

The following terms apply 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 delivering 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 any 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 authorised 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 always be obtained by Customer by requesting them to DCLUX at the email address sales@datacenter.eu.

Definitions

Content means any information, data, text, software, song, sound, picture, or video in any format stored, made available or transmitted 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 outlined 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 during business hours.

Customer Hardware means the servers, computer systems 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 web hosting.

Datacenter means the facility owned, leased or licensed by DCLUX to house computer systems.

DCLUX means Datacenter Luxembourg SA, the limited company established at 202, Z.A.E Wolser F L-3290 Bettembourg, Luxembourg.

DCLUX Equipment or Equipment means the computer systems, and all associated components owned, leased, or licensed by DCLUX and made available to Customer as part of the Service.

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 Customer authorises such person or entity 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.

Recurring Fees means the fees periodically invoiced to Customer for the 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.

Service Delivery Note means the document provided by DCLUX to the Customer informing them that the Service is ready for use.

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 part of 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 always subject 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 apply to the Service.

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

2.2 Conclusion of the agreement

This Agreement shall take effect upon execution of the Order Form by duly authorised representatives of both Parties. The commencement of the Services shall, however, be conditional upon receipt by DCLUX of payment in full of all applicable Non-Recurring Fees and the first period's Recurring Fees as specified in the Order Form. For the avoidance of doubt, DCLUX shall have no obligation to commence provisioning of the Services prior to satisfaction of this condition.

2.3 Customer details and communication

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

To this end, and to allow DCLUX to reach Customer and to provide the Services adequately, 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 reserves the right to suspend, limit or discontinue the provision of any Service, in whole or in part, in the following circumstances:

(a) where DCLUX reasonably determines that such action is necessary to prevent or mitigate fraud, unauthorised access, tampering or any other activity that compromises the integrity or security of the Services, the DCLUX Infrastructure, or the interests of other customers;

(b) where Customer's use of the Service results in, or presents a material risk of, network degradation, congestion or disruption adversely affecting the provision of services to other customers of DCLUX;

(c) where DCLUX is required to do so by a binding legal obligation or by order of a competent judicial, governmental, regulatory or administrative authority;

(d) where urgent maintenance or remedial work on the DCLUX Infrastructure is required and cannot reasonably be deferred;

(e) where Customer fails or refuses to provide information reasonably requested by DCLUX regarding their use of the Services, or provides materially false or misleading information regarding their identity, address or use of the Services;

(f) where DCLUX has reasonable and documented grounds to believe that Customer is using, or intends to use, the Services for fraudulent, unlawful or criminal purposes, including but not limited to conduct that may constitute an infringement of Articles 383, 454 and following of the Luxembourg Criminal Code;

(g) where Customer has failed to settle an invoice in accordance with Article 6.5, and such failure has not been remedied within five (5) Working Days of written notice from DCLUX;

(h) where Customer becomes insolvent, makes an assignment for the benefit of creditors, files for or becomes subject to bankruptcy or reorganisation proceedings, or otherwise abandons the Service; or

(i) where performance of the Service is prevented by a Force Majeure event as defined in Article 19.2.

Save in circumstances of genuine emergency falling under sub-clauses (a), (b), (c) or (f) above, DCLUX shall provide Customer with reasonable prior written notice of any intended suspension, specifying the ground relied upon and, where applicable, the steps Customer may take to remedy the situation. In all cases, DCLUX shall use reasonable endeavours to minimise the duration and scope of any suspension and to restore the Service as promptly as practicable.

3.3 Customer's Obligation to Pay

The suspension of any Service pursuant to Article 3.2 shall not release Customer from their obligation to pay all fees due and payable under the Agreement during the period of suspension. DCLUX's liability for any loss or damage suffered by Customer as a direct result of a suspension carried out in good faith and in accordance with Article 3.2 shall be governed exclusively by the limitations set out in Article 13.

Article 4: Article 4: Service Continuity and Performance

4.1 General Standard of Performance

DCLUX shall provide the Services with reasonable skill and care, in accordance with the standards expected of a professional IT service provider operating in the Grand Duchy of Luxembourg. This obligation is one of means (obligation de moyens) and not of result (obligation de résultat). Accordingly, DCLUX does not guarantee uninterrupted or error-free delivery of the Services, nor does it warrant that the Services will meet any specific performance threshold except where expressly provided in an applicable Service Level Agreement.

