

Co-Mingling

# Appendix I

## General terms and conditions

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# Introduction

1. This document sets the General Terms and Conditions of the Co-mingling Agreement applicable between the Parties regarding the Co-mingling Service provided by NETHYS.
2. This Service is provided in order to be used in the regulatory framework of the NETHYS regulated wholesale cable access service (service d'accès à la plateforme de télévision numérique et revente de l'offre d'accès haut débit)
3. The present General Terms and Conditions shall prevail on any other contractual obligations in respect to the specific subject matter "Co-mingling".

## 1. Scope

4. Co-mingling is the service according to which NETHYS offers the possibility to a Beneficiary to install equipment in a NETHYS technical building for the purpose of connecting NETHYS and Beneficiary Infrastructure and/or Network Elements for self-providing or to provide infrastructure and/or network elements requested by another Beneficiary in order to operate a service using a NETHYS cable access reference offer as foreseen in the relevant agreements entered between the Parties.
5. The Beneficiary can sign a Co-Mingling Agreement for a site or for an extendable list of sites. Once a Co-Mingling Agreement has been signed, the Beneficiary will be enabled to use the colocation. The Co-mingling service will be offered in a Co-mingling zone, this is the space selected by NETHYS within the NETHYS technical building where Co-mingling can be offered. Within this Co-mingling zone the Beneficiary will have its Co-mingling Area i.e. the footprint that will be explained hereunder (on which a specific rack (lockable metal cabinet equipment) may be imposed depending on the zone).

## 2. Provisioning of Co-mingling

6. Co-mingling will be implemented in a NETHYS technical building. NETHYS will determine the most appropriate space for the installation of the Beneficiary's rack(s)/equipment. The position of the racks will be indicated with a standard depth and a linear distance footprint, a common rack frame line up. The footprints will be numbered so that the Beneficiaries will recognize their dedicated footprints where the Beneficiary will install its lockable metal cabinet equipment. The rack and the metal cabinet are supplied and installed by NETHYS and NETHYS will deliver the power cable up to the racks, unless otherwise agreed. The connection has to be made by the Beneficiary.
7. The implementation of Co-mingling requests will follow the present General Terms and Conditions.
8. The minimum space for Co-mingling with the rack being supplied by the Beneficiary is a standard footprint of XX cm X XX cm. The maximum height of the rack is XX m (same as for NETHYS racks).
9. The maximum space for Co-mingling is a multiple of standard footprints.
10. Due to room space constraints, installation of more than 1 rack in same room is only possible after agreement of NETHYS.
11. By ordering Co-mingling the Beneficiary agrees with the environmental conditions of the Co-mingling zone. These are the conditions that are normally present in NETHYS technical rooms where similar equipment has been installed.
12. Due to space constraints, issues related to security and provisioning of necessary utilities such as adequate power supply, air-conditioning etc. , NETHYS may not be able to provide Co-mingling in all NETHYS technical buildings/rooms.
13. This Service can only be offered if there is suitable space available in the requested NETHYS technical building. NETHYS shall under no circumstances be obliged to construct a building extension on its technical building or lease additional space in order to provide Co-mingling.
14. Without prejudice to the above, NETHYS may refuse to meet a Co-mingling Request where it can demonstrate that meeting that Co-mingling Request either:
  - a. is impracticable on technical grounds which will be evidenced to Beneficiary; or
  - b. would impair the integrity of NETHYS's network.

15. When Co-mingling cannot be implemented in a requested building, NETHYS will inform the Beneficiary within 15 working days by demonstrating the reasons of the impossibility.
16. When the impossibility has been established, NETHYS will immediately inform the market of the unfeasibility of Co-mingling at the specific site. If the reasons of the impossibility are not confidential, they will be communicated to the market too.
17. If asked by the Beneficiary, NETHYS will consent to a field visit by the Beneficiary or by a third party designated by the Beneficiary. The appointment will be fixed within 10 working days after receiving Beneficiary's request for a survey. (Appendix IV Code of Conduct)
18. In the event that NETHYS is caused to move the "Co-mingled" Beneficiary and/or NETHYS equipment, then both Parties will co-operate to find a mutually acceptable solution. Each Party will pay the costs for the move of its own equipment.

