

THESE GENERAL TERMS SHALL APPLY TO ALL QUOTES, ORDERS, THE SERVICES, THE SERVICES SPECIFICATION, THE SUPPORT AND SERVICE LEVEL SCHEDULE, THE LEASEWEB POLICIES, THE INTERNET SERVICES MASTER AGREEMENT (IF CONCLUDED), AND ANY OTHER AGREEMENTS AND/OR LEGAL RELATIONSHIPS BY AND BETWEEN LEASEWEB AND CUSTOMER RESULTING THEREFROM OR IN CONNECTION THEREWITH, LEASEWEB EXPRESSLY REJECTS THE APPLICABILITY OF CUSTOMER'S GENERAL TERMS AND CONDITIONS, UNLESS LEASEWEB EXPRESSLY AGREES TO THE APPLICABILITY OF CUSTOMER'S GENERAL TERMS AND CONDITIONS IN WRITING. ANY AMENDMENTS TO THESE GENERAL TERMS SHALL ONLY BE BINDING BETWEEN THE PARTIES, IF BOTH PARTIES HAVE EXPRESSLY AGREED THERETO IN WRITING.

1. DEFINITIONS

In these General Terms, the Internet Services Master Agreement (if concluded), the Services Specification, the Support and Service Level Schedule, the Order(s) and the LeaseWeb Policies, the following definitions shall have the following meanings:

Affiliate means, with regard to any entity, any other entity that (directly or indirectly) Controls, is Controlled by, or is under common Control with such entity.

Agreement means the Internet Services Master Agreement (if concluded) and/or each Order, including the LeaseWeb Policies, the Services Specification, the Support and Service Level Schedule and all other schedules thereto, pursuant to which LeaseWeb shall provide certain (internet) services to Customer, which Services are indicated on the Order Form(s) or the Order Confirmation.

API means the application programming interface (or similar technology), through which Customer is able to access or communicate with LeaseWeb and/or LeaseWeb's servers and through which Customer may place API Orders.

API Order means the Order that shall become legally effective upon LeaseWeb's acceptance of a Purchase Order that has been submitted by Customer to LeaseWeb through the API. The Order Confirmation for the API Order shall set forth the Services and/or Equipment Customer purchased or leased from LeaseWeb and the relevant details.

Bandwidth means the amount of data that is be carried from one point to another in a second, expressed in bits per second (bps).

Basic Power means the limit that has been set for Customer's use of electricity, on the basis of the Services Specification, as specified in the Order Form or Order Confirmation, measured in amperes.

Business Day means Mondays to Fridays, with the exception of official federal holidays in The United States.

Business Hours means the period between 08.30 hours and 17.30 hours on a Business Day.

Change Order Form means the document, in standard LeaseWeb layout, used by LeaseWeb to respond to a change request, as referred to in Section 5.

Colocated Equipment means Equipment owned by Customer that is from time to time installed by Customer at a Data Center pursuant to the Agreement.

Colocation Service means a non-exclusive right to install and retain the Colocated Equipment in the Housing Space, granted by LeaseWeb to Customer with effect from the RFS Date for the duration of the Term.

Confidential Information means all information not publicly known used in or otherwise relating to the Agreement, the business or affairs of a Party or an Affiliate of such Party and disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by the Disclosing Party to the Receiving Party whether before or after the Effective Date, including but not limited to: (i) the provisions of this Agreement, (ii) any information whatsoever with respect to the Equipment, software, and Services, (iii) the course of dealing between LeaseWeb and Customer hereunder, and (iv) all other non-public information relating to the foregoing, including, but not limited to, user information submitted through Customer's web forms, and the number of such web forms submitted.

Control means the possession of power, directly or indirectly, to direct or cause the direction of the management and policies of an entity,

whether through ownership of voting rights, by contract or otherwise.

CPI means the US Consumer Price Index issued by the Bureau of Labor Statistics.

Customer means any natural person or legal entity that gives an assignment to LeaseWeb with respect to the provision of services by LeaseWeb.

Customer Portal means the online services portal operated by LeaseWeb Global B.V., available at <https://secure.leaseweb.nl/auth/customer/login> or at an alternate website identified by LeaseWeb Global B.V.

Data Center means a datacenter out of which or within which LeaseWeb provides Services.

Data Traffic means the sum of data that is transmitted to and from Customer's infrastructure, measured in Bytes.

Dedicated Equipment means Equipment leased from time to time by Customer from LeaseWeb pursuant to the Agreement.

Delivery Date means the date on which LeaseWeb shall deliver the Equipment that is sold by LeaseWeb to Customer, as specified in the Order Form or Order Confirmation.

Disclosing Party means the Party that discloses Confidential Information to the Receiving Party, as referred to in Section 23.

Dispute means any claim, controversy, or dispute concerning questions of fact or law arising out of or relating to these General Terms or the Agreement or to the performance of either Party hereunder, or to the threatened, alleged or actual breach thereof by either Party.

Effective Date means (i) the date on which the Agreement becomes effective and the Term commences, as specified in the Internet Services Master Agreement (if concluded); and (ii) the date on which an Order becomes effective and the Term commences, as specified in Order Form or Order Confirmation.

Electricity Supply means the supply of electricity, which supplies will be charged by LeaseWeb to Customer, measured in kWh.

Emergency means any situation which poses an immediate risk to: (i) a person or persons; (ii) the Data Center; (iii) the provision of one or more of the Services; (iv) the Equipment; and/or (v) the provision of services by LeaseWeb to other customers.

End User means any client of Customer or other user of Customer's services, as well as any other person or (legal) entity who obtains access to Services via Customer.

Equipment means any equipment, including but not limited to: computer hardware, telecommunications hardware, Interconnection Points, accessories, attachments, alterations of and spare parts for that equipment.

Facility Agreement means any lease, license and/or other agreement executed by and between LeaseWeb and a third party, further to which LeaseWeb is entitled to use a Data Center and to grant Customer a license to use the Housing Space within the Data Center.

Force Majeure means any event outside the reasonable control of a Party affecting its ability to perform any of its obligations (other than payment) under the Agreement, including: acts of God; acts of terrorists; acts of war; outbreak of hostilities; sabotage; civil disorder; riots; a restriction, condition, order, direction, action or request of or imposed by any court, government or authority or instrumentality thereof; strikes or other labour unrest; fires; floods; earthquakes; storms; lightning, any interruption in the supply of electrical energy to the Data Center; restrictions related to an outbreak of disease (such as avian influenza viruses or the H1N1 flu); epidemics; shortage of materials; unavailability or delay in delivery not resulting from the responsible Party's failure to timely place

orders therefore; equipment failures; lack of or delay in transportation; failure of a third party to grant a required right-of-way permit, assessment or other required authorization; acts or omissions of vendors or suppliers; changes in law or government policy; and other unforeseeable circumstances, provided however that Force Majeure shall not include any labour problems or strikes relating to the workforce of Customer or its suppliers or subcontractors.

General Terms means these terms and conditions, including the preamble preceding Section 1.

Housing Space means the racks, footprints, cages, cabinets, suites and/or other areas, designated as such by LeaseWeb within the Data Center or in such other places which LeaseWeb may from time to time designate and specify in the Services Specification or the Order Form/Order Confirmation.

Initial Term means the Term for which the Order is initially entered into, as specified in the Order Form/Order Confirmation.

Intellectual Property Rights means any patent, copyright, trademark, trade name, service mark, moral right, database right, trade secret, knowhow and any and all other intellectual property right whether registered or not or capable of registration and whether subsisting in the country of LeaseWeb's principal place of business or any other part of the world together with any and all goodwill relating thereto.

Interconnection Point means a port on LeaseWeb's switch and/or router and/or firewall and/or load balancer located in the Data Center, at which point the responsibility of the data stream transport is transferred from LeaseWeb to Customer.

Internet Services Master Agreement means an agreement so entitled, signed and executed by LeaseWeb and Customer (if any).

