

# General Terms and Conditions

The following terms are applicable to every service, product or software provided by Datacenter Luxembourg S.A.

These General Terms and Conditions and the Specific Terms and Conditions shall be interpreted and applied together as a single instrument (the “Agreement”).

The Agreement between DCLUX and Customer sets forth the legal rights and obligations governing DCLUX offering, provisioning and delivery of the Services and Customer’s receipt and use thereof.

The Agreement in its entirety shall consist of: these General Terms and Conditions, the Order Form, each applicable Specific Terms and Conditions, where applicable the Service Level Agreement, the Access Agreement, any applicable additional Terms of Use and/or License pertaining to the software provided under this Agreement.

In the event of an inconsistency between a term or condition contained in any document(s) comprising the Agreement, including any incorporated attachments, appendices, exhibits or other documents, the order of precedence, from the most to the least controlling, shall be:

1. The Order Form properly executed by authorized representatives of both DCLUX and Customer;
2. The applicable Specific Terms and Conditions, including any exhibits and the Service Level Agreement and
3. The General Terms and Conditions

These general terms and conditions, as well as the specific terms and conditions, may be obtained by Customer at all times by requesting them to DCLUX at the email address **sales@datacenter.eu**.

THESE TERMS MAY BE MODIFIED BY DCLUX AT ANY TIME AS PERMITTED OR REQUIRED BY LAW. DCLUX SHALL PROVIDE CUSTOMER WITH AT LEAST FIFTEEN (15) DAYS PRIOR NOTICE OF ANY CHANGES THAT WOULD MATERIALLY AND ADVERSELY AFFECT CUSTOMER SO THAT CUSTOMER MAY ELECT TO DISCONTINUE THE SERVICE AND AVOID THE EFFECTS OF THE CHANGES. CUSTOMER SHALL BE BOUND BY CHANGES AFTER THEY BECOME EFFECTIVE.

## Definitions

- Content means any information, data, text, software, song, sound, picture, video in any format stored, made available or transiting via any of the Services provided by DCLUX.
- Customer means an entity that orders the Service and is responsible for compliance with all the Customer's obligations set forth in the Agreement, including the duty to pay for the Service.
- Customer Details means an email address, postal address and a valid phone number at which Customer can be reached from 9 a.m. to 9 p.m. GMT/UT
- Customer Hardware means the servers, computers system and connecting lines and cables owned by Customer and directly or indirectly used within the scope of the Service.
- Customer Support means the assistance efforts provided by DCLUX in response to the Customer demand.
- Database means both the database server software, and the database itself necessary to perform webhosting.
- Datacenter means the facility used to house computer systems owned, leased or licensed by DCLUX
- DCLUX means Datacenter Luxembourg SA, the limited company established at 4, rue Graham Bell L-3235 Bettembourg, Grand-Duché du Luxembourg.
- DCLUX Equipment or Equipment means the computer systems, and all associated components owned, leased or licensed by DCLUX made available to Customer as part of the Services.
- DCLUX Infrastructure means the hardware and software used by DCLUX to provide the Service to Customer.
- DCLUX Network means the Internet telecommunication network used by DCLUX to provide the Service to Customer.
- End-User means any person or entity that receives or uses the Service, irrespective of whether such person or entity is authorized by Customer to receive or use the Service.
- Non-Recurring Fees means the fees punctually invoiced to Customer for the provision of the Service.
- Order Form means the part of the Agreement that shall be executed by DCLUX and Customer and, which among other things, identifies the Service to be provided and the fees charged for its provision.
- Party or Parties means Customer or DCLUX individually or both collectively.
- Payment means definitive receipt of the sums due by Customer on DCLUX' bank account.
- Recurring Fees means the fees periodically invoiced to Customer by DCLUX for the use and/or provision of the Service.
- Service or Services means any service referenced in DCLUX offering and for which Customer has executed an order form.
- Service Availability Date means the date indicated in the Service Delivery Note.

- Working Day means a normal workday within the meaning of Luxembourg civil law, excluding, among others, weekends and legal holidays.

## Article 1. General information

Customer expressly acknowledges having read and understood these General Terms and Conditions as well as any document comprising the Agreement. The same shall apply to any third party to whom Customer will make directly or indirectly benefit from the Service. The Agreement shall remain in effect for the entire term of the contractual relationship.

## Article 2. Establishment of the contractual relationship

### 2.1 Order Form

The offering, provisioning and delivery of the Services are subject at all times to the receipt and acceptance by DCLUX of an order form executed by Customer.