## 3. Ordering Process

### 3.1 Quotation Procedure

19. A Beneficiary, which is interested in obtaining Co-mingling at a specific NETHYS building, can request information from NETHYS regarding the availability of this service at the said site through a Quotation Request. When notifying such a request to the NETHYS SPOC, the Beneficiary will describe its needs regarding the said site and the type of equipment it wishes to install (i.e. the number of racks and power requirements).
20. In order to make the request, the Beneficiary should use the form provided in Appendix III-A. Quotation Request Form.
21. NETHYS will co-ordinate the Quotation Requests and the Ordering procedure once a quarter.
22. NETHYS will try to handle 5 'Quotation Requests', 1 per quarter from the whole market.
23. On every Quotation Request Days (QRD), each Beneficiary individually can request maximum 5 Quotations every quarter, indicating an order of priority from high to low.
24. If more than 5 Quotations have been requested by the market, NETHYS, under supervision of the BIPT, will take into consideration N sites per Beneficiary in proportion to their requested number over the total requested number of sites, with a minimum of 1 site of each requesting Beneficiary up to a total of 5 sites.

### 3.2 Ordering Procedure

25. The Ordering procedure will happen once a quarter.
26. Per order<sup>2</sup>, a minimum of one (1) rack and a maximum of two (2) racks may be ordered.
27. When ordering the first Co-Mingling, the Co-Mingling Agreement will have to be signed. For additional orders the Order form will be considered as an addendum of the Agreement.
28. Therefore orders must be introduced per site.
29. The Beneficiary is to act in good faith and shall only request space that it will need in a reasonable time frame.

#### 3.2.1 Beforehand Ordering

30. In order to spread the number of orders, the Beneficiaries have the possibility to introduce



monthly 1 order three (3) months beforehand by sending a signed Co-Mingling Agreement for the requested site with in annex the Quotation Form (if relevant) and the Order Form (Appendix III) on an Order Date.

31. The payment will take place in two phases. The first payment of 50% of the upfront charges, which have to be borne by the Beneficiary, or a proof of payment, has to be send at the latest on the Order Date three months later. The Second payment of 50% of the upfront costs will have to be done when works will be terminated and accepted by the Beneficiary.
32. In the framework of the beforehand ordering process, the date on which NETHYS receives the Co-Mingling Agreement with the annexes will stand for the effective order date but the

<sup>2</sup> Individual Agreements and Orders must be introduced per site.

provisioning time will start on the date of the reception of the proof of payment. For the sake of clarity, this is with the understanding that the payment or payment proof will be send simultaneously with the documents or a posteriori.

33. The beforehand orders will be treated in priority. This means that if more than 1 beforehand orders have been introduced for a certain month, the extra volume will be accepted and deduced from the standard ordering volume of that month.

### 3.2.2 Standard Ordering

34. NETHYS will try to handle every month maximum 5 orders<sup>4</sup> from the whole market.
35. When the Beneficiary decides to order, the Beneficiary has to send the Co-mingling Agreement with in attachment the Quotation Form (if relevant) and the completed Order Form by requested site (Appendix III.C), for maximum 1 order per Order Date (OD) and in an order of priority, from high to low to its SPOC.
36. The ordering must happen within the four (4) weeks validity period of the Quotation. The price is guaranteed during 4 weeks on condition that the specific Co-mingling area to which the price relates is not taken by another Beneficiary or no longer available for any other reason.
37. If more than 5 Orders have been requested by the market during the same month, NETHYS under supervision of the BIPT, will take in consideration N sites per Beneficiary in proportion of their requested number over the total requested number of sites, with a minimum of 1 site of each ordering Beneficiary till a total of 5 orders.
38. NETHYS will inform the ordering Beneficiaries about the sites that will be delivered by sending the countersigned Agreement for those sites to the Beneficiaries and by communicating the delivery dates.
39. If a Beneficiary orders without requesting a quotation, this means that it is ordering simultaneously with his quotation request.
40. In cases where this order concerns a site where it is the first order for colocation in a site where there has been no quotation at all (new site to study) or the existing colocation space and power capacity are fully in use, in these cases only, the provisioning time will be extended with 5 working days to a maximum of 2 months and 5 working days. This means that if there is already a quotation or order for colocation in this site and there is still space and power available in the already studied space, the extension of 5 working days does not apply. In the meantime the

Beneficiary should pay an advance of 7.450 EUR. NETHYS will start the implementation works once the Beneficiary has paid its advance of 7.450 EUR or has sent a proof of the advance payment<sup>5</sup>.