LeaseWeb in relation to Service(s) and/or Equipment provided to Customer it means LeaseWeb USA, Inc., a Delaware Corporation, with its registered office at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, the United States of America; and in relation to the Customer Portal means LeaseWeb Global B.V., a private company with limited liability, incorporated under the laws of the Netherlands, with its registered seat at Amsterdam, the Netherlands.

Data Center means a data center out of which or within which LeaseWeb provides Services.

LeaseWeb Policies means the policies and guidelines applied from time to time by LeaseWeb in its relationship with Customer.

Maintenance means maintenance, repairs, modifications or upgrades performed by LeaseWeb from time to time on the Network.

Maintenance Window means the timeframe in which LeaseWeb schedules the performance of Maintenance. Unless specifically agreed otherwise in writing by the Parties, the Maintenance Window is every day, between the hours of 20:00 until 08:00 CE(S)T, whereby LeaseWeb will preferably schedule Maintenance during the weekend between the hours of 01:00 until 06:00 CE(S)T.

Network means the telecommunications network, which is comprised of all infrastructure Equipment (i.e. Equipment that supports the flow and processing of information, including storage, servers and networking components) owned or leased by LeaseWeb within each active LeaseWeb POP or LeaseWeb's Affiliates POP, all LeaseWeb wiring within each active LeaseWeb POP or LeaseWeb's Affiliate's POP, power supplies owned or controlled by LeaseWeb in each POP, and all telecommunications circuits owned or leased by LeaseWeb between active LeaseWeb POPs and active POPs of LeaseWeb's Affiliates. For the avoidance of doubt: the Network does not include Equipment owned, leased, or controlled by Customer, telecommunications circuits or networks (including, without limitation, local access loops) between a LeaseWeb POP and a Customer location or between Customer locations, interconnections between Customer's network and the Network, or any networks, network equipment, or telecommunications circuits not owned or controlled by LeaseWeb.

Order means the agreement that comes into existence: (i) upon the written acceptance by Customer of a Quote; or (ii) in the manner specified in Sections 4.5, 4.6, 4.7 and 4.9.

Order Confirmation means a communication by LeaseWeb to Customer, made via email, through the Customer Portal or

otherwise, to notify Customer that Customer's Web Order or API Order has been accepted by LeaseWeb. The Order Confirmation shall set forth the Services and/or Equipment Customer purchased or leased from LeaseWeb and the relevant details.

Order Form means the document, in standard LeaseWeb layout, in which LeaseWeb has itemised which Services and/or Equipment will be sold or given into use or lease by LeaseWeb to Customer, including the prices, RFS Date, etc.

Parties means LeaseWeb and Customer, each a "Party".

POP means a 'point of presence', i.e. an access point to the Internet.

Purchase Order means the document in which Customer has itemised which Services and/or Equipment it intends to purchase or lease from LeaseWeb.

Quote means any offer, quote, proposal and/or tender-bid made by LeaseWeb.

Quote Sheet means the document, in standard LeaseWeb lay out, in which LeaseWeb specifies a Quote. A Quote Sheet shall be deemed an Order Form upon (written) acceptance of such Quote Sheet by Customer.

Receiving Party means the Party that receives – or is granted access to – Confidential Information by the Disclosing Party, as referred to in Section 23.

RFS Date means the ready for service date, i.e. the date as of which LeaseWeb enables Customer to use the Services for the first time, as specified in the Order Form/Order Confirmation, or in the case of a Colocation Services, the date as of which Customer is entitled to install the Colocated Equipment at the Data Center, as specified in the Order Form/Order Confirmation.

Service Charges means the charges, fees, costs and expenses payable under the Agreement by Customer to LeaseWeb for the provision of Services and the same arising out of Customer's use of the Services, including recurring and non-recurring charges, set forth in the Services Specification and the Order.

Service Credits means a credit, calculated in accordance with the Support and Service Level Schedule, applied to Customer's account, and to be used as credit towards future invoices.

Service Disruption an interruption or degradation in the provision of one or more Services by LeaseWeb to Customer; provided that such interruption or degradation is not the result of an Excluded Event (as defined in the Support and Service Level Schedule).

Service Levels means the performance metrics with respect to the Services set forth in the Support and Service Level Schedule.

Services means the services to be provided by LeaseWeb to Customer, as agreed and specified in an Order Form/Order Confirmation.

Services Specification means the document in which LeaseWeb has set forth and specified the services offered by LeaseWeb, as well as the manner in which the services should be used, which document may be amended from time to time.

Support and Service Level Schedule means the document in which LeaseWeb has specified the available Service Levels, which document may be amended from time to time.

Term means the period for which the Agreement and/or an Order has been entered into, starting on the Effective Date.

Test means a trial or test performed on the Network in order to verify and ensure the proper performance thereof.

Web Order means the Order that comes into existence upon LeaseWeb's acceptance of a Purchase Order that has been submitted by Customer to LeaseWeb by completing the online purchase process on LeaseWeb's website or the Customer Portal. The Order Confirmation for the Web Order shall set forth the Services and/or Equipment Customer purchased or leased from LeaseWeb and the relevant details.

2. DOCUMENT STRUCTURE

2.1 In general, the Agreement will consist of the following documents, whereby in the event of any inconsistency or conflict between or among provisions of the following documents, the contents of the document first listed shall have precedence and shall prevail over the documents listed later, in descending order:

- a) The Internet Services Master Agreement (if entered into);
 - b) The Change Order Form (only in relation to the relevant Order Form);
 - c) The Order Form/the Order Confirmation;
 - d) The Services Specification;
 - e) The Support and Service Level Schedule;
 - f) The General Terms; and
 - g) The LeaseWeb Policies, including its Privacy Statement which can be found at www.leaseweb.com.
- 2.2 If LeaseWeb has accepted the applicability of Customer's general terms and conditions in writing, and there is a conflict or inconsistency between any of the provisions of these General Terms and one or more of the provisions of Customer's General Terms, the provisions of these General Terms shall prevail.
- 2.3 LeaseWeb is entitled to amend the General Terms, the Services Specification, the Support and Service Level Schedule and the LeaseWeb Policies. Such amendment also applies to existing Orders for Services, unless LeaseWeb states otherwise. The amendments come into effect thirty (30) days after the announcement or on a later date stated in the announcement. The announcement may be made through the Customer Portal and/or the API. If Customer does not wish to accept an amendment that relates to an existing Order, it can terminate the Agreement in relation to that existing Order with effect from the date on which the amendment comes into force. The written cancellation must have been received by LeaseWeb within fourteen (14) days after LeaseWeb's announcement of the amendments. No such termination rights shall exist if: (a) the amendment is solely for the benefit of the Customer; (b) Customer is offered the option to refuse the amendment; (c) the amendments are required by law; or (d) the amendment does not adversely affect Customer's use of the Services.

3. SCOPE OF SERVICES

- 3.1 The scope and nature of the Services offered by LeaseWeb are set forth in the Services Specification. The scope and nature of the available Service Levels are set forth in the Support and Service Level Schedule.
- 3.2 The Services, as well as the Service Levels, purchased or leased by Customer from LeaseWeb are itemized in the Order Form/Order Confirmation. The Order Form/Order Confirmation shall also specify any Equipment leased by Customer from LeaseWeb and any Equipment purchased by Customer from LeaseWeb.

4. QUOTES AND ORDER PROCEDURE

- 4.1 All Quotes shall be non-binding and may be changed by LeaseWeb at any time prior to the execution of a binding contract, even when a period for acceptance is mentioned in the Quote. In case no period for acceptance is mentioned, Quotes cease to be effective after thirty (30) days from the date of the relevant Quote.
- 4.2 LeaseWeb shall not be bound by variations or amendments or changes to a Quote that occur in the acceptance by Customer of such Quote. Nor shall LeaseWeb be bound by a partial acceptance of a (composite) Quote.
- 4.3 In the event that Customer wishes to purchase or lease Services or Equipment from LeaseWeb, Customer shall either (i) place a Purchase Order with LeaseWeb to that effect; or (ii) request LeaseWeb to provide a Quote.
- 4.4 Any Purchase Order made by Customer shall be submitted (i) in writing, by facsimile or by email; or (ii) by completing the online purchase process on LeaseWeb's website (www.leaseweb.com); (iii) by means of or through the Customer Portal; or (iv) through the API.
- 4.5 LeaseWeb shall review a Purchase Order within a reasonable time after receipt thereof. If LeaseWeb is willing and able to provide the requested Service(s) and/or Equipment to Customer, LeaseWeb shall confirm such to Customer in writing, by email or by facsimile, by sending a signed Order Form to Customer or (in

case of a Web Order or API Order) by sending an Order Confirmation.

