

# Worldstream Terms

Draft under Dutch law version 0.99



## **1. Definitions**

- 1.1. The following words, when used capitalised shall have the meanings given to them in the paragraphs below.
- 1.2. “Acceptable Use Policy” means the document published on the Worldstream website outlining the limits to the usage acceptable on or with Worldstream Services.
- 1.3. “Agreement” means the agreement for the provision of Service by Worldstream to Customer consisting at least of the Customer order and the Terms.
- 1.4. “Customer” means the natural or legal person entering into an agreement with Worldstream.
- 1.5. “Customer Portal” means the part of the Worldstream website exclusively accessible by Customer that can be used for the ordering and management of Services by Customer.
- 1.6. “Service” means the services provided by Worldstream to Customer on the basis of an agreement.
- 1.7. “Service Level Agreement” means the Agreement defining the responsibilities of Worldstream and Customer and the quality of the Service to be provided by Worldstream.
- 1.8. “Terms” means the conditions contained in this document setting out the basic legal terms that apply between Customer and Worldstream.
- 1.9. “Worldstream” means Worldstream B.V., Greenhouse Datacenters B.V. as well as any other entity that declares these Terms applicable on an Agreement with Customer.
- 1.10. “Working Day” means Monday through Friday except on national holidays in the Netherlands.

## **2. Applicability and conclusion of Agreements**

- 2.1. These Terms apply to all offers made by Worldstream and all resulting subsequent Agreements and relationships between Worldstream and a Customer. No other conditions, such as purchasing conditions from Customer apply and Worldstream expressly rejects the applicability of such other conditions.
- 2.2. Worldstream may require Customer to register with Worldstream prior to the conclusion of an Agreement. Such registration will take place through the Customer Portal. During Customer’s registration, Worldstream may perform a “Know-Your-Customer” verification procedure, on which procedure Worldstream may rely in order to determine whether Worldstream wishes to enter or continue an Agreement with Customer. Customer is responsible for providing accurate and up to date information in the Customer Portal.
- 2.3. An Agreement between Worldstream and Customer comes into existence when Worldstream responds in confirmation to Customer’s acceptance of an offer by Worldstream, regardless of the manner in which the Agreement is concluded. An Agreement between Worldstream and Customer can only be amended in writing with the exception of changes to these Terms which can be made at any time by Worldstream and will come into force 30 days after Worldstream makes the new Terms available to Customer, including by means of publication on the Worldstream website.

- 2.4. Customer may make or request the modification of orders for Services through the Customer Portal. Worldstream will confirm its acceptance of such a Customer request by performing the requested change to the Service.

### **3. Third party products and services**

- 3.1. Worldstream may provide to Customer products and/or services from Third Parties, in which case contractual terms from such Third Parties will also apply to the providing of such products and/or services.

### **4. Worldstream rights and obligations**

- 4.1. Worldstream will apply commercially reasonable efforts to provide the Service to Customer in accordance with the written specification of the Service ordered by Customer as documented by Worldstream in its Service Catalogue or in a Service description. Any delivery dates mentioned by Worldstream to Customer are indicative and do not form binding delivery dates.
- 4.2. Worldstream may, at its discretion, involve third parties to (help) provide the Service to Customer. Should a third party need to be involved as a result of a specific Customer request, Worldstream may require Customer to conclude a further written Agreement and may charge Customer for the costs of such third party involvement.
- 4.3. Worldstream may, at its discretion, transfer, pledge and/or assign any of its rights under an Agreement with Customer to a third party.
- 4.4. Offers, proposals and quotations from Worldstream are made under the suspensive condition of Customer completing Worldstream's "Know-Your-Customer" process, which process may require Customer a) being able to document and prove its identity and b) not being subject to applicable sanctions. Worldstream is entitled to revoke any offers, proposals and quotations and/or to terminate any Agreement with Customer, without being liable to compensate Customer in any manner should the "Know-Your-Customer" identification of Customer be brought into doubt or should Worldstream have reason to believe that Worldstream is prevented from continuing an Agreement due to applicable sanctions.