41. In the framework of the standard ordering process, the date on which NETHYS receives the proof of the payment will stand for the effective order date. For the sake of clarity, this is with the understanding that the payment or payment proof will be sent simultaneously with the documents or a posteriori.
42. Since several Beneficiaries can order for the same site, the total number of racks that can be installed will be notified in the quotation and the 'first ordered, first served' rule will be applied. The Quotation remains valid in case no other Beneficiary ordered the requested Co-mingling in the time frame of the validity of the Quotation. When the available space has been exhausted and a Beneficiary still orders based on this quotation, the Beneficiary will be informed as soon as possible since a new quotation will have to be asked for the extension on a next Quotation Day.
43. All additional orders of Tie Cabling will be invoiced as described in the product related Service Description.
44. Any additional requirements from the Beneficiary, that would explicitly or implicitly constitute an upgrade of any common facility of the existing Co-mingling Zone where the Beneficiary's equipment/rack(s) is (are) located, shall be handled according to the following terms and conditions:
  - NETHYS will examine any request for additional requirements and will in principle only accept such additional requirements:
    - when it is reasonable and duly justified by the Beneficiary in view of the Services provided by NETHYS;
    - when the adaptations needed to meet these additional requirements are technically feasible<sup>6</sup>; and
    - when the requested requirements won't impair the integrity of NETHYS's Network;
    - NETHYS shall upgrade the common facility related to the relevant Co-mingling Zone with a specific economic increment<sup>7</sup> determined by NETHYS and which will be specific to that Co-mingling Zone. In any event, this economic increment will be at least<sup>8</sup> the size of the increment needed to fulfil the additional requirements from the Beneficiary. NETHYS will prepare an additional Quotation for the implementation of the additional requirements.

<sup>5</sup> The provisioning time when a Beneficiary orders without a quotation will be extended with 5 working days to a maximum of 2 months and 5 working days.

<sup>6</sup> In case NETHYS notifies the Beneficiary that it cannot accept Beneficiary's request for additional requirements, NETHYS will communicate the reasons why it cannot accept Beneficiary's request.

<sup>7</sup> "Economic increment" means the most cost-effective extension to an existing infrastructure that can effectively be implemented and allows complying with the mentioned additional requirements.

<sup>8</sup> NETHYS will select what it considers to be the best economic choice for the equipment to be installed in order to comply with Beneficiary's requirements.

45. The specific upfront costs related to the upgrade of the common facility with the specific economic increment would be shared by the Beneficiaries making use of the upgraded common facility<sup>9</sup>.
46. Beneficiary may install additional authorized equipment in its Co-mingling Area until its dedicated space is filled. No new order will be accepted if the Beneficiary has not installed its equipment or if the Beneficiary does not make use at all of its allocated space.
47. NETHYS reserves the right to reallocate any Co-mingling Area that is not used by the Beneficiary within 2 months of the provision of the Co-mingling Area, on the basis of the "use it or lose it" rule, and with notice to the Beneficiary. As soon as a replacing Beneficiary has ordered and after consultation of the BIPT, the 'replaced' Beneficiary will be informed within 3 working days and refunded (except for any recurrent fees and except for the administrative expenses and charges incurred by NETHYS and other justified costs), within 30 working days. NETHYS cannot guarantee that additionally ordered Co-mingling Areas in one Co-mingling Zone will be located next to existing Co-mingling Area but will do a 'best effort' for this. If requested, the Beneficiary will be enabled to verify the selected solution.

### **3.3 Installation and acceptance procedure**

48. Once the Co-Mingling Agreement has been signed and 50% of the Upfront costs or an advance of 7.450 EUR have been paid by the Beneficiary and a proof of payment has been delivered to NETHYS, NETHYS will perform the installation works of the Co-mingling Area. This will be realized within the delivery times and conditions as specified in the quotation.
49. Within 5 working days after the order day NETHYS will make an appointment with the Beneficiary to discuss the operational planning of the introduction works as described in the Network Access to Colocation Offer.
50. NETHYS will perform the essential implementation works.
51. Three (3) working days before RFO (Ready for Beneficiary), after maximum 2 months<sup>10</sup> and before the installation of Beneficiary's equipment, NETHYS will contact the Beneficiary in order to organise a site-survey. This site-survey will take place at the latest one (1) working day after RFO. The purpose of this site-survey is to fill in and sign the Acceptance Form (Appendix III D) and to co-ordinate the installation works and the necessary testing<sup>11</sup>.

<sup>9</sup> Any specific one-time cost, which results in a benefit that is exclusive to a particular Beneficiary or to the whole Co-mingling, will entirely be borne by the Beneficiary or by all the Co-mingled Beneficiaries, respectively. These costs will be for 100% paid in advance.

<sup>10</sup> See exceptions in point 3.5 Period of delivery.

<sup>11</sup> In case the Beneficiary would like to verify other items, this should be communicated to NETHYS by the confirmation of the appointment to its SPOC.