- 4.6 Unless LeaseWeb has made any material alterations to Customer's Purchase Order, in the acceptance of such Purchase Order and drawing up the Order Form, Customer shall be bound by LeaseWeb's acceptance of the Purchase Order as confirmed and specified in the Order Form/Order Confirmation.
- 4.7 In the event that LeaseWeb has made any material alterations to Customer's Purchase Order, in the acceptance of such Purchase Order and drawing up the Order Form, the Order Form shall be subject to Customer's approval and acceptance. If Customer approves the Order Form, (an authorised representative of) Customer shall sign the Order Form for acceptance and provide a copy thereof to LeaseWeb.
- 4.8 If any Service and/or Equipment is erroneously listed at an incorrect price on LeaseWeb's website and/or the Portal and/or the API, LeaseWeb reserves the right to reject the Web/API Order, or in case LeaseWeb has accepted the Web/API Order by sending an Order Confirmation, LeaseWeb shall be entitled to terminate the Web/API Order by giving written notice to Customer by providing a seven (7) day prior written notice.
- 4.9 The LeaseWeb Portal shall contain activation options for some Services, including Services that are offered on a pay-as-you-go basis, i.e. Services that are charged to Customer based on Customer's actual usage of the Service, measured per day/minute/hour or other appropriate unitized measure. After the activation by Customer, Customer may use such Services without entering into any subsequent Web Order, Order Form or API Order. Customer may deactivate the Service at any time in the Portal, unless the Portal has indicated that the Service has an Initial Term, in which case Section 19 shall apply.

5. CHANGE ORDER PROCEDURE

- 5.1 During the Term of an Order, Customer may submit a change request. Customer should submit its change request in writing, by facsimile or by email to LeaseWeb for the attention of the Sales Department. Every change request is subject to acceptance and approval by LeaseWeb, which may be granted or withheld at LeaseWeb's sole discretion.
- 5.2 Any acceptance and approval of a change request shall only be valid if confirmed in writing by an authorized representative of LeaseWeb. As a general rule, any such confirmation will be made by means of a Change Order Form.
- 5.3 LeaseWeb shall be entitled to set conditions to its acceptance and approval of the change request, e.g. adjustment of the Service Charges, payment by Customer of a charge for administrative activities and/or payment by Customer of any other non-recurring charges in relation to effecting the change. Such conditions, adjustment and charges will be specified in the Change Order Form.

6. (INITIAL) DELIVERY

- 6.1 LeaseWeb shall use commercially reasonable efforts to ensure that:
- a) the Services will be ready for Customer's use on the RFS Date; and
 - b) any Equipment sold by LeaseWeb to Customer will be delivered on the Delivery Date at the Data Center, as specified in the Order Form/Order Confirmation.

In view of the foregoing, Customer acknowledges that both the RFS Date and the Delivery Date are target dates.

- 6.2 With effect from delivery to Customer of the Equipment sold by LeaseWeb to Customer, such Equipment shall be for the risk and benefit of Customer. However, title of ownership to the Equipment will only pass to Customer on the receipt by LeaseWeb of payment - in full - of the purchase price for such Equipment, as specified in the Order Form/Order Confirmation. For the avoidance of doubt: In the event that Customer leases Dedicated Equipment, such lease will be an operational lease and

payment of Service Charges shall not constitute any transfer of ownership of such Dedicated Equipment to Customer.

- 6.3 LeaseWeb may – at its sole discretion – unilaterally delay the RFS Date, by giving written notice to Customer, taking into account a notice period of at least five (5) days, provided that Customer shall be entitled to a credit equal to ten percent (10%) of the non-recurring charges, referred to in Section 9.4b), with respect to the affected Service if LeaseWeb unilaterally delays the RFS Date by more than thirty (30) days after the initial RFS Date. LeaseWeb's notice of delay shall state a new RFS Date.
- 6.4 In case Customer has a complaint with respect to:
- a) the Service, Customer shall provide written notice to LeaseWeb, including in reasonable detail the grounds for its complaint, within two (2) days from the RFS Date in the absence whereof Services shall be deemed to be approved of by Customer;
 - b) any Equipment sold by LeaseWeb to Customer, Customer shall provide written notice to LeaseWeb, including in reasonable detail the grounds for its complaint, within five (5) days from the Delivery Date in the absence whereof such Equipment shall be deemed to be accepted and approved of by Customer.
- 6.5 In the event that Customer has provided its written complaint in accordance with Section 6.4, and such complaint is found to be justified, LeaseWeb shall take such action as necessary, and as expeditiously as reasonably practicable, to correct or cure such defect or failure. LeaseWeb will subsequently notify Customer hereof once the Service or Equipment is functioning properly and the complaint periods specified in Section 6.4 shall (re)commence on the date of such notice.

7. USE OF SERVICES AND EQUIPMENT

- 7.1 Customer shall at all times use the Services and/or Equipment in compliance with all relevant laws and the LeaseWeb Policies. Customer shall not permit any third party (including Customer's End Users) to use the Services for any improper or unlawful purpose.
- 7.2 Customer acknowledges that LeaseWeb exercises no control over - and that LeaseWeb accepts no responsibility for - the content of information and communications, in whatever form, transmitted by Customer over the Network.
- 7.3 Customer acknowledges that, by offering or providing the Services, LeaseWeb does not publish or otherwise provide Customer's content to any End Users. Customer agrees that Customer shall, at all times, be solely responsible for all text, graphics, sound, video, data and any aspect of Customer's content.
- 7.4 Customer's use of any information obtained via the Network is at Customer's own risk. LeaseWeb specifically denies any responsibility for the accuracy or quality of information obtained through its Services.

8. CREDIT APPROVAL AND FINANCIAL SECURITY

- 8.1 The provision of Services or sale of Equipment by LeaseWeb to Customer is subject to approval by LeaseWeb of Customer's credit. In view hereof, Customer shall prior to the RFS Date or Delivery Date provide credit information to LeaseWeb for approval by LeaseWeb.
- 8.2 LeaseWeb may, at any time, by notice in writing impose a credit limit on Customer to an amount to be determined by LeaseWeb. Any Services required by Customer in excess of any such credit limit will require Customer to deposit an amount equal to or greater than the amount by which Customer will exceed the credit limit.
- 8.3 In addition to Section 8.2, LeaseWeb may require Customer to provide a deposit or a bank guarantee or a parent guarantee, equivalent to up to three (3) months' Service Charges (actual or projected) or other security satisfactory to LeaseWeb.
- 8.4 Any deposit or bank guarantee or parent guarantee shall be held by LeaseWeb as security for the payment of Service Charges and

any other amounts due under the Agreement. Upon termination or expiration of the Agreement, LeaseWeb may apply a deposit or bank guarantee or parent guarantee to any amounts owed by Customer to LeaseWeb. Any remaining credit balance of a deposit shall be refunded to Customer. Any deposit paid by Customer pursuant to this Section will not carry any interest.

