

TERMS OF SERVICE TRANSIP

Article 1 Definitions

In these Terms Of Service, the following terms, both singular and plural, each identified by a capital letter, have the following definitions:

- 1.1. Additional Services: the services that alongside the Colocation Services, VPS services, Hosting Services and Domain Name Services are offered by TransIP which are further specified in the Agreement, including but not limited to the supply of power and the supply of Remote Hands;
- 1.2. Account: personal section created and controlled by User;
- 1.3. Terms Of Service : these general Terms Of Service ;
- 1.4. Computer Equipment: the telecommunications Equipment that is installed by User in the TransIP Data Centre for the duration of the Agreement;
- 1.5. Colocation Service: the non-exclusive, non-transferable and non -sub licensable right that TransIP gives User to install and keep installed Computer Equipment in the Colocation Space, from the Date of Use until the end of the Agreement;
- 1.6. Colocation Space: the space in the TransIP Data Centre where, for the duration of the contract, the Computer Equipment is situated and where the TransIP equipment is also set up;
- 1.7. Services: the services offered by TransIP, which include the Colocation Services, VPS Services, Hosting Services and the Domain Name Services as well as Additional Services as described in more detail in TransIP quotations and the Agreement;
- 1.8. Domain Name Service: the service whereby TransIP, commissioned by and on behalf of User, registers domain names and keeps these registered;
- 1.9. Downtime: an interruption in the TransIP network resulting in a general unavailability of the Services ;
- 1.10. User: the natural or legal person with whom the contract for the provision of TransIP Services has been concluded;
- 1.11. Date of Use: the date when TransIP enables the User to use the Services as specified in the Agreement ;
- 1.12. Hosting Service: service whereby information and files can be stored on behalf of User and made available via the internet;
- 1.13. Installation Date: the date that TransIP provides User the opportunity to install the Computer Equipment in the Colocation Space;
- 1.14. Intellectual Property Rights: all intellectual property rights and any related rights, such as copyright, trademark, patent, design right, trade name rights, database rights and neighbouring rights, and rights to know how and single line performance;
- 1.15. Agreement: The contract between the parties regarding the provision of the Services by TransIP;
- 1.16. Remote Hands: the remote execution of actions on the instruction of and at the risk of the User.
- 1.17. TransIP: TransIP B.V. established at (2316 XB) Leiden on the Schipholweg 9b;
- 1.18. TransIP Equipment: the racks, server spaces, footprints, cages, cables and all other equipment of TransIP that is situated in the Colocation Space;
- 1.19. TransIP Data Centre: one of the data centres of TransIP where TransIP provides the Services to User;
- 1.20. Requirements: the requirements made known by TransIP to User in any manner to be complied with by User in relation to the Services provided, including but not limited to, technical requirements, minimum requirements, house rules and specifications;
- 1.21. Confidential information: all information, in any form – written, oral, electronic or tangible – including but not limited to software, (source)code, programs, applications, customer details, know how, technical specifications and documentation;
- 1.22. Uptime: the given time that TransIP Services are fully reachable and operational, at which time Downtime is not applicable.

- 1.23. VPS service: service whereby the User receives access to a Virtual Private Server and can use the storage and calculation capacity assigned to him on a TransIP server, connected to the power and network facilities.
- 1.24. Website: the website hosted by TransIP www.transip.nl and any underlying web pages or other websites that are the property of TransIP.
- 1.25. Windows Server 2008 R2: All editions of Windows Server 2008 R2 of which proprietary rights are held by Microsoft Corporation.
- 1.26. Microsoft Corporation: A third party software provider that is holder of Windows Server 2008 R2 proprietary rights.
- 1.27. License: The permission given by the third-party software provider to make use of a specific product or service.

Article 2 Applicability Terms Of Service

- 2.2. These Terms Of Service apply to all offers and proposals of TransIP and to the Agreement and all other contracts to which TransIP is party, insofar as parties have not deviated from these Terms Of Service in writing. These Terms Of Service prevail and replace any other, earlier terms of service declared applicable by Parties to TransIP offers, quotes and/or proposals and to the Agreement.
- 2.3. If the provisions of these Terms Of Service conflict with or deviate from any provision of this Agreement, the provisions of the Agreement shall prevail.
- 2.4. General (purchasing) conditions applied by User are not applicable to TransIP offers, quotes and proposals, the Agreement or any other contract to which TransIP is party, unless and insofar as this is expressly accepted in writing by TransIP.
- 2.5. In cases where both the Terms Of Service and the Terms Of Service of User are applicable, these Terms Of Service shall prevail.
- 2.6. TransIP has the right to amend these Terms Of Service. TransIP shall give notification of the changes to the Terms Of Service at least one month before they come into force. Parties are bound by the amended Terms Of Service from the moment these come into force. User is only entitled to terminate the Agreement as of the date that the amended Terms Of Service come into force if the amended Terms Of Service include a significant deterioration in the position of the User.

Article 3 Establishment of an Agreement

- 3.1. All TransIP offers and/or quotations are not mandatory unless specifically stated otherwise.
- 3.2. An agreement is established by written (this includes e-mail) confirmation by TransIP of a User order. There is also the option of signing an offer and/or quotation by means of an online signature. In such cases, the Agreement is effective after e-mail confirmation by TransIP of the offer/quote signed by User.
- 3.3. Electronic communication will be deemed to be received at the moment of transmission, unless User proves the contrary. If, as a result of delivery and/or accessibility difficulties regarding the User mailbox, this is at the User's risk, even if the mailbox is situated at a third party.
- 3.4. TransIP reserves the right, for whatever reason, to reject requests for the provision of Services.
- 3.5. User accepts and agrees with TransIP, that TransIP shall comply with the Agreement, immediately after it comes into force. The 'cooling off' provision as meant in article 7:46d para. 1 of the Civil Law Book ("BW ") for cancellation of a distance contract is therefore (as is defined in article 7:46i para 5 sub a BW) not applicable. If, unexpectedly, TransIP does not start implementation of the Agreement immediately after it comes into force, User, where User is a consumer, has seven (7) days to dissolve the Agreement free of charge, starting from the moment that the Agreement was effective, unless TransIP has commenced implementation within the aforementioned seven (7) days.

