

# SMITCOMS NV

## General Terms and Conditions

The general terms and conditions of SMITCOMS N.V. shall govern all agreements and understandings between SMITCOMS N.V. and the individual or any legal entity ("Customer") that has applied to one or more of SMITCOMS N.V.'s products and services. By continued usage of SMITCOMS N.V. products and services, the Customer shall be deemed to have agreed to all modified, altered and updated terms and conditions.

### **1. Responsibility**

Customer shall be solely responsible for providing, at its own costs and expense, the equipment, the software and facilities required to enable connectivity to the service, at the entire exoneration of SMITCOMS N.V. Customer shall be solely responsible for the installation, operation and maintenance of such equipment, software, and facilities. All equipment use must be compatible with the network of SMITCOMS. Equipment, software installed or in operation by the Customer causing interference with the Network must be removed or disconnected upon the notice issued by SMITCOMS

### **2. Warranty & Liability**

SMITCOMS N.V. offers no warranty whether express or implied, and makes no representation with regards to any merchandise, information, content, and services offered or made available or accessible on the digital facility and/or service. SMITCOMS N.V. shall not be liable for Customer's reliance on, or use of such merchandise, information, content, and services offered.

SMITCOMS N.V. is however entitled to restrict or (temporarily) close access to destinations in all cases in which SMITCOMS N.V. is regarded to do so in compliance with the law or in case SMITCOMS N.V. is officially ordered to do so based on the application of section 39, 40, 41 and/or 42 of the Telecommunication Act (PB 1995 no. 196).

In no event shall SMITCOMS N.V. be liable to the Customer for consequential, special, or indirect losses or damages sustained by the Customer or any third parties in using the service howsoever arising and

whether under contract, tort or otherwise (including without limitation, third party claims, loss of profits, loss of customers, or damage to reputation or goodwill).

### **3. Delivery time & Service**

Delivery time of offered products and services can be accomplished, under reserve delivery public infrastructure and international capacity, within 5 workdays after receipt of an official request and documents and after payment from Customer for installation related to this contract and upon receipt of the matching order of the overseas telecommunication administration. In consultation with the customer, delivery date can be decided. SMITCOMS N. V. will do its utmost to comply with delivery date, with the exception of circumstances beyond its control. No failure or omission by SMITCOMS N.V. to carry out or observe any of the terms and conditions of this agreement by SMITCOMS N.V. shall give rise to any claim against SMITCOMS N.V. or be deemed a breach of this agreement if such failure or omission arises from a cause of force majeure, an act of God or any other cause beyond the reasonable control of SMITCOMS N.V.

### **4. Prices**

Certain prices are subject to change to the availability of local, inter-island and/or international transmission pricing and capacity. Above-mentioned prices exclude all Government taxes. Prices offered under an agreement to the Customer are fixed for the period of the agreement, unless otherwise determined in the agreement.

### **5. Billing**

Activation charges must be paid within 15 days after receipt of an invoice for payment issued by SMITCOMS. SMITCOMS N.V. reserves the right at any time to require Customer to issue a refundable deposit, a non refundable activation charge, irrevocable letter of credit or other form of security acceptable to SMITCOMS N.V.

### **6. Payment**

The SMITCOMS N.V. invoices are sent monthly and payment must take place each month, commencing on the date that service is delivered, within 15 days

of the date of SMITCOMS N.V.'s invoice and in favor of SMITCOMS N.V., with the mentioning of the invoice number. In addition to the remedies provided in the agreement, all amounts due hereunder to SMITCOMS by Customer that are not paid when due shall accrue interest from the day following the day on which payment was due until paid in full. Interest shall be computed at a rate of 1% per month, compounded daily.

## **7. Transfer & Usage**

The Customer may not assign or transfer the Live Internet Audio Streaming agreement without the prior written consent of SMITCOMS N.V. SMITCOMS N.V. may assign or transfer the Live Internet Audio Streaming to any affiliated entity or successor in interest of SMITCOMS N.V. whether by merger, consolidation, transfer of all its assets or otherwise. The Customer will be notified in writing 30 days prior to such assignment. The Customer may not use the Live Internet Audio Streaming for any other purpose than the written authorized purpose issued by SMITCOMS in the service order to any agreement. Live Internet Audio Streaming obtained for streaming may not be used for any other purpose than specifically set forth in the service order.

The use of the above mentioned (digital) facility and service must take place based on the license issued to the Customer for its business operation and in accordance with the actual telecommunication regulation as it is being specified in the Landsbesluit Randapparatuur (PB 1995 no.224) and according to the general conditions of SMITCOMS N.V. for the provisioning of Live Internet Audio Streaming. Usage of the above mentioned (digital) facility shall be for streaming.

## **8. Term**

The Term shall commence from the effective date, for a period of **one (1) year**. Thereafter, this agreement shall automatically renew for an additional **one (1) year** renewal unless terminated by either party through a written notice of termination or revision sixty (60) days before termination date.

SMITCOMS N.V., without prejudice to its other rights at law or in equity, may terminate, even during the first year, this Agreement and all other services provided by SMITCOMS N.V. immediately and without notice in the event of any of the following:

- If Customer is in default of payment and formal notice was given in this regard.

- If any representation or warranty made herein by Customer shall prove at any time to be materially incorrect.
- If Customer fails to comply with the regulation of the Landsbesluit Randapparatuur (PB 1995 no. 224) and according to the general conditions of SMITCOMS N.V. for the provisioning of live Internet Audio Streaming and/or offers a use of the Live Internet Audio Streaming in violation with the conditions set in the Customers' license.
- If Customer is declared bankrupt or judicially determined to be insolvent or fallen into a situation of suspension of payments (Surseance van Betaling).

In the case of early termination of this agreement prior to the expiration of the *term* stated by SMITCOMS N.V. or by Customer for any reason other than a material breach solely attributable to SMITCOMS N.V., which breach has not been cured and for which SMITCOMS N.V. has not commenced reasonable efforts to effect a cure, Customer shall remain liable to pay SMITCOMS N.V. for the monthly fee for the remainder of the then-current Term.

The Live Internet Audio Streaming agreement, the services there under and these terms and conditions shall be governed, construed and interpreted in all respects in accordance with Netherlands Antilles law and shall be subject to the exclusive jurisdiction of the courts of (Netherlands Antilles).

The service shall, as far as commercially and technically practicable, be offered on a 24-hour per day basis, 7 days a week.

For all necessary actions SMITCOMS N.V. must be provided with a recent copy of customers registration at the Chamber of Commerce, not older than 1 year, a copy of the Customers business- and operational license (warranting the authorized use of the bandwidth provided herein) and a copy of an ID of the Director representing the Customer.

In the event these terms and conditions differ from the general terms and conditions of the Customer, the present general terms and conditions of SMITCOMS N.V. prevail. SMITCOMS may from time to time with notification to the Customer alter the general terms and conditions.