

Article 1: DEFINITIONS

NL-ix: Trade-name of supplier, Broadband Hosting BV, Chamber Of Commerce nr 27197308, The Hague, Netherlands.

Contracting Party: the customer who signed an Order Form with NL-ix on which this General Agreement applies.

Order Form: document describing Services as ordered by Contracting Party.

Service(s): service(s) as provided to Contracting Party by NL-ix. NL-ix is only responsible for the correct operation of the Service up to and including the Demarcation Point.

NL-ix Infrastructure: the NL-ix network, and third party networks, providing the NL-ix Services.

Router or Switch: the device of the Contracting Party that is needed to establish a connection with the Demarcation Point.

Demarcation Point: the physical connection point to the NL-ix infrastructure.

Peering: the advertising of routes via BGP4.

ASN: Autonomous System Number, a globally unique inter-domain routing identifier, assigned by a Regional Internet Registry.

Housing Site: any physical location in which the NL-ix Infrastructure is present, i.e. where the Router or Switch of Contracting Party is located.

NL-ix IP-address: one IP address, provided by NL-ix to the Contracting Party for its own Router or Switch per port as Contracting Party has applied for, out of a dedicated address range reserved for the NL-ix Infrastructure.

Article 2: AMENDMENTS, ORDER FORM

2.1 Amendments or supplements to this Agreement are only valid if agreed in writing and signed.

2.2 Amendments to this Agreement may include descriptions of additional Services provided by NL-ix not covered under this Agreement and shall form an integral part of this General Agreement.

2.3 The Order Form referred to in this Agreement is used to order Services under this Agreement or amendments to this Agreement and form an integral part of this Agreement.

2.4 In case of conflicts between this Agreement, amendments and Order Forms, the order of precedence shall be (i) the Order Form; (ii) the amendment and (iii) this Agreement.

Article 3: OBJECT

3.1 NL-ix will provide and maintain the Service for Contracting Party under the terms of this Agreement.

3.2 Contracting Party is responsible for arranging housing and in-house cabling.

Article 4: ORGANIZATIONAL SET-UP

4.1 Contracting Party will appoint (an) administrative contact person(s) who will function as contact person(s) with respect to all administrative and financial matters relating to the Service.

4.2 Contracting Party will appoint an implementation contact person who will function as contact person with respect to all implementation matters relating to the Service.

Article 5: RATES AND PAYMENTS

5.1 Contracting Party has the obligation to pay NL-ix the costs for the Service as specified on the Order Form. All costs of payment such as, but not limited to, commission, exchange rates or wire transfer fees shall be borne by Contracting Party. NL-ix provides invoices in electronic form by e-mail standard. If customer requires additional invoicing procedures such as, but not limited to, a paper invoice, additional documentation or tax declarations to accompany the invoice, NL-ix reserves the right to charge an additional processing fee of € 50 per invoice.

5.2 Fixed recurring costs shall be invoiced per calendar-quarter 14 days before the start of each calendar-quarter. Initial one-time costs, and fixed recurring cost for the remainder of the 1st operational calendar quarter, shall be invoiced at date of Service delivery.

5.3 Usage costs, if applicable, shall be invoiced monthly in arrears conform the 95-percentile model: The 95% model is a method to determine the traffic volume on a Service over a calendar month and is used for billing purposes:

1. Every 5 minutes two measurements (transmit and receive) are made of the total traffic that has passed over the port since last measurement.
2. At the end of the calendar month all measurements (the highest of transmit and receive) of that month (generally $12 \times 24 \times 30 = 8,640$) are lined up and sorted from high to low.
3. The highest 5% of the measurements (so generally $5\% \times 8,640 = 432$) is dropped, and the next highest measurement defines the 95% traffic level on which the billing for that month is based.

Invoices for usage shall be sent one working day after the end of the monthly period.

5.4 Traffic commitment: Services with a certain traffic commitment, already include traffic up to this level in the fixed monthly price. The burst fee of the Service is only applicable for traffic over the commitment level. A few examples:

If you have a 5 Mbit/s commitment and actually use 7 Mbit/s, in addition to the fixed monthly fee you pay for $7 - 5 = 2$ Mbit/s of burst traffic;

If you have a 15 Mbit/s commitment and use 12 Mbit/s, you only pay the fixed monthly fee and no burst traffic.

NL-ix will charge the committed traffic per calendar-quarter in advance as per the fixed recurring costs.