52. By signing the Acceptance Form, the Beneficiary accepts its Co-Mingling Area and confirms the compatibility of the delivery with the General Terms and Conditions of the Colocation Agreement concerned.
53. Once the works are accepted, and when the upfront installation costs to be borne by the Beneficiary have been entirely paid, the Beneficiary, accompanied by the security guard, will be allowed to start its own works in the Co-mingling Area, i.e.:
  - bring outdoor cable in the building
  - install equipment in the Co-mingling Area
  - connection outdoor cable to equipment
  - install power cable towards foreseen power cabinet
54. The Beneficiary will install equipment in its Co-Mingling Area that complies with all applicable specifications concerning electrical safety and electromagnetic conformity; a conformity certificate may be asked for; and as far as the equipment is indispensable to supply the planned services. This means that transmission equipment, but also other types of equipment (router, switch, test, multiplexer...), can be installed as an integrated entity. In agreement of the Beneficiary and accompanied by a bailiff or another independent third party, NETHYS, has the right to control the installations of the Beneficiaries.
55. The Beneficiary's equipment, including the racks, has to be installed in the Co-mingling Area by the Beneficiary itself or by authorised staff working under the Beneficiary's responsibility. All this equipment has to comply with the appropriate NETHYS Technical Specifications. (Appendix II of the Co-mingling Agreement)
56. The installation of Tie Cabling will be specified in the product related Service Descriptions.
57. During the implementation of the Co-mingling, and if required by the Beneficiary, NETHYS will consent to a site-visit by Beneficiary's qualified personnel. The appointment will be fixed within 5 working days after receiving Beneficiary's request for a site-visit. (Appendix IV Code of Conduct)
58. Note that all works or visits where NETHYS staff must be present, have to take place during business hours.

### **3.4 Provisioning, maintenance and administration of Co-mingling Facilities.**

59. The Beneficiary shall provision, maintain and operate the equipment that is installed in its Co-mingling Area in accordance with the NETHYS Technical Specifications. (Appendix II of the Co-mingling Agreement)
60. In its Co-mingling Area, Beneficiary shall only install equipment for the purpose of connecting NETHYS and Beneficiary Infrastructure and Network Elements as defined in the product related Service Descriptions.
61. The Beneficiary will be responsible for the equipment and the material that he brought to the Co-mingling Zone. The Beneficiary should not leave any material out of its Co-mingling Area e.g. packaging, documentation, tools, etc.

62. NETHYS will be responsible for the cleaning and maintenance of the Co-mingling Zone outside the Racks at the same frequency as NETHYS cleans and maintains its own equipment area.

### **3.5 Period of Delivery**

63. Maximum two (2) months to provide the facilities of the Co-mingling Zone,<sup>12</sup> except in those cases:
64. where a security coordinator is required in accordance with the applicable legislation. In this case, the period of 2 months will be extended with a period of 15 working days.
65. where NETHYS receives an order without foregoing quotation. In this case, the period of 2 months will be extended with a period of 5 working days.
66. NETHYS will indicate the expected lead-time on each Quotation. This lead-time will take into account the specific implementation works to be executed at the specific site.

<sup>12</sup> It cannot be excluded that in specific circumstances or force majeure the lead times mentioned will need to be extended. These will be justified case by case to the BIPT.

## 4. Access & Security conditions

74. NETHYS will provide Beneficiary with an appropriate "Escort Service" – Access from outside the NETHYS premises up to the Beneficiary's Co-mingling Area.
75. Each Beneficiary that chooses for Co-Mingling has to work with the Escort Service and will have to sign an agreement with the Security firm of NETHYS<sup>13</sup>.
76. This service will enable an access available 24/24h and 7/7days. Where relevant, specific rules applicable with regard to specific sites will be described in the Co-mingling Agreement concerned.
77. The Beneficiary's attention is drawn to the fact that certain restrictions will apply, such as:
  - at least 1 Hour<sup>14</sup> before every visit NETHYS Security must be informed by the Beneficiary.
  - Beneficiary's staff should always be able to identify itself.
  - Beneficiary's staff cannot enter a NETHYS building without Security Escort.
78. Beneficiary may not, without the prior written consent of NETHYS:
  - mount up, install or otherwise affix, in or around the Beneficiary's Co-mingling. Area any items, including in particular advertisements and publicity marking, other than those described below;
  - alter both the Beneficiary's Co-mingling Area and/or the Co-mingling Zone;
79. Beneficiary may not cause any inconvenience towards other users of the Co-mingling.
80. Beneficiary shall make sure that its equipment does not cause disturbance or interference to NETHYS equipment or other Beneficiary's equipment in the technical building (Appendix II: Technical Specifications). If this would be the case, both Parties shall co-operate to resolve the problems. Any cost incurred by such a relevant event shall be borne by Beneficiary.
81. All the equipment installed by Beneficiary in the Co-mingling Area remains the sole property of Beneficiary.
82. The Beneficiary should not leave any material out of its Co-mingling Area e.g. packaging, documentation, tools, etc.
83. Beneficiary shall provide to its employees, its delegates and to its contractors the complete information regarding the content of the present rules to be respected regarding Co-mingling.

