

callto 365

General Terms

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1. Definitions

- 1.1 Connection: the Facility made available by CallTo365 which makes it possible to use the Service.
- 1.2 Applicant: the legal person who submits an application for a Service to CallTo365.
- 1.3 Application form: a written or electronic form or document by CallTo365 with which the Applicant requests CallTo365 to provide the Service.
- 1.4 General conditions: the present general conditions of CallTo365.
- 1.5 Contractor: the person with whom CallTo365 has entered into an Agreement.
- 1.6 Colocation Service: the right that CallTo365 grants to the Contracting Party to install and keep Computer Equipment in the Space.
- 1.7 Computer equipment: the telecommunication, network, server or computer equipment that is installed by the Contracting Party in the CallTo365 Space during the term of the Agreement.
- 1.8 Data center: one of the data centers where CallTo365 hires capacity from which the Colocation Service will be provided.
- 1.9 Room(s): colocation space within the Data Center that CallTo365 uses
- 1.10 Housing: Collective name of the Room where Computer Equipment is placed in Room(s) and / or Rack(s).
- 1.11 Internet access: the Service that CallTo365 offers that allows access to the internet based on various transmission techniques such as DSL, fiber optic, GPRS or UMTS.
- 1.12 Service (s): the performance (s) to be delivered by CallTo365 as further specified in the Service Description, the Agreement and the SLA.
- 1.13 Service description: a document drawn up by CallTo365 in which the Service is described in more detail. This document is not available for every service.
- 1.14 IP: Internet protocol; a protocol that enables communication via the Internet.
- 1.15 Netiquette: The generally acceptable standards of behavior on the Internet. Also known as RFC1855.
- 1.16 Network: the transfer equipment that makes it possible to establish signals between connection points via cables and radio waves.
- 1.17 Agreement: the Application Form, the General Terms and Conditions and, where applicable, the Service Description (s).
- 1.18 Parties: CallTo365 and Contractor.
- 1.19 Plan delivery date: the date on which CallTo365 expects to deliver the Service (= Ready for Service)
- 1.20 Peripherals: all devices that are intended to be connected directly to a network connection point and that allow for interaction with a (public) (communication) network.
- 1.21 Rack: A standardized 19" mounting option for modular electronic equipment where Contractor places the Computer Equipment.

- 1.22 Ready for Service: actual date on which the contract commences. This is the date on which the Service (s) is made available to the Contractor by CallTo365.
- 1.23 Sideletter: an Agreement that is drawn up after the Service has been supplied to record further agreements.
- 1.24 Telecommunication Service: a Service that consists wholly or in part in the transmission or routing of signals over a telecommunication network.
- 1.25 Facility (s): facilities, including hardware and software, for the (delivery) of a Service that are made available by CallTo365 to the Contractor
- 1.26 CallTo365: the private limited company CallTo365 B.V.

2. Applicability

- 2.1 The General Terms and Conditions apply to the Services and in particular are considered to be part of all offers by CallTo365 and the Agreement. CallTo365 expressly excludes the general terms and conditions of the Contractor.
- 2.2 In the event of a conflict between the provisions in the Application Form, the General Terms and Conditions and, where applicable, the Service Description (s), the following order of precedence applies: a. Sideletter b. the Application Form c. the Service Description (s) d. the General Terms and Conditions If a framework agreement has been concluded with the Contractor with regard to the provision of the Services; the provisions of this framework agreement shall prevail over the provisions of the aforementioned documents under a, b and c.
- 2.3 If any payment from the Agreement proves to be null and void or is canceled, the remaining provisions remain in full force. CallTo365 and the Contractor will enter into consultation or consultation in order to agree on a new provision with regard to the invalid or nullified provision, whereby the purpose and intent of the invalid or nullified provision will be observed as much as possible.