The execution of an order form by Customer constitutes acceptance of the Agreement terms in their entirety without any possibility of withdrawing such acceptance in whole or in part.

In addition, by submitting the Order Form, Customer implicitly accepts in advance and without reservation the legal, administrative and technical rules and regulations that are applicable to the Service.

Notwithstanding the foregoing, if Customer receives and uses Services without a duly executed order form as, Customer nevertheless shall be bound by all the applicable terms and conditions pertaining to the Services received and used.

### 2.2 Conclusion of the contract

The Order Form executed by Customer shall only constitute a definitive order vis-a-vis DCLUX upon payment in full of the required fees for the Services.

With regard to any territoriality issue that may arise hereunder, the Agreement shall be deemed to have been concluded at the DCLUX head office, as indicated in the definitions section herein.

### 2.3 Handling of Customer Details and acceptance thereof

Customer agrees that proper communication between them and DCLUX on a regular basis is essential to the proper use of the Services. Accordingly, Customer must properly consult and acknowledge any relevant information transmitted by DCLUX.

To this end, and in order to allow DCLUX to reach Customer as well as to provide the Services in a proper manner, Customer agrees to provide DCLUX with current and updated Details.

## Article 3. Services Limitations and suspension

### 3.1 Services Modification or Addition

Any modification or addition of the Services requested after the signature of the Agreement shall be subject to a written acceptance of DCLUX and governed by the same General Terms and Conditions and Specific Conditions as set forth in the Agreement.

In its sole discretion and without liability to Customer, DCLUX may:

(a) alter the methods, processes or suppliers by or through which it provides the Service; and/or

(b) change the Facilities used to provide the Service; and/

or (c) substitute comparable Service for that being provided to Customer. If necessary due to the potential impact on affected customers, DCLUX will provide prior notice of any alterations, changes or substitutions.

### 3.2 Services Suspension

DCLUX may, without notice and without incurring any liability, discontinue the provision of the Service:

- (a) if it determines such action is necessary to (i) prevent or protect against fraud, tricks, tampering, schemes, electronic devices, or any other fraudulent means or devices, (ii) protect its personnel, agents, facilities or services, or (iii) protect against actual or potential adverse financial effects; or
  - (b) if the Customer uses or misuses the Service in a manner that results, or could result, in network blockage or other degradations that adversely affect the Service provided to the Customer or to other existing or prospective customers of DCLUX.
- (b) in case of legal obligation, judicial or governmental request, or request from a duly competent regulatory or administrative authority
- (c) in case of urgent work on DCLUX Infrastructure; or
- (d) if Customer fails or refuses to provide information regarding their past or current use of the Services, the jurisdictional nature or characteristics pertaining to their use or planned use of the Service; or
- (e) if Customer provides false information to DCLUX regarding Customer's identity, address, past or current use of the Service
- (f) if DCLUX has reasonable grounds to believe that Customer uses or threatens to use the Service in a fraudulent and/or unlawful and/or criminal manner or in a manner which could prejudice DCLUX, especially but not limited to, in case of possible infringement of Articles 383, 454 and following of Criminal Code of Luxembourg (Code Pénal luxembourgeois)
- (g) in case of failure by the DCLUX to settle their invoice in accordance with article 6.5 herein;
- (h) if Customer becomes insolvent, makes assignments for the benefit of creditors, files for bankruptcy or reorganization, fails to discharge an involuntary petition for bankruptcy within the time permitted by law, or otherwise abandons the Service,
- (i) in case of Force Majeure, as defined in Article 19 hereafter.

Notwithstanding the foregoing, DCLUX shall make its best efforts to notify Customer of the suspension within a reasonable prior delay as well as to limit the suspension period.

### 3.3 Customer's Obligation to Pay

The suspension of the Service pursuant to this Article 3 does not relieve Customer of their obligation to pay DCLUX for the Service provided up to the time of suspension.

In all instances, DCLUX shall not be held responsible or liable for any consequences and /or damage that Customer may suffer due to a Service suspension.

## Article 4. Services Continuity

DCLUX shall act as a professional IT service provider but shall not guarantee the accessibility and/or the availability and/or a performance level of the Services. Notwithstanding the foregoing, certain Service are subject to a dedicated service level agreement defining the quality level guaranteed for such service by DCLUX.

## Article 5. Customer Support

Any request for Customer Support shall be sent to DCLUX, by email at the following address: support@support.datacenter.eu.