### **5. Customer rights and obligations**

- 5.1. Customer will promptly provide Worldstream with all assistance and information Worldstream requires to provide the Service to Customer. Customer will provide complete and accurate information and accepts that Worldstream may not be able to provide the agreed upon Service if Customer's information is not complete and/or accurate.
- 5.2. Customer will observe all Worldstream instructions regarding the use of the Service, including the Acceptable Use Policy specifying the permitted uses of the Service which Worldstream keeps published on its website. Customer will ensure that its use of the Service is in full respect of the laws and regulations that apply to Worldstream and to Customer and further that it fully respects the rights of others, including other users of Worldstream Services.
- 5.3. Customer is responsible for backing up any data it stores or processes through or in connection

- with the Service. Worldstream has no obligation with regards to Customer data.
- 5.4. Customer has the right to instruct Worldstream to carry out activities for the benefit of Customer in connection with Services provided to Customer. Customer can submit such instructions by email from email addresses registered with Worldstream by Customer. Worldstream shall provide Customer with a provisional planning if Worldstream can carry out the requested activities.
- 5.5. Customer may make use of the Service in accordance with the quantities and qualities agreed with Worldstream, and if no quantity or quality has been specified, then in accordance with principles of fair use and in accordance with the Acceptable Use Policy. Use of the Service in excess of the agreed upon quantity and quality is subject to additional charges by Worldstream in accordance with the then applicable prices. Service Level Agreements and/or other specifications do not apply to use of the Service in excess of the quantities and qualities agreed with Worldstream. The quantities and qualities of a Service are specified the Customer Portal or in an order form.
- 5.6. Customer agrees to be bound by requests made on behalf of Customer through the Customer Portal. Customer will therefore protect the relevant login and authorization data and passwords. Customer will inform Worldstream as soon as Customer has reason to believe that its authorization data and/or passwords may have been exposed or might be abused.
- 6. Prices, invoicing and payment**
- 6.1. Prices are quoted, subject to typographical errors, excluding value added tax but will be invoiced with value added tax and any other taxes that may apply.
- 6.2. Unless otherwise agreed upon in an offer, Worldstream will invoice customer once a month. Fixed price items will be invoiced in advance for the invoice period while usage will be invoiced in arrears.
- 6.3. Worldstream may offer Customer the possibility of being invoiced on the basis of flexible use of resources. In such a case, Worldstream will measure the use Customer makes of resources multiple times each hour of every day of the month. The usage measured in this manner will be averaged out over the period except where an order form specifies that peak usage will be measured. At the end of the period. Worldstream will invoice Customer on the basis of the recorded usage, respectively at the average or peak usage as calculated over the period.
- 6.4. Worldstream will provide the Customer (electronic) (consolidated) invoices for the fees that are payable via e-mail and/or via the Customer Portal. Unless a different term is agreed upon, Customer will pay invoices within fourteen (14) days from the invoice date unless otherwise agreed. Worldstream may require Customer to pay invoiced amounts before the start of the delivery of the Service.
- 6.5. Worldstream has the right to review Customer's financial state with a view to determining an appropriate level of credit for Customer, so that Worldstream may, from time to time, unilaterally modify the payment conditions that apply to Customer.

- 6.6. Worldstream is not under an obligation to pay out any excess amount from Customer's account.
- 6.7. Payment can be made by means of the methods of payment then accepted by Worldstream. Customer is liable to pay the Euro amount invoiced from an account in the name of Customer. Worldstream is not liable to recognize payments made on behalf, or for the benefit, of Customer that have been made from an account not belonging to Customer. Should Customer remit payment in another currency, the received amount will be calculated on the basis of the exchange rate that applies on the date when Worldstream receives the payment. Worldstream has the right to change its accepted methods of payment at any time.
- 6.8. Worldstream has the right to modify its prices by the increase of the CPI once per year. This CPI modification will take place on 1 January of each year on the basis of the index figure most recently published by the Dutch statistical institute CBS.
- 6.9. Worldstream further has the right to adjust prices in accordance with increases to the prices of its direct inputs such as energy and licenses. The prices of third party products and/or services are also subject to the third party terms that apply to such products and/or services so that changes to their prices are regulated by the applicable third party terms. Worldstream will notify Customer in writing of price modifications, which price modifications may and will enter into effect on the date notified to Customer. Where the notification does not provide for a date, the price modifications will enter into force 10 Working Days after publication of the notification by Worldstream.
- 6.10. Customer may object to (the contents of) an invoice within 10 Working Days after the transmission date of the invoice. Worldstream will respond to, and resolve such Customer reclamations promptly. Customer's reclamation right (to object to the contents of an invoice) lapses after 10 Working Days after the transmission date of the invoice so that an invoice will be valid between Worldstream and Customer after that date. Reclamation does not affect Customer's obligation to pay within the agreed upon term.
- 6.11. Customer is not entitled to set off (verrekenen) any of its payment obligations against any (payment) obligation of Worldstream whatsoever.
- 6.12. Customer shall be in default (verzuim) by operation of law from the due date of the invoice, without prior notice of default being required. Worldstream is then entitled to charge the Customer all amounts due, along with the statutory interest for commercial transactions calculated from the due date. Worldstream will send a written notice of default to Customer to the Customer's registered contact address providing a deadline for outstanding payments (including interest and any other charges). Should Customer fail to meet its obligation to make full payment by that deadline, Worldstream has the right to suspend (opschorten) an Agreement in full without being liable for any consequences of that suspension.
- 6.13. Reactivation of the Service after suspension due to late payment or any other breach of an Agreement by the Customer will incur an additional fee of EUR 119 for each instance and will be processed as soon as reasonably possible.
- 6.14. Customer's payment obligation under an Agreement (such as periodic fixed fees) continues

