



# Appendix 1

## Terms and conditions

To colocation agreement

# Definitions

For purposes of this agreement, the following expressions shall have the following meanings:

- **Agreement:** This agreement including the particulars and the attached appendices
- **Service fee:** Smartdc's fees for providing additional services
- **Cabinet:** Facility in the co-location area in which customer equipment can be placed using the technical facilities, and the additional technical facilities if ordered by customer, as specified in the particulars.
- **Additional Services:** The services additional to the services and described as such in the particulars
- **Customer Equipment:** Equipment of customer which is or will be placed in the co-location area of Smartdc
- **Co-location Department:** Organizational unit within Smartdc, which ensures the handling of technical questions of customer relating to the service and where customer can report authorized persons.
- **Co-location Area:** Conditioned installation room located inside a facility in use by Smartdc where customer equipment is or will be installed.
- **Commencement Date:** The date stated in the particulars from which date Smartdc will commence the provision of the service.
- **Facility:** A building, or part thereof, in use by Smartdc, including but not limited to the buildings mentioned in the particulars.
- **General Terms and Conditions:** The general terms and conditions of Smartdc.
- **Conditions:** The general terms and conditions form an integral part of this agreement as appendix 5.
- **Monthly Service Fee:** Monthly fee stated as such in the particulars payable in respect of the provision of services.
- **Office Hours:** The period between 10.00 and 18.00 hours, from Mondays through Fridays, with the exception of generally recognized national holidays in the Netherlands.
- **Particulars:** The particulars as set out in the particulars, which form an integral part of this agreement.
- **Power Charge:** Charge for power consumption in kWh.
- **Services:** The provision by Smartdc of co-location space and cabinet(s) in the co-location area and related services as specified in this agreement.

## 1. Obligations of smartdc

1.1 Smartdc will provide the services to customer from the commencement date with reasonable care and skill in accordance with this agreement.

1.2 Smartdc shall provide to customer the number of cabinet(s) as specified in the particulars, for the placement and having in use of customer equipment in the co-location area. Smartdc shall keep the co-location area and cabinet(s) in a good state of repair.

1.3 Smartdc shall keep the co-location area clean and tidy. This does not include installation, maintenance or any other form of conservation of the customer equipment.

1.4 Smartdc shall grant customer access, with due observance of the access protocol and the authorization rules and the security and conduct regulations as specified in appendix 4, to the co-location area and cabinet(s) in order to install or remove customer equipment and to carry out maintenance thereof.

1.5 Smartdc shall make a reasonable effort to provide elementary support to customer by means of the co-location Department during office hours.

1.6 If, at the request of or with prior consent from customer, Smartdc has rendered additional services, customer shall pay additional service fees for those services according to Smartdc's usual rates.

## 2. Rights of smartdc

2.1 Smartdc shall be entitled upon not less than 30 business days' written notice to customer to have the customer equipment moved to a different location within the existing facility or to a different facility nominated in writing to customer by Smartdc, provided only that the facility concerned is reasonably close to the existing facility. The customer must, at its own risk, take care of the moving of the customer equipment and its installation in the new co-location area and/or cabinet(s). The costs and expenses incurred by Smartdc in moving and installing the equipment shall be borne by Smartdc.

2.2 Relocation will only take place for reasons of security or other urgent reasons and Smartdc agrees that it shall use all reasonable endeavours to consult with customer prior to any relocation and to minimize any disruption caused to the operation of the Equipment.

2.3 Upon reasonable notice, customer shall permit Smartdc unrestricted access to the equipment to ascertain whether customer's obligations under this agreement have been duly observed and performed. Smartdc can access the equipment without prior notice, in case of an emergency situation, or if required by law or court ruling, This will be for instance in case of fire and/or smoke.

2.4 Smartdc shall be entitled to change the opening times of the co-location department after consulting customer. If Smartdc changes the opening times, customer will be timely notified. This does not have any conflict with the 24x7 access to the datacenter.

## 3. Obligations of customer and use of service

3.1. Customer shall take care of the installation and maintenance of the customer equipment.

3.2 Customer must observe and comply with the stipulations of appendix 3. Customer guarantees that its employees and any temporary third party staff as specified in the particulars shall have knowledge of the stipulations of appendix 4, and guarantees that these persons shall comply with the stipulations of appendix 4

3.3 Shipments of equipment to and from the Smartdc facilities are at customer's risk and expense. VAT and/or import charges are to be prepaid by customer. Shipments to the Smartdc facility should be announced in advance mentioning tracking number and contents of the shipment.

3.4 Customer must ensure that the customer Equipment is suitable for the use of the service, and that customer equipment meets the ESD security norms and requirements as established by the ESDA (Electrostatic Discharge Association) and other requirements that may reasonably be set on it for this purpose by competent authorities.

3.5 Customer shall take out and/or maintain a suitable and adequate insurance at its own expense, in accordance with the stipulations of article 8.