Unless otherwise agreed between the Parties and specified in the Order Form, DCLUX shall provide support during Working Days only, between 8 a.m. to 12 a.m. and between 1 p.m. and 5 p.m. (« Support Hours ») and if possible during the Working Day following the day during which the request has been received.

Customer Support shall be administered through a ticket system. The tickets will be invoiced on a half-hourly basis and in application of the rates specified in the Order Form.

While providing Customer Support, DCLUX shall use its best efforts but shall not guarantee any result.

## Article 6. Fees, Invoicing, Payment

### 6.1 General provisions

Unless otherwise specified, all fees are net, in euro (EUR) and exclusive of VAT. DCLUX reserves the right to adapt its fees at any time to take into account any factor such as any new or modified requirements imposed by its suppliers, any monetary parity that may take effect, or any supplementary taxes that may be levied. DCLUX shall inform Customer of such adaptations, whenever possible, prior to their application.

All fees are subject to change pursuant to any change of the Luxembourg's cost of living index published by Statec (Service central de la statistique et des études économiques) and will track future changes of the same index without prior notice to Customer.

DCLUX may modify the applicable fees and charges on not less than fifteen (15) days prior notice to Customer. Except as expressly provided otherwise in an Order Form, the rates and fees for the Service shall be effective during the Initial Term of the Service and during any Renewal Term. For recurring Service, any contractual period or Term started is due in full.

### 6.2 Fees imposed by third parties

If a third party (such as but not limited to, a DCLUX supplier, an administrative authority, a shipping company) imposes a fee on DCLUX in connection with the provision of the Service to Customer, such fees will be invoiced by DCLUX on a pass-through basis to Customer.

### 6.3 Invoicing

Unless specified otherwise in the Order Form, all fees shall be charged in advance.

Customer Support tickets shall be charged after the intervention or after closing of one or several intervention tickets mentioned in Article 5 here above.

DCLUX will exclusively issue digital invoices for its services and will send them to Customer by email. Should Customer request it, DCLUX will send them a copy of its invoices by postal mail, in such case DCLUX will charge Customer a ten (10) Euros fee per invoice.

### 6.4 Payment

Payment of the invoices shall be made at the head office of DCLUX and in euro (EUR). Any additional fee attached to the payment shall be at Customer's expense. The net amount received by DCLUX shall be strictly equal to the amount due by Customer.

## 6.5 Payment Delay

Unless otherwise agreed in writing by the Parties all payment shall be made within thirty (30) days following the date specified on the invoice. (the "Payment Deadline").

Any invoice or amount not paid upon falling due shall be subject, without formal notice, to interest charges amounting to ten (10) percent of the unpaid amount, until the outstanding amount is paid in full.

Additionally, DCLUX shall be entitled without formal notice to (a) invoice administrative costs amounting to seventy-five (75) euros by overdue invoice and (b) suspend the Services and/or (c) terminate the Agreement, with retention of the Customer Hardware without reimbursement of all sums already paid, even in advance.

## 6.6 Invoicing Errors

DCLUX' obligation with respect to any errors resulting in overpayments by Customer for the Service is limited to granting invoice credits equal to the amounts erroneously billed. Under no circumstance will any invoicing error affect the Customer's obligation to pay for the Services rendered.

## Article 7. Invoicing disputes

Customer may dispute any invoiced charge after the Payment Deadline without right of withholding any payment, by notifying DCLUX in writing and providing information sufficient to allow DCLUX to investigate the Customer's claim, provided the Customer's notification is received by DCLUX within sixty (60) days of the date of the invoice on which the disputed charge occurs.

In all instances involving a disputed charge, the parties will cooperate in good faith to resolve the dispute within thirty (30) days of DCLUX' receipt of the Customer's notification. If a dispute is not resolved within that period, either DCLUX or Customer may refer the dispute to the Luxembourgish Chamber of Commerce Arbitration Court.

All invoiced charges shall be deemed to be correct and indisputable sixty-one (61) days after the date of the invoice on which they appear.

## Article 8. Indemnification

Customer will indemnify, defend and hold harmless DCLUX against:

- (a) any loss or damage to any property or injury to or death of any person caused by any wrongful or negligent act or omission of Customer or their agents; and
- (b) any claim brought or filed by a third party against DCLUX due to any failure by Customer or their agents to act in accordance with this Agreement; and
- (c) any costs, liability, losses, damages, or claims incurred or suffered by DCLUX where DCLUX performs any act or omission specifically required by a direction to DCLUX from a regulatory body or law enforcement agency, purporting to exercise its functions or powers; and that direction to is caused by an act or omission of Customer or their agents.

