

eco Datacenter Star Audit

Agreement

between

eco Service GmbH,

Head quarters in Cologne, Lichtstraße 43i, 50825 Cologne, registered at the Commercial Register of the District Court Cologne (HRB 52579), represented by the CEO Harald A. Summa,

hereinafter called 'eco'

and

the company [NAME],

[street], [zip code, city], represented by [POSITION, NAME(S)],

hereinafter called 'Operator'

hereinafter called 'Parties'

regarding

the audit process of the data center:

site, name of the object, address

Contents

I. Terminology / Preamble	3
Art. 1 Terminologies / Abbreviations	3
Art. 2 Preamble	3
II. Auditing	4
Art. 3 Audit Criteria	3
Art. 4 Auditing / Auditors	4
Art. 5 Audit Results / Date of the Audit / Validity Period / Amendment Audit	4
Art. 6 Confidentiality	5
Art. 7 Operator's Right of Refusal	6
III. License Agreement	6
Art. 8 eco Datacenter Star Audit Logo	6
Art. 9 eco's Right of Use / Announcement Stop	7
IV. Operator's Obligations	7
Art. 10 Reporting Requirement	7
Art. 11 Access to the DC	7
Art. 12 Compliance with the Audit Criteria	8
V. Compensation	8
Art. 13 Audit Compensation / Travel Costs	8
Art. 14 eco Membership	9
Art. 15 Free Service by eco	9
VI. Obligations / Liability	9
Art. 16 Basis of the Audit	9
Art. 17 Liability Restrictions	9
VII. Duration / Termination / Rights and Obligations When the Agreement Expires	10
Art. 18 Duration / Termination	10
Art. 19 Rights and Obligations When the Agreement Expires	10
VIII. Good Conduct Clause / Arbitration Arrangement	11
Art. 20 Good Conduct Clause / Arbitration Arrangement	11
IX. Other Provisions / Appendices	11
Art. 21 Final Provisions / Non-Assignment Clause	11
Art. 22 Appendix	12

I. Terminology / Preamble

Art. 1 Terminologies / Abbreviations

The terms mentioned below will be defined within the context of the present Agreement as follows:

- eco – refers to the eco – Association of the German Internet Industry Association
- Operator – refers to eco's business partner, who at least operates a DC or has operated it in a responsible manner.
- DC – is the abbreviation for 'data center' and refers to the Operator's computer center mentioned in the caption of the present Agreement.
- Star Audit Quality Standard – refers to the agreement between both parties.
- eco Data Center Star Audit Logo – refers to the eco Data Center Star Audit emblem and other signs licensed by eco.

Art. 2 Preamble

It is eco's goal to support the commercial use of the Internet. Natural and legal persons, who want to use data center services are often not able – without relevant expert knowledge - to easily judge the performance of each data center, as well as be able to judge the organisational and technical processes and facilities. As such, there is an uncertainty, over which data center, with what performance levels should be selected by interested parties for their specific business model. The purpose of the project 'eco Datacenter Star Audit' is to avoid these uncertainties by conducting audits of the data centers. The audit process reveals the characterisation of the data center by using a predetermined, published and specified catalogue of criteria. The results of the audit respectively reflects the deserved performance levels. For identification purposes relevant eco Datacenter Stars of ★ up to ★★★★★ are provided and the use of the relevant eco Datacenter Star Audit Logo is licensed by virtue of the present Agreement. A direct guideline can therefore be given to the potential new customer. For the purpose of the audit, eco has contractual agreements with the data center to be audited as well as with the company that conducts the audit (in the following: auditor). In using the present Agreement, the parties regulate the details of the collaboration between eco and the data center to be audited.

II. Auditing

Art. 3 Audit Criteria

- (1) The audit criteria includes the areas facility, personnel, procedures, and technology.
- (2) The specific audit criteria are listed in the **Request for Information / Guide for Customers (Annex 1)**.
- (3) The audit criteria are assessed by eco at the latest every two years and, if relevant, adjusted to technological progress. By request, eco will provide the current version as well as prior versions of the audit criteria. The Operator will be informed about changes to the audit criteria at the latest when an (additional) assessment of one of its DCs is conducted.