3.6 Customer shall not give the service or any part thereof in (sub) use to any third party or parties in any way, except with the prior written consent of Smartdc.

3.7 Customer undertakes not to infringe any rights of Smartdc or third parties by use of the Service, not to behave indecently or contrary to good morals or public order towards Smartdc or third parties, and not inflict any damage upon (any property of) Smartdc or third parties. customer undertakes in particular:

- to respect the intellectual property rights of third parties;
- not to distribute any data contrary to statutory provisions;
- not to gain access to computer systems and/or computer networks for which he is not authorized;
- not to change, delete, or render unusable data of third parties without the consent of the - not to spread any spam or computer viruses;
- not to use the service in a manner that will inflict damage, including diminished functionality, to Smartdc's property, or that will hinder other customers of Smartdc in their use of any service provided by Smartdc.

## 4. Taking effect on the agreement, duration and termination

4.1 The agreement is concluded on the moment of signing by the parties and is effective on the commencement date for the initial term as stated in the particulars.

4.2 Upon expiry of the initial term as set out in the particulars, the agreement shall be extended automatically each year by a period of one (1) year, unless either party will terminate the agreement by the end of the then effective period, by giving at least three (3) months' notice by registered mail.

4.3 Either party may partly or completely terminate the agreement in writing with immediate effect and without a notice of default if a petition for liquidation is filed with regard to the other party or if the other party's business is wound up or terminated for other reasons besides a business reconstruction or merger, without any obligation to pay for damages.

4.4 Termination of this agreement shall be without prejudice to the other rights, duties and liabilities accrued prior to termination and shall not affect any term that is stated to continue or must by inference continue after termination.

4.5 In case of premature termination customer shall not be entitled to reimbursement of any (advance) payments already made.

4.6 Within 10 working days after termination of this agreement, customer shall (at customer's own cost) disconnect and remove the customer equipment from the cabinet(s) and make good any damage caused thereby to Smartdc's reasonable satisfaction.

4.7 If customer fails to comply with clause 4.6, customer shall pay to Smartdc on demand as liquidated damages any costs and expenses incurred by Smartdc in remedying the breach.

4.8 If after written notice customer still fails to disconnect and remove the customer Equipment Smartdc may, as agent of customer (hereby appointed), disconnect and remove the Equipment. Smartdc can store the equipment and bill customer at the same tariff as the rack for storage.

4.9 Customer will indemnify Smartdc against any liability to any third party whose goods are stored, having been left at the Rack Space at the end of the Term or the earlier termination of this agreement and will bill customer the same tariff as the rack for storage.

## 5. Prices and payment

5.1 In addition to the other fees payable, customer will pay for electrical power consumed; and for the purposes of this clause 5.3 power usage shall be calculated by measuring the actual power consumption through the internal power meter(s) installed in the cabinet(s). Each individual power feed is metered separately.

5.2 Power usage will be charged monthly in arrears.

5.3 The power charges mentioned in particulars is subject to change after each new price negotiation with our energy supplier.

5.4 Customer shall pay all invoices within fifteen (15) days of the date of invoice.

5.5 In the event that customer fails to pay any sum due under this agreement, customer shall owe legal commercial interest on the outstanding amount, and, if the customer still does not pay the claim after a written demand or notice of default, Smartdc can pass on the claim for collection, in which case customer shall, in addition to the total amount owed then, be obliged to pay for all in-court and out-of-court expenses.

5.6 All payments made by customer under this agreement shall be made in full without any set-off, restriction or condition and without any deductions for or on account of any counterclaim. No sums paid under this Agreement shall be refundable if a Service is provided by Smartdc but not used by customer (in whole or part) before the end of the period for which payment has been made in advance.

## 6. Suspension of services

6.1 Smartdc is entitled to terminate this agreement;

- Payment of sums owed by customer are overdue for 30 days or more;
- Customer does not comply with the stipulations of appendices 2 and 3;
- Customer commits any illegal or unlawful act in connection with the use of the services;
- Customer prevents or delays Smartdc in carrying out any of its obligations under this agreement where this has a severe negative effect for Smartdc.
- Suspension may include disconnecting the customer equipment.

6.2 In the event that any of the services are suspended as a consequence of the act or omission of customer, customer shall pay (in advance of recommencement) all of Smartdc's reasonable charges and expenses incurred in the implementation of such suspension and any subsequent recommencement of the provision of any services.

## 7. Liability

The following provisions set out the entire liability of the parties to each other, including the acts and omissions of its employees, agents and subcontractors, arising as a result of negligence or any breach of its obligations under the agreement.

7.1 Neither party shall in any circumstances be liable to the other for any of the following types of losses (whether such losses arise directly, indirectly or otherwise): loss of profit; or depletion of goodwill; or wasted management

7.2 Smartdc will not be liable for loss or corruption of data (and any loss of use or value that arises as a result), or any other kind of consequential damage. The total liability of Smartdc here under in any period of twelve (12) months during the term of this agreement shall not exceed the total of 5 times the aggregated monthly service fees over the past twelve (12) months.