3. Formation of an Agreement

- 3.1 All quotations and offers from CallTo365 are made without obligation.
- 3.2 The Applicant requests a Service by completing and signing an Application Form intended for that purpose.
- 3.3 CallTo365 is entitled to conduct or have carried out a creditworthiness investigation of the Applicant. Based on this research, CallTo365 can demand certainty.
- 3.4 CallTo365 is entitled to refuse an application for reasons of its own.

3.5 In principle, CallTo365 will inform the Applicant in writing within two calendar weeks after receipt of the application whether the application has been accepted.

3.6 The Agreement between CallTo365 and the Applicant is concluded on the date of confirmation of acceptance of the request made for a Service.

4. Property and protection

4.1 CallTo365 can make Facilities available to the Contractor for the provision of the Service. The Agreement does not extend to any transfer of ownership of the Facilities, unless expressly agreed otherwise in writing.

5. Use of the Service

5.1 The Contractor is not permitted to use the Service (s) for acts contrary to the law, the Agreement, the SLA and, if applicable, the Netiquette.

5.2 The Contractor is free to rent the Service (s) in whole or in part to a third party.

5.3 If the service or network of CallTo365 is hindered by use by the Contracting Party of the Service, the Contracting Party is obliged to follow the reasonable instructions given by CallTo365 for the use of the Service and any associated Facilities.

5.4 The Contracting Party is not allowed to use hardware or software, which may cause damage to the Service or damage to CallTo365 or a third party, or which may cause a malfunction in the Service.

6. Change billing address or move

6.1 If the Contractor moves or changes the billing address of the Contractor, the Contractor must notify CallTo365 in writing of its new place of residence, residence or business location and / or new billing address in advance.

7. Obligation to provide information and cooperation

7.1 The Contractor is obliged to provide CallTo365 with all necessary information and to provide all necessary cooperation that CallTo365 needs to maintain the proper functioning of the Service (s).

8. Changes to the Service

8.1 CallTo365 is entitled to change or supplement the (technical) properties of the Service(s).

8.2 If the change or supplement as referred to in this article results in such a large change to the functionality of the Service applicable at that time by the Contractor, the Contractor has the right to terminate the Agreement on the date on which the change or supplement takes effect.

9. Services and maintenance

9.1 CallTo365 does not guarantee in any way that the Service it provides is suitable for any purpose, nor does it give any guarantees other than those mentioned in the Agreement

9.2 CallTo365 will, insofar as can be reasonably expected of it, endeavor to maintain the Service (s) for 7 days a week, 24 hours a day, subject to the time required for maintenance work, unless expressly agreed otherwise.

9.3 CallTo365 will, insofar as can reasonably be expected of it, endeavor to maintain the link with other Networks and to maintain it sufficiently.

9.4 CallTo365 is entitled to temporarily put the Service (s) out of service for maintenance purposes. CallTo365 will inform the Contractor of this as soon as possible, unless this is not reasonably possible, given the situation and the associated time pressure.

9.5 If a malfunction occurs in the functioning of a Service, the malfunction must be reported to CallTo365 as soon as possible by or on behalf of the Contractor, stating a clearly formulated description of the malfunction that has occurred.

9.6 CallTo365 will endeavor to rectify a malfunction in the Service as soon as possible after the malfunction has been reported by the Contractor. CallTo365 will endeavor to take measures as soon as possible after the malfunction report that the Service or a comparable alternative facility can be used.

9.7 If the malfunction is present in a Service, the costs of the malfunction investigation, the costs of rectifying the malfunction and the call-out costs will be borne by CallTo365, unless the malfunction is the result of an act or omission on the part of the Contractor Agreement, SLA or the Contractor has made improper use of the Service (s) or if the malfunction arose due to the presence of malfunctioning equipment of the Contractor.

10. Data

10.1 In the context of the Service (s) it provides to the Contractor, CallTo365 will not process more personal data than is necessary for the proper delivery of the Services.