<sup>13</sup> The Beneficiaries can contest or re-negotiate the conditions based on market input.

<sup>14</sup> A shorter delay can be agreed in case of emergency

## 5. Term and Termination

### 5.1 Term

84. The term of a Co-Mingling Agreement can be defined according to following specifications:
- The Co-mingling Agreement is concluded for an initial term of 1 year.
  - After one year, the Agreement will automatically be extended for an undefined period.
85. The terms must be considered separately for each ordered site

### 5.2 Termination

#### 5.2.1 General

86. The termination of a Co-Mingling Agreement can be defined according to following specifications:
- During this initial term the agreement may not be terminated.
  - A Beneficiary and/or NETHYS can terminate a Co-mingling Agreement at the renewal date of the initial term, in order to avoid the automatically extension of the agreement, by giving a written notice at the latest 6 months prior to the end of the first year
  - Co-Mingling agreements older than one year can be terminated on site level or agreement level (all sites grouped), any time, by Beneficiary and/or NETHYS by a written notice at the latest 6 months prior to the effective termination date.
87. If the Beneficiary has not made any operational use of the Co-mingling for a period longer than one year, NETHYS will at all times be entitled to terminate the Agreement subject to a one month notice period.
88. NETHYS will inform the BIPT when it has the intention to terminate a Co-Mingling Agreement and it will give the reason of termination in order to enable the BIPT to formulate a non-guidance. This guidance will be communicated to the Beneficiary and to NETHYS, but it has no binding character.
89. Upon termination of the Agreement for a specific Site, the Beneficiary shall prior to the termination of the Service:
- pay all remaining fees
  - pay for the removal of the Beneficiary specific facilities at NETHYS's option
  - recover the Site in its original state
  - remove its equipment, spare parts, test equipment, documentation, etc...
90. When Beneficiary terminates the Agreement for any reason whatsoever, Beneficiary shall not, in any circumstances, be refunded for any payments made unless another (or the same, without refund) Beneficiary will bring the Co-mingling Area in use within one year after termination. Then the rule of 'transfer of rights will be applicable.



91. In the scenario in which the Agreement is terminated by NETHYS where the Beneficiary has not made any operational use of the Co-mingling Area for a period of more than one year, the Beneficiary will under no circumstances be refunded for any payments made to NETHYS in respect of the Co-mingling Agreement.
92. In the case of full termination of this Agreement for any reason by the Beneficiary, NETHYS shall be entitled to claim a payment for all Services performed prior to such termination at the latest within 30 calendar days as from termination.
93. These provisions are without prejudice to any other right or claim for compensation to which one of the Parties may be entitled to in the event of termination of this Agreement.

## **5.2.2 Transfer of rights**

94. If a Beneficiary wants to transfer its rights of a Co-Mingling Area to a third party, the Beneficiary should inform NETHYS by mentioning the site and the candidate on the cancellation notice of its agreement. The candidate Beneficiary has to sign the Co-mingling Agreement with the annexes for the 'transferred' Area.
95. NETHYS will inform the Beneficiary and the Candidate Beneficiary about the due sums in order to enable a financial settlement between them.

## **5.2.3 Termination for Cause**

96. Notwithstanding the provision describing the dispute resolution, in the event that either Party defaults in the performance of any of its material obligations under this Agreement (which shall include any obligation of payment of undisputed sums due under this Agreement) and such default is not substantially cured within thirty (30) calendar days after written notice is given specifying the default, then the non-defaulting Party may by giving Notice to the other Party, terminate this Agreement with immediate effect.
97. In the event that either Party is declared bankrupt or enters into liquidation, then the other Party may terminate this Agreement, without any further legal or other procedures, by sending Notice of termination with immediate effect to the other Party.

## **6. Sub granting of usage right in respect of Co-mingling Service(s)**

98. A Beneficiary may not sign a Co-Mingling Agreement with as sole purpose the sub-granting of usage right of Co-Mingling Services.
99. A Beneficiary can sub-grant rights of usage in respect of its Co-mingling Area partially or completely to a third party, in order to deliver to the third party services as described in the Co-Mingling Agreement between NETHYS and the Beneficiary. A Beneficiary can also sub-grant to a third party that has concluded an agreement with NETHYS in order to benefit from (a) regulated service(s). For the sake of clarity this means that the aforementioned third party does receive the services directly from NETHYS in the colocation of the third party, without having concluded a colocation agreement himself.
100. The sub granting in respect of the Co-Mingling Area must in any case be correlated to a maintenance service from the Beneficiary, since the third party will not have access to the NETHYS building except as a delegate of the Beneficiary if any.
101. In any event, the Beneficiary will not grant or otherwise attribute any right of physical access in respect of the NETHYS technical building to the third party.
102. When making use of its access right, Beneficiary can be accompanied by third parties when required for operational purposes.
103. A Beneficiary may lease transport services to or from another licensed Beneficiary or from NETHYS.
104. Beneficiaries cannot establish relations between their racks without prior approval of NETHYS.

