be payable upon acceptance. Only the Service description stated in the offer shall be binding. The Client may also use the electronic ordering process on the Website in order to purchase the Service. The Website furthermore states which amount shall be payable, while the Service description on this Website shall also be binding.
2. The offer shall be subject to contract and valid for 30 days after having been submitted by Hostnet, unless the offer states otherwise.
3. If it emerges that the information provided by the Client is incorrect, Hostnet is entitled to adjust the prices accordingly.

4. The Agreement shall at all times be subject to these General Terms and Conditions, unless explicitly agreed otherwise in writing. Special terms and conditions may apply for particular products and/or services in addition to these General Terms and Conditions. Hostnet will provide these special terms and conditions either prior to or when concluding the Agreement, in principle by means of a direct hyperlink.
5. Provisions or conditions set by the Client that deviate from or do not appear in these General Terms and Conditions shall only bind Hostnet if and insofar explicitly accepted by Hostnet in writing.
6. After having been accepted, the Agreement may be changed by mutual consent only.
7. The Agreement commences as of the moment Hostnet receives the acceptance notification from the Client.

### Article 3. Provision of the Service

1. Following conclusion of the Agreement, Hostnet shall provide the Service as soon as possible, in accordance with the offer, electronic order or order by letter or fax.
2. Insofar as not agreed otherwise in writing, Hostnet guarantees that the Service shall be provided to the best of its abilities, while exercising due care and workmanship.
3. If and insofar required by a proper provision of the Service, Hostnet is entitled to have certain work carried out by third parties. Any additional costs relating to this shall be payable by the Client, unless agreed otherwise.
4. The Client is obliged to do and omit everything that is reasonably required and desirable in order to facilitate a timely and correct provision of the Service. In particular, the Client shall ensure that all information, of which Hostnet indicates that it is required or with regard to which the Client can reasonably understand that it is required for the provision of the Service, is made available to Hostnet in good time.
5. Without the Client's prior consent, Hostnet is not permitted to independently make changes to the material provided by the Client, with the exception of changes deemed necessary by Hostnet in order to be able to provide the Service correctly, and which shall not change the fundamental content of the material.
6. If such forms part of the Service, Hostnet shall provide the Client with an administrative user-

name and password. This information gives the Client access to an administrative account and a management tool that enables the Client to manage provision of the Service as it sees fit and to manage accounts for individual users and adjust the options and restrictions for these individual users of the Service, all this within the limits stated in the Agreement.

7. Every action through the administrative account or an account of an individual user is deemed to have been effectuated on the responsibility and risk of the Client. Hostnet cannot be held liable for this. In the event of suspected abuse of an account, the Client must notify Hostnet of this as soon as possible, enabling the latter to take measures.

8. Terms of delivery stated by Hostnet only serve as an indication, unless it is explicitly stated in writing that it concerns a deadline. Hostnet is in default only after the Client has declared it to be in default in writing, also in the event of an agreed deadline.

9. Exceeding an agreed delivery time for whatever reason does not constitute a right to compensation, unless otherwise agreed in writing.

10. Hostnet has the right to (temporarily) decommission and/or restrict the use of products and services delivered, or not to deliver them or to a limited extent only if the Client fails to fulfil an obligation towards Hostnet under the Agreement or if it acts in breach of these terms and conditions.

#### Article 4. Prices

1. All prices are exclusive of turnover tax (VAT) and other levies imposed by the government, unless otherwise stated.

2. All prices on the Website, in offers, leaflets and other documentation from Hostnet are subject to programming and typing errors. Hostnet does not accept liability for the consequences of such errors.

3. If the Agreement is a continuing performance contract, Hostnet is entitled to increase the rates applied at any time. Hostnet shall notify the Client of rate changes via the Website or by e-mail at least 2 (two) months in advance. In the event of a price increase, the Client is entitled to terminate the Agreement, subject to a notice period of 1 (one) month.

4. Without the Client, i.e. the company, being able to terminate, Hostnet is entitled to increase all prices agreed on with the Client by 4% on 1 January of each year.

5. All costs to be incurred by Hostnet and arising

from the Agreement shall be payable by the Client, unless agreed otherwise.

#### Article 5. Hosting and related services

1. If the Service (also) pertains to a service relating to storage and/or transfer of material supplied by the Client to third parties, as is the case with webhosting or e-mail services, the provisions in this article shall apply.

2. The Client shall not publish or offer information via (the servers of) Hostnet which violates Dutch law. This particularly yet not exclusively includes information offered without the copyright owner(s) consent, defamatory, threatening, insulting, racist, vindictive or discriminating information, information containing child pornography and information that violates the privacy of third parties or constitutes a form of stalking, as well as hyperlinks, torrents or other references to such information on third-party websites anywhere in the world (even if the information is legal in the jurisdiction in question).