9. TERMS OF PAYMENT

- 9.1 For Equipment purchased by Customer from LeaseWeb, Customer shall pay to LeaseWeb the purchase price specified in the Order Form/Order Confirmation. For the use of the Services, Customer shall pay to LeaseWeb the Service Charges. Unless specified otherwise, all Service Charges are in US Dollars.
- 9.2 LeaseWeb is entitled to increase any of the Service Charges one (1) time per calendar year, by the higher of either: (a) five percent (5%); or (b) the percentage increase of the CPI for the previous year. The increase will apply with effect from the first (1st) of January, unless stipulated otherwise by LeaseWeb in its notification to Customer. In the event that the increase of the Service Charges takes effect within twelve (12) months of the Effective Date, the increase will be pro-rated on the basis of the number of months that have passed since the Effective Date.
- 9.3 In addition to Section 9.2, LeaseWeb shall be entitled to pass on changes in any (license) fees or prices or charges for (software) products: (i) used by LeaseWeb in the provision of Services to Customer; (ii) or licensed or resold by LeaseWeb to Customer.
- 9.4 Unless specified otherwise in the Order Form/Order Confirmation, LeaseWeb will invoice:
- a) the purchase price of any Equipment sold by LeaseWeb to Customer, upon the Effective Date of the Order;
 - b) setup charges, Service activation charges and any other non-recurring initial charges, upon the RFS Date or upon the Effective Date, whichever is earlier; and
 - c) all recurring Service Charges, e.g. with respect to the usage of Bandwidth and/or Data Traffic, as of the RFS Date or the Effective Date (whichever is earlier), and monthly in advance thereafter, with the exception of use of Services above the agreed levels of Service and/or additional services which will be invoiced monthly in arrears.
- 9.5 In deviation of Section 9.4a), LeaseWeb may require Customer to make a pre-payment to LeaseWeb in relation to any Equipment purchased by Customer from LeaseWeb.
- 9.6 LeaseWeb will send invoices to Customer by e-mail, in a portable document format (PDF). At Customer's request, LeaseWeb will – as an extra Service – provide Customer with a print out of the invoice, via regular mail. For such extra Service, Customer shall pay a Service Charge to LeaseWeb, in relation to the additional (administrative) activities performed by LeaseWeb and the costs of the mail service.
- 9.7 Unless specified otherwise in the Order Form/Order Confirmation, all invoices sent by LeaseWeb to Customer are payable by Customer to LeaseWeb within fourteen (14) days from the invoice date.
- 9.8 The method of payment is specified in the Order Form/Order Confirmation. In case of Direct Debit or Credit Card, Customer authorizes LeaseWeb to charge Customer's bank account or Credit Card for the Service Charges.
- 9.9 In case Customer has a complaint with respect to an invoice, Customer shall communicate such complaint in writing to LeaseWeb within the payment term, in the absence whereof invoices are deemed to be approved of by Customer. A complaint with respect to an invoice shall only be taken into consideration in the event that the complaint specifies the relevant invoice(s) and provides proper motivation for the complaint. In such case, the Parties will use commercially reasonable efforts to resolve the dispute amicably within twenty (20) days of LeaseWeb's receipt of Customer's complaint, firstly at the level of each Party's senior management and – failing satisfactory resolution within fifteen (15) days – secondly at the Parties' executive level. In the event Parties fail to resolve the dispute amicably within

twenty (20) days of LeaseWeb's receipt of Customer's complaint, each Party shall be entitled to commence dispute resolution in accordance with Section 27.

- 9.10 Customer shall not be entitled to any set-off or deduction of payment of an invoice. Customer's right to suspend payment of (part of) an invoice is limited to the amount of the invoice that is contested in good faith by Customer, in accordance with Section 9.9. In the event Customer's complaint is found to be unjustified, Customer will immediately pay the outstanding amount, plus interest in accordance with Section 9.11.
- 9.11 If Customer does not pay an invoice within the payment term, in the event that such invoice has not been disputed in accordance with Section 9.9, or Customer does not pay the undisputed part of the invoice within the payment term, Customer shall be in default by operation of law and LeaseWeb will, without a warning or notice of default being required, be entitled to charge Customer interest on such sum on a daily basis from the due date until the date of payment with an interest rate of six percent (6%) per annum, without any prejudice to LeaseWeb's other rights and remedies.
- 9.12 In addition to Section 9.11, in the event that LeaseWeb and Customer have agreed to payment by Customer to LeaseWeb by means of Direct Debit, LeaseWeb will be entitled to charge an administrative fee of five hundred US Dollars (US\$ 500.--) to Customer, if: (i) Customer has cancelled the Direct Debit authorization; or (ii) payment to LeaseWeb has been reversed or denied more than once.

10. TAXES

- 10.1 Customer shall be responsible for and shall pay all sales, use, excise, or similar consumption taxes (including VAT, if applicable) arising out of its purchase or lease of Services and/or Equipment from LeaseWeb; provided, however, that LeaseWeb shall be solely responsible for its own income-, net worth-, and property taxes.
- 10.2 Notwithstanding the foregoing, LeaseWeb shall not invoice Customer for any taxes for which Customer has provided a valid exemption certificate in a form reasonably acceptable to LeaseWeb.
- The Parties are of the opinion that the use or provision (as appropriate) of the Colocation Service will not create a relationship of lessor/landlord and tenant between the Parties.

11. SUSPENSION OF SERVICES

- 11.1 LeaseWeb shall be entitled to immediately suspend the provision of any of the Services and/or to suspend Customer's access to the Customer Portal and/or the API and/or to suspend Customer's right to access to the Equipment, by giving written notice to Customer, in the event that:
- LeaseWeb receives an order or ruling or decision to that effect from a court, any law enforcement authority or any (other) governmental authority;
 - Customer is in breach of the Acceptable Use Policy (part of the LeaseWeb Policies), and fails to cure such breach or take (timely) remedial action in accordance with the Abuse Policy (part of the LeaseWeb Policies) after receipt of a notice from LeaseWeb, provided always that LeaseWeb may immediately suspend Services without providing any cure period if the continued provision of Services may subject LeaseWeb to any liability towards third parties, and/or may cause an Emergency;
 - Customer's consumption of electricity exceeds Basic Power (specified in the Order) and Customer fails to reduce its electricity consumption to a level on or below Basic Power within three (3) days after having received notice thereon;
 - Customer's consumption of Data Traffic or Bandwidth exceeds the Committed Data Traffic or the Committed Bandwidth (specified in the Order Form/Order Confirmation), as the case may be, and Customer fails to reduce such consumption to a level on or below the Committed Data

- Traffic or the Committed Bandwidth, as the case may be, within three (3) days after having received notice thereon;
- Customer has failed to maintain the licenses, permits, and authorizations required to use the Services and/or the Equipment and fails to remedy such failure within seven (7) days after having received written notice thereon;
 - Customer does not cooperate with any investigation of Customer's alleged improper or unlawful use of the Services, the Network or other networks accessed through LeaseWeb, and fails to remedy such breach within seven (7) days after having received written notice thereon;
 - Customer does not pay an invoice within the payment term and fails to pay such invoice, plus the interest referred to in Section 9.11, within a period of seven (7) days after having received notice thereon;
 - the Services, software, or Equipment are exported or used in a country, or used by a Customer or an End-User, in violation of the restrictions referenced in Section 15.8; and/or
 - Customer is in breach of any of the other provisions of the Agreement and Customer fails to cure such breach within a period of fourteen (14) days after having received written notice thereupon, whereby, provided always that LeaseWeb may immediately suspend Services without granting any cure period if the continued provision of Services may subject LeaseWeb to any liability towards third parties, and/or may cause an Emergency.
- 11.2 In addition to Section 11.1, in the event that Customer is in default of its payment obligations according to Section 11.1g), LeaseWeb shall -upon three (3) days prior written notice- be entitled to:
- limit Customer's consumption of Data Traffic or Bandwidth; and/or
 - suspend Customer's right to access or use the Customer Portal and/or the API; and/or
 - suspend the provision of support Services.
- 11.3 LeaseWeb shall be entitled to continue the suspension or limitation described in Section 11.1 and Section 11.2 until:
- Customer has remedied the breach and has paid the deactivation charge specified in Section 11.4; or
 - the Agreement has been terminated in accordance with Section 20.
- 11.4 Following suspension of the provision of the Services and/or access to the Equipment, in accordance with this Section 11, LeaseWeb may claim -and Customer shall pay upon demand- a deactivation charge in the amount of one hundred fifty US Dollars (US\$ 150.--), in relation to the (administrative) activities performed in order to suspend and - if applicable - to recommence the provision of the Services and/or Customer's (right to) access to the Equipment.