## Article 9. Property Retention

Any product purchased by Customer from DCLUX shall remain DCLUX' property until reception by DCLUX of the payment of the entire purchase price including all interests, costs and incidental expenses.

## Article 10. Term

The initial term of the Service shall be as set forth in the Order Form (“Initial Term”) and shall begin on the Service Start Date. If no Initial Term is set forth in the Order Form, the Initial Term of the Service shall be one (1) year. If neither Customer nor DCLUX cancels or terminates the Agreement before the end of the Initial Term or any renewal term, the Agreement, unless otherwise provided in the Order Form, shall automatically renew for an identical term (“the Renewal Term”) pursuant to the rates, terms and conditions contained in the Agreement.

## Article 11. Termination

Termination of the Agreement implies termination of all the Services provided under this Agreement. Termination of one Service will not affect the Parties’ rights and obligations with regard to other Services ordered under this Agreement.

### 11.1 Termination for convenience

Either party may terminate any individual Service provided under this Agreement upon ninety (90) days written notice to the other subject to:

- (a) payment by Customer to DCLUX of any outstanding fees for the Service(s) so terminated; and
- (b) payment of the applicable termination fees amounting to the sum of Recurring Fees to be paid until the anniversary date of the current term; and
- (c) only if the individual Service terminated does not entail the termination of other Services for technical or contractual reasons.

### 11.2 Termination for cause

Either Party may immediately by notice terminate a Service and/or the whole Agreement and all its Services under it if one of the following events occurs:

- a) the other Party commits a material breach or has failed to perform any obligation under the Agreement and, no cure has taken place within thirty (30) calendar days after the terminating Party has given its notice of default, or
- b) if any matter beyond the other party’s control prevents the performance of the whole or a substantial part of the other party’s obligations in relation to that Service for a continuous period of three (3) months after the date on which it should have been performed; or
- c) any governmental or regulatory authority with competence and/or jurisdiction over the Parties decide that the provision of the relevant Service is contrary to existing laws, rules or regulations or any decision, law or other official governmental order makes the provision of the Service illegitimate. In such case no damages shall be due; or
- d) if the other Party is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if any of its assets are the subject of any form of seizure, or goes into liquidation, either voluntary or compulsory or if a receiver or administrator is appointed over its assets (or the equivalent of any such event in the jurisdiction of such other Party).

In any such event, such party shall immediately notify the other party in writing of any situation which could conduct to one of the above-mentioned circumstances.

### **11.3 Customer Default and Cancellation prior to the Service Start Date**

If Customer, without any express right to do so, cancels, changes or breaches the Agreement after its execution but prior to the Service Start Date, Customer shall pay DCLUX an amount equal to: (a) all Non-recurring Fees incurred by DCLUX up to the date of cancellation; plus (b) two (2) months of the forecasted Monthly Recurring Fees.

## **Article 12. Liability, warranties and disclaimer**

### **12.1 Limitation**

IN NO EVENT WILL DCLUX BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF DCLUX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF DCLUX EXCEED THE LESSER OF (I) THE TOTAL AMOUNT PAID OR PAYABLE TO DCLUX UNDER THE TERMS OF THIS AGREEMENT FOR THE IMMEDIATELY PRECEDING THREE (3) MONTH PERIOD, OR €50 000 EUR

### **12.2 DCLUX Representations and Warranties**

DCLUX represents and warrants that: (1) it is a corporation duly incorporated, validly existing and in good standing under the laws of Luxembourg, (2) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, (3) the execution, performance and delivery of this Agreement has been duly authorized by DCLUX, and (4) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by DCLUX in order for it to enter into and perform its obligations under this Agreement.

### **12.3 Disclaimer of Warranties**

DCLUX EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD-PARTY RIGHTS.

DCLUX DOES NOT WARRANT THAT THE SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS, OR THAT THE SERVICE WILL BE DELIVERED ON THE SERVICE START DATE, OR THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR- FREE, OR THAT DEFECTS WILL BE CORRECTED. FURTHERMORE, DCLUX DOES NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE SERVICES IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

THE FOREGOING DISCLAIMER OF WARRANTIES SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW, AND SHALL SURVIVE ANY TERMINATION.