3. Hostnet has a complaints procedure in place that enables third parties (hereinafter referred to as: notifying parties) to submit a complaint when they feel such violation has occurred. If, in the opinion of Hostnet, a complaint is justified, Hostnet is entitled to remove the material or deny access to it. In that case, Hostnet is also entitled to provide a notifying party or the competent authorities with the personal details of the Client. Hostnet shall notify the Client of the progress of this procedure.

4. When it concerns possibly punishable information, Hostnet is entitled to report this. Hostnet may submit all relevant information about the Client and other information to the competent authorities, and do anything else requested by these authorities within the framework of the investigation.

5. In the event of repeated (justified) complaints about the information provided by the Client, Hostnet is entitled to dissolve and/or terminate the Agreement.

6. The Client indemnifies Hostnet against all damage or loss resulting from the above. Hostnet is not liable for any damage or loss suffered by the Client as a result of Hostnet's intervention within the framework of the complaints procedure, even when the complaint turns out to be unjustified and the information does not violate Dutch law.

7. The Client shall refrain from obstructing other Clients or Internet users or from damaging the servers. The Client is not permitted to start up

processes or programmes - via the server or otherwise - with regard to which the Client knows or reasonably can suspect that this shall obstruct or harm Hostnet, other Clients or Internet users. Hostnet shall notify the Client of any measures.

8. The Client shall observe the generally accepted code of conduct on the Internet or as laid down in RFC1855 (<ftp://ftp.ripe.net/rfc/rfc1855.txt>) and future changes to this.

9. Without Hostnet's consent, the Client is not permitted to transfer the username(s) and password(s), provided by Hostnet, to third parties.

10. Hostnet may set a maximum to the amount of storage space or data traffic which the Client may use each month within the framework of the Service. When this maximum is exceeded, Hostnet is entitled to charge an additional sum, in accordance with the amounts for extra data traffic listed on the Website. Hostnet shall not be liable for the consequences of not being able to send, receive, store or change data if an agreed limit for storage space or data traffic is reached.

11. The Client hereby provides Hostnet with an unrestricted licence to distribute, store, transfer or copy all materials distributed by the Client via Hostnet's systems, in any way deemed suitable by Hostnet, however, only insofar as this is reasonably required for Hostnet to fulfil the Agreement.

12. In addition to the statutory obligations, damage or loss resulting from incompetence or the failure to act in accordance with the above shall be payable by the Client.

#### **Article 6. Domain names and IP addresses**

1. If the Service (also) serves for Hostnet to mediate on behalf of the Client in obtaining a domain name and/or IP address, the provisions of this article shall apply.

2. Application for, the granting and possible use of a domain name and/or IP address depend on and are subject to the prevailing rules and procedures of the Domain name providers in question, including the Foundation for Internet Domain Registration in the Netherlands (Stichting Internet Domeinregistratie Nederland) and RIPE. The authority in question shall decide whether or not a domain name and/or IP address is granted. During the application, Hostnet only has a mediating role and cannot guarantee that an application shall be honoured.

3. The Client can only take cognizance of the fact that registration has been successful from the confirmation e-mail sent by Hostnet, stating that the requested domain name has been registered.

An invoice for registration costs does not constitute confirmation of registration.

4. The Client indemnifies Hostnet against and compensates the latter for all damage or loss relating to (the use of) a domain name by or on behalf of the Client.

5. Hostnet shall not be liable for the Client losing its right(s) to a domain name or for the fact that the domain name is requested and/or obtained by a third party in the meantime, except in the event of intent or gross negligence on the part of Hostnet.

6. If Hostnet registers a domain name in its name for the benefit of the Client, Hostnet shall comply with requests from the Client to move, transfer or cancel this domain name.

7. The domain name holder and Client are deemed to be the same person or legal entity. If the Client and the domain name holder are different people or legal entities, the following provisions in this paragraph apply too, unless the domain name holder is either Hostnet or a Hostnet local contact person for the Client:

- the Client undertakes to inform the domain name holder about – and ensure conformance with - Article 6 paragraph 8, which applies to the Client;
- the Client remains responsible for compliance with all other provisions from the Agreement.

8. The Client must conform with all registration conditions, provisions, and (dispute) policies that the Domain name providers set for the application for, assignment of or use of a domain name and/or IP address. The Client is referred to the domain name conditions that apply to the extension in question, which are set out on an overview page. The domain name conditions are part of the Agreement.