Article 4 Provision of Services

- 4.1. User is required to take every step necessary to ensure a correct delivery by TransIP, including the supply of correct and clear information and also prompt notification of any changes, important for the provision of the Services, to the information supplied. For any additional work, caused by failure

of User to comply with these obligations, User shall pay a fee to TransIP based on the normal rates charged. TransIP is not liable for any damage caused by TransIP, operating on the information given by the User.

- 4.2. TransIP has no knowledge of information and/or details that are distributed by User and/or User's clients, distributed with the aid of the Service. TransIP is not liable for this information. User shall indemnify TransIP for any damage resulting from these details and/or information, distributed with the aid of the Service by User or User's clients.
- 4.3. TransIP shall perform its Services to its best knowledge and ability, and in accordance with the requirements of good workmanship. This obligation takes the form of an "effort commitment". TransIP makes no guarantee that its services and systems will be uninterrupted, reliable and always accessible, unless otherwise agreed between the parties (e.g. in an SLA). TransIP is not liable for damages resulting from failures or changes in the telecommunications and/or transport data from third parties.
- 4.4. If TransIP has granted a SLA to User on the availability and accessibility of one or more of the Services, then the remedies for exceeding the promised availability and accessibility, are explicitly the only remedies that apply for User. TransIP is in no way liable for damages against User for exceeding the SLA.
- 4.5. All (delivery) periods and lead times specified by TransIP, including but not limited to the Date of Use and the Installation Date, are determined in good faith and will, wherever possible, be respected. TransIP is not bound by (delivery) periods and these are therefore not "fatal". By exceeding the (delivery) period, TransIP is not at fault or negligent. In case of a (possible) exceeding of a (delivery) period parties will consult as soon as possible in order to take appropriate action.
- 4.6. User guarantees that he has the necessary permits and that he has permission to use the Computer Equipment, the software that runs on it and that he is authorized to perform any activity he provides with the aid of the Services. In addition, User guarantees that the Computer Equipment used by him, meets the Requirements indicated by TransIP via the Website or via any other means.
- 4.7. Parties may reach an interim agreement that the approach, method or scope of the Agreement and/or the resulting tasks be extended or modified. User accepts that the duration of the agreement then may be affected. If the interim change influences the agreed fee or expense reimbursements, TransIP shall notify User of this at the earliest opportunity.
- 4.8. If, pursuant to an amendment to the contract, due to additional requests or demands of User, TransIP is obliged carry out additional work (more work), then this work will be charged to User on an actual cost basis according to the usual rates, unless otherwise agreed in writing.
- 4.9. TransIP reserves the right to adjust the limitations on the use of data transfer and storage capacity at any time. User will be informed of this as soon as possible but in any event within (1) one month.
- 4.10. The log files and other electronic or other records of TransIP shall provide full evidence of the position of TransIP, subject to proof of the contrary by User.
- 4.11. To use the Services, User must create an account in the manner described on the Website. User shall guarantee TransIP that he is authorized to create the Account and that the information he provides to create the Account, is complete, true and accurate. It is not permitted to create an account in someone else's name. When creating an Account, User must submit a user name and password, with which the Account can be accessed. If, when creating the Account, User is under the age of sixteen (16), then User must have permission from a parent or legal guardian to create the Account. By creating the Account and/or using the Service, User guarantees that he is sixteen (16) or older, or that he at least has permission from a parent or legal guardian.
- 4.12. User is personally responsible for preserving the confidentiality of the username and password combination. User is liable for any use that is made of the Service with the user name and password. TransIP may assume that user is in fact the person who logs on under the username and password of User. Once User knows or has reason to suspect that a user name and/or password has come into the hands of unauthorized persons, User must inform TransIP of this, notwithstanding its own obligation to immediately to take effective measures, such as changing the password.

- 4.13. TransIP reserves the right to change the in log procedure, the password and/or the user name of User if deemed necessary in the interest of the functioning of the Service. User names will in any case be deleted and/or withdrawn if these infringe on any rights of third parties or are considered otherwise undesirable by TransIP.
- 4.14. User guarantees that he fulfils these Requirements.
- 4.15. TransIP cannot guarantee a fixed place in the data centre for the acquired colocation. It may be that servers need to be moved because of space optimization. Naturally, User shall be timely informed.
- 4.16. On purchase of SMS and e-mail monitoring, the cost of sending the SMS is not included. User pays € 0.25 per message received plus the cost his or her provider charges for receiving SMS.