Art. 4 Auditing / Auditors

- (1) In assessing the audit criteria specified in art. 3, an evaluation, examination and classification of the DC performance, as well as of the local organisational and technological precautionary measures, devices and facilities (in the following called 'auditing') will be conducted. Auditing of the Operator's DC will be performed in two steps. Firstly by the evaluation of the Operator's responses provided by the **Request for Information (Annex 1)** and secondly by the on-site inspection and examination of the DC.
- (2) If the Operator operates more than one DC, auditing and classification respectively refers only to one DC of the Operator. If the Operator wishes auditing of several DCs and if these DCs use a common infrastructure whereby the auditing effort will be reduced, then the parties can agree on a special Agreement prior to the audit process to reduce the auditing costs.
- (3) Auditing will be conducted in a schedule of two months calculated from the date eco receives the Operator's **Request for Information (Annex 1)**.
- (4) At its own discretion, eco commissions auditors, which perform audits of the Operator's DC. For this purpose, auditors appoints, on their side, salaried employees, who are expressly certified beforehand by eco as '**eco Authorised Auditors**' (in the following: '**eAA**') and who have acquired the professional competence and expertise.

Art. 5 Audit Results / Date of the Audit / Validity Period / Amendment Audit

- (1) The Operator receives the result of the audit and the written evaluation statement according to the audit criteria in the context of an appropriate presentation of the results.
- (2) The relevant date for the audit of the DC is the date of the last auditors' evaluation activity. In the case of finalised partial audits, the relevant date for the audit is the finalisation date of the audit of this part.

- (3) The audit results and the classification of the DCs based on these results solely reflect the status quo at the time of the audit. Post-hoc modifications will not be considered unless a new audit will be conducted.
- (4) The results of the audit and the relevant classification have a validity period of 24 (verbally: twenty-four) months (validity period). It starts with the month, in which the results of the audit and the classification is communicated and ends 24 (verbally: twenty-four) months later at the end of the month. Consequently, if a DC will be audited, for example, on June 15, 2007, the validity data will end on June 30, 2009.
- (5) The Operator has the right to request an audit for the purpose of improving the original audit results, which must be conducted within six months upon communicating the results of the audit and the classification (amendment audit). Implementing the request for an amendment audit requires an additional remuneration, the amount for which is shown in the **price list (Annex 3)**. Subject to Section 4, the validity period of the audit will not be affected by the amendment audit. The amendment right can be exercised several times in a row.
- (6) During the validity period, the Operator is authorised to refer in any media to the performed audit and the evaluation results in the context of the presentation and application of the DC audited. Hereby, the Operator does not obtain the right of use the eco Datacenter Star Audit Logo (art. 8). When the validity period ends, the Operator needs to remove all information about the audit and its results without delay and without being requested to by eco.

Art. 6 Confidentiality

- (1) The parties are obligated to comply with the following confidentiality agreement.
- (2) Confidential information is all information, statements, results, data and documents, which the auditor/eco receives from or about the Operator and the DC to be audited and which the Operator explicitly marks or labels as confidential. Moreover, confidential information is all information, statements, results, data and documents, which the Operator receives from eco or from the auditor or from the appointed staff in context of the auditing process and which eco or the auditor explicitly marks or labels as confidential. Information, statements, results, data and documents cannot be marked or labeled as confidential, which comply to the recognised rules or technology or to the state-of-the-art technology or with the technology known among experts or which has been already published. If there is a disagreement among the parties about the contents of the confidentiality agreement, a separate agreement is required.
- (3) Information will not be considered as confidential but as freely usable, which has been later legally published or announced in public or to which auditor/eco has received legal access by other means.
- (4) Confidential information needs to be kept under lock and key and must be secured for inspection by a third party by applying appropriate safety measures. The parties are allowed to provide access to confidential information to their own employees and third

parties, only if an appropriate confidentiality agreement has been signed or if they are subject to the professional duty of confidentiality.

- (5) In the case that a party is forced to reveal confidential information because of a legal or legally binding court decision or because of decisions or orders by relevant authorities, the other party must be informed about this in written form as early as possible. Herewith, this party should be in a position to seek remedy.
- (6) The obligations of the present agreement continue to be valid for an unlimited period of time.
- (7) eco reaches an agreement with the auditor to the extent described to this point, and the auditor with the eAA appointed by him.