during the suspension period. Worldstream shall resume the Service after the Customer has remedied the failure within the period specified by Worldstream, which remedy also includes the payment of all costs and expenses due to Worldstream in relation to such failure and reconnection and/or reactivation costs. Any exercise of such right of suspension shall not prejudice Worldstream's right to subsequently terminate the Agreement or any other legal remedy available to Worldstream.

- 6.15. If payment from Customer remains outstanding 90 days after the invoice date, Worldstream has the right to terminate (ontbinden) the Agreement with immediate effect upon written notice to the Customer. Worldstream shall then, where relevant, furthermore be entitled to remove the server and/or charge additional costs for reinstatement. Worldstream shall not be liable for any damages resulting from such termination. Worldstream may, but is not obliged to, retain any Customer data or materials as surety for full payment, during which retention period all risks and costs relating to the retained materials remain the responsibility of Customer.
- 6.16. Without prejudice to the above, Customer is liable to compensate Worldstream for all costs and damages associated with the collection of outstanding debts and/or a termination of an Agreement due to an attributable breach by Customer. The damages explicitly include the amounts that Customer would be due for the remaining duration of the Agreement as well as judicial and extrajudicial costs (including any reasonable costs of lawyers, bailiffs and collection agencies engaged for this purpose) which will be borne and reimbursed by the Customer. The extrajudicial costs shall be at least fifteen percent of the amount due with a minimum of two hundred euros.

## **7. Indemnification**

- 7.1. Customer hereby indemnifies and holds Worldstream harmless against any and all damages that can result from Customer's failure to comply with these Terms, the Acceptable Use Policy and/or with any applicable legislation or regulation or instructions from competent authorities. Such damages include the reasonable costs of a defense in a procedure. Worldstream will inform Customer immediately should Worldstream or third party wish to invoke this indemnification.

## **8. Processing of personal data**

- 8.1. Worldstream processes personal data in accordance with the General Data Protection Regulation ("GDPR") and the Worldstream privacy policy as published on the Worldstream website when it processes personal data as controller.
- 8.2. Worldstream will not process personal data on behalf of Customer without a clear written instruction, in the form of a data processing Agreement, from Customer.
- 8.3. Customer acknowledges that when providing the Service to Customer, Worldstream does not have access to Customer's content. Consequently, even if Customer content contains personal data, Worldstream does not process that data.

- 8.4. Worldstream is committed to protecting and respecting personal data. As a result, unless agreed otherwise, Worldstream will not process (or store) personal data outside of the European Economic Area. Worldstream will further not involve non-EU nationals in the processing of personal data.

## **9. Intellectual Property Rights**

- 9.1. All intellectual property rights relating to the Service and materials by Worldstream remain with Worldstream or its suppliers. The Agreement does not transfer any rights to the Customer, who only receives the rights explicitly granted in writing. Unless otherwise agreed upon in writing, these rights are non-exclusive, non-transferable.
- 9.2. Worldstream may implement security measures for the Service and materials, which the Customer must not bypass or remove. Customer must not alter or remove any copyright, brand, trade name, or other intellectual property indications from the provided materials or services. Customer is also prohibited from accessing the source code of any software through reverse engineering or similar methods, except where permitted by mandatory law.
- 9.3. Customer guarantees it has all necessary rights and consents for the use of their information and materials with the Service and indemnifies Worldstream against third-party claims, including those relating to an, alleged, infringement of third party intellectual property rights by Customer. Customer grants Worldstream the right to use this information and materials solely for performing the Agreement.

## **10. Liability**

- 10.1. Worldstream's total liability for loss and/or damage to the Customer in respect of an Agreement or a claimed tort (onrechtmatige daad) shall be limited to the fees paid by the Customer under that Agreement in the calendar month prior to the moment the (first) damage occurred.
- 10.2. Worldstream's liability for indirect damages is excluded in full. Indirect damages are understood by the Parties in this context to mean lost profits, lost savings, reduced goodwill, and damage due to business interruption.
- 10.3. Worldstream's contractual limitations of liability will be reduced in the measure that the liability is the result of intent (opzet) or deliberate recklessness (bewuste roekeloosheid) on the part of Worldstream.
- 10.4. Worldstream is insured and has coverage for damage to Customer property on Worldstream premises. The liability of Worldstream for physical damage to Customer property on Worldstream premises is limited to the amount paid out by Worldstream's insurance.
- 10.5. Any claim for damages by the Customer shall expire by the mere lapse of three (3) months after the Customer seeking to commence the action became aware, or should have become aware, of the circumstances giving rise to the action.