5.5 All prices and rates are stated in euro exclusive of value added tax (VAT) and other government levies.

5.6 Payment for all NL-ix invoices are due within 14 days of the date of the invoice.

1. If NL-ix has not received payment before the date due Contracting Party will be in default without the need for further notice of default. From that moment Contracting Party is liable for interest at 1% per month or part of a month from the day of the original due date.

2. In the event that Contracting Party is overdue on its payment obligations for more than two consecutive months, NL-ix may, upon no less than fifteen (15) days prior written notice to Contracting Party, suspend Services until Contracting Party's account is current.

3. The obligation to pay is not suspended if Contracting Party lodges a formal complaint about the invoice or if the debtor terminates the contract. If Contracting Party fails to fulfil any payment obligations, Contracting Party is liable for all costs (in addition to the principal and interest) incurred in obtaining payment out of court. The extrajudicial collection costs amount to at least 15% of the principal amount with a minimum of € 250.00, excluding VAT. All court costs relating to the collection of the invoiced sums will be borne by the Contracting Party.

5.7 Contracting Party shall make all payments due under the Agreement in full. If Contracting Party is obliged by applicable law to make payments subject to any deduction or withholding, Contracting Party will inform NL-ix of the extent of such deductions in which case the sum payable shall be increased to the extent necessary to ensure that after the required deduction and withholding NL-ix receives a net sum equal to the sum which NL-ix would have received if such deductions or withholding had not been required.

5.8 NL-ix may annually re-assess the costs of the NL-ix Service(s) and shall be entitled to change the price for any following year subject to giving at least 2 calendar months' notice. In such cases, if the price increase is greater than an inflationary adjustment based on the consumer price index, Customer is entitled to terminate the service without penalty at the end of this notice period before the changes go into effect.

5.9 Where NL-ix provides services where such services are partially or fully based on reselling services purchased from third parties (e.g. patches, waves, fibers or remote access to other exchanges), NL-ix reserves the right to pass on any price increases levied by third parties to Contracting Party when the increases become effective.

5.10 Payments for all NL-ix invoices are made by the Contracting Party or an affiliated entity (associated third party). On request the Contracting Party will provide NL-ix all requested information/evidence in case payments are made by an affiliated entity (associated third party). Payments made by a non-associated third party are not allowed and will be qualified as an invalid payment.

Article 6. TERM AND TERMINATION

6.1 The current version of this Agreement shall come into force on the date Contracting Party signs any Order Form.

Order Forms under this Agreement shall come into force on the date the Service is delivered and shall remain in force until Service provided under the Order Form is terminated in accordance with this article 6.

6.2 After the initial Service contract duration, as set out on the Order Form, Order Forms under this Agreement can be terminated at any time by any of the parties by means of a written notice to the other party with a notice period of one month.

In that case, the Service contract for that Order Form is terminated 30 days after the date on which the written notice was received.

6.3 Each of the parties is at any time entitled to terminate the Service contract on the Order Form by means of a written notice to the other party:

1. If the other party, after an appropriate default notice and the lapse of a reasonable term for remedy, is in breach with one or more of its obligations under this Agreement;

2. The other party is dissolved ("ontbonden"), is declared bankrupt or applies for a general suspension of payments ("surséance van betaling").

The obligation of Contracting Party to pay for Services provided up to the moment of such termination remains in force.

6.4 Any termination is effective only for the future and entails no obligation for the parties to return or refund any benefits received until the moment of termination. Upon termination of this Agreement Contracting Party will immediately return to the NL-ix Operator the NL-ix delivered goods and/or NL-ix IP-address(es) provided for operational use under this Agreement.

Article 7. USE AND LIMITATIONS

7.1 Contracting Party is entitled to use the Service for its normal business purposes. This Agreement is non-exclusive and non-transferable. Contracting Party is not entitled to assign and/or sub-license any of its rights under this Agreement to any third party without previous written consent of NL-ix.

7.2 NL-ix is not obliged to make or continue the Service if a valid Order Form is not signed by Contracting Party;

7.3 Contracting Party guarantees 24 hours per day reachability and shall provide NL-ix with the necessary contact information.

7.4 NL-ix shall provide all reasonable care to ensure that the Service functions in accordance with the operational and functional specifications as agreed between the parties.

7.5 Contracting Party is solely responsible that use of the Service does not cause or is likely to cause any damage, or is in any other way harmful to the NL-ix Infrastructure, to NL-ix, to other NL-ix customers, or to the normal operation, availability or functionality of the Service and/or the Housing Site or to the traffic exchanged. Contracting Party agrees to implement any reasonable measures that NL-ix may propose to prevent or repair such damage or harm. NL-ix reserves the right to apply port-security and ACL policy where applicable.