Article 5 Installation of Computer Equipment

- 5.1. User shall install the Computer Equipment in the Colocation Space as of the Installation Date.
- 5.2. When installing the Computer Equipment User shall follow all reasonable instructions from TransIP and act fully in accordance with the prevailing "house rules" of TransIP Data Centre.
- 5.3. User guarantees that computer equipment that is installed in the Colocation Space, is installed in accordance with safety requirements, instructions and security measures applicable for that Computer Equipment. User is prohibited from bringing any combustible materials to the Colocation Space and/or to store them there, including, but not limited to, paper, cardboard and flammable liquids. Any Computer Equipment connected to the Service must be technically compatible with the Services.
- 5.4. On installation of Computer Equipment in the Colocation Space and/or use of the Colocation Space User shall not introduce any changes in the Colocation Space and/or the existing TransIP Equipment.
- 5.5. If the support of TransIP technicians is required for the installation of Computer Equipment, User shall provide TransIP with all relevant information necessary to support the installation, such as the delivery data of the Computer Equipment and its description.
- 5.6. If User installs and/or mounts Computer Equipment and/or racks inappropriately in the Colocation Space, the costs of fixing these errors will be fully charged to User. Such repair costs are at least EUR 50, - (fifty Euros) excluding VAT.
- 5.7. If User purchases Colocation Services, TransIP offers User the option to purchase Remote Hands with respect to those Colocation Services. The conditions under which Remote Hands occurs, are specified in the Agreement. The costs for Remote Hands are charged to User on an actual costs basis.
- 5.8. TransIP at all times reserves the right to change TransIP Equipment, computer programs and methods used by her, without being in any way liable for damages to User.
- 5.9. User is personally responsible for the use, application and maintenance of its Computer Equipment, for adequate system management and for security of the data stored there.

Article 6 Access and Security

- 6.1. Notwithstanding provisions elsewhere specified in this Agreement and/or other regulations regarding the access and security that is in force in the TransIP Data Centre, in principle User has access to the Data Centre and TransIP colocation Space, 24 hours a day, 365/366 days a year provided that:
 - i) User does not fail accountably to comply with the Agreement;
 - ii) access is only granted to employees of who are registered with TransIP;
 - iii) TransIP may refuse access to third parties brought by User; and
 - iv) TransIP reserves the right to delete any employees of User who violate house rules and/or fail to follow the reasonable instructions of TransIP.
- 6.2. User is responsible for any use of access codes and/or passes by User personnel, third parties and/or unauthorized persons. In the event that User suspects or knows that access codes and/or passes are being misused, it will notify TransIP without delay, notwithstanding User's own responsibility to take appropriate action.

Article 7 Disclaimers

- 7.1 Notwithstanding any other remedies available to TransIP, User shall indemnify TransIP for claims in any way connected to a breach of the Agreement by User, wrongful act or other act and/or omission by User including, but not limited to, claims by third parties in relation to content that, with the aid of the Service, was made public by User or claims arising from the use of the Services by User.

Article 8 Guarantees

- 8.1 User guarantees that (the implementation of) the Agreement neither the actual nor legal actions performed by User in using the Services of TransIP, shall infringe upon any subjective right of a third party, or act of law, regardless of the legal system from which it originates.
- 8.2. If TransIP in any manner whatsoever, becomes aware of a potentially unlawful act or possible criminal conduct of User or its clients, it shall be entitled to wholly or partially suspend the Services until it established by law whether these existed. Under unlawful or criminal behaviour of User and/or its clients, regardless of whether this occurred with the user's and/or its customer's knowledge, is understood to include:
- i) acts in breach of (Intellectual Property)rights of third parties;
 - ii) sending spam and bulk messages;
 - iii) hacking, IP spoofing, phishing, password cracking, phreaking, computer intrusion and computer fraud;
 - iv) overloading the network of TransIP or third parties;
 - v) running IRC related services (including but not limited to, IRC servers, IRC shell hosting, bouncers, clients, eggdrop, etc.)
 - vi) distribution of child pornography;
 - vii) hosting pornographic content
 - viii) the distribution of illegal information with a racist or discriminatory content;
 - ix) storage of information that is in any way illegal; or in any other way in violation of relevant acts and/or legislation.
- 8.3. Should User become aware and /or suspect that a third party with the aid of the Services performs wrongful acts against User, TransIP and/or third parties, including but not limited to the acts mentioned in 8.2, User shall immediately take all steps necessary to stop this unlawful act , notwithstanding the rights of TransIP to take its own measures.
- 8.4. If it is established in court that there are indeed unlawful and/or criminal acts performed by User and/or its clients, TransIP is entitled to terminate the Agreement. If no unlawful and/or criminal acts have been carried out, TransIP shall resume provision of Services. TransIP is at no time liable for any damages to User created by the suspension of Services, even if it is established that there was no question of wrongful or criminal act.
- 8.5. Any damage and/or costs to User, caused by and/or resulting from actions of other users and/or third parties, including but not limited to actions mentioned in article 8.2, are at User's own expense. TransIP accepts no liability for this.
- 8.6. The obligation of User, for example, to pay the agreed fee, shall remain in force during the period that TransIP suspends its service.

Article 9 Liability

- 9.1 In the context of the formation and/or execution of the Agreement TransIP shall not be held liable for any damages arising from a (attributable) fault, unlawful act or otherwise, except for the provisions in the following paragraphs of this article.
- 9.2. If TransIP is liable to User for any damages, for whatever reason, the amount of the resulting damages shall be restricted to the amount actually paid out by the TransIP insurance in that specific case. If, for any reason, the insurance of TransIP does not pay out, articles 9.3, 9.4 and 9.5 are applicable for the determination of the level of compensation.