Art. 7 Operator's Right of Refusal

- (1) If the auditor or the eAA appointed to him is working for a direct competitor of the Operator and if there is a justifiable economic interest on behalf of the Operator to keep a new method or know-how secret, that so far does not match the general technological status quo, the Operator has the right to refuse the auditor or the eAA appointed to him.
- (2) Before the agreed audit date, the Operator needs to provide a written note to eco about this immediately following the announcement of the auditor or the eAA. Because of this notification, all appointments will be accordingly postponed.

III. License Agreement

Art. 8 eco Datacenter Star Audit Logo

- (1) After completion of the audit and payment of the relevant fees for the performance package 'audit' according to the guidelines of the **price list (Annex 3)**, the Operator receives a basic, non-transferable right for the use of the award certificate, the eco Datacenter Star Audit emblem badge itself and an electronic image of this emblem badge in file format (eco Datacenter Star Audit Logo) through to the end of the calendar year in which the audit is performed. The period of this license depends on the validity period subject to art. 5 sec. (4). The parties agree in this respect to the validity of the **eco Datacenter Star Audit Guidelines (Annex 2)**.
- (2) The Operator receives an emblem badge (sign) to be mounted at, or in, their entrance hall of the audited DC and which displays the eco Datacenter Star Audit Logo, including the classification of the DC. If the Operator has more than one DC in the building, the emblem badge should be placed only in the audited DC mentioned in the caption of the present Agreement, unless all Operator's DCs located in the building have been audited.
- (3) Moreover, the Operator receives the emblem badge electronically in a standard graphic format and by using the emblem badge the Operator is authorised during the validity period to refer in any media to the audit and the evaluation results in the context of the presentation and application of the audited DC.

- (4) The right to use the award certificate and the physical and electronic emblem badge ends by default and according to the expiration of the validity period subject to art. 5 sec. (4), no cancellation of the license agreement or of the **eco Datacenter Star Audit Guidelines (Annex 2)** is required by either party.
- (5) By paying the fees for the performance package 'audit' that is highlighted in the **price list (Annex 3)** the relevant license agreement will be implemented and no special agreement is required.
- (6) An extension of the license Agreement beyond the validity period requires a new audit of the Operator's DC.

Art. 9 eco's Right of Use / Announcement Stop

- (1) eco has the right to save, process, and use the name, the logo, the web address, and the results of the audit of the Operator.
- (2) During the period of the execution of an amendment right subject to art. 5 sec. (5), the Operator will be granted on request, the right to deviate from the provisions of the above mentioned article and issue, a publication stop with respect to the audit results and the classification (publication stop).

IV. Operator's Obligations

Art. 10 Reporting Requirement

- (1) The **Request for Information (Annex 1)** must be filled out by the Operator according to the guidelines in the respective **Guide for Customers (Annex 1)** and be returned to eco.
- (2) The Operator is obligated to provide all information required for the audit according to the opinion of the auditor or eco in addition to granting the inspection of the relevant documents, maps, certificates and/or official or private permits, approvals or authorisations or disapprovals.
- (3) All information, which will be provided or presented to eco and the auditors, needs to be provided or presented completely and truthfully. It is essential for the audit and will not be examined further by the auditor or eco.

Art. 11 Access to the DC

- (1) After receipt of the complete and correctly filled in Request for Information, the auditor schedules the on-site DC audit dates, which depend on performance and size of the data center.
- (2) If, in light of the Request for Information and in preparation of the on-site audit dates, further information is useful and suitable according to the opinion of the auditors beforehand, then the Operator must provide information to the auditor.
- (3) At the scheduled dates, the employees appointed by the auditor, in particular the eAA, will obtain unrestricted access to the DC along with all devices and facilities, entrances

and auxiliary buildings, rooms and areas such as splice chambers, distribution substations, cable ducts, NOC (network operation center), technology and administrative offices, even if they are located in different buildings or building sections.

- (4) On demand from the auditor, or of the appointed eAA, access will be provided also to special access areas for the Operator's customers, if facilities and devices are listed in these areas or if the facilities/devices located there deviate from the remaining DC standards.