## **7. Pricing for Co-mingling**

### **7.1 Upfront costs**

- 106. The upfront costs will be the costs that can be directly assigned to an individual Beneficiary.
- 107. This infrastructure encompasses equipment that can be individually assigned to a particular Beneficiary such as introduction ducts, cabling, HVAC and power supply (230V). NETHYS taking into account the specific requests from the Beneficiary will make a particular offer.
- 108. NETHYS will seek as much as possible to provide the required utility infrastructure as an extension of the existing utility infrastructure in the building concerned, in order to reduce the costs.
- 109. However, it cannot be excluded that in some cases the installation of dedicated infrastructure for exclusive use in the Co-mingling Zone cannot be avoided. For example the installation of air conditioning in a room where there was no need initially but with the installation of additional NETHYS or Beneficiaries racks and/or equipment air-conditioning becomes essential for the good running of the equipment installed in the Co-mingling Zone. The cost of the installation will be attributed to the Beneficiaries present in the Co-Mingling Zone in proportion of the power units that they requested.
- 110. The NETHYS offer will take into account the specific situation of each building.

#### **7.1.1 Cabling from the Co-mingling Zone up to the NETHYS Network**

- 111. Cost cabling from comingling zone to NETHYS equipment will be charged to Beneficiary.

#### **7.1.2 Electric Power Installation**

- 112. The upfront cost per Ampere for Power can be found in the Price List (see. item V).

#### **7.1.3 HVAC Installation**

- 113. Since power consumption correlates with heat radiation, the HVAC consumption will be calculated based on the requested electric power units too. The HVAC installation will be charged from the moment that it will be present and this to all the Beneficiaries present in the Co-mingling Zone in proportion to their requested power units.
- 114. The upfront cost per Ampere for HVAC can be found in the Price List (Appendix V).
- 115. The upfront payment is neither refundable nor deductible from a next order. When upgrading power to a higher capacity, also the upfront for HVAC will increase based on the difference

between the two requested values (initial fuse value and update fuse value) requested by the Beneficiary.

116. The upfront investment cost for HVAC covers a period of 10 years and if the Co-mingling Agreement lasts for longer than this period, these upfront investment costs will again become due by the Beneficiary.

#### **7.1.4 Various costs**

117. Each NETHYS invoice related to Co-mingling will include a compensation for the study costs (quotation fee), management and administrative costs related with the realisation of the relevant aspects of Co-mingling. See Appendix V Price List for The cost of the quotation by rack. The management and administrative costs will be invoiced as a flat rate to the requesting Beneficiary and it will be included in the individual upfront costs.

### **7.2 Recurring costs**

118. The recurring costs are payable in advance and the invoice is sent for the first time as soon as the common and Beneficiary specific works are completed by NETHYS and accepted by Beneficiary. The payment of the recurring costs will be made within 30 days of the invoice and will not impact the activation of the Beneficiary's equipment in the Beneficiary's room. The recurring costs encompass in particular.

#### **7.2.1 Floor space**

119. The Beneficiary will be charged for the number of ordered footprints.
120. The usage fee for one footprint, corresponding to two m<sup>2</sup>, and the unit price in the Price List is expressed in EUR/m<sup>2</sup>/year.
121. The usage fee does not include the operational costs for ventilation/cooling, which are covered in the next section (7.2.2.). Heating costs are however included (T°min= 5 C°, no condensation).
122. The costs related to the cleaning of the parts of the Co-mingling Zone, which are located outside the Beneficiary's Co-mingling Area, the maintenance of: lightning, fire detection, etc. are included in the usage rights for these parts.
123. The total usage fee is payable annually in advance: as soon as the Co-mingling Area is made available to the Beneficiary and at the latest on each anniversary date of which the space was made available to the Beneficiary.

#### **7.2.2 Electric Power Consumption**

124. The price per power unit includes the maintenance costs related to the supply of electrical power. (item V Price List)

##### AC 230V Power Consumption

125. Charges for power consumption (AC 230V) are based on real consumption indicated on the Beneficiary dedicated counter (See Colocation Agreement: Appendix II Technical Specifications). The Beneficiary still has to indicate the maximum power consumption it will need by choosing the fuse value for its installation.
126. In case of big change on market, charges for power consumption will be adapted with prior notice of 6 months to the Beneficiary.

### **7.2.3 HVAC Consumption**

127. Since power consumption correlates with heat radiation, the HVAC consumption will be calculated in proportion to the real electric power units consumed.