7.6 NL-ix is entitled to (a) suspend or (b) discontinue the Service, in whole or in part, and/or (c) to require that certain conditions be met before continuation thereof, if:

1. Contracting Party is infringing article 7.5 and Contracting Party has not, after a written warning from NL-ix, implemented adequate measures to prevent or repair such infringement;

2. Such is necessary for NL-ix to comply with a statutory obligation or a judicial decision;

3. Such is necessary in the view of NL-ix for installation or maintenance of hardware, software or infrastructure that is used or otherwise relevant for the NL-ix Infrastructure;

4. NL-ix has received a claim as referred to in article 7.7;

5. Contracting Party is in breach of one or more obligations under this Agreement;

6. In the view of NL-ix, the Contracting Party is not reacting or taking any appropriate measures against any internet abuse and spam activities, which are provided via Contracting Parties Service(s) and advertised IP prefixes.

7.7 Contracting Party will hold NL-ix harmless from any and all damage they might suffer as a result of a claim of a third party that information exchanged on the NL-ix Infrastructure through the Service of Contracting Party would violate Dutch or foreign statutory rules, rules of public order or decency or rights of third parties.

Article 8. LIABILITY

8.1 None of the parties will be liable towards any other party for compensation of indirect or consequential damage, including lost profits and damage consisting of or resulting from loss of data or information.

8.2 Any liability of NL-ix towards Contracting Party for compensation of damages resulting from NL-ix performance or non-performance of this agreement is at all times limited to the total amount of fees paid by Contracting Party to NL-ix under this agreement over the 12 months, preceding the event that caused such damages.

8.3 Any liability of Contracting Party towards NL-ix for compensation of material damage to the physical components belonging to the Service resulting from Contracting Party's performance or non-performance of this Agreement is limited to an amount of € 500,000.

Article 9. CONFIDENTIALITY AND PRIVACY

9.1 Confidential information may only be used by recipient in connection with its intended purpose under this Agreement. Confidential information may not be disclosed except to those employees or contractors of recipient with a need to know and who agree to hold the information in confidence. All confidential information will remain the property of the discloser. A party receiving confidential information will provide at least the same care to avoid disclosure or unauthorized use of such information as it provides to protect its own confidential information.

9.2 Confidential information means all information that:

1. Is disclosed between the parties as part of contract initiations or performance, regardless of whether it is marked as confidential; or

2. Enjoys special legal protection under applicable law, particularly knowledge

If information is contained on a data carrier, the confidentiality also extends to the data carrier.

9.3 Confidential information does not mean any information:

1. That is publicly known;

2. That is generally published or shared with third parties under agreements with technical administration organizations, international organizations (e.g., ICANN, RIPE) or generally accepted technical rules and standards, or can be otherwise disclosed under this Agreement;

3. That is known by the receiving party only through its own research and development;

4. For which the disclosing party has waived confidentiality in writing; or

5. That became known to the receiving party in some other manner than the disclosing party, without violating a confidentiality obligation.

Article 9. CONFIDENTIALITY AND PRIVACY (continued)

9.4 This confidentiality and non-disclosure obligation will also survive the term of the Agreement, unless otherwise agreed.

9.5 Each party shall publish or provide information about the other party to third parties only to the extent and in the manner and type that is typical for publication or disclosure under agreements with technical administration organizations (e.g., operators of primary networks), international organizations (e.g., ICANN, RIPE) or generally accepted technical rules and standards. Further, NL-ix shall publish the company name of the customer, the number of autonomous systems (ASN) connected by the customer, and the data exchange policies (peering policies) selected by the customer on the NL-ix website.

9.6 NL-ix will comply with applicable data protection legislation related to processing of personal data as provided by Contracting Party.

9.7 By agreeing with these NL-ix General Terms and Conditions, Contracting Party confirms that details with regard to contact persons appointed following article 4 are correct and up to date, and that these contact persons are aware that their personal data are shared with and processed by NL-ix in order to perform the NL-ix Order Form. Contracting Party indemnifies NL-ix for any consequences if that is not the case. Contracting Party also explicitly consents to personal data relating to Contracting Party's employees being recorded in the NL-ix customer portal mynl-ix.net, which system is necessary to manage the Order Form between the Contracting Party and NL-ix.