Art. 12 Compliance with the Audit Criteria

- (1) As long as the Operator advertises with the results of the assessment (without using the eco Datacenter Star Audit Logo) and/or, where applicable, additionally with the licensed eco Datacenter Star Audit Logo and uses these in the context of a company presentation with respect to the DC to be audited, the Operator is obligated with respect to the audited DC(s) at least not to fall short of the DC performance criteria, on which the assessment is based.
- (2) If the DC performance falls below the assessment level, the authorisation to use the results of the assessment (art. 5 sec. (5)) expires and/or, where applicable, the licensed eco Datacenter Star Audit Logo (art. 8) without providing an additional explanation and independent of the fact that the validity period (art. 5 sec. (4)) has not expired.
- (3) In the case of falling below the assessed performance, the Operator has the option to request a new audit at eco. This constitutes a new validity period according to the provisions of art. 5 sec. (4).
- (4) If eco receives information and hints that the assessment-based DC performance has become worse during the period of the present agreement, eco will communicate this to the Operator and will request an immediate statement. If eco did not receive a statement within a week or if the result of the statement also indicate a decline in the performance offered at the time of the audit, eco can request a new audit. The Operator needs to cover the costs for the audit according to the appended **price list (Annex 3)**. If the Operator rejects the audit, the authorisation to use the results of assessment (art. 5 sec. (5)) and the possible permitted usage of the eco Datacenter Star Audit Logo (art. 8) expires without providing an additional explanation for this purpose.

V. Compensation

Art. 13 Audit Compensation / Travel Costs

- (1) The compensation for the performance package 'Audit', including the audit and license, and the compensation of the performance package 'Amendment Audit' subject to art. 5 sec. (5) is shown in the appended **price list (Annex 3)**.

- (2) By signing the present Agreement, the compensations mentioned in the paragraph above plus value added tax (VAT) are due and payable.
- (3) The travel costs of the employees (in particular of the eAA), who were appointed for the purpose of the audit, are reimbursed as follows: If traveling by car, reimbursement takes place according to the current fiscal tariffs for motor vehicle flat rates (EUR 0.30 per km). When traveling with the German railway, railway tickets of the 2nd class will be reimbursed. If other traffic systems will be used, the reimbursement of these travel costs requires a prior agreement between the parties.

Art. 14 eco Membership

For Operators that are also eco members the discounts mentioned in the **price list (Annex 3)** may apply.

Art. 15 Free Service by eco

If eco grants free services, there is no entitlement for a further supply of those services. eco is authorised to stop these services without the prior Agreement of any partner's entitlement to punitive damages, loss or refund.

VI. Obligations / Liability

Art. 16 Basis of the Audit

- (1) eco is not responsible for the correctness, completeness and accuracy of the issues and information provided by the Operator that represents the basis of the audit. Because of the restricted audit period, an obligation to examine these points is not possible.
- (2) eco is not in the position to assess the functionality of the complete DC from technical and organisational viewpoint. Based on the claimed performances, devices and facilities, eco performs only a random sample examination.

Art. 17 Liability Restrictions

- (1) eco's contractual and non-contractual liability for all its performances is restricted according to the provisions mentioned below. This does affect a possible liability that is subject to the product liability law.
- (2) eco is always liable for the full amount and without restrictions for caused damages resulting from the culpable injury to life, the body or health of a human being irrespective of whether the injury was caused by eco itself, lawful representatives or vicarious agents.
- (3) eco is always unrestricted in terms of liability, where it is grossly at fault (intent and gross negligence) and if their leading employees and legal representatives are grossly at fault.
- (4) eco is also liable on the merits in the case of each culpable violation of essential contract obligations, whose compliance is of specific importance for achieving the contractual

purpose (so-called 'cardinal obligations'). This is also the case, if the breach of duty has been caused by leading employees and vicarious agents.

- (5) eco is liable in the case of breaches of duty, which do not represent the violation of cardinal obligations, on the merits for being grossly at fault (intent and gross negligence) of basic vicarious agents, unless eco can contract out from the liability because of commercial practice.
- (6) In the case of the paragraphs (4) and (5), eco's liability is limited to the amount that corresponds to the compensation of the typical of the typical predictable damage.
- (7) Neither the contract partner nor eco are liable for non-fulfillment or delay, as long as it is caused by events of force majeure such as walkout, lockout or public-authority orders. This is also the case if the suppliers or contractors of eco or its subsuppliers or subcontractors experience events of force majeure. During the period of these disturbances and its effects, eco is exempt from the obligation to provide services and is authorised to withdraw completely or partially from the Agreement in the case of unreasonableness of the provision of services. If the disturbance occurs longer than 8 weeks, the contract partners are also authorised to withdraw as long as the service has not yet been provided.