## **11. Use and Restriction of Service**

- 11.1. Services are delivered to Customer in accordance with the agreed upon Terms and any applicable Service Level Agreement and Customer can use the Service accordingly but within the limits placed by the Worldstream Acceptable Use Policy as published on the Worldstream website.
- 11.2. Worldstream provides a merely technical and automatic processing of the information provided by Customer. Worldstream does not play an active role in connection with the Customer Services that would give Worldstream knowledge of, or control over, information published by Customer.
- 11.3. Worldstream maintains a notice and takedown procedure as documented on the Worldstream website. This procedure allows Worldstream to be notified of alleged abusive use of Worldstream Services, including illegal content. Illegal content is information that is not in compliance with applicable law irrespective of the subject matter or nature of the law. For the sake of clarity: information in this context includes any type of information driven service. Worldstream will follow up on notifications of illegal content by means of automated procedures and human review to ascertain whether a notification is correct.
- 11.4. Should a notification made to Worldstream turn out to be correct, Worldstream reserves the right to restrict Customer's use of the Service partially or completely should Customer violate applicable law, the Acceptable Use Policy or another term of an Agreement between Worldstream and Customer.

## **12. Term and Termination**

- 12.1. An Agreement between Worldstream and Customer is concluded for the period indicated in the order form or otherwise offer confirmation from Worldstream to Customer. Agreements where no specific period is indicated are concluded for a twelve month period starting from the date stated in the confirmation.
- 12.2. An Agreement concluded for a fixed period of time shall renew automatically at the end of a period unless terminated in writing by a party. Agreements will renew for the period of the initial Agreement. If the initial Agreement was concluded for a period of 12 months or less, parties have a one month notice period. If the initial Agreement was concluded for a period of more than 12 months, parties have a two month notice period.
- 12.3. Worldstream may, with immediate effect, terminate (opzeggen), suspend (opschorten) or dissolve (ontbinden) an Agreement in writing, in whole or in part, without notice of default being required and without being liable for any damages resulting therefrom, if
  - (a) Worldstream has reason to believe that Customer will no longer be capable of properly performing its obligations, for example if Customer files for or has been granted suspension of payments or if Customer files for bankruptcy or its bankruptcy has been declared;
  - (b) The continued performance of the Agreement would, in the exclusive opinion of Worldstream, cause Worldstream to be in breach of a legal obligation such as those resting upon it on the basis of contract or statute;



- (c) Customer, despite being required by Worldstream to pay an invoice before the activation of a Service, has failed to make such payment 10 Working Days after the invoice date;
- (d) Customer, despite a clear request to do so by Worldstream after having been contacted in accordance with the notice and takedown policy fails to correct a breach it has committed of the Acceptable Use Policy or other applicable regulation;
- (e) Worldstream is no longer technologically capable of providing the Service, for instance due to the fact that certain software or hardware no longer receives updates or security support;
- (f) Customer acts in a manner that breaches applicable law or can damage the name and reputation of Worldstream;
- (g) An act, omission or status of Customer could prevent Worldstream from complying with the laws and regulations that apply to Worldstream;
- (h) the Customer's operations are terminated or the Customer's business is liquidated; or
- (i) any part of the Customer's assets have been seized.

12.4. Termination of an Agreement shall be without prejudice to the rights, duties and liabilities of either Party accrued prior to termination and shall not affect any term that is stated to continue (or must by inference continue) after termination. Parties further agree that the Service is consumed at the moment that the Service is provided so that the termination of an Agreement will never lead to an obligation to reverse Parties' performance of an Agreement.

12.5. Worldstream is under no obligation to store goods or information stored by Customer with Worldstream, regardless of whether such goods or information were left with Worldstream by Customer or by clients of Customer. Worldstream may wipe information and format and repurpose or destroy goods stored by Customer with Worldstream after 30 days after the end of the Term.

### **13. Changes to the Terms**

13.1. Worldstream may change these Terms and changes to the Terms will come into force 30 days after Worldstream informs Customer, either by email to a registered Customer account or otherwise publishes notification of the intent to change the Terms on its website.

### **14. Governing law**

14.1. Agreements between Worldstream and Customer are governed by Dutch law. The district court of the Hague, the Netherlands has exclusive jurisdiction in disputes between Worldstream and Customer regardless of the nature of that dispute.