## **Article 13. Customer Obligations**

### **13.1 Use and Maintenance of the Services and the Equipment**

If Customer, their agent or contractor fails to operate and maintain the Facilities, Equipment and systems interconnected with the Service, with the result that there is harm or imminent harm to DCLUX, the Services or other customers, DCLUX may require Customer, at their



expense, to acquire, install and use protective equipment designed to eliminate such harm. If the protective equipment fails to eliminate the harm, DCLUX, following the delivery of written notice to Customer, may suspend or terminate the Service, without any liability or further obligation to Customer.

### **13.2 Software License**

For services where Customer is provided with one or several software licenses (the "License"), Customer shall not modify, substitute, remove or attempt to modify, alter, substitute, remove the License key provided as part of the Service without prior written authorization of DCLUX.

Where applicable, Customer will be responsible and liable for managing the periodical reporting of License usage and as such will hold DCLUX harmless of Customer's actions or lack thereof when doing so.

### **13.3 Notice of Claims and Problems**

Customer shall immediately notify DCLUX upon receipt of any information that might adversely affect DCLUX, including, but not limited to, notices of any claims or proceedings that involve the Service, and Customer shall promptly notify DCLUX of any problem relating to the Service or the Service performance and reasonably cooperate with DCLUX in correcting the Service problem.

### **13.4 Co-operation on Audits**

If a regulatory agency seeks to audit DCLUX and in particular part of, or the whole Service provided under the Agreement, Customer will co-operate at no cost in any such audit investigation.

## **Article 14. Customer notification and declaration**

### **14.1 Compliance with laws and regulatory statutes currently in force**

Customer will take every step necessary to ensure that their use of the Service does not violate any law or regulatory statute currently enforceable in Luxembourg or elsewhere pertaining to public order, public security and public decency.

Customer shall refrain from using the Service for any illicit purpose such as but not limited to, the hosting of illicit material, the use of any false identity to defraud others. Pursuant to Article 14 hereof, Customer shall assume sole responsibility for the consequences of any improper activities, which are beyond DCLUX' control from all standpoints including technical.

Customer shall refrain from sending any email containing or suspected of containing viruses such as Trojan horses, worms, time bombs or any other computer program that could damage the computer operating system of any content recipient.

Customer shall abide by any law or statutory regulation to which Customer may be subject by virtue of the Customer's use of the Service.

DCLUX may suspend the Service if the Customer uses, or threatens to use the Service for any unlawful purpose or otherwise violates the terms of the Agreement.

### **14.2 Third party rights**

In realizing any operation relating to the Service, Customer shall not infringe the rights of others. Pursuant to Article 14 hereof, Customer shall assume sole responsibility for the consequences of any infringement of third-party rights.

Specifically, Customer shall be solely responsible for their use of the Service towards third parties, and shall bear sole responsibility for any infringements of, among others, personality rights, intellectual property rights, distinctive and pre-existing marks, commercial names, trade names or any copyright or industrial property rights or patents.

## Article 15. Confidential Information

During the term of this Agreement, each Party (the "Disclosing Party") may disclose its Confidential Information to the other Party (the "Receiving Party"). Each Party's use and disclosure of Confidential Information disclosed hereunder are subject to the following terms and conditions:

- a) The Receiving Party shall treat as strictly confidential, and use all reasonable efforts to preserve the secrecy and confidentiality of, all Confidential Information of the Disclosing Party, including implementing reasonable physical security measures and operating procedures.
- b) The Receiving Party agrees that it will use any Confidential Information of the Disclosing Party solely for the purpose of exercising its right or performing its obligations under this Agreement and for no other purposes whatsoever.
- c) The Receiving Party shall make no disclosures whatsoever of any Confidential Information of the Disclosing Party to others; provided, however, that if the Receiving Party is a corporation, partnership, or similar entity, disclosure is permitted to the Receiving Party's officers, employees, contractors and agents who have a demonstrable need to know such Confidential Information, provided the Receiving Party shall advise such personnel of the confidential nature of the Confidential Information and take reasonable steps to maintain the confidentiality thereof.
- d) The Receiving Party shall not modify or remove any confidentiality legends and/or copyright notices appearing on any Confidential Information of the Disclosing Party.
- e) The Receiving Party agrees not to prepare any derivative works based on the Confidential Information.
- f) Notwithstanding the foregoing, this Article 15 imposes no obligation upon the parties with respect to information that (i) is disclosed in agreement with the Disclosing Party who provided its consent in writing prior to such disclosure; or (ii) is or has entered the public domain through no fault of the Receiving Party; or (iii) is known by the Receiving Party prior to the time of disclosure; or (iv) is independently developed by the Receiving Party without use of the Confidential Information; or (v) is required to be disclosed by law, regulation or court order; provided, that in the event the Receiving Party is required by law, regulation or court order to disclose any of Disclosing Party's Confidential Information, Receiving Party will promptly notify Disclosing Party in writing prior to making any such disclosure in order to facilitate Disclosing Party seeking a protective order or other appropriate remedy from the proper authority, at the Disclosing Party's expense. Receiving Party agrees to cooperate with Disclosing Party in seeking such order or other remedy. Receiving Party further agrees that if Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information that is legally required.