7.3 The liability of customer is limited up to € 500.000 per occurrence and up to € 1.000.000 per year.

7.4 Limitation of liability under this clause 7 does not apply to damages arising out of death or personal injury.

7.5 Parties will notify each other immediately as soon as one of them becomes familiar with a claim that the other party is responsible for.

7.6 Customer shall indemnify Smartdc against all claims of third parties for compensation of damage resulting from the use of the service and the use of customer equipment and its presence in the co-location area.

7.7 A party will only be liable for default (failure to perform /attributable shortcoming) under this agreement if this party, after receiving a written notice of default, still imputable fails to perform its obligations within the reasonable time period for remedy stated in the notice of default.

7.8 This clause 7 has continuing effect after termination of this agreement.

## 8. Insurance

8.1 Any destruction, loss, wear and tear, theft or deterioration of customer equipment shall be at customer's risk.

8.2 Customer must ensure to have taken out a business liability insurance ("bedrijfsaansprakelijkheidsverzekering") regarding customer equipment and the use of the service with an appropriate sum insured, and will maintain this insurance at least for the duration of the agreement. All costs involved in this insurance shall be fully payable by customer.

8.3 At the request of Smartdc, customer shall provide copies of its insurance certificate.

8.4 Customer recognizes that the obligation arising from article 8.2 implies no limitation of his liability for any damage under this agreement.

## 9. Force majeure

9.1 Neither party shall be liable to the other in any manner whatsoever if it is unable to perform any of its obligations under this agreement due to any cause beyond its reasonable control including but not limited to all known forms of force majeure and especially including fire, explosion, flood, earthquakes, acts of terrorism, damage to cables by ground works of any third party for whom Smartdc is not responsible or rodents, interruption of, or inability in obtaining, supplies or services from third parties or improper performance of obligations by suppliers of Smartdc. In the event that Smartdc is unable to perform for a period of more than 60 days as a result of a force majeure event, customer will have the right to immediately terminate this agreement without any penalty or further liability to Smartdc. Smartdc will further not invoice customer for those services for the time that Smartdc is unable to perform during a force majeure event.

## 10. Confidentiality

10.1 Each party shall keep confidential any confidential information disclosed to it by the other party. Confidential information includes, without limitation, information which is marked or expressed as being confidential, the content of this agreement and any information which could reasonably be deemed to be confidential, from its nature, content or the circumstances in which it is provided. Neither party shall disclose confidential information to anyone else except to its employees, agents and sub-contractors who need the information to effect proper performance of this Agreement and/or to its professional advisers. Each party shall be responsible for ensuring that any person to whom information is disclosed by them complies with the terms of this clause 10.1.

10.2 Clause 10.1 shall not apply to any information that is generally available to the public unless this availability results from a breach of this Agreement, to information the receiving party already possesses or which it obtains independently in circumstances in which the receiving party is free to disclose it to others and/or to information that is required to be disclosed for legal reasons.

10.3 This clause 10 has continuing effect after termination of this agreement.

## 11. Contact persons

11.1 Customer's contact person for operational matters designated in the particulars shall designate employees of customer and/or employees of a third party (or third parties) who are authorized, in accordance



with appendix 3 and as summarized in the particulars, to have access to the Smartdc facility and the co-location area.

11.2 Customer shall promptly inform Smartdc in writing of any change or adaptation to the data mentioned in particulars.

## 12. Ranking between the various documents of the agreement

12.1 This agreement consists of the following stipulations and documents all forming an integral part of this agreement:

- The articles and considerations of this agreement;
- Appendix 1 (Terms and conditions)
- Appendix 2 (Service Level Agreement);
- Appendix 3 (Protocol of access and data of authorized persons);
- Appendix 4 (Rules of conduct and security);
- Appendix 4 (General Terms and Conditions).

12.2 In the event of any inconsistencies between the documents mentioned in article 12.1, stipulations in the articles and considerations of the agreement shall have precedence over the stipulations in the appendices.

12.3 By signing the agreement, the customer accepts the applicability of the general terms and conditions, and certifies to have received a copy thereof.

12.4 By signing the agreement the customer agrees to it that its general or specific condition shall not be applicable.

## 13. Miscellaneous

13.1 This agreement shall be governed by Dutch law.

13.2 Any disputes arising from or relating to this agreement shall exclusively be submitted to the competent court in Rotterdam, the Netherlands.

13.3 Without the consent of customer, Smartdc shall have the right to assign any rights and obligations specified in this agreement to a third party. Customer shall not have the right to assign its rights and/or obligations under this agreement to any third party without the prior written consent of Smartdc.

13.4 This agreement contains all rights and obligations between the parties relating to the subject matter of the Agreement and replaces all prior agreements, obligations and/or arrangements in this respect.

13.5 This agreement can only be amended by means of a written document signed by both parties.