- 9.3. TransIP shall only be liable for direct damages (as defined below) that User suffers as a result of an attributable breach and/or unlawful act of TransIP to an amount equal to the fees paid to TransIP for a period of three (3) months prior to the event from which the liability arises, whereby the total liability under this Agreement shall never exceed EUR 1.000, - (thousand Euros) .
- 9.4. Direct damage means exclusively:
- i) damage to property;
 - ii) reasonable costs incurred to prevent or limit direct damage as a result of the incident on which the liability is based, that might be expected;
 - iii) reasonable costs incurred to determine the cause of damage, liability, the direct damage and the manner of restitution.
- 9.5. Any liability of TransIP other than for direct damages, including consequential damages is excluded. Consequential damages in this context is understood to mean: lost profits, lost savings, loss of goodwill, damage through business interruptions, shortfall, costs incurred to prevent or to determine consequential damages, misplacement, switching or damage to electronic data and/or damage caused by delay in transport of data transfer and any other damage than that mentioned in article 9.4.
- 9.6. This article in no way limits the liability of TransIP for damages caused by intent or gross negligence on the part of TransIP ("its own actions") and/or its management.
- 9.7. TransIP liability for attributable breach of the Agreement and/or unlawful act shall arise only if User immediately and properly provides TransIP written notice of default, whereby User gives TransIP a reasonable time to discharge its obligations and that, after the expiry of this period, TransIP attributably continues to fail to fulfil its obligations. The notice must give as detailed a description as possible of the shortcoming, allowing TransIP to respond adequately.
- 9.8. Any right to compensation under this article shall expire if within fourteen (14) days from the time the damage occurred no action has been taken by or on behalf of so User.

Article 10 Insurance

- 10.1 User has adequate Insurance and shall for the duration of the Agreement maintain adequate insurance for civil liability and professional liability.
- 10.2. Any damage to the Computer Equipment is at all times at the risk of User, unless TransIP is liable under article 9 for the damage. For the duration of the Agreement, it is also the responsibility of the User that he is adequately insured and, for the duration of the Agreement, adequately insured for any loss, theft, damage and /or other harm to the Computer Equipment.
- 10.3. User shall, on first request, present TransIP with the Insurance policies.

Article 11 Intellectual Property rights

- 11.1. Nothing in the Agreement involves the transfer of any Intellectual Property rights from one party to another party. The provision of Confidential Information to User shall not in any way result in a transfer of Intellectual Property rights incumbent on the Confidential Information to User.

Article 12 Payment

- 12.1 Unless otherwise expressly agreed in the Agreement, the payment for Services is in advance by means of direct debit, or by using alternative available payment methods. In case payment is done by using alternative available payment methods, TransIP reserves the right to charge administration costs. In case payment is done by means of direct debit, User ensures a sufficient bank or giro balance so that the amount can be debited. User is also responsible for the correctness of the bank account details, including but not limited to, the account number and name.
- 12.2. If expressly agreed in the Agreement that payment is not by direct debit or alternative available payment methods, User shall pay by bank transfer within the period stated on the invoice. If no payment date is specified or agreed, payment by User shall be within fourteen (14) days after the invoice date. Unless otherwise stated, all prices are in Euro and excluding VAT.

- 12.3. TransIP reserves the right, during the term of the Agreement, to raise its prices annually on 1 January, in line with the price index for the preceding calendar year, as issued by the CBS (Consumer Price Index "All households"), plus up to 15%. TransIP is authorized to implement the price rise at a later date if this is deemed desirable from an administrative viewpoint.
- 12.4. In addition to that mentioned in article 12.3, TransIP is also entitled to increase prices for its Services when an increase occurs in expenses incurred by TransIP. TransIP shall give notification of this increase no later than one (1) month before the date the increase takes effect. If User is a consumer, User reserves the right to terminate the Agreement if the price increase is implemented within the first three (3) months after closing of the Agreement .
- 12.5. Unless otherwise specifically agreed, TransIP shall:
- i) charge installation costs, activation costs and other one-off costs from the date of the signing of the Agreement;
 - ii) charge in advance, all recurring fees from the Date of Use or the date of signing of the Agreement, whichever is earlier;
 - iii) charge all Additional Services one month in arrears.
- 12.6. Any appeal by the User for deferment, set off or deduction is not allowed unless User is a consumer.
- 12.7. TransIP is at all times entitled to invoice User in the interim and/or to demand security for compliance from User on the basis of advances.
- 12.8. If the direct debit fails due to insufficient balance , is reversed and/or otherwise fails, User shall automatically receive notification. TransIP shall, in such cases, attempt to collect the amount by direct debit one or more times. If the direct debit fails two more times and/or is reversed, TransIP shall send User an invoice requesting immediate payment of amounts due by bank transfer. Hereby, in addition to the amounts due, a sum of EUR 14.71(fourteen Euros and seventy-one Eurocents) excl. VAT administration costs shall be charged. If the User's direct debit also failed, for whatever reason, in the past, then on the next failure, after the first attempt, an invoice will be sent to User, which includes the aforementioned administration costs.
- 12.9. If parties have expressly not agreed to direct debit, and User has not paid within the period stipulated in article 12.2, TransIP shall send User a reminder wherein TransIP reserves the right to charge, above the amounts agreed, administration costs of EUR 14.71(fourteen Euros and seventy-one Eurocents) excl. VAT. This invoice must be paid within the stipulated period.
- 12.10. If User has not completed the payment within the period referred to in articles 12.8 and 12.9, TransIP shall send User a formal notice for that amount, wherein, in addition to the amounts referred to in articles 12.8 and 12.9, formal notification costs of EUR 25,-- (twenty-five Euro) excl. VAT shall be charged.
- 12.11. From the moment that the direct debit is rejected for the first time and/or is reversed and/or there is no direct debit agreement, User fails to pay the TransIP invoice within the payment period, then he shall be automatically in default, without the requirement of any notice of default or summons.
- 12.12. If User, after the formal notice referred to in article 12.10, still fails to pay the amount due, plus administration costs and notification costs, then TransIP has the right to:
- i) to terminate the Agreement immediately without judicial intervention, cease the provision of the Services and all to remove Services and accounts, and any related Accounts, provided that no reversal liability arises and the amounts due by User remain claimable; and/or
 - ii) hand over the claim for collection to a third party. In that case, in addition to the principal and administration costs and notification costs, User shall be obliged to pay any out of court costs and injunction costs, explicitly above and beyond any costs determined in court. The amount of the out of court costs is at least 15% of the principal, with a minimum of EUR 250,-- (two hundred and fifty Euro).
- 12.13. If TransIP must incur costs, costs that must be reasonably incurred by TransIP, exceeding the indicated collection costs as mentioned in the preceding paragraph, then User shall also pay these costs to TransIP.