10.2 CallTo365 processes personal and traffic data (also called logs) for:

- A. Creditworthiness study
 - B. Market research and sales activities
 - C. Billing
 - D. Control of the network
 - E. Legislative obligations such as retention and interception obligations
- 10.3 When CallTo365 is required by law to provide data, CallTo365 will do so. CallTo365 will take the utmost care and protect your data as much as possible.
- 10.4 CallTo365 will in all cases comply with relevant laws and regulations, including the General Data Protection Regulation (GDPR) and the Telecom Act.

11. Confidentiality

- 11.1 Each Party is obliged to maintain confidentiality towards third parties of data of a confidential nature in whatever form obtained from and about the other party.
- 11.2 Without prejudice to Article 11.1, the provision of confidential information may only take place in the following cases:
- A. To other employees and employees of the own company and to third parties, only insofar as this is necessary in the context of the Agreement;
 - B. To third parties, if the party who transferred the information has given its prior written permission to do so;
 - C. To third parties, if this is demanded from the party under a legal regulation and after direct notification of such claim to the other party.
 - D. CallTo365 and the Contractor will oblige their employees and / or third parties involved in the execution of the Agreement to comply with this confidentiality provision

12. Fees

- 12.1 The Contracting Party owes CallTo365 the fees determined by CallTo365 for the Service (s) supplied or to be supplied to the Contracting Party by CallTo365 or on behalf of CallTo365. The fees may consist of one-off amounts, monthly or otherwise periodic amounts and amounts that depend on the use of a Service provided by CallTo365.
- 12.2 The amounts as referred to in the Agreement and as referred to in this article are denominated in Euros and are increased by VAT and any other government levies.
- 12.3 CallTo365 can charge a pro rata amount per calendar day for both agreed fees that are related to a specific period and are not due over the entire period.
- 12.4 If there are periodic amounts or recurring amounts to be paid by the Contractor, CallTo365 is entitled, unless the Agreement has explicitly agreed otherwise, for every period of three

months from the commencement date of the Agreement, on the first day of adjust the applicable prices and rates during that period, provided that CallTo365 has notified the Contracting Party in writing of the intended adjustment no later than thirty days before the start of the relevant quarter.

- 12.5 If the Contracting Party does not agree to an increase in prices and rates as referred to in 12.4 announced by CallTo365, the Contracting Party is entitled to terminate the Agreement in writing within fourteen days after the date of the notification referred to in those articles. notification of CallTo365 said date on which the price or rate increase would take effect.
- 12.6 CallTo365 is entitled to adjust the rates once a year on the basis of the Consumer Price Index of Statistics Netherlands. Such an adjustment is not an adjustment in accordance with 12.4. Cancellation in accordance with 12.5 is therefore excluded.
- 12.7 If CallTo365 has concluded an agreement on behalf of the Contractor with a third party and that third party increases its rates, CallTo365 is entitled to implement that rate increase immediately.
- 12.8 If CallTo365 provides work and / or services that are not specified in the Agreement, these work and / or services will be invoiced at the then current rates of CallTo365.
- 12.9 The details of CallTo365 are decisive for determining the amounts owed, unless the Contractor can demonstrate that these details are incorrect.

13. Payment

- 13.1 The fees for the Service are due from the notification by CallTo365 that the service has been delivered (Ready for Service). CallTo365 is entitled to demand advance payment.
- 13.2 CallTo365 will charge the fees owed by the Contractor by means of an invoice. Payment must be made within a period of fourteen days from the invoice date. The moment of payment is the moment that the amount due has been received by CallTo365.
- 13.3 CallTo365 will invoice from the first of each calendar month for the current calendar month, unless otherwise agreed in the Agreement.
- 13.4 If the Contractor believes that the amount of the invoice is incorrect, the Contractor must notify CallTo365 in writing of the objections before the due date of the invoice. After receipt, CallTo365 will investigate the correctness of the invoice amount. The part of the invoice amount against which no objection is made remains due and payable. Payment of the part against which no objection is made may therefore not be suspended by the Contractor.