4.2 Service Level Agreements

Where the Order Form specifies that a Service is subject to a Service Level Agreement, the quality and availability commitments set out in that Service Level Agreement shall apply to that Service. The remedies provided under the applicable Service Level Agreement shall constitute Customer's sole and exclusive remedy for any failure by DCLUX to meet the performance standards set out therein. Nothing in this Article shall be construed as limiting Customer's rights in respect of any other breach of the Agreement that falls outside the scope of the Service Level Agreement.

4.3 Scheduled Maintenance

DCLUX reserves the right to carry out scheduled maintenance on the DCLUX Infrastructure from time to time. Where practicable, DCLUX shall provide Customer with reasonable prior notice of any scheduled maintenance likely to result in Service interruption or degradation. Planned maintenance carried out in accordance with this clause shall not constitute a breach of the Agreement or give rise to any right of compensation on the part of Customer, provided that DCLUX uses reasonable endeavours to minimise disruption and to carry out such maintenance outside of peak usage hours."

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 half-hourly and in application of the rates specified in the Order Form. Any commenced half-hour period is charged in full.

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

Article 6: Fees, Invoicing, Payment

6.1 General provisions

Unless otherwise specified in the Order Form, all fees are denominated in euros (EUR), are exclusive of VAT and any other applicable taxes, and are net of any bank charges or transaction costs, which shall be borne exclusively by Customer. The net amount received by DCLUX shall be strictly equal to the amount invoiced.

6.2 Fee Adjustments

6.2.1 Index-Linked Adjustment

All Recurring Fees are subject to annual adjustment in line with the Luxembourg cost-of-living index published by STATEC (Service central de la statistique et des études économiques). Such adjustment shall take effect automatically on each anniversary date of the Agreement without prior notice to Customer.

6.2.2 Discretionary Adjustment

DCLUX reserves the right to modify the applicable fees outside of the index-linked adjustment mechanism set out in clause 6.2.1, subject to providing Customer with no less than thirty (30) days' prior written notice. Where such modification represents an increase exceeding five percent (5%) of the then-current fees, Customer shall have the right to terminate the affected Service by written notice to DCLUX within fifteen (15) days of receipt of DCLUX's notification, such termination to take effect at the end of the then-current billing period. If Customer does not exercise this right within the prescribed period, the modified fees shall be deemed accepted.

6.2.3 Software License Fees

Where the Service includes a software license, the applicable license fee shall be revised annually to reflect the pricing applied by the relevant software publisher. DCLUX shall provide Customer with documentary evidence of the publisher's applicable public pricing upon written request.

6.3 Third-Party Pass-Through Fees

Where a third party, including but not limited to a supplier, administrative authority or logistics provider, imposes a fee on DCLUX directly attributable to the provision of the Service to Customer, DCLUX shall be entitled to invoice Customer for such fee on a pass-through basis. DCLUX shall provide reasonable supporting documentation for any such pass-through charge upon Customer's request.

6.4 Invoicing

Unless otherwise specified in the Order Form, all Recurring Fees shall be invoiced in advance at the beginning of each billing period. Non-Recurring Fees shall be invoiced upon the occurrence of the event giving rise to the charge. Customer Support fees shall be invoiced following completion of the relevant intervention or closure of the applicable support ticket(s) as described in Article 5.

DCLUX shall issue invoices exclusively in digital format, transmitted to the email address provided by Customer in the Order Form. Should Customer request invoices by postal mail, DCLUX shall accommodate such request subject to an administrative fee of ten (10) euros per invoice.

Any contractual period commenced shall be invoiced and payable in full, including where termination occurs part-way through a billing period.

6.5 Payment Terms

Payment shall be made in euros (EUR) to DCLUX's designated bank account within thirty (30) days of the invoice date (the "Payment Deadline"), unless otherwise agreed in writing by the Parties. Payment shall be deemed made upon definitive receipt of the full invoiced amount in DCLUX's bank account.