VII. Duration / Termination / Rights and Obligations When the Agreement Expires

Art. 18 Duration / Termination

- (1) The Agreement resumes with bilateral signing and has, after auditing, a fixed duration until the end of the twenty-fourth month. After expiration of this period, the Agreement ends and no termination statement is required by one of the parties.
- (2) The finalisation of the Agreement is subject to any subsequent rejection by the Operator of the auditor or the eAA, who he appointed, according to art. 7 and the refusal then means that the auditing cannot be performed in a foreseeable time, but is likely within, the latest, six months after the first justifiable rejection.
- (3) The right of termination because of significant reasons remains unaffected by clause 1. An important reason is:
 - a) if the Operator fails to meet his contractual obligations despite a reasonable period of grace;
 - b) if the financial and/or economic situation of the Operator becomes worse as such that there is reasonable ground that the Operator cannot fulfill his contractual obligations or
 - c) requests the initiation of the insolvency proceedings or of comparable proceedings abroad via the Operator's investment or the initiation has been rejected because of a lack of assets.

Art. 19 Rights and Obligations when the Agreement expires

- (1) In the case the present Agreement will be terminated, the mutual rights and obligations of the parties expire.
- (2) At the time when the Agreement will be terminated, the Operator must stop and refrain from all contractually permitted applications. If for an important reason the Agreement terminates, the parties agree in this respect a date of expiry of one month.

VIII. Good Conduct Clause / Arbitration Arrangement

Art. 20 Good Conduct Clause / Arbitration Arrangement

- (1) The parties are obligated to refrain from all actions, which are qualified for damaging the reputation of the respective other party.
- (2) All disputes, which are related to the Agreement or its validity, will be finally decided according to the rules of arbitration of the German Institute for Arbitration e. V. (DIS) in the version dated from July 7, 1998 without possibility of recourse to legal action. The venue for arbitration is Cologne, Germany. The number of arbitrator is 1. The substantive law that applies is the German law. The language of the arbitration proceedings is German.

IX. Other Provisions / Appendices

Art. 21 Final Provisions / Non-Assignment Clause

- (1) Entering this Agreement does not authorise or obligate an Agreement partner to act in any form on behalf of the other Agreement partner. The goal of the current Agreement is not to establish an internal or external relationship between the Agreement partners that goes beyond the present Agreement without signing another contractual agreement.
- (2) The present Agreement, its changes and modifications, require a written notice; changes and modifications must be explicitly marked and respectively, and physically connected with the present Agreement. An exclusion from the form requirement is only possible in written form. Other agreements related to this Agreement have been met neither verbally nor in any other form.
- (3) Reassigning the rights or obligations relating to this Agreement are only permitted with prior written agreement of the other Agreement partner.
- (4) This Agreement reproduces, completely, the agreements of the Agreement partners with respect to the subject of the Agreement and replaces all prior agreements of the Agreement partners about the subject of the Agreement.
- (5) If individual provisions of the present Agreement – independent of the reasons – are, or will be, completely or partially invalid or inexecutable, or should this Agreement include a loophole that needs to be filled, the validity of the other Agreement provisions will not be affected. Instead of the invalid or inexecutable provision, that provision will be valid, which

matches best the economical relevance and purpose of the original provision within the limits of the law. In the case of a loophole that needs to be closed, that provision will be considered as agreed upon, which corresponds to fact what the Agreement partners would have agreed on from the beginning according to the relevance and purpose of the present Agreement.

Art. 22 Appendix

- (1) The appendices mentioned in the Agreement are an integral part of the present Agreement.
- (2) By signing both Agreement partners confirm that each received a copy of the present Agreement as well as its appendices.

The complete content of the present Agreement has been negotiated in detail between the parties according to the preliminaries of art. 305 sec. (1), clause 3 BGB (German Civil Code).

Operator	eco
Signature	Signature
Name	Name
Title	Title
Company's stamp	Company's stamp
Location, Date	Location, Date