- 13.5 If the Contractor has not paid, or has not paid within the term stated on the invoice, or has not paid in full, the Contractor will be in default without further notice of default.
- 13.6 From the date on which the Contractor is in default, CallTo365 is entitled to charge the statutory interest on the amount owed by the Contractor and any judicial and extrajudicial collection costs will be charged to the Contractor.
- 13.7 CallTo365 is only entitled to (partial) decommissioning and / or to dissolve the Agreement due to late payment after the Contractor, also within a reminder to be sent by CallTo365, has not paid a further term.
- 13.8 When, in the opinion CallTo365, circumstances arise which seriously impede or jeopardize its remedies against the Contractor, the total amount of the installments remaining until the end of the contract period with interest and costs is immediately due and payable.

14. Force majeure

- 14.1 CallTo365 is not obliged to comply with any obligation to the Contractor if CallTo365 is prevented from doing so as a result of a circumstance that is not due to its fault, nor is it at its expense under the law, legal act or traffic regulations. is coming ("force majeure").
- 14.2 Circumstances as referred to in the previous paragraph include, but are not limited to: disruptions in the connections to and with the internet, disruptions in the energy or material supply, transport delays, strikes, exclusions, government measures, the transit companies, suppliers and / or or other third parties fail to fulfill their obligations. These circumstances also include any event or circumstance as a result of which fulfillment by CallTo365 has become so objectionable and / or expensive compared to the circumstance at the time of entering into the Performance Agreement, in the opinion of CallTo365 no longer reasonably. may be required.
- 14.3 During the period of force majeure, CallTo365 is entitled to suspend its obligations arising from the Agreement. If the temporary force majeure lasts longer than two months, the Contractor is entitled to terminate the Agreement by means of an extrajudicial written notice to that effect, without any liability on the part of CallTo365 for costs or damage resulting from this termination. However, the latter right lapses as soon as the situation of force majeure will be lifted and the right to dissolve has not yet been invoked.

15. Liability

- 15.1 CallTo365 is not liable for any damage in the context of the conclusion and / or execution of the Agreement, except for the provisions of the following paragraphs of this article.

- 15.2 CallTo365 is only liable for the direct damage (as described below) that the Contractor suffers as a result of a shortcoming attributable to CallTo365 up to an amount equal to the compensation that CallTo365 during a period of three months prior to the event from which the liability arises, which has been paid with a maximum of € 100,000.00.
- 15.3 Direct damage exclusively means:
- A. Material damage to tangible items
 - B. Reasonable costs incurred to prevent or limit direct damage that could be expected as a result of the event on which the liability is based
 - C. Reasonable costs incurred to determine the cause of damage, liability, direct damage and the method of repair.
- 15.4 The total liability of CallTo365 for damage due to death or physical injury will in no case exceed € 450,000.00 per event, whereby a series of related events counts as one event.
- 15.5 Any liability of CallTo365 for consequential damage is excluded. Consequential damage in this context is in any case understood to mean:
- A. Loss of profit, missed savings
 - B. Losses
 - C. Costs incurred to prevent or determine consequential damage
 - D. Loss, exchange or damage of electronic data and / or damage due to delays in the transport of data traffic
 - E. Damage other than direct damage
- 15.6 This article does not in any way limit CallTo365's liability for damage resulting from intent or gross negligence on the part of CallTo365's executives.
- 15.7 CallTo365's liability due to an attributable shortcoming in the fulfillment of the Agreement only arises if Contract immediately gives CallTo365 notice of default in writing (by regular post), whereby Contractor CallTo365 has a reasonable term to still fulfill its obligations, and CallTo365 also after the expiry of that period continues to fall attributable in the fulfillment of its obligations. The notice of default must contain as detailed a description as possible of the shortcoming, so that CallTo365 is able to respond adequately.
- 15.8 Any right to compensation under this article lapses if no legal action has been instituted for this or on behalf of the Contractor within one year in which the damage occurred. Damages / complaints relating to externally observable defects must be made within 8 days.