9. Hostnet is entitled to render the domain name and/or IP address inaccessible or unusable or to transfer it into its own name when the Client demonstrably fails to fulfil the Agreement, however, only for as long as the Client is in default and only after the lapse of a reasonable term to comply, outlined in a written notice of default.

10. In the event that the Agreement is dissolved on account of the Client's breach of contract, Hostnet is entitled to cancel the domain name and/or IP address.

11. The Client takes cognizance of Hostnet's privacy statement and agrees to the processing of personal details for domain names as described in the privacy statement.

12. If details from the Whois are protected or con-

cealed at the Client's request, this does not mean that Hostnet is unable to provide the competent authorities with any name and address details or other details. If a statutory obligation rests with Hostnet to provide details to the competent authorities, Hostnet will comply with this obligation at all times.

#### **Article 7. Availability of the Service**

1. Hostnet shall endeavour to realise uninterrupted availability of its systems and networks and to realise access to data stored by Hostnet, but it cannot offer any guarantees in this respect, unless otherwise agreed in the offer or the electronic ordering procedure by means of a Service Level Agreement (SLA) clearly designated as such. Insofar as not stipulated otherwise in such SLA, availability is subject to the provisions in this article.
2. Hostnet shall not provide the Client with backups, unless the Client has purchased an additional SLA to that end. It is therefore the Client's responsibility to make backups of the data stored at Hostnet.
3. Hostnet shall endeavour to keep the software it uses up-to-date. However, Hostnet is dependent on its supplier(s) in that respect. Hostnet is entitled not to install certain updates or patches if, in its opinion, this is not conducive to a correct provision of the Service.
4. Hostnet shall endeavour to ensure that the Client is able to use the networks that are directly or indirectly connected to Hostnet's network. However, Hostnet cannot guarantee that these networks are available at all times.
5. If in the opinion of Hostnet a danger arises regarding the functioning of the computer systems or the network of Hostnet or third parties and/or the services via a network, especially as a result of the excessive sending of e-mails or other data, poorly protected systems or activities of viruses, Trojans and similar software, Hostnet is entitled to take any measures it deems reasonably necessary to avert or prevent this danger.

#### **Article 8. Liability**

1. Hostnet's liability for direct damage or loss suffered by the Client as a result of an imputable failure by Hostnet to fulfil its obligations under this agreement or as a result of an unlawful act by Hostnet, its members of staff or third parties it has hired is, for each event or series or related events, limited to an amount equal to the payments to be made by the Client under this Agree-

ment each year (excluding VAT). Under no circumstance however shall the total compensation for direct damage or loss amount to more than EUR 1,000 (excluding VAT).

2. Hostnet's liability for indirect damage or loss including consequential loss, loss of profits and savings or loss of (business) details and loss caused by business interruptions is excluded.
3. With the exception of the cases stated in article 8.1, Hostnet shall not be liable for compensation, irrespective of the ground on which a claim for compensation was to be based. The maximum amounts stated in article 8.1 shall not apply, however, if and insofar as the damage or loss is the result of intent or gross negligence on the part of managerial staff of Hostnet.
4. Hostnet's liability due to any imputable failure to fulfil the Agreement only arises if the Client has given Hostnet notice of default in writing forthwith and in a proper manner, setting a reasonable period for remedying the breach, and Hostnet continues to fail imputably in the fulfilment of its obligations after that period. In order to allow Hostnet to respond effectively, the respective notice of default must contain a description of the failure that is as accurate as possible.
5. Hostnet shall never be liable for damage or loss resulting from force majeure.
6. A condition with regard to any right to compensation being created shall always be that the Client reports the damage or loss in writing to Hostnet within 30 days of it having arisen.
7. The Client indemnifies Hostnet against all third-party claims for liability as a result of a fault in the Service provided to a third party by the Client and which in part comprised items, materials or results provided by Hostnet.

#### **Article 9. Breakdowns and force majeure**

1. Hostnet is entitled to temporarily shut down its systems, including the Website, or parts thereof for the purpose of maintenance, modifications or improvement thereto or thereof. Hostnet shall try to effectuate such action outside office hours as much as possible and it shall endeavour to notify the Client of a scheduled shut down in good time. However, Hostnet shall never be liable to pay compensation for damage or loss in connection with such action.
2. Hostnet is entitled to modify its systems, including the Website, or parts thereof from time to time so as to improve functionality and to remedy errors. In the event that a modification leads to a considerable change in functionality, Hostnet

shall endeavour to notify the Client thereof. In the case of modifications that are relevant to multiple clients, it shall not be possible to abandon a certain modification just for the Client. Hostnet shall not be obliged to pay any compensation for the damage or loss caused by such modification.