6.6 Late Payment

Where Customer fails to settle an invoice by the Payment Deadline, the following consequences shall apply automatically and without requirement for formal notice: (a) interest shall accrue on the outstanding amount at a rate of ten percent (10%) per annum from the Payment Deadline until the date of full payment; (b) an administrative handling fee of seventy-five (75) euros shall be applied per overdue invoice; and (c) where the payment default is not remedied within five (5) Working Days of written notice from DCLUX, DCLUX shall be entitled to suspend the Services in accordance with Article 3.2(g) and, where the default persists, to terminate the Agreement in accordance with Article 12 with retention of the Customer Hardware without reimbursement of all sums already paid, including those paid in advance.

6.7 Invoicing Errors

Where an invoicing error results in an overcharge to Customer, DCLUX's liability shall be limited to issuing a credit note equal to the amount erroneously billed, to be applied against the next invoice issued. Such error shall not affect Customer's obligation to pay all correctly invoiced amounts by the applicable Payment Deadline."

Article 7: Invoicing disputes

Customer may dispute any invoiced charge after the Payment Deadline without the right of withholding any payment by notifying DCLUX in writing and providing information sufficient to allow DCLUX to investigate the Customer's claim, provided DCLUX receives the Customer's notification 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's 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**8.1 Customer Indemnification**

Customer shall indemnify, defend and hold harmless DCLUX, its directors, officers, employees and subcontractors against any third-party claim, loss, damage, cost or expense (including reasonable legal fees) arising out of or in connection with: (a) any wrongful, negligent or unlawful act or omission of Customer or their agents in connection with their use of the Services; (b) any breach by Customer of their obligations under this Agreement; or (c) any infringement by Customer of the intellectual property, personality or other proprietary rights of any third party in connection with their use of the Services.

8.2 DCLUX Indemnification

DCLUX shall indemnify and hold harmless Customer against any third-party claim alleging that the Services, as provided by DCLUX and used by Customer in accordance with this Agreement, infringe the intellectual property rights of any third party. This obligation shall not apply where the alleged infringement arises from modifications to the Services made by Customer without DCLUX's prior written authorisation, or from Customer's use of the Services in combination with software or hardware not provided or approved by DCLUX.

Article 9: Insurance

Customer shall maintain insurance coverage with a reputable insurance company of good financial standing. The level of such coverage shall be adequate considering the scope, nature and value of the Services and their use by Customer. It shall fully cover the Service's use, including, where applicable, cyber security insurance. If requested by DCLUX, Customer shall provide evidence of their insurance coverage.

Article 10: Property Retention

Title to any product sold by DCLUX to Customer shall remain vested in DCLUX until receipt in full of the purchase price, together with any accrued interest and costs. Title shall pass to Customer automatically upon such payment without further formality. Until title has passed, Customer shall hold the product in a manner that clearly identifies it as DCLUX's property, maintain it in good condition, and refrain from encumbering or disposing of it without DCLUX's prior written consent. In the event of Customer's insolvency or payment default, DCLUX shall be entitled to recover possession of any product to which title has not yet passed, and Customer shall provide DCLUX with reasonable access to its premises for that purpose.

Article 11: Term and Renewal

The Agreement shall enter into force on the date of execution of the Order Form and shall remain in effect for the initial period specified therein (the "Initial Term"). Where no Initial Term is specified, the Agreement shall be deemed concluded for a period of one (1) year.

Upon expiry of the Initial Term, and upon expiry of each subsequent renewal term, the Agreement shall automatically renew for an equivalent period on the same rates, terms and conditions then in force (each a "Renewal Term"), unless either Party has given notice of non-renewal in accordance with Article 12.1. The Service shall commence on the Service Availability Date as notified by DCLUX to Customer by means of the Service Delivery Note.

Article 12: Termination

Termination of this Agreement automatically terminates all Services provided under it. Termination of an individual Service does not, however, affect the rights and obligations of the parties with respect to any other Services ordered under this Agreement, unless otherwise specified in the relevant Order Form. All termination notices must be sent to DCLUX by registered mail with acknowledgement of receipt. Terminations take effect on the last day of the month in which the contractual anniversary date falls.