12. SERVICE DISRUPTION

- 12.1 Immediately on becoming aware of a Service Disruption, Customer shall notify LeaseWeb by e-mail and by telephone of the Service Disruption and shall provide LeaseWeb with the appropriate information in accordance with Chapter B of the Support and Service Level Schedule.
- 12.2 Following notification by Customer in accordance with Section 12.1, LeaseWeb shall:
- notify Customer of the estimated timescale for restoration of the affected Services, on LeaseWeb's website and via e-mail;
 - use its best endeavors to end the Service Disruption and to restore the affected Services; and - as necessary -
 - provide Customer with information updates on its progress to end the Service Disruption.
- 12.3 Instead of restoring a Service, LeaseWeb may elect to substitute such affected Service by a reasonably equivalent Service.
- 12.4 In the event of a Service Disruption, Customer may be entitled to compensation in the form of a Service Credit as specified in the Support and Service Level Schedule.

13. MAINTENANCE AND TESTING

- 13.1 LeaseWeb reserves the right to suspend the Services and may suspend Customer's right to access to the Equipment in order to perform Maintenance.
- 13.2 Customer acknowledges that LeaseWeb will from time to time have to perform Maintenance in order to ensure a proper performance of the Network, Data Center and the Services and that such Maintenance may affect the provision of the Services to Customer.
- 13.3 If LeaseWeb expects scheduled Maintenance, referred to in Section 13.2, to affect the provision of the Services and/or access to the Equipment, LeaseWeb shall:
- to the extent reasonably possible - provide at least three (3) days prior notice to Customer of the intended Maintenance;
 - to the extent reasonably practicable - schedule such Maintenance and any related suspension of the Services and/or access to the Equipment within the Maintenance Window, so as to minimize any adverse effect of the Maintenance on Customer's use of the Services and/or access to the Equipment; and
 - endeavor to keep the duration of any interruption or suspension or degradation in the provision of the Services and/or Customer's access to the Equipment as short as possible.
- 13.4 If LeaseWeb does not expect scheduled Maintenance, referred to in Section 13.2, to affect the provision of the Services and/or access to the Equipment, LeaseWeb shall be entitled to perform such Maintenance at any time, without taking into account a notice period.
- 13.5 Customer acknowledges that LeaseWeb may from time to time have to perform non-scheduled Maintenance, in order to resolve or prevent an Emergency. LeaseWeb shall be entitled to perform such Maintenance at any time, without taking into account a notice period. LeaseWeb shall in such case notify Customer of such Emergency and the need to perform Maintenance without undue delay.
- 13.6 Customer acknowledges that LeaseWeb will from time to time perform Tests and that Tests may be performed at any time, without taking into account a notice period.

14. HOUSING SPACE / RELOCATION

- 14.1 Customer acknowledges that LeaseWeb's ability to grant Customer a license to use the Housing Space, as well as LeaseWeb's ability to provide (other) Services, are subject to the provisions of – and continuance of – (a) Facility Agreement(s).
- 14.2 LeaseWeb reserves the right to relocate the Housing Space, as well as the right to suspend the Services in connection with such relocation.
- 14.3 LeaseWeb shall give prior written notice to Customer of the intended relocation, taking into account a notice period of at least thirty (30) days, unless such notice cannot reasonably be expected from LeaseWeb.
- 14.4 In the event that LeaseWeb elects to relocate the Housing Space, Customer shall be required to relocate the Colocated Equipment to the new/alternative Housing Space designated by LeaseWeb.
- 14.5 In case the relocation of the Colocated Equipment is performed by Customer, as referred to in Section 14.4, LeaseWeb shall provide compensation to Customer for any reasonable costs, to be determined by LeaseWeb, incurred by Customer as a result of the relocation, excluding the costs of any new interconnections that Customer may require or the procurement, delivery, and/or installation of any duplicate Colocated Equipment required to accomplish the relocation.
- 14.6 Without prejudice to Section 14.4, LeaseWeb may – at its sole discretion – decide to relocate the Colocated Equipment for and on behalf of Customer, provided that LeaseWeb shall in such case: (i) notify Customer thereof simultaneously with its notification of the intended relocation of the Housing Space; and (ii) to the extent practicable, coordinate the relocation of the Colocated Equipment with Customer.

15. WARRANTIES

- 15.1 Each Party warrants, represents and undertakes that it:
- has obtained and that it will, at least for the duration of the Agreement, maintain all of the necessary licenses, permits, and authorizations to use or provide (as appropriate) the Services and the Equipment;
 - shall comply with all relevant laws in providing or using (as appropriate) the Services;
 - shall use or provide (as appropriate) the Services with all due skill, care and diligence, at least in accordance with good industry practice.
- 15.2 Without limiting the generality of Section 15.1, Customer warrants, represents and undertakes that (i) it shall pay all due local access- or telecommunications charges applicable to transmitting data beyond the Network and/or through other public and private networks, as necessary and related to Customer's use of the Services; (ii) it owns or has the right to use and offer the content stored on the LeaseWeb infrastructure and/or transmitted by Customer over the Network; and (iii) if Customer stores or processes content that is subject to regulation or legislation that limits the transfer of such data, Customer has all required consents and rights to transfer such data to LeaseWeb.
- 15.3 With respect to software licensed or resold or otherwise given into use by LeaseWeb to Customer, Customer warrants, represents and undertakes that it shall comply with the provisions of any end user license agreement related to such software.
- 15.4 With respect to the Equipment sold by LeaseWeb to Customer, LeaseWeb will provide a hardware warranty to Customer that is equivalent or equal to the warranty granted to LeaseWeb by the manufacturer / supplier of such Equipment. To the extent possible:
- LeaseWeb will transfer to Customer and Customer will accept the warranty that LeaseWeb has received from the manufacturer / supplier of the Equipment; or
 - LeaseWeb will arrange that the manufacturer / supplier of the Equipment grants such warranty directly to Customer.
- In the events referred to in a) and b) of this Section, Customer will not have any recourse against LeaseWeb with respect to such Equipment sold by LeaseWeb to Customer, but instead may seek recourse directly from the manufacturer / supplier of such Equipment.
- 15.5 With respect to software licensed or sublicensed or otherwise given in to use or provided to Customer by LeaseWeb, LeaseWeb will provide a (software) warranty that is equivalent or equal to the warranty granted to LeaseWeb by the manufacturer / supplier of such software. To the extent possible:
- LeaseWeb will transfer to Customer and Customer will accept the warranty that LeaseWeb has received from the manufacturer / supplier of the software; or
 - LeaseWeb will arrange that the manufacturer / supplier of the software grants such warranty directly to Customer.
- In the events referred to in sub a) and b) of this Section, Customer will not have any recourse against LeaseWeb with respect to such software, but instead may seek recourse directly from the manufacturer / supplier of such software.
- 15.6 Without limiting Section 15.5, the Customer Portal (including the use thereof, and the related services) is provided 'as is'; and otherwise LeaseWeb hereby disclaims any and all warranties of any kind, whether express or implied, relating to the Customer Portal and the API, the software used therein or as part thereof, and any data accessed there from, including any implied warranties of title, satisfactory quality, fitness for a particular purpose and non-infringement.
- 15.7 Notwithstanding Section 15.5 and Section 15.6, LeaseWeb does not warrant that the Customer Portal, the API, the software used therein or as part thereof, or the related services, or the Customer's use thereof, are or will be error free or will operate without interruption.