9.8 The latest version of the NL-ix Privacy Statement can be found on the NL-ix website.

9.9 Parties shall afford each other every cooperation to enable the other Party to fulfil its obligations under the General Data Protection Regulation. In all instances Contracting Party shall inform NL-ix timely and properly of whether data processing for the purpose of an Agreement falls under the General Data Protection Regulation and whether the Dutch Data Protection Authority or the data protection officer of Contracting Party has been notified of the processing. Contracting Party shall reimburse NL-ix for any work and/or costs necessary in respect of obligations mentioned in this article.

9.10 Each party shall inform the other party in advance if information about the other party is to be disclosed or published. The advance information should indicate whether the disclosure or publication under applicable law or contractual agreement is voluntary. The advance information will not be provided if this violates applicable law or the implementation act of a responsible government agency or a court.

9.11 Customer provides NL-ix with the revocable right, at no charge, to use its company name and logo for reference purposes on the NL-ix website and in its advertising materials.

9.12 Further, NL-ix can provide technical information about the use of NL-ix services by a customer to some or all customers or make it available, if the scope of information is relevant for the maintenance of the technical executability, stability, or performance for the respective customer group that is to receive the information.

Article 10. AMENDMENT TO THESE GENERAL TERMS & CONDITIONS

10.1 NL-ix is authorized to make modifications and/or additions to these General Terms and Conditions. The amended condition(s) will come into effect on the stipulated commencement date. If no commencement date has been communicated, the amendment(s) will come into effect as soon as the Contracting Party is notified of the amended condition(s). Such notification may be done by posting the amended condition(s) on the website of NL-ix.

10.2 In case of a dispute, the latest version of the General Terms and Conditions published on the website of NL-ix will be applicable.

Article 11. GOVERNING LAW, DISPUTES

11.1 Dutch Law shall govern this Agreement.

11.2 With regards to Services involving the use of wholesale input regulated by any competent authority having jurisdiction, Customer must accept any changes to the terms and conditions or tariffs (i) if and to the extent that the changes arise directly or indirectly from, and/or are permitted with the framework of applicable regulations and/or a binding ruling from an authority having jurisdiction based on applicable regulations, and (ii) if and to the extent necessary, with retrospective effect. The foregoing is without prejudice to the right of Customer to terminate the Agreement if the change is evidently not in his favor.

11.3 If any provision of this Agreement is in contradiction with the currently applicable laws and regulations, this shall not affect the validity of the remaining provisions of this Agreement. The contracting parties shall, taking into account the purpose of this Agreement, agree on a new suitable provision that is compliant with laws and regulations.

11.4 Any dispute concerning the conclusion, interpretation or performance of this Agreement, and any other dispute with respect to or relating to the Agreement, shall be submitted exclusively to the competent court of law in Den Haag, the Netherlands.

Article 12. USE OF ROUTING SERVICES (TRANSIT AND PARTIAL TRANSIT)

12.1 Traffic of the Contracting Party should have a common pattern, e.g. a pattern with a mix of different origins and destinations. If traffic to and from a particular ASN exceeds 10% of Contracting Party's monthly Committed Data Rate (CDR), NL-ix cannot provide a guarantee of performance towards packet loss and/or latency to and from that ASN. The above is also applicable to "Transit" Autonomous systems which are used to reach end user destinations.

12.2 NL-ix reserves the right to take steps if Contracting Party sends more than 10% of overall traffic to/from one designated network measured by AS (Autonomous System) number in the highest used direction. These steps can consist of but are not limited to rate limiting the Service to the destination, rate limit the overall traffic, or cancelling the Agreement. If the rate limit or other means do not resolve the issue, NL-ix is entitled to cancel within the agreed cancellation period (see Deviation on article 6).

12.3 Private and/or public IP-addresses provided by NL-ix as a part of the services offered may only be used for the intended purpose. E.g. IP-addresses provided in order to set up bilateral sessions should not be announced publicly.

Article 13. PEERING

13.1 Peering with third parties is not covered by this Agreement for connectivity Services, unless NL-ix is specifically providing an NL-ix Peering Service. The Contracting Party is responsible for the conclusion of Peering agreements.

13.2 Customer agrees to exchange traffic through the NL-ix Infrastructure only when there is a bilateral agreement to exchange traffic between Customer and the other individual customers on the NL-ix Infrastructure.

NL-ix (trade-name of Broadband Hosting BV)		Contracting Party	
Prinses Beatrixlaan 400		Street	
2595 BK, the Hague		ZIP, City	
The Netherlands		Country	
Represented by:	Cornelis van Huizen	Represented by:	
Function:	CFO	Function:	
Signature:		Signature:	
Date:		Date:	