- 12.14. TransIP reserves the right to request security for payment in a form indicated by TransIP, including but not limited to the provision of a bank guarantee. TransIP will in such a case only deliver the Services or resume the provision of Services after the appropriate security is obtained.
- 12.15. If parties have agreed that User will pay fees by means of direct debit, TransIP is authorized to charge administration costs, regardless of any other costs that must be met by User under this article 12, if:
- i) User has cancelled and/or terminated the direct debit; and/or
 - ii) payment to TransIP has been reversed more than one (1) time.

Article 13 Shutdown of Services

- 13.1. TransIP is entitled immediately to interrupt and suspend the provision of Services and/or deny User access to the Colocation Space and/or TransIP Data Centre if:
- i) User has not paid the invoice within the period specified in article 12.1 or 12.2 and has not paid the amount and the interest as specified in article 12.8, within seven (7) days after notification of this shortcoming.
 - ii) the power consumption of the User exceeds the limit for electricity usage as specified in the Agreement and User fails permanently to reduce the electricity usage to the limit as defined in the Agreement, within three (3) days of being informed by TransIP of this.
 - iii) If User runs software and/or scripts on his or her webhosting and/or VPS leading to the compromise of the TransIP network.
 - iv) User executes a credit card or Paypal chargeback for unjust reasons.
- 13.2. The interruption and/or suspension of the Services, or denial of access leave TransIP's right to terminate the Agreement or the adoption of any other remedy that it has at its disposal, unaffected.
- 13.3. After interruption and/or suspension of the Services or the denial of access under article 13, TransIP has the right to charge reactivation costs to the amount of EUR 50,-- (fifty Euro), with regard to the administrative costs of TransIP in the context of interruption and/or suspension or the denial of access and possible resumption of the provision of the Services.

Article 14 Interruptions

- 14.1. Immediately after discovery of a Downtime, User shall inform TransIP per e-mail and telephone of the Downtime and provide information on:
- i) the nature of the Downtime;
 - ii) the Services affected by the Downtime;
 - iii) the name of the User company;
 - iv) the name, Telephone number and e-mail address of the User contact person
 - v) the location of the Colocation Space within the TransIP Data Centre; and
 - v) any instructions for employees of TransIP.
- 14.2. After notification by User in accordance with article 14.1, TransIP shall give an estimate for repair of the Downtime and make every effort to end the Downtime as soon as possible.
- 14.3. User can only invoke response and recovery times if he has signed a SLA. If an interruption is outside of the SLA, the current TransIP rate shall be charged.
- 14.4. Instead of restoring the Service, TransIP entitled to replace the Service with any other reasonably comparable service.
- 14.5. If TransIP cannot repair the Downtime and can offer User no alternative service, resulting in an uninterrupted Downtime of more than two (2) hours on the Service, User has the right to compensation in the form of a pro rata credit on fees paid with regard to the Services affected by the Downtime, under the condition that the inability to restore the Downtime was not caused by force majeure (article 24) or any act or omission of User.
- 14.6. For VPS Services a 99.99% uptime guarantee is in place. If, in a given calendar month, 0.01% or longer no Uptime occurs on the VPS Services that User is using, the User is entitled a compensation in the form of a refund of the costs made for the time that no Uptime was in place, in minutes (rounded downwards), times 100 (hundred). For this refund a maximum applies of all the paid costs of the VPS

Services for that given calendar month in which the Uptime guarantee has not been fulfilled, and the condition that the inability to restore the Uptime was not caused by force majeure (article 24) or any act or omission of User.

- 14.7. User is only granted the rights as in this article in the event of a Downtime. Any other rights, including but not limited to the right to damages, are explicitly excluded.

Article 15 Maintenance

- 15.1. TransIP reserves the right to interrupt Services and/or to deny access to the Data Centre and/or the Colocation Space if it considers this necessary for maintenance purposes. User therefore recognises that the performance of maintenance may result in interruption of provision of Services. TransIP may, inter alia, carry out (have carried out) the following actions: the control of files and/or data for signs of unsafe or illegal acts, computer attacks and computer viruses.
- 15.2. Insofar as TransIP fulfils the provisions in articles 14 and 15, then interruptions due to maintenance shall not qualify as Downtime.
- 15.3. If TransIP expects the maintenance shall negatively influence the provision of the Services to User or may lead to denial of access to the TransIP Data Centre and/or de Colocation Space, TransIP:
- i) make every effort to inform User seven (7) days prior to the maintenance.
 - ii) where possible, let maintenance take place between 23:00 and 5:00 hours to keep the negative effect on the provision of services or the access to the Data Centre and/or the Colocation Space to a minimum; and
 - iii) make every effort to limit any interruptions to the Services or the denial of access to the Data Centre and/or the Colocation Space as much as possible.
- 15.4. TransIP reserves the right to implement (i) changes to the technical properties of the Services, (ii) changes in the data and telecommunications network or (iii) any other changes in relation to the Services. These changes may possibly have an influence on the peripheral equipment, such as the Computer Equipment, used by User. TransIP is not liable for any damage that occurs as a result of changes as referred to in this article.
- 15.5. TransIP only installs patches and updates for the software that it has made available to User itself. TransIP makes every effort to install patches and updates as quickly as possible. Liability of TransIP for not installing patches and updates promptly or correctly is specifically excluded.
- 15.6. TransIP is authorized without prior notice to deviate from the provisions of this article 15 if, in the opinion of TransIP there is an emergency situation that requires immediate performance of maintenance tasks that may lead to an interruption of the Services or denial of access to the Data Centre and/or the Colocation Space.