15.9 In the event of delivery terms (Plan delivery date), CallTo365 will endeavor to meet the deadline. This target period never counts as a strict deadline. If the delivery of the Service is delayed, CallTo365 will inform the Contracting Party of this. The Contracting Party indemnifies CallTo365 against all damage that the Contracting Party will or will suffer as a result of, or which is related to, a delay in the delivery of the Service. Delay in the delivery of the Service does not in any way entitle the customer to terminate the Agreement.

16. Liability Contractor

16.1 The Contractor is liable to CallTo365 for all damage resulting from (attributable) shortcomings and / or tort of the Contractor. This damage also includes damage as a result of destruction, loss, theft or damage to the Facilities.

16.2 Damage as referred to in this article also includes wear caused by improper use or careless handling by the Contractor.

16.3 The Contracting Party indemnifies CallTo365 against claims from third parties for compensation for damage that these third parties could recover from CallTo365 in any way.

16.4 CallTo365 is not liable for the content of the information made available by the Contractor through the Service (s). Contract indemnifies CallTo365 against claims from third parties in this regard.

17. Decommissioning

17.1 CallTo365 reserves the right to (temporarily) completely or partially decommission a Service if the Contractor fails to fulfill an obligation under the Agreement towards CallTo365 in respect of the Service in question. The obligation to pay the fees remains in full force during the suspension period.

17.2 Reconnection and / or provision of the Service will be made if the Contractor has still fulfilled his obligations within a period set by CallTo365 and has paid the relevant amount for reconnection.

18. Duration and termination

18.1 Unless Parties agree otherwise, the Agreement is entered into for an initial period of 12 months.

- 18.2 After the initial duration has expired, the Agreement will be tacitly renewed for a period of one month, unless the Parties have agreed otherwise.
- 18.3 Both the Contracting Party and CallTo365 are entitled to dissolve the agreement if the other party fails to fulfill one or more of its obligations insofar as this failure justifies termination. If compliance is still possible, a written reminder containing a reasonable period to still fulfill the obligations must first be sent.
- 18.4 Each of the parties has the right to dissolve the Agreement with immediate effect without judicial intervention and without notice of default, if:
- A. The other party has applied for a (provisional) moratorium on payments or whether this has been granted to him
 - B. The other party has been declared bankrupt or has filed for bankruptcy
 - C. The other party's business is liquidated
 - D. The other party is in default

19. Impact of termination

- 19.1 In case of termination of the Agreement, for whatever reason:
- A. The Contractor will immediately terminate the use of the Service (s) at the time of termination of the Agreement.
 - B. Immediately after termination of the Agreement, CallTo365 will take or block the codes it has provided (usernames, passwords) that have been provided under the Agreement, unless otherwise agreed.
 - C. If applicable, CallTo365 will notify the termination of the Agreement to the relevant institution (s) that has issued domain names registered by CallTo365 for Contractor and, if necessary, to cancel them.
 - D. All obligations that must remain in force either explicitly or by their nature will survive in full.
 - E. If the termination occurs within the stipulated term, the total amounts of the installments remaining until the end of the contract period are immediately due and payable.

20. Contract takeover

- 20.1 Without CallTo365's prior written consent, the Contractor is not entitled to transfer the rights and obligations under the Agreement to a third party.

20.2 CallTo365 is entitled to outsource all or part of the rights and obligations under the Agreement to a third party or under contract without the prior consent of the Contractor.

21. Change of General Terms and Conditions

21.1 CallTo365 has the right to change the General Terms and Conditions.

21.2 If CallTo365 declares the amended General Terms and Conditions applicable to existing Agreements, CallTo365 will notify the changes in writing or electronically in time. They will enter into force thirty days after the announcement of the change or at a later date specified in the announcement.

21.3 If the Contractor does not wish to accept an amendment to the General Terms and Conditions, it has the right to terminate the Agreement within thirty days of the stated announcement by the date on which the amended terms and conditions take effect.

22. Applicable law

22.1 Dutch law applies to the Agreement