3. In the event that the Service is not available due to breakdowns, maintenance or other causes, Hostnet shall endeavour to notify the Client of the nature and expected duration of the interruption.

4. In the event of force majeure, which in any case includes disruptions to or breakdown of the Internet, the telecommunications infrastructure, synflood, network attacks, DoS or DDoS attacks, power failures, domestic uprising, mobilisation, war, traffic jams, strikes, exclusions, business interruptions, stagnations in supply, fire, floods, import and export obstructions and in the event that Hostnet's own suppliers deem it unable to deliver - regardless of the reason - as a result of which Hostnet cannot reasonably be expected to fulfil the Agreement, performance of the Agreement shall be suspended or the Agreement shall be terminated when the situation of force majeure has exceeded a ninety-day period, without being obliged to pay any compensation.

#### **Article 10. Term and termination**

1. In the event that the Service pertains to the periodic provision of services during a certain period, the Agreement is deemed to have been concluded for the minimum term indicated per service. If this minimum term elapses without one of the parties making known its desire to terminate at least one (1) month before the contract expiry date, the Agreement will be automatically extended by the term indicated for that service. If the Client is a natural person who does not act in the course of a profession or business and the Client has not made his or her desire known to terminate before the elapsing of the minimum term, the Agreement will be automatically converted into one with an indefinite term that has a one-month notice period.

2. If the Client is a natural person who does not act in the course of profession or business, the Client is entitled to submit their notice of termination on any given day after the after the automatic contract renewal with a one-month notice period. The termination is effectuated at the latest on the same calendar day one month after the termination notice is submitted.

3. In the event of cancellation, termination or dissolution for whatever reason, Hostnet is entitled

to delete all stored data or to render access to it impossible with immediate effect and to cancel all of the Client's accounts. In that case, Hostnet shall not be obliged to give the Client a copy of this data.

4. Termination requests can be submitted via the same channel through which the agreement has been entered as well as through Mijn Hostnet or by written notice. Since some channels are susceptible to misuse and/or identity theft, Hostnet may take measures that are in the Client's interest in order to reduce the risk of such misuse. For reasons of security, Hostnet asks that, if the Client should wish to terminate the service, in all cases the client first logs on to Mijn Hostnet (My Hostnet) to do so.

5. If the Client is a natural person who does not act in the course of a profession or business, the Client is entitled, without having to state the reasons, to dissolve the Agreement within fourteen days of its conclusion, unless Hostnet has already started executing the Agreement within this period with the Client's consent. Services that are excluded from the fourteen-day cooling-off period are listed, together with the reason for their exclusion, at: <https://www.hostnet.nl/over-hostnet/herroepingsrecht>.

6. In the event that the Client fails to fulfil any of its obligations under the Agreement, Hostnet is entitled to terminate all agreements concluded with the Client in question, without any notice of default or legal intervention being required and without prejudice to Hostnet's right to compensation for damage, loss of profits and interest.

#### **Article 11. Payment conditions**

1. The Client's payment obligation commences the moment the agreement is concluded. Payments relate to the period that starts on the day on which the products and services of Hostnet are actually available.

2. Hostnet shall send the Client an invoice for the amounts payable by the latter. The payment terms of this invoice are 14 days from the invoice date, unless the invoice or the Agreement stipulates otherwise.

3. The Client agrees with electronic invoicing by Hostnet.

4. In derogation from the previous paragraph, Hostnet is not obliged to send an invoice if the Agreement is a continuing performance contract. Every month or a different period agreed on, the Client shall pay Hostnet in advance the amount payable for that period.



5. Depending on the term for which the agreement is concluded, the costs due shall be charged and payable in advance, failing which Hostnet reserves the right to (temporarily) close down the services.

6. If the Client fails to pay in time, this shall be communicated to the Client and a new payment term shall be determined. When payment is still not made within that term, the Client is in default without any further notice of default. In that case, the Client must pay the statutory interest referred to in sections 6:199a and 6:120 of the Netherlands Civil Code (statutory commercial interest). If the client is a natural person who does not act in the course of a profession or business, he must pay the statutory interest referred to in section 6:119 of the Netherlands Civil Code.

7. If due to the actions of the Client the monies due cannot be collected or received, Hostnet shall in any case charge EUR 5.00 in administration costs. The aforementioned administration costs shall be increased up to a maximum of EUR 25.00 if the Client continues in failing to pay Hostnet's claim and Hostnet is forced to refer the debt for collection. In the latter case, the Client is also obliged to pay a reasonable compensation for extrajudicial costs, including all costs referred to in section 6:96 of the Netherlands Civil Code.