- 15.8 The Services, software and Equipment may be subject to international rules that govern the export of Services, software and Equipment. Customer warrants that it shall comply with all end-user, end-use, or destination restrictions issued by national governments or similar bodies, and restrictions on embargoed nations.
- 15.9 The warranties expressly set forth in the Agreement constitute the only warranties of LeaseWeb regarding the Services and the Equipment and such warranties are in lieu of all other warranties, express, implied, written, oral or statutory, by operation of law or in fact, including but not limited to warranties of merchantability, availability, uptime, non-infringement or fitness for a particular purpose.
- 15.10 The foregoing warranties shall not apply to performance issues or defects in the Services (i) caused by factors outside of LeaseWeb's reasonable control; (ii) that resulted from any actions or inactions of Customer or any third parties; or (iii) that resulted from Customer's equipment or any third party equipment not within the sole control of LeaseWeb.
- 15.11 **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 15, LEASEWEB MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, THE SOFTWARE OR THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE SERVICES FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND LEASEWEB HEREBY EXPRESSLY DISCLAIMS THE SAME. LEASEWEB DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.**

16. INDEMNIFICATION

- 16.1 Without limiting any other legal remedy available to LeaseWeb, Customer shall indemnify and hold harmless LeaseWeb against all actions, losses, costs, damages, awards, expenses, fines, fees (including legal fees - including attorney and collection agency fees - incurred and/or awarded against LeaseWeb), proceedings, claims or demands brought or threatened against LeaseWeb by a third party: (i) arising out of any infringement or misappropriation or alleged infringement or misappropriation of any United States or foreign copyright, trade secret or other proprietary right related to any Equipment utilized by Customer in connection with any of the software or Services, (ii) related to content stored or transmitted through the Services, including any claim that the content was not properly transferred to LeaseWeb or that the processing of such content is contrary to applicable laws; (iii) arising out of the use by Customer of the Services, or (iv) related to any willful or negligent act or omission of Customer.
- 16.2 With respect to the indemnification obligations under Section 16.1, Customer shall at its sole expense (a) provide LeaseWeb with full authority, information and assistance as is reasonably necessary for the defense, compromise or settlement of the third party claims; and (b) at the request of LeaseWeb, take those steps that are reasonably required to put LeaseWeb in the financial position it would have been in if said third party claim did not occur.

17. LIMITATION OF LIABILITY

- 17.1 LeaseWeb does not monitor or exercise control over the content of the information transmitted through its facilities. Customer acknowledges that it is responsible for the alteration or deletion of any content which may be required under applicable laws. Use of the Equipment, the software, and Services or any information that may be obtained therefrom is at Customer's own risk. Notwithstanding anything else to the contrary contained in this Agreement, LeaseWeb's maximum aggregate liability to Customer for any claim related to, or in connection with, this Agreement, whether in contract, tort or otherwise, shall be limited to the lesser of five hundred thousand US Dollars

(US\$ 500,000.--) or the total amount of fees paid by Customer to LeaseWeb for the prior twelve (12) months. **NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE RESULTING FROM THE USE OF LEASEWEB'S EQUIPMENT, SOFTWARE AND SERVICES BY CUSTOMER OR ANY THIRD PARTIES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.** For the purpose of this Section 17.1, any 'direct damages' shall be limited to damages caused by, or in connection with, the performance of the Services, or which are the result of, or the consequence of, a breach of an obligation, warranty or guarantee under the Agreement, for which Customer bears the burden of proof, and such damages are caused by, or resulting directly from an intentional act or the gross negligence by LeaseWeb or by persons employed by or engaged by LeaseWeb.

- 17.2 LeaseWeb shall not be liable for:

- any harm or personal injury to Customer or Customer's employees, clients, representatives or agents, except when such harm or personal injury is the direct result of gross negligence or wilful misconduct on the part of LeaseWeb; any transaction, which Customer may enter into with a third party using the Services;
- the contents of any information and/or communications transmitted via the Equipment and/or Services or for any information or content on the Internet;
- the contents of any information and communication, in whatever form, transmitted by Customer over the Network;
- the accuracy or quality of information obtained through the Services;
- damage to or loss of any of Customer's data (bases) or loss of technology, except when such damage or loss is the direct result of gross negligence or wilful misconduct on the part of LeaseWeb;
- damage to or loss or destruction of Colocated Equipment, except when such damage or loss is the direct result of gross negligence or wilful misconduct on the part of LeaseWeb;
- damage that is the direct or indirect result of the actions of Customer contrary to (one of) its obligations under the Agreement;
- damage that is the direct or indirect result of an inaccuracy of the information provided by or on behalf of Customer;
- damage that is the direct or indirect result of the suspension of Services by LeaseWeb, as referred to in Section 11 and Section 13;
- damage that is the direct or indirect result of the Customer Portal and/or API being (temporarily) offline or otherwise unavailable;
- damage that is the direct or indirect result of the Customer's use of the Customer Portal or the API;
- damage that is the direct or indirect result of a Denial-of-Service (DoS) attack, or other attack that results in a peak in data traffic, or any damage resulting from successful or unsuccessful hack attempts, regardless whether protected by an SSL certificate or (hardware) firewall provided by or through LeaseWeb;
- damage in case LeaseWeb has not been notified of such damage in writing within eight (8) days after Customer has come to know of the damaging event, or should reasonably have known of it; or
- any damage in case and insofar as such damage is covered by any insurance effected by or for the benefit of Customer.

- 17.3 Notwithstanding any other provision of the Agreement, LeaseWeb shall not be liable to Customer, if changes in any of its facilities, procedures, or Service: (i) render obsolete Colocated Equipment in conjunction with its use of the Service; (ii) require modification, alteration or relocation of such Colocated Equipment; or (iii) otherwise affect the performance of such Colocated Equipment.

- 17.4 The legal remedies outlined in Sections 6.3 and 20.4a) constitute all legal remedies available to Customer in relation to a delay of

the RFS Date by LeaseWeb. LeaseWeb shall have no other liability to Customer if the Service is not ready for Customer's use on or before the initial or delayed RFS Date; or - if the installation is to be performed by LeaseWeb - the installation is not completed by the initial or delayed RFS Date.

- 17.5 The legal remedies outlined in Section 12.4 and Section 20.4b) constitute all legal remedies available to Customer in relation to a Service Disruption and any failure by LeaseWeb to meet the agreed Service Levels.
- 17.6 All Customer's claims for compensation end in any case twelve (12) months after the damaging event has taken place, unless: (i) Customer and LeaseWeb have come to a written arrangement; or (ii) Customer has commenced legal action in accordance with Section 27.
- 17.7 Nothing in the Agreement shall exclude or limit the liability of Customer to: (i) pay the Service Charges; or (ii) repair (or if repair is not practicable, replace) any tangible physical property intentionally or negligently damaged by Customer or its representatives or employees.
- 17.8 Nothing in this Agreement shall operate to exclude or limit a Party's liability resulting from (i) wilful misrepresentation or fraud; or (ii) wilful misconduct; or (iii) gross negligence.

18. INSURANCE

- 18.1 Customer shall obtain and - at least for the duration of the Agreement - maintain the following insurances with a reputable insurance company, which (at minimum) covers:
- third party liability;
 - Customer's liability towards LeaseWeb; and
 - Customer's liability as an employer towards Customer's employees; in each case up to an amount per event of - at least - three (3) times Customer's total annual Service Charges, with a minimum of one million US Dollars (US\$ 1,000,000.--).
- 18.2 Without prejudice to Section 17.2f), the Colocated Equipment shall at all times be at Customer's risk. Therefore, during the continuance of the Agreement, it shall be Customer's responsibility to insure at its own expense, and keep insured the Colocated Equipment, with a reputable insurance company against loss, theft, damage or destruction howsoever arising at an amount not less than the full replacement value of the Colocated Equipment. Under no circumstances shall LeaseWeb be obligated to provide insurance coverage for any of the Colocated Equipment or other Customer property installed within the POP and/or the Data Center.
- 18.3 Customer shall provide LeaseWeb with documentation evidencing Customer's compliance with the provisions set forth above in this Section 18, within ten (10) days of LeaseWeb's request to that effect. In general LeaseWeb considers a written statement by Customer's insurance company, confirming Customer's compliance, to be sufficient evidence.