### **7.2.4 Price of Security Service**

128. The compensation of the Security Escort Service will be fixed in the agreement between the Beneficiary and the Security firm.

## 8. Accounting/Billing

129. In consideration for the Services provided by NETHYS under this Agreement, Beneficiary shall pay the charges and fees provided in the specific Co-mingling Agreements.

130. Payment will be made:

- within fifteen (15) calendar days from the date of issuance of the invoice, for the first invoice of 50% of the upfront costs.
- within sixty (60) calendar days from the date of issuance of the invoice, for the second invoice of 50% of the upfront costs.

This invoice will be sent once the first invoice, which is the trigger to start the works, has been paid or a proof of payment has been received.

- within thirty (30) calendar days from the date of issuance of the invoice, for the first invoice of the recurring cost.
131. This invoice will be sent the first year when the second invoice has been paid or when the Beneficiary has accepted its Colocation Area and can install its equipment. The following years the invoicing will happen at the latest on each anniversary date of which the space was made available to the Beneficiary.
132. If the Beneficiary omits to pay on due date, an annual interest equal to the legal interest rate increased by 2% will accrue automatically and without notice on all amounts outstanding after the due date. This interest will be calculated monthly as of the due date until the date of payment. Any month having started will be deemed as having lapsed entirely.
133. All costs of unpaid collections, checks or bills of exchange will be borne by Beneficiary.
134. The Parties acknowledge that the prices expressed in this Agreement and its schedules are expressed in Euro and invoicing shall take place in Euro.

### 8.1 Payment of upfront costs

135. When a Beneficiary places a firm order for a Co-mingling Area, by sending the following documents:
- the Co-Mingling Agreement
  - the Quotation form (if relevant)
  - the completed Order form (by fax and by e-mail),
  - the legal proof of payment of minimum an advance of 7.450 EUR.

136. The Beneficiary will be invoiced in two times from which the first 50% of the upfront costs within eight working days after the order day and the invoice will be faxed to the Beneficiary, the second 50% three working days after the reception of the payment of the first invoice or after the reception of the first proof of payment, together with the first invoice.
137. The Beneficiary will have to pay its second 50% of the upfront costs when NETHYS has completed the implementation works and Beneficiary has accepted them but prior to the installation of its equipment by the Beneficiary. If the Beneficiary has a delay in achieving its cabling work, NETHYS will complete its Colocation works as much as possible and an additional invoice will follow for the delayed works.
138. In case the Beneficiary orders and pays an advance or sends a proof of payment simultaneously, NETHYS will send two invoices of 50% of the total amount of the upfront costs, based on the quotation, within 3 working days. The Beneficiary will have to pay the difference between the first invoice and the advance within fifteen (15) calendar days.
139. A fee covering the administrative costs, related to the order handling and the handling of the financial operations of collection and reimbursement of the costs, will be added to this amount.

## 8.2 Payment of recurring costs

140. The invoice of the recurring costs will be send once the Co-Mingling Area has been completed and accepted by Beneficiary. The invoice will be payable within 30 calendar days.

### 8.2.1 Floor space

141. In order to facilitate the control on the billing, NETHYS will work with a full year reference period for every invoice. The reference period will be from 01 January till 31 December of each year.
142. For the floor space, the billing of the first year will not be a full year billing, but the billing of the remaining period till 31-dec of that year. This imply the following calculation:

$$\#m^2 \ Y_n * price \ Y_n / 365 * (31decY_n - Acceptance \ date)$$

143. For the following years the invoice will be send annually.

### 8.2.2 Electric Power & HVAC

144. Also for the electric power & HVAC consumption NETHYS will work with a full year reference period for every invoice.
145. The reference period will be from 01 January till 31 December of the year X (with  $X=Y_n-1$  in 8.2.1).
146. The invoice will be send annually within a quarter of year  $X+1$  ( $=Y_n$  for floor space).

#### 8.2.2.1 AC 230V

147. Electricity consumption in AC 230V, including maintenance and repair costs, shall be billed based on "real consumption" of the low-voltage counters.

#### 8.2.2.3 Power upgrade

148. For every request of power upgrade the Beneficiary will be charged a fix coordination fee instead of the management and administration fee. (See Colocation Agreement: Appendix V: Price List)
149. The upfront payment is neither refundable nor deductible from a next order.
- Feeder Capacity  $\geq$  Upgrade Fuse Capacity  
When upgrading to a higher capacity the upfront will be based on the difference between the two requested values, initial fuse value and update fuse value, requested by the Beneficiary increased with 50%.
  - Feeder Capacity  $<$  Upgrade Fuse Capacity  
In this case the upgrade request will be considered as an initial request. The cost involved in this type of upgrade will hold the upfront part for the difference between the initial request and the new one plus the additional cabling cost to upgrade the installation to be able to supply the requested AC 230V-current and to install a new feeder cabinet. A new feeder will have to be placed. The billing will be based on both counters from the moment the new feeder is put at his disposal until the moment he annuls the first one.