8. In the event that Hostnet had to incur additional costs (other than the aforementioned) in order to collect the money due, they shall be recovered from the Client.

9. In the event that the Client is of the opinion that the costs charged are not justified, the Client can notify Hostnet of its objections within two weeks of the invoice date. After having received a notice of objection, Hostnet shall investigate the correctness of the invoice amount.

10. The claim for payment is immediately due and payable in the event that the Client is declared insolvent, has applied for a moratorium or has all of its assets seized, dies or is wound up or dissolved.

11. In the above cases, Hostnet is also entitled to terminate or suspend execution of the Agreement or any as yet unexecuted part thereof without notice of default or legal intervention, without the Client being entitled to compensation for any damage that may be the result of that.

#### **Article 12. Intellectual property rights**

1. All intellectual property rights to all materials, software, analyses, designs, documentation, advice, reports, offers, as well as preparatory material thereof designed or supplied within the

framework of the Service are exclusively vested in Hostnet or its licensors.

2. The Client shall only obtain the rights of use and powers that are the result of the purport of the Agreement or which are granted in writing, and it shall not multiply or publish the software or other materials.

3. The Client is not permitted to remove or change any notices pertaining to copyrights, brands, trade names or other intellectual or industrial property rights - including notices regarding the confidential nature and secrecy of the materials - from/in the materials.

4. Hostnet is permitted to take technical measures in order to protect the materials. In the event that Hostnet has protected the materials by means of technical protection, the Client is not permitted to remove or avoid this protection.

5. Any use, copying or publication of the materials outside the purport of the Agreement or granted rights of use shall be regarded as an infringement of copyrights. The Client shall pay Hostnet an immediately due and payable penalty of EUR 2,000 per violation - which penalty is not open to judicial mitigation - without prejudice to Hostnet's right to be compensated for the damage or loss it suffers as a result of the infringement or to take other legal measures in order to bring a stop to the infringement.

#### **Article 13. Confidentiality**

1. The parties shall treat information made available to one another before, during or after execution of the Agreement in confidence when this information is earmarked as such or when the receiving party knows or reasonably should suspect that the information was intended as confidential. The parties also impose this obligation on their members of staff, as well as third parties they hire for the execution of the Agreement.

2. Hostnet shall not take cognizance of data stored and/or distributed by the Client via the Hostnet systems, unless this is necessary for the proper execution of the Agreement, or unless Hostnet is obliged to do so by virtue of a statutory provision or court order. In that case, Hostnet shall endeavour to limit taking cognizance of the data to the greatest possible extent, insofar this lies within its powers.

#### **Article 14. Changes to the General Terms and Conditions**

1. Hostnet reserves the right to make changes in

or additions to these terms and conditions.

2. Changes also apply to agreements entered into earlier, subject to a period of 30 days from the date on which notice of the change is given on Hostnet's website or via electronic messaging. Changes of minor importance can be made at any time.

3. Should the Client not wish to accept a change in these terms and conditions, it shall be entitled to terminate the agreement up until the date on which the new terms and conditions take effect, as of this date.

#### **Article 15. Final stipulations**

1. This agreement is governed by Dutch law.

2. Insofar as not dictated otherwise by mandatory law, any disputes as a result of this agreement shall be submitted to the competent Dutch court in Amsterdam.

3. If any provision in this agreement turns out to be void, it does not invalidate the entire agreement. In that case, the parties shall determine (a) new provision(s) which resemble(s) the intention of the original Agreement and General Terms and Conditions as closely as legally possible.

4. In these terms and conditions, the terms 'in writing' and 'written' are also taken to mean

e-mail and communications by fax, provided the identity and integrity of the e-mail or fax has been sufficiently established.

5. The version of any communication or monitoring received or stored by Hostnet is regarded as authentic, subject to proof to the contrary, to be presented by the Client.

6. The parties shall continuously and immediately notify each other of any changes to name, correspondence address, e-mail address, telephone number and, when asked, bank or giro account number. The Client shall implement these changes via My Hostnet.

If the Client demonstrably remains in default and cannot be contacted using any of the most recently provided contact details, Hostnet is entitled to terminate paid-for services at the end of the contract term and to immediately terminate services that have remained unpaid for.

7. The parties are not entitled to transfer the rights and obligations from the Agreement to a third party without the written consent of the other party.

8. The General Terms and Conditions have been drawn up in Dutch and in English. In the event of any difference regarding contents or purport, the Dutch text shall be binding.