12.1 Termination for convenience

Either party may elect not to renew an Order Form (as amended by an Addendum or a Supplemental Order Form where applicable) by giving no less than ninety (90) days' written notice prior to the anniversary date of the then-current contractual period. Such notice shall be given in accordance with clause 19.8. Termination shall take effect on the last day of the month of the relevant anniversary date. For the avoidance of doubt, the serving of a termination notice shall not release the Customer from its obligation to pay all fees due and payable up to the termination date.

12.2 Termination for cause

Either Party may, by written notice, immediately terminate a Service and/or this Agreement and all Services provided under it upon the occurrence of any of the following events:

(a) the other Party commits a material breach of, or fails to perform any obligation under, this Agreement, and such breach or failure remains unremedied for thirty (30) calendar days following receipt of a written notice of default served by the terminating Party;

(b) a governmental or regulatory authority with competence and/or jurisdiction over the Parties determines that the provision of the relevant Service is contrary to applicable laws, rules or regulations, or any legislative measure or official governmental order renders the provision of such Service unlawful; or

(c) the other Party becomes the subject of a bankruptcy order, becomes insolvent, enters into any arrangement, composition or assignment for the benefit of its creditors, has any of its assets subject to seizure in any form, enters into liquidation whether voluntary or compulsory, or has a receiver or administrator appointed over its assets, or undergoes any equivalent procedure under the laws of the jurisdiction in which that Party is incorporated or established.

Notwithstanding termination under this clause 12.2, all fees accrued and outstanding as at the effective date of termination shall remain due and payable by the Customer. Where termination is effected by the Customer on grounds of material breach by DCLUX under sub-clause (a), any prepaid fees attributable to the period following the effective date of termination shall be reimbursed to the Customer within thirty (30) days of the effective date.

Article 13: Liability, warranties, and disclaimer**13.1 Limitation of Liability**

Neither Party shall be liable to the other for any indirect, special, incidental, punitive or consequential loss or damage, including but not limited to loss of profits, loss of revenue, loss of data or loss of business opportunity, arising out of or in connection with this Agreement, regardless of whether such loss was foreseeable or whether the Party had been advised of its possibility.

The aggregate liability of DCLUX to Customer under or in connection with this Agreement, whether arising in contract, tort or otherwise, shall not exceed the lesser of: (a) the total fees paid or payable by Customer to DCLUX during the twelve (12) months immediately preceding the event giving rise to the claim; or (b) EUR 50,000.

The foregoing limitations shall not apply where the loss or damage results from fraud, wilful misconduct or gross negligence (faute lourde) on the part of the liable Party, or where mandatory provisions of applicable Luxembourg law prohibit such limitation.

13.2 Representations and Warranties

DCLUX represents and warrants that: (a) it is duly incorporated and validly existing under the laws of Luxembourg and has full corporate authority to enter into and perform its obligations under this Agreement; and (b) the execution and performance of this Agreement does not require any further approval or authorisation from any governmental or regulatory authority.

13.3 Disclaimer of Warranties

Save as expressly set out in clause 13.2 and in any applicable Service Level Agreement, DCLUX provides the Services on an "as is" basis and expressly excludes all warranties and conditions, whether express or implied, including any implied warranty of merchantability, satisfactory quality or fitness for a particular purpose.

DCLUX does not warrant that the Services will be uninterrupted, error-free or free from defects, or that they will meet any specific requirement of Customer not expressly agreed in writing. This disclaimer applies to the fullest extent permitted by applicable law and shall survive termination of the Agreement.

Article 14: Customer Obligations**14.1 Use and Maintenance of the Services and the Equipment**

Customer shall ensure that all Customer Hardware and systems interconnected with the DCLUX Infrastructure are operated and maintained in a manner that does not compromise the integrity, security or performance of the Services or the DCLUX Infrastructure.

Where Customer's failure to do so results in, or presents an imminent risk of, harm to DCLUX, the Services or other customers, DCLUX may require Customer to implement, at Customer's expense, such corrective measures as DCLUX reasonably deems necessary. Customer shall implement such measures within the timeframe specified in DCLUX's written notice.