19. TERM / RENEWAL

- 19.1 At the end of the Initial Term of an API Order or a Web Order, (the term of) the Order shall be renewed for successive terms equal to the Initial Term ("**Renewal Term**" or "**Renewal Terms**"), unless either Party notifies the other in writing that it does not agree to the renewal of (the term of) the Order, taking into account a notice period of at least:
- one (1) hour, provided that such notice is submitted by means of the Customer Portal or the API; or
 - five (5) Business Days, in the event that notice is submitted by other means than the Customer Portal or the API.
- 19.2 At the end of the Initial Term of a non-Web/non-API Order, (the term of) the Order shall be renewed for successive terms equal to the Initial Term, unless either Party notifies the other in writing that it does not agree to renewal of (the term of) the Order, taking into account a notice period of at least:

- one (1) hour, in the event of an Initial Term / Renewal term of one (1) month, provided that such notice is submitted by means of the Customer Portal or the API;
- five (5) Business Days, in the event of an Initial Term / Renewal term of one (1) month, in the event that notice is submitted by other means than the Customer Portal or the API;
- two (2) months, in the event of an Initial Term / Renewal term of three (3) months or longer.

20. TERMINATION

- 20.1 A Party is entitled to terminate the Agreement with immediate effect, by giving written notice to the other Party, if:
- the other Party has ceased its legal existence or has been dissolved;
 - the other Party has been declared bankrupt, or it has been granted suspension of payments or entered into voluntary liquidation;
 - the other Party's business has been discontinued;
 - the other Party is in breach of any of the other terms of the Agreement and, if and to the extent such breach can be cured, fails to cure such breach within a period of thirty (30) days after having received notice with respect to such breach; and/or
 - the other Party is unable to perform its obligations due to an event of Force Majeure, provided that the event of Force Majeure has lasted more than sixty (60) days and the Parties are unable to reach a temporary solution for the Force Majeure period in spite of having negotiated in good faith with respect to such temporary solution.
- 20.2 LeaseWeb shall be entitled to terminate the Agreement, effective immediately, by giving written notice to Customer, if:
- the provision of the Services and/or access to the Equipment has been suspended in accordance with Section 11.1 for seven (7) or more consecutive days; and/or
 - in the event the continued performance of the Services under the Agreement cannot reasonably be expected from LeaseWeb, e.g. if (i) Customer or its End-User has, according to LeaseWeb's findings, repeatedly breached the Acceptable Use Policy; and/or (ii) the continued performance of the Services may subject LeaseWeb to a third party claim; and/or
 - Customer does not pay an invoice within the payment term and fails to pay such invoice, plus the interest referred to in Section 9.11, within a period of fourteen (14) days after having received notice thereof; and/or
 - of a change of ownership or Control of Customer if - in LeaseWeb's opinion - (i) the party that acquires ownership or Control of Customer is of lesser socio-economic standing than the party which owned Customer or had Control of Customer as at the Effective Date; and/or (ii) Customer's credit situation is adversely affected by such change of ownership or Control; and/or
 - a court has ruled or decided, or LeaseWeb reasonably expects that a court will rule or decide, that the provision of any Service infringes upon the Intellectual Property Rights of a third party; and/or
 - LeaseWeb has grounds to anticipate that Customer will materially breach its obligations under the Agreement, and Customer does not, within three (3) Business Days upon written request, confirm to LeaseWeb in writing that it will fully perform its obligations in conformity with the Agreement.
- 20.3 LeaseWeb is entitled to terminate the Agreement by giving prior written notice to Customer of at least thirty (30) days, if:
- LeaseWeb has received notification from its lessor or landlord with respect to termination or expiration of the Facility Agreement where the Housing Space - that has been licensed to Customer - is located; and
 - LeaseWeb will, for any reason, not be able to arrange for an alternative and suitable location for the Housing Space within

a period of thirty (30) days after having received notification from its lessor or landlord, such to be determined at LeaseWeb's sole discretion.

- 20.4 Customer shall be entitled to terminate the relevant Order with immediate effect, by giving written notice to LeaseWeb, effective immediately, if:
- LeaseWeb unilaterally delays the RFS Date, and such delay lasts for thirty (30) days after having received a notification of Customer's intention to terminate; and/or
 - LeaseWeb fails to remedy a Service Disruption that results in the Service provided under the Order being fully unavailable or unusable, within thirty (30) days after having received a notification of Customer's intention to terminate.
- 20.5 A Party may only terminate an Order or the Agreement in accordance with the termination rights explicitly granted to such Party in the Agreement.

21. CONSEQUENCES OF TERMINATION

- 21.1 Termination or expiration of the Agreement shall be without prejudice to any rights or remedies available to, or obligations or liabilities accrued to the Parties, as at the date of termination or expiration.
- 21.2 Upon expiration or termination of the Agreement:
- LeaseWeb shall cease to provide all Services;
 - LeaseWeb shall be entitled to erase and delete any and all data of Customer -and any and all data of Customer's End Users- from LeaseWeb's Equipment, including from the Dedicated Equipment;
 - LeaseWeb shall be entitled to make the Dedicated Equipment available for use by other Customers;
 - all sums due to LeaseWeb up to the date of termination shall become due and payable in full immediately;
 - Customer shall, subject to Section 21.5, remove all of the Colocated Equipment from the Data Center and shall return the Housing Space to LeaseWeb in the same condition it was in prior to Customer's use thereof; and
 - Customer shall ensure that all (Internet) domains which have been registered through LeaseWeb are transferred to another registrar.
- 21.3 If Customer does not timely remove the Colocated Equipment in accordance with Section 21.2e): (i) LeaseWeb may - at Customer's expense - remove and store the Colocated Equipment or return such Equipment to Customer, or dispose of such Equipment without liability for any related damages; and (ii) Customer shall be liable to pay to LeaseWeb a penalty equal to one month Service Charges for the terminated Colocation Services for each month, or part of a month, that Customer has failed to remove the Colocated Equipment.
- 21.4 If Customer has not transferred the (Internet) domains to another registrar ultimately within five (5) Business Days of the date of expiration or termination of the Agreement, in accordance with Section 21.2f), LeaseWeb shall be entitled to deregister or cancel the registration of such (Internet) domains, without any obligation to provide Customer prior notice thereof.
- 21.5 LeaseWeb will have the right to retain any Colocated Equipment until it has received payment in full of all sums due and/or payable by Customer to LeaseWeb. If LeaseWeb has not received such sums within a reasonable time frame after termination or expiration of the Agreement, such to be determined by LeaseWeb, LeaseWeb shall be entitled to sell any Colocated Equipment, necessary to recoup all sums due and/or payable, at such price as LeaseWeb is able to obtain in the open market.
- 21.6 In the event that LeaseWeb terminates the Agreement in accordance with Section 20.1, 20.2a), 20.2b), 20.2c), 20.2d), or 20.2f), Customer shall- without prejudice to any other rights or remedies that LeaseWeb may have - within five (5) Business Days after the effective date of termination, pay to LeaseWeb one hundred percent (100%) of the Service Charges, actual or projected, for the period from the effective date of termination up to and including the last day of the then current Term.

- 21.7 In the event that LeaseWeb terminates the Agreement or an affected Service in accordance with Section 20.2e), LeaseWeb shall refund to Customer:
- any non-recurring initial charges or setup charges that have been paid by Customer to LeaseWeb in respect of the Service so terminated, in the event that the Agreement or affected Service is terminated prior to the RFS Date; and
 - a pro rata portion of any recurring Service Charges that have been prepaid by Customer to LeaseWeb in respect of the Service so terminated, if and to the extent that such prepayment exceeds the Service Charges that will accrue until the date of termination of the affected Service.
- 21.8 The following Sections shall survive termination or expiration of the Agreement and continue in full force and effect, in addition to those Sections the survival of which is necessary for the interpretation or enforcement of this Agreement: Indemnification (Section 16), Limitation of Liability (Section 17), Confidentiality (Section 23), Notices (Section 25), Miscellaneous (Section26), Governing Law and Dispute Resolution (Section 27).