Article 16 Move

- 16.1. TransIP is authorized to move the TransIP Data Centre and/or the Colocation Space, and to interrupt the Services in the context of such a move.
- 16.2. User recognizes and agrees that any interruptions in provision of the Services as a result of a move as referred to in this article, do not qualify as Downtime if TransIP informs User thereof thirty (30) days prior to the move in writing.
- 16.3. The costs incurred by User as a result of the move must be borne by User, unless parties have agreed otherwise in writing.

Article 17 Exceeding the data limit and power limit VPS and Colocation

- 17.1. TransIP enables User to use a certain amount of data transfer. TransIP charges User for this use of data transfer in the manner specified in the Agreement. The Agreement stipulates what the allowed data transfer per month is.
- 17.2. If User does not fully utilize this permitted monthly maximum amount of data transfer, he may not carry the remainder forward to the following month and shall also not be refunded.

- 17.3. Where User exceeds his allowance of data transfer, TransIP shall, for each additional gigabyte used, charge User EUR 1.50 (one euro and fifty cents) per GB, rounded up. Invoicing of this additional fee takes place once a month.
- 17.4. Notwithstanding article 4.3 of these Terms Of Service, TransIP guarantees no minimum speed with regard to the data transfer.
- 17.5. TransIP allows User to use the electricity in the Colocation Space. This use of power shall be charged to User by TransIP in the manner stated in the Agreement. The Agreement stipulates how many amps power User may use per month and how many amps the power limit is.
- 17.6. If User does not fully utilize the maximum amps power allotted to him, he may not carry the remainder forward to the following month and shall not be refunded.
- 17.7. Where User exceeds the allowed kVA Electricity limit, TransIP shall, for each additional 0.1 Amp, rounded up, charge User for extra costs. The rate is stated on the TransIP Website. Invoicing of this additional fee takes place once a month.
- 17.8. Notwithstanding article 4.3 of these Terms Of Service, TransIP does not guarantee uninterrupted provision of electricity.
- 17.9. In case of exceeding the current limit or amount of data traffic TransIP shall allow User to upgrade User package to a larger package. Where User accepts this offer the cost of excessive use shall be dropped.
- 17.10. If User, In case of exceeding the current limit or amount of data traffic, accepts the offer to upgrade his package, then the rate for the new package shall be charged from the month that the excess occurred.
- 17.11. In case of exceeding the current limit for a 20U or 46U colocation contract, the cost of excessive use shall be calculated on the basis an extra power block of 4 amps and 670 kWh. The number of electricity blocks charged depends on the amount of excessive use.
- 17.12. The price of Electricity is subject to fluctuation. TransIP therefore reserves the right to change the price for electricity when they feel compelled to do so.

Article 18 Domain Name Registration

- 18.1. TransIP reserves the right to only consider an application for registration of a Domain Name if TransIP has received from User:
 - i)the amount due for the domain name registration;
 - ii)the necessary order form for registration, completed and sent to the authorized person; and
 - iii)all other documents required for the registration application.
- 18.2. If TransIP has already applied for a domain name before he has received complete payment from User for the domain name registration, then the requested domain name shall remain at the disposal of TransIP until complete payment has been made, regardless of any rights that User may assert to this domain name.
- 18.3. TransIP accepts no liability whatsoever for the (no longer) availability of a particular domain name, rejection of the application for a particular domain name, the unused expiration of an objection or appeal period due to the absence of instructions from User or claims of third parties with regard to a particular domain name. User indemnifies TransIP against all claims of third parties in any way arising from and/or in connection with User's use of a domain name registered on his behalf or in his name by TransIP.
- 18.4. Where the application for a particular domain name is rejected then User must ensure the prompt provision of clear and complete instructions to TransIP, to allow timely notice of objection or appeal on behalf of User concerning the rejection of the application for domain name registration. The costs associated with the setup of this objection or appeal shall be borne by User.
- 18.5. In the event of changes to information with respect to a domain name registration, User will ensure that these changes are transmitted immediately to the particular registry (including but not limited to the SIDN). If a User domain name is moved then User shall ensure that the address details used by TransIP for the Whois - database of that particular registry (including but not limited to the SIDN) are amended so that TransIP shall no longer be associated with the domain name concerned.

- 18.6. If User does not pay the amounts due with regard to the domain name registration within the agreed period, TransIP, notwithstanding further provisions in this Terms Of Service, explicitly not required to pay fees for the domain names held by (TransIP on behalf of) User.
- 18.7. If TransIP has made available to User e-mail addresses, IP-addresses and/or other access and/or network addresses and/or protocols, you can derive no rights from these. TransIP is at all times authorized to amend and/or change these protocols without such a change giving User the right to terminate the Agreement. TransIP shall make every effort to inform User of such changes.