#### 8.2.2.4 HVAC consumption

150. The HVAC consumption cost will be calculated as 40% on the volume of power consumption. HVAC equipment maintenance is not included in this supplement.

#### 8.2.2.5 Power & HVAC Recurring Advance

151. For electric power and HVAC the Beneficiary will have to pay an advance that will be reviewed with the measured consumption at least once a year.
152. For the first year where no real consumption figures are known yet, the advance will be a flat rate based on 25% of the number of requested consumption fuses.

Afterwards, the advance will always be 50% of the real consumption amount invoiced for the previous period.



### **8.2.3 Annual Administration fee**

153. A fee covering the administrative costs, related to the handling of the financial operations of invoicing and collection, will be added to invoice of the Recurring fees.

### **8.2.4 Security Escort**

154. As each Beneficiary will have an own agreement with the Security Company, the invoicing will be done directly from the Security Company to the Co-mingled Beneficiary.

## 9. Liability and indemnification

157. Taking into account the nature of the respective activities of the parties, the risks and potential profits associated with these activities and the consideration obtained by each Party from this Agreement, parties expressly agree that their respective liability shall be limited as follows.
158. If either Party is held liable to the other Party (including such other Party's employee(s) and contractor(s)) under this Agreement, that liability shall be limited to the following:
- if such liability results from any personal injury or death incurred as a direct result of the non-performance of the relevant Party's obligations under this Agreement, then such liability shall be only subject to the limitation provided in § 158.
  - if such liability results from any conduct attributable to the relevant Party, which is, under Belgian law, characterised as being gross negligence (faute lourde – zware fout) or intentional negligence (dol – bedrog), then such liability shall be subject to no limitation, except as provided by law;
  - if such liability results from any material damage, other than those referred to above, arising out of or in any way connected with the performance by the relevant Party of this Agreement or the breach of such Party's obligations under this Agreement, then the total amount which can be recovered from such Party for all acts or omissions shall, in no event, exceed an aggregate amount equal to EUR 1.240.000 (one million two hundred forty thousands).
159. Neither Party shall be liable for indirect damages (pure and consequential), including without limitation loss of profit, loss of revenue, loss of data, loss of use, loss of savings, loss of goodwill, interruption of business or claim by third parties.
160. Beneficiary will be responsible for, and will indemnify NETHYS against, any claim for damages issued by Beneficiary's End Users in connection with the performance of this Agreement, except when the damage or claim is the result of a fault of NETHYS.
161. In addition, and notwithstanding the above, Beneficiary will indemnify NETHYS against any claim or loss related to the illegal use, or the use for illegal purpose of the Services by Beneficiary or Beneficiary's End Users.

## 10. Insurance

162. The Beneficiary undertakes to insure, at his own expenses:
- the Equipment installed in its colocation area(s) against all risks (fire, breaking of glass, explosion, electrical risks and other similar risks);
  - its liability concerning his installation;
  - its liability versus NETHYS and other third parties (material accidental damage, consequential and financial loss).
163. The Beneficiary or its Parent Company will Benefit from an all risks insurance policy that covers at least: the material damages resulting from the covered risks, the loss of indemnification from NETHYS, the claims of the neighbours, all the liabilities against everyone resulting from his installation or its exploitation. The insured amounts have to cover at least the material damages and the cost for the reconstruction of the attributed parts of the buildings and installations. The limit for the third Party insurance is minimum EUR 2.240.000 (material damage, personal damage and financial loss) per claim. The insurance policies have to be contracted with a settled insurance company in an E.U. country.
164. The policy must contain the following provisions:
- the suspension, cancellation or the end of the insurance policy will be opposable to NETHYS, 15 calendar days after the reception of a registered letter from the insurance company informing NETHYS the end of the policy
  - the insurance company and the Beneficiary renounce to all claims against NETHYS, her subordinates, suppliers (subcontract) or visitors. (« right of recovery waiver »)
  - NETHYS's insurance company and NETHYS renounce to all claims against the Beneficiary, her subordinates, suppliers or visitors ("bilateral waivers of right of recovery")
  - the insurance company renounce without any limitation to « the rule of proportionality » in case of under-insurance
165. Before the introduction of Beneficiary network Equipment in NETHYS premises can take place, the Beneficiary has to give a certificate of insurance describing the risk covered by the policy. Upon request of NETHYS, Beneficiary shall give at all time to NETHYS the evidence of paying the insurance premium.