22. FORCE MAJEURE

- 22.1 A Party shall not be deemed in breach of any of its obligations, guarantees or warranties under these General Terms, the Agreement or the LeaseWeb Policies if, and to the extent that, performance is prevented or delayed by an event of Force Majeure, provided that the Party that is affected by the event of Force Majeure has:
- promptly notified the other Party thereof in writing, as soon as reasonably possible and no later than five (5) Business Days after the first occurrence of the Force Majeure event; and
 - provided the other Party with all information on the event of Force Majeure and the (expected) cessation or termination of said event.
- 22.2 The Party that is affected by an event of Force Majeure shall use all reasonable endeavours to avoid or minimise the effects of an event of Force Majeure on its performance of its obligations under the Agreement.
- 22.3 Upon the occurrence of an event of Force Majeure, the time for performance shall be extended for the period of delay or inability to perform due to such occurrence, but if an Event of Force Majeure continues for a continuous period of more than sixty (60) days the other Party shall be entitled to terminate the Agreement.

23. CONFIDENTIALITY

- 23.1 A Receiving Party shall: (i) keep all Confidential Information confidential, (ii) not disclose any Confidential Information to any other person without the prior written consent of the Disclosing Party, and (ii) only use and reproduce the Confidential Information for the performance of its obligations under the Agreement.
- 23.2 The obligations contained in Section 23.1 shall not apply to any Confidential Information which: (i) at the date of the Agreement is, or at any time after the date of the Agreement becomes, public knowledge other than through breach of the Agreement by the Receiving Party; (ii) can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known to the Receiving Party prior to it being disclosed by the Disclosing Party to the Receiving Party; or (iii) is required to be disclosed or used by law.
- 23.3 The Receiving Party agrees that any and all notes, diagrams, descriptions, memoranda and other writings or electronic information obtained from the Disclosing Party and any copies, notes or excerpts thereof containing Confidential Information shall remain the property of the Disclosing Party and that said documents shall, upon request of the Disclosing Party and at the Disclosing Party's option, be promptly returned to the Disclosing Party or destroyed upon any termination of any underlying contract.

24. TRANSFER OF RIGHTS AND OBLIGATIONS

- 24.1 Without prejudice to Section 24.2 and 24.3, neither Party shall be entitled to assign or transfer, or purport to assign or transfer, any rights or obligations under the Agreement to a third party without the prior written consent of the other Party, which consent may not be unreasonably withheld.
- 24.2 LeaseWeb shall be entitled to assign any of its rights or obligations under the Agreement to an Affiliate (or its or their successors, through merger or acquisition of substantially all of their or its assets), upon giving written notice to Customer.
- 24.3 LeaseWeb shall be entitled to sub-contract any or all of its obligations under the Agreement to a third party, provided that LeaseWeb shall remain liable to Customer for the performance of those obligations.
- 24.4 Nothing in the Agreement shall exclude or limit LeaseWeb's rights to grant or create a right of pledge or other security right - for the benefit of a bank or other financial institution or other third party - on or over any or all (cash) receivables that Customer owes or comes to owe to LeaseWeb.

25. NOTICES

- 25.1 Unless specified otherwise herein, any notice, demand, claim or other communication under or in connection with the Agreement shall be in writing and shall be delivered personally or sent by registered mail or by prepaid recorded courier delivery or by e-mail, to the Party due to receive the notice at its address set forth below or such other address as any Party may specify by notice in writing to the other:
- | | |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| If to LeaseWeb | to the LeaseWeb entity and at the address as specified in the Order Form, for the attention of the Board;
with a copy directed for the attention of the Legal Department, by e-mail to: legal@us.leaseweb.com |
| If to Customer | to the person and at the address as specified in the Customer Portal |
- 25.2 In the absence of evidence of earlier receipt, any such notice, demand, claim or other communication shall be deemed to have been received:
- if delivered by hand, at the time of delivery;
 - if posted, on the expiration of three (3) Business Days after the notice has been provided to the courier company; or
 - if sent by e-mail, the moment the e-mail has been received on or by a mail server or mail exchanger used or operated by the receiving Party.
- 25.3 For the purpose of Section 25.2c) any failure to deliver -and any impossibility to receive or access- a notice, demand, claim or other communication shall be for the risk and account of the receiving Party, if -and to the extent that- such failure or impossibility is related to -or the result of- an act or omission of the receiving Party, a failure of the mail server or mail exchanger used or operated by the receiving Party, or a failure or interruption in the services of a third party that manages or hosts of the mail server or mail exchanger used or operated by the receiving Party.

26. MISCELLANEOUS

- 26.1 No waiver of any of the terms of the Agreement or of any breach of those terms shall be effective unless such waiver is in writing and signed by the waiving Party. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach.
- 26.2 Other than LeaseWeb's subcontractors who shall have the benefit of the Agreement, nothing in the Agreement shall confer upon any third party any right, benefit or remedy of any nature under the Agreement.
- 26.3 Nothing in the Agreement shall result in the transfer of a Party's Intellectual Property Rights (of whatever nature) to the other Party.

- 26.4 Neither Party shall be authorized to (i) make press or public announcements relating to this Agreement, without the prior written approval of the other Party, or to (ii) use the other Party's Intellectual Property Rights in any advertising, sales, promotions, or other publicity materials. However, LeaseWeb shall - without Customer's approval - be entitled to inform third parties that LeaseWeb provides Services to Customer, e.g. as a Customer case during sales activities and on LeaseWeb's website.
- 26.5 Should any or several of the provisions of the Agreement be invalid or null on void, this shall not affect the remaining provisions thereof. In such event, the relevant provision shall be replaced by a valid provision that reflects, to the extent possible, the purpose and the intended effect of the original provision.

27. GOVERNING LAW AND DISPUTE RESOLUTION

- 27.1 These General Terms, the Agreement and all matters arising there from or connected therewith are governed by the laws of the Commonwealth of Virginia, with the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods, and without giving any effect to this state's or any other jurisdiction's conflict of law principles.
- 27.2 The parties shall exercise their best efforts to settle any Disputes. Any Dispute between the parties will be decided: (i) first by the technical and administrative points of contact for this Agreement. If satisfactory resolution is not achieved, then (ii) by senior management of the parties. Dispute discussions between senior management shall continue for a period of no less than ten (10) days. If satisfactory resolution is not achieved, then (iii) by the originating party's initiation of mediation which shall take place in Manassas, Virginia. or any other location the parties may agree to, or a claim in a court of competent jurisdiction in accordance with the terms of Section 27.3. The parties shall use best efforts in order to proceed diligently with the performance of this Agreement pending the resolution of any Dispute that is subject to this Section 27.2. Each Party has the right to pursue provisional relief from any court, such as attachment, preliminary injunction, replevin, etc., to avoid irreparable harm, maintain the status quo, or preserve the subject matter of the mediation, even though mediation has not been commenced or completed.
- 27.3 The forum having the proper exclusive jurisdiction and venue to adjudicate any claim, dispute or default which may arise out of the execution, delivery and performance of this Agreement and the transactions contemplated hereby or thereby shall be either the state or federal courts of Prince William County, Virginia, USA. The parties expressly submit and consent to such jurisdiction and venue and specifically waive any and all rights it may have to contest the jurisdiction and/or venue of the above mentioned forums and to demand any other forum. **FURTHERMORE, THE PARTIES HERETO ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT THIS RIGHT MAY BE WAIVED. THE PARTIES EACH HEREBY KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION, WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF THIS AGREEMENT OR OUT OF ANY AGREEMENT, INSTRUMENT OR DOCUMENT DELIVERED, OR WHICH MAY IN THE FUTURE BE DELIVERED, IN CONNECTION HERewith AND AGREE THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BOTH PARTIES REPRESENT THAT THEY HAVE BEEN REPRESENTED IN THE EXECUTION OF THIS AGREEMENT AND THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**