

## 1 Definitions

1.1 In these Conditions the following terms have the following meanings:

**“Agreement”** means these Terms and Conditions which shall apply to the End Client in the event of the award of a DCA Data Centre Certification and use of the Certification Scheme.

**“End Client”** means the owner or operator of the Data Centre Site who is a client of the DCA Approved Auditing Firm.

**“Data Centre Site”** means the site that has been awarded a Certification under the DCA Certification Scheme.

**“Approved Auditing Firm”** means the company representing End Client, the DCA’s Certification services, proposal or quotation and is a supplier of products or services to the End Client.

**“DCA Accreditation Board”** The body appointed by the DCA to hold Certification Authority over the DCA Certification Scheme

**“DCA Certification Scheme”** The Certification scheme owned and managed by the DCA to label data centre sites, documents and facilities as verified against the scheme’s requirements.

**“DCA”** means the Data Centre Alliance Limited registered in England and Wales company number 6294147 and it’s duly appointed representatives.

**“Certification Materials”** means any equipment or collateral which is to be supplied by DCA or Approved Auditing Firm utilised by the End Client in relation to DCA Certification Scheme, this includes but is not limited to, certification plaques, promotional items, digital media, badges and website listings.;

**“DCA Logo”** means the name, branding designs and trademarks of the DCA

## 2 Agreement

2.1 The DCA shall grant license to the End Client the use of DCA Logo and Certification Materials supplied by the DCA or Approved Auditing Firm provided the End Client successfully satisfies the current requirements of the DCA Certification Scheme.

2.2 Unless prior written approval is obtained from the DCA The End Client may only use Certification Materials pursuant to the DCA Certification Scheme and the DCA logo supplied by the DCA or The Approved Auditing Firm.

2.3 The End Client Acknowledges that award of certification under the DCA Certification Scheme does not constitute membership of the DCA.

2.4 The End Client acknowledges that The DCA is the Certification authority of the scheme and the DCA reserves the right to withdraw the licence to use the Certification Materials and or DCA Logo at anytime.

2.5 The End Client agrees to notify a DCA Approved Auditor or the DCA of any change to the Data Centre Site that renders a sustained ie longer than 30 days, non-compliance against the DCA Certification Requirements within 30 days.

## 3 Delivery

3.1 DCA shall use its reasonable endeavors to deliver or procure the delivery of the Certification Materials to or relating to the Data Centre Site within 4-6 weeks of the award of Certification.

## 4 Title, Risk and Ownership

4.1 Risk in Certification Materials and Services shall pass to End Client on delivery to The End Client. Title in the Certification Materials shall remain the property of the DCA who reserve the right to remove or withdraw use of the Materials should any reason come to light that the End Client’s continued display of Certification Materials damages or will damage the reputation of the DCA Certification Scheme.

4.2 The copyright or other intellectual property rights in and to any Certification Materials provided by DCA hereunder shall remain vested in the DCA.

## 5 Limitation of liability

- 5.1 Nothing in the Agreement excludes or limits the liability of either party for death or personal injury caused by its negligence or for fraudulent misrepresentation.
- 5.2 In no event shall either party be liable in contract, tort (including negligence), breach of statutory duty or otherwise howsoever for: (a) any loss of profit, loss of business, loss of goodwill, loss of contracts, loss of revenues or loss of anticipated savings; or (b) any increased costs or expenses; or (c) loss of, damage to or corruption of software or data; or (d) any special, indirect or consequential loss or damage of any nature whatsoever, whatever the cause thereof arising out of or in connection with this Agreement even if the other has been advised of the possibility of such damages.
- 5.3 The DCA's liability hereunder for the tangible property loss of the End Client directly arising from the DCA's negligence shall be limited to the value of the Certification Materials that caused such loss.
- 5.4 Nothing in this agreement or the award of Certification or supply of Certification Materials or DCA Logo constitutes any liability of any party or guarantee of service levels or suitability of performance, availability, security, use or otherwise of the Data Centre Site or in relation whatsoever to services offered by The End Client to other parties.

## 6 Confidentiality

- 6.1 Each party shall treat as confidential such information obtained from the other pursuant to The DCA Certification Scheme and shall not divulge such information to any person, except to such party's own employees and subcontractors and suppliers and then only to those employees who need to know the same, unless authorized in writing to do so when applying for and in the process pursuant to DCA Certification.
- 6.2 The DCA acknowledges that Dissemination of information about the existence of the End Client's Data Centre Site and the information contained in the Certification Materials via the DCA's media channels is optional and that there is no obligation to display, use or take delivery of the Certification Materials or DCA Logo.

## 7 Term

- 7.1 This Agreement shall be effective from submission of an application for Certification continue in full and effect for A) the period of time an application for Certification is active and pending or B) the period of time, commencing upon award of Certification, the End Client is compliant with the scheme for a maximum term of two years. Thereafter this Agreement shall cease unless (i) The End Client engages a DCA Approved Auditing Firm who places an order for a further period (the "Extended Term") prior to 30 days from the end of the Initial Term or (ii) The DCA has previously agreed an extension to the Initial Term in writing with the End Client.

## 8 Termination

- 8.1 This Agreement may be terminated by written notice:
  - (a) By The DCA, if the DCA is notified and has reasonable cause to determine the failure of the End Client to remain compliant with the requirements of DCA Certification Scheme, or if the End Client fails a renewal application for an Extended Term due to either a change at the Data Centre Site or the Data Centre Certification Scheme or by the decision of the DCA Accreditation Board.
  - (b) By the End Client, if the End Client does not wish to remain compliant with the requirements of the DCA Certification scheme, at which point all Materials and use of DCA Logo must cease and be returned to the DCA.
- 8.2 The End Client agrees to remove and discontinue use of the Certification Materials with immediate effect upon Termination of this agreement.

8.3 The End Client acknowledges that the decision of the DCA Accreditation Board in respect of Award or Non-Award of Certification is final and no appeals will be acknowledged. However complaints can be lodged with respect to any other issues via the DCA website pages.

**9 Miscellaneous**

9.4 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby agree to submit to the exclusive jurisdiction of the English Courts. Notwithstanding the foregoing either party may take action in any jurisdiction to protect its confidential information and intellectual property rights.

9.5 This Agreement is not intended to create a joint venture or partnership between the parties and neither party is authorised to act as the agent of the other.