Article 19 Windows Server 2008 R2

- 19.1 To the extent it is permitted by applicable law, user can in no instance hold Microsoft Corporation responsible for direct, indirect or consequential damage arising from the use of Windows Server 2008 R2.
- 19.2 To the extent it is permitted by applicable law, user can in no instance call upon Microsoft Corporation for warranties or technical support.
- 19.3 In case of a technical malfunction of Windows Server 2008 R2, the user will not call upon Microsoft Corporation or one of its distributors for support, but only on TransIP.
- 19.4 User will allow information sharing of user details between TransIP and Microsoft Corporation in order to identify user as rightful user of a license, but only to the extent that privacy regulation permits it.
- 19.5 In case user generates more than €1000 revenue for Microsoft Corporation, monthly sharing of address details with Microsoft Corporation will be required. TransIP will ask user for permission before sharing the address details with Microsoft Corporation.
- 19.6 User will not remove, modify or obscure any copyright, trademark, or proprietary rights notices that are contained in or on Windows Server 2008 R2.
- 19.7 User will refrain from reverse engineering, decompiling, or disassembling Windows Server 2008 R2, except to the extent that such activity is expressly permitted by applicable law.
- 19.8 User will refrain from unlicensed, illegal and unauthorized use of Windows Server 2008 R2.
- 19.9 Unless expressly mentioned differently, user will not share and/or distribute Windows Server 2008 R2, parts of it, user rights or activation keys.
- 19.10 Unless expressly mentioned differently a single license grants access to the use of Windows Server 2008 R2 to a single biological person. If multiple persons make use of a single license this must be communicated with TransIP. TransIP might decide to charge additional costs.
- 19.11 You may permit up to two other users to use or access the graphical interface of Windows Server 2008 for testing maintenance and administrative purposes only. Under these circumstances there is no need for ordering additional licenses.
- 19.12 User is to avoid the application of Windows Server 2008 R2 in high risk circumstances. Thus user will consent to refrain from using Windows Server 2008 R2 in situations where it might lead to death, serious bodily injury of any person and severe physical or environmental damage.
- 19.13 If the user were to use Windows Server 2008 R2 in any way prohibited by article 19.1 to article 19.12, TransIP maintains the right to block and cancel all user's services.
- 19.14 If the user were to use Windows Server 2008 R2 in any way prohibited by article 19.1 to article 19.12, TransIP maintains the right to share any information requested by Microsoft Corporation, but only to the extent that privacy regulations permit it.
- 19.15 TransIP is not to be held responsible for direct, indirect or consequential damage for deficiencies inherent to Windows Server 2008 R2.

Article 20 Duration and Termination

- 20.1 An Agreement shall commence on the day that TransIP accepts the proposal and/or order signed by User, in accordance with article 3, and applies for the deadline set on the TransIP website. Other than provided in article 20.2, interim termination of the Agreement is not possible.

- 20.2 If User is a consumer, the Agreement shall be entered into for the period of one (1) year. The user has the right to terminate the Agreement at the end of this period, observing a termination notice of one (1) month. If the User does not terminate Agreement this is automatically extended to an Agreement for an indefinite period. The User in that case has the right to terminate Agreement taking into account a notice of termination of one (1) month. Costs (i) incurred or (ii) no longer to be cancelled by TransIP on behalf of User, after the Agreement has come into force, shall not be refunded as a result of cancellation, or shall at least remain due in full after the cancellation.
- 20.3 Notwithstanding the provisions of articles 20.1 and 20.2 TransIP has the right to terminate on notice of thirty (30) days if TransIP receives notification from his lessor or proprietor that the lease contract for the location where the TransIP Data Centre is established, is terminated and TransIP has not found an alternative and suitable Data Centre within thirty (30) days.
- 20.4 Parties may terminate the Agreement with immediate effect without notice or judicial intervention when:
- i) the other party has applied for bankruptcy or is declared bankrupt;
 - ii) the other party requests suspension of payments, or that is granted to him;
 - iii) the other party by confiscation or otherwise loses the power of its assets or a substantial part thereof;
- 20.5 Parties shall be entitled to terminate the Agreement out of court, where the other party accountably fails to fulfil obligations under the Agreement and, after receiving proper written notice of shortcomings, within fourteen (14) days after the onset of these shortcomings does not repair them within a reasonable period.
- 20.6 Notwithstanding the provisions of articles 20.4 and 20.5 and elsewhere in this Terms Of Service, TransIP has the right to terminate the Agreement immediately, without judicial intervention and without any liabilities in respect of User, if:
- i) User and/or his staff have, on several occasions, been guilty of and/or misconduct in het Data Centre and/or de Colocation Space, to be determined by TransIP;
 - ii) following the conclusion of Agreement TransIP learns of circumstances giving good reason to fear that User shall be unable to meet its obligations; and /or
 - iii) User has not provided to TransIP the security required under article 12.7 or this security is insufficient.
- 20.7 If User, at the time of dissolution referred to in this article, has already received work for the implementation of the Agreement, such work and the related payment obligation is not subject to cancellation. Any amounts invoiced by TransIP before the dissolution, in connection with work performed or delivered to the best of his ability, notwithstanding the provisions in the preceding sentence, remain payable and shall be immediately due and payable at the time of the dissolution.
- 20.8 If User does not give notice to terminate is colocation or VPS Agreement, this shall be automatically prolonged in an Agreement of the same duration for which the Agreement was initially entered into.
- 20.9 Termination of contracts concerning VPS Services, Hosting Services and/or Domain Services shall be effected by means of direct termination via the Controlpanel. Termination of contracts concerning Colocation Services shall be effected by means of a ticket from the Controlpanel. For terminations, notice of a period of 1 month applies.