Failure to comply within that timeframe, or insufficiency of the measures taken, shall entitle DCLUX to suspend or terminate the affected Service upon written notice, subject to the liability framework set out in Article 13.

14.2 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 authorisation of DCLUX.

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

14.3 Content integrity

Customer acknowledges that DCLUX has no access to, and exercises no control over, the Content stored or processed as part of the Services. The verification of Content integrity is solely Customer's responsibility.

Where DCLUX provides a backup service, such service is limited to the technical replication of Content as it exists at the time of backup. DCLUX does not verify the accuracy, completeness or usability of backed-up Content, and the provision of a backup service shall not be construed as a guarantee of Content recoverability. Customer remains solely responsible for performing regular integrity checks to ensure that backed-up Content is complete and usable, and for maintaining independent backup copies where the nature or value of the Content so requires.

14.4 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.

14.5 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 to DCLUX in any such audit investigation.

Article 15: Customer notification and declaration

15.1 Compliance with laws and regulatory status

Customer shall ensure that their use of the Services complies at all times with applicable laws and regulations, including those pertaining to public order, public security and public decency, whether enforceable in Luxembourg or in any other jurisdiction in which Customer operates or from which the Services are accessed.

Customer shall not use the Services for any unlawful purpose, including but not limited to the hosting or distribution of illicit material or the assumption of a false identity for fraudulent purposes. Customer shall bear sole responsibility for any consequences arising from unlawful or improper use of the Services, including any resulting claims brought by third parties or competent authorities.

Where Customer is subject to sector-specific regulatory obligations by virtue of their activities or the nature of their use of the Services, Customer shall ensure compliance with such obligations independently and without reliance on DCLUX. DCLUX assumes no responsibility for Customer's regulatory compliance and shall not be liable for any consequences arising from Customer's failure to meet such obligations.

Any use of the Services that violates this clause shall entitle DCLUX to suspend the Services in accordance with Article 3.2, without prejudice to any other rights available to DCLUX under this Agreement.

15.2 Third party rights

In realising any operation relating to the Service, Customer shall not infringe the rights of others. Under article 15 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: 16 Confidential Information

During the term of the Agreement, each party will have access to certain confidential and proprietary information of the other party ("Confidential Information"). 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 it 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 to exercise its right or perform 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 derivative works based on the Confidential Information.

(f) Notwithstanding the foregoing, this Article 16 imposes no obligation upon the parties with respect to information that (i) is disclosed in agreement with the disclosing 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's Confidential Information, receiving party will promptly notify disclosing in writing prior to making any such disclosure in order to facilitate disclosing seeking a protective order or other appropriate remedies from the proper authority, at the disclosing's expense. The receiving party agrees to cooperate with disclosing in seeking such order or other remedy. The receiving party further agrees that if disclosure 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 17: 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 18: Protection of Personal Data

For every Service provided under this Agreement, DCLUX will handle only personal data belonging to Customer. For this personal data, DCLUX shall act as controller within the meaning of the 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 following DCLUX Privacy Policy published at www.datacenter.eu.

Article 19: Misc.

19.1 Waiver

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

19.2 Force Majeure

DCLUX shall not be responsible for any delay or non-performance resulting from any force majeure event 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 fulfil 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.

19.3 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.

19.4 Amendments

DCLUX reserves the right to modify these General Terms and Conditions at any time as permitted or required by law. Where any such modification would materially and adversely affect Customer, DCLUX shall provide no less than thirty (30) days' prior written notice, during which period Customer may elect to terminate the affected Service in accordance with Article 12. Customer shall be bound by any modification that takes effect without having exercised that right.

Modifications to the Order Form or any SLAs shall require the written agreement of both Parties.

19.5 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.

19.6 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.

19.7 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.

19.8 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..

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's SMTP server.

19.9 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.

19.10 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.

19.11 Language

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

19.12 Applicable law and jurisdiction

This Agreement shall be interpreted and governed by Luxembourg Law. Customer irrevocably and unconditionally agrees that any dispute arising out of or related to this Agreement shall be subject to the exclusive jurisdiction of the Luxembourg city Court.