## Article 16. Intellectual Property

Each party acknowledges: (a) that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever, which are used in

connection with the Service shall remain the sole property of the entitled owner of such rights or its subcontractors; and (b) that it shall not be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of the other without its prior written consent.

## Article 17. Protection of Personal Data

For every Service provided under this Agreement, the sole personal data handled by DCLUX will be the data belonging to Customer. For this personal data DCLUX shall act as controller with the meaning of Act of 1 August 2018 on the organisation of the National Data Protection Commission and the general data protection framework.

DCLUX will handle and process this personal data in accordance with DCLUX Privacy Policy published at [www.datacenter.eu](http://www.datacenter.eu).

## Article 18. Misc.

### 18.1 Waiver

Any delay or omission in the exercise of a right under the Agreement shall not be deemed a waiver of this right. A waiver of a right is only valid with written consent of the Party who waives that is signed by a duly authorized representative of this Party.

### 18.2 Force Majeure

DCLUX shall not be responsible for any delay or non-performance resulting from any event of force majeure as the latter is commonly defined by custom, law and the courts, or for any outage in any electrical grid, telecommunications or Internet system. Furthermore, are included in the list of force majeure events (non-exhaustive list) any circumstance over which DCLUX has no sole and direct control and any event that leads to economic imbalance for DCLUX preventing the continuity of the Agreement in the same conditions. If DCLUX fails to fulfill their contractual obligations due to a Force majeure event, DCLUX shall inform Customer as soon as possible. The Service shall be suspended from the appearance of the force majeure event until its disappearance.

### 18.3 Survivability

The terms and conditions contained in the Agreement that, by their sense and context, are intended to survive the performances of the parties shall survive the completion of those performances and the Agreement's termination. These include, without limitation, the making of payments due under the Agreement.

### 18.4 Entire Agreement

This Agreement, which includes the Order Form and Specific Terms and Conditions noted herein, constitutes the entire agreement with Customer concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

### 18.5 Severability

Should any term or provision of the Agreement be declared invalid or unenforceable, that term or provision will be construed consistent with applicable law as nearly as possible to reflect the original intentions of the parties, and the remaining terms and provisions will remain in full force and effect.

### **18.6 Non-Agency**

Nothing contained in the Agreement shall be construed as creating any agency, partnership or other form of joint enterprise between Customer and DCLUX.

### **18.7 Notices**

Unless specified otherwise, all notices, requests or other communications hereunder shall be in writing, addressed to the parties at the address indicated on the Order Form. Notices mailed by registered or certified mail shall be deemed to have been received by the addressee on the 5th business day following the mailing or sending thereof. Notices sent by facsimile shall be deemed to have been received when the delivery confirmation is received.

All email sent to Customer by DCLUX shall be deemed to have been received and read, immediately upon error-free transmission of such email to the email address provided by Customer in their Order Form by DCLUX' SMTP server.

### **18.8 Assignment**

DCLUX retains the right to assign or transfer any rights and obligations of the Agreement without the Customer's prior approval, who expressly waives any claim to obtain the execution of any obligation by DCLUX after its transfer or assignment.

### **18.9 Non-exclusivity**

Each party understands that this Agreement is non-exclusive. Without limiting the generality of the foregoing, Customer acknowledges that nothing in this Agreement shall prevent or limit DCLUX from marketing and selling its products or services, in whole or in part, directly or indirectly, to any prospective customers or from appointing representatives, resellers, distributors and other marketing agents, without liability to Customer.

### **18.10 Language**

Only the English version shall apply and prevail in any and all interpretation, notably before a court.

### **18.11 Applicable law and jurisdiction**

This Agreement is subject to Luxembourg Law, and any disputes will be resolved in the appropriate Luxembourg Court.