Article 21 Consequences of Termination

- 21.1 Immediately after termination of the Agreement in any manner whatsoever:
- i) TransIP shall cease the provision of the Services to User, and
 - ii) all amounts owed by User are immediately due, and
 - iii) TransIP reserves the right to notify the clients of User of termination . Only if and when required by law, shall User grant permission to TransIP to notify clients thereof.
- 21.2 If the Agreement is terminated by either party in accordance with article 20.3, or 20.4 User shall ensure that the Computer Equipment is removed before the end of the period of notice from the Colocation Space and that the Colocation Space is returned to TransIP in the same condition on the day the Agreement ends, as it was at the beginning of the Agreement.

- 21.3 If the Agreement is terminated pursuant to articles 20.4, 20.5, 20.6 or 20.7 shall TransIP shall offer a reasonable period to remove the Computer Equipment and return the Colocation Space to the same condition as at the beginning of the Agreement and yield it to TransIP. With respect to a reasonable period it applies that User must make every effort to comply as quickly as possible with the provisions of this article.
- 21.4 Termination of the Agreement, for whatever reason, will be regarded as not having occurred, if User has not removed the Computer Equipment within the period specified in article 21.2 and/or 21.3. In that case, the Agreement shall continue to be prolonged for a period of one month, until User has removed the Computer Equipment. During these months, TransIP shall charge User for the Colocation Service and User shall pay. Notwithstanding the aforementioned provisions in article 21.4, from the moment that the periods specified in article 21.2 and/or 21.3 TransIP is no longer bound to perform Services for User. From that moment, TransIP has the right to remove the Computer programs and/or other items and to store them elsewhere. The costs of removal and storage of the Computer programs and/or other items shall also be charged to User.
- 21.5 TransIP has the right to retain the Computer Equipment until User has paid any outstanding fees. If User fails to pay any outstanding amounts within a reasonable period, TransIP reserves the right to, where possible, to sell the Computer Equipment to offset the outstanding amounts.
- 21.6 If User terminates the Agreement contrary to article 20 and/or if TransIP terminates the Agreement on the basis of article 20.5 or 20.6, User shall, within fourteen (14) days:
- i) reimburse TransIP for all termination costs for the termination of the Services; and
 - ii) notwithstanding other rights of TransIP – pay TransIP 100% of the actual costs or estimated costs , for the then remaining months of the current period of the Agreement.
- 21.7 Termination and/or dissolution shall, in no circumstances, result in a refund of fees already paid.

Article 22 Confidentiality

- 22.1 User shall treat all Confidential Information that it receives from TransIP as strictly confidential and secret.
- 22.2 User shall use the Confidential Information solely for the purpose it was provided to User and shall observe the same duty of care and security that apply with respect to its own internal confidential information. User shall provide the Confidential Information to employees only insofar as this is necessary within the context of the Agreement.
- 22.3 The obligation to maintain confidentiality of the Confidential Information shall not apply insofar as User can prove that the information:
- i) is already known to him at the time of receipt;
 - ii) is already public knowledge at the time of receipt;
 - iii) has become public knowledge after receipt without being attributable to User;
 - iv) has been received in a legitimate manner by a third party together with the right to disclose it without any obligation to maintain confidentiality;
 - v) must be provided by virtue of law or regulation or as a result of a court order User has notified TransIP of such a mandatory disclosure;
 - vi) is made public with the approval of TransIP.

Article 23 Transferability

- 23.1 The rights and obligations under the Agreement may not be (sub) licensed or transferred by User to third parties, unless TransIP has given express written consent.
- 23.2 TransIP may (sub) license and/or transfer the rights and obligations under the Agreement to a third party, without consent of User. If User is a consumer, User has the right to terminate the Agreement within one month after TransIP has informed User of the intended transfer. This exception for consumers is not valid if the transfer occurs in connection with the transition and/or reorganization of (part of) TransIP.

- 23.3. TransIP can, for the purposes of implementation of the Services, engage third parties, on the understanding that TransIP remains responsible for the implementation thereof.

Article 24 Force Majeure

- 24.1 There is no attributable breach of the Agreement by TransIP in the event of force majeure.
- 24.2 Force majeure shall inter alia include illness of employees and/or absence of key personnel for the provision of Services, interruptions of the power supply where these are not accommodated by the backup capacity, strikes, riots, government action, fire, natural disasters, floods, shortcomings of TransIP suppliers, malfunctions in the Internet connection, hardware failures, failures in (telecommunications) networks and other unforeseen circumstances.
- 24.3 If the force majeure lasts at least thirty (30) days, both parties have the right to terminate the Agreement, without the dissolving party being liable to pay any damages in respect of such a termination.
- 24.4 If TransIP at the time of force majeure can still partially perform or has performed, it is entitled to conduct such performance and invoice this as though it were a separate Agreement.

Article 25 Other Provisions

- 25.1 If one or more provisions of this Agreement and/or Terms Of Service are or become non-binding, the remaining provisions will remain in force. Parties commit themselves to replace a non-binding provision with a provision that is binding and that deviates as little as possible from the non-binding provision.
- 25.2 The (legal) relationship between as User and TransIP is governed by Dutch law.
- 25.3 Parties shall only submit any disputes arising out of the legal relationship defined in the preceding paragraph, to a competent Court in Amsterdam, except insofar as any mandatory provision precludes this.
