

Special Terms and Conditions - Cloud Communications Service Destiny NV

1. Definitions

For the purposes of the Special Terms and Conditions set out below, the definitions included in the General Terms and Conditions shall apply, as well as the following additional definitions:

Cloud Communications Service

The 'Unified Communications and Collaboration as a Service' Service from Destiny NV consisting of the access for the Customer and its users to a Cloud PBX-platform (telephone exchange software) and, on this basis, access to the communication and collaboration functionalities (CS-functionalities) in accordance with the terms and conditions included in the Agreement and for the full Duration of the Agreement.

CS-functionalities: the communication and collaboration services and functionalities as described in the Agreement made up of elements such as traditional PBX telephone exchange functionalities for handling incoming and outgoing fixed or mobile VOIP calls, presence and presence-based routing functionality and routing functionalities (transfer, cascade, ...), Instant Messaging functionality (chat service), fax-to-mail and mail-to-fax functionality, Automatic call Distribution functionality (ACD), reporting functionalities, Application program Interfacing (API) and Administration functionalities.

Soft-phone: a Microsoft Windows or Apple Mac supported software application supplied by Destiny NV in accordance with the Service Order Form, which is supported by Destiny NV and can be used by the Customer and its users to gain access to the Cloud Communications Service.

An overview of the Soft-phones provided and supported by Destiny NV is available upon written request.

Hard IP-phone: a VOIP hard phone (deskphone, DECT device, conference equipment, ...) supplied by Destiny NV in accordance with the Service Order Form, which is supported by Destiny NV and can be used by the Customer and its users to gain access to the Cloud Communications Service.

An overview of the Hard IP-phones provided and supported by Destiny is available upon written request.

DCC App ("Destiny Cloud Communications App"): the Android and iOS supported software application from Destiny NV that allows the Customer's users to access the most essential functionalities of the Cloud Communications Service from a mobile device.

2. Object

2.1 Area of application

The Special Terms and Conditions set out below are applicable to the provision by Destiny NV of the Cloud Communications Service in exchange for the Fee.

The Customer accepts and acknowledges that the (proper) provision of the Cloud Communications Service by Destiny NV is only possible in so far as and to the extent that a Data Connection configured on a Destiny Connection Network or Customer Connection Network is (promptly) provided at the Location(s) and this Data Connection is maintained by the Customer for the entire duration of the Agreement.

The failure to maintain or continue to maintain the Data Connection, regardless of the reason, in no way discharges the Customer from any of its obligations stemming from the Agreement. The failure of the Data Connection to (continue) to fulfil the required technical parameters will (potentially) lead to loss of quality and nonavailability of the Cloud Communications Service.

3. Rights and obligations of the Parties

Destiny NV can in no way be held responsible or liable for the proper functioning of the Cloud Communications Service and for potential defects or malfunctions regarding the Cloud Communications Service as a result of or on the basis of the failure of the Cloud Communications Service to (continue to) fulfil the technical specifications or technical parameters established by Destiny NV, if this is a direct or indirect consequence of an act or intervention of the Customer or a third party and in general, the failure of the Customer to (continue to) fulfil the contractual conditions as set out in the Agreement.

Limited nontransferable right of use

Subject to the Customer's compliance with all provisions of the Agreement, in exchange for the Fee(s) and subject to the limitations and conditions of the Agreement, Destiny NV and, if applicable, its licensor(s), grants to the Customer, for the duration of the Agreement, a limited, non-exclusive and nontransferable right of use with regard to the (telephone exchange) software.

The right of use granted is limited to the normal use by the Customer and its users, in execution of the Agreement exclusively, of the CS-functionalities, for the maximum number of users as stipulated in the Service Order Form. Any other use of the (telephone) software is explicitly excluded.

Any use of the CS-functionalities by more users than the maximum permitted in accordance with the provisions of the Service Order Form will lawfully and automatically cause additional fees to be payable by the Customer. Destiny NV is entitled to carry out audits at any time within the full duration of the Agreement.

Destiny NV is exclusively responsible, at its own discretion, for the configuration, installation, maintenance, upgrades and updates of the (telephone exchange) software.

The Customer explicitly agrees, and vouches for its users in this regard, to refrain from copying, reproducing, reverse engineering, translating, adapting, analysing, decompiling, imitating, modifying, reconstructing or otherwise reproducing and/or processing the (telephone exchange) software in any way whatsoever, in part or in full.

The Customer is not permitted to (sub)license, lease or rent out its right of use or to use it for the training of third parties or for commercial timesharing.

All (Intellectual) property rights as well as all rights, titles and interests in and to patents, copyrights, trademarks, trade secrets and other intellectual rights with regard to the (telephone exchange) software and the documentation and any works derived from it belong exclusively to Destiny NV and/or its licensors. The Agreement in no way entails the transfer, in part or in full, of these (intellectual) property rights.

The Customer acquires no other rights, whether explicit or implicit, beyond the limited right of use as described in this Agreement.

The right of use and the access to the CS-functionalities are supplied "AS IS".

With the exception of the obligations of Destiny NV with regard to the Cloud Communications Service Service Level Agreement, if applicable, Destiny NV explicitly rejects all guarantees of any kind whatsoever with regard to the (telephone exchange) software and the access to it, whether explicit, implicit, statutory or stemming from the process of operation, the process of delivery or the use for commercial purposes, including any guarantee of suitability for any purpose whatsoever.

4. CS-functionalities

4.1 Management of the CS-functionalities

Under the Agreement, the Customer and its users can be granted access to the Destiny Cloud Communications portal (**DCC-portal**) for the basic day-to-day management of the CS-functionalities as described in the Agreement.

Within the framework of management, the Customer may increase or decrease the number of users via de DCC-portal.

However, the Customer must ensure that the total number of users at any given time is not less than 70% of the initially agreed maximum number of users as stated on the Service Order Form.

The deactivation of the number of users, resulting in a number beneath the aforementioned threshold, constitutes the unilateral termination of the Agreement by the Customer.

The access to the DCC-portal is personal and secured with a login and password for the Customer or its users. It is the exclusive responsibility of the Customer and the Customer's users not to grant access to the DCC-portal to third parties.

The Customer remains solely liable for the management actions carried out via the DCC-portal and must take adequate steps to secure the password and login and to maintain confidentiality. The assignment of "Administrator access" rights and "User access" rights is subject to the exclusive discretion and responsibility of the Customer.

All (Intellectual) property rights as well as all rights, titles and interests in and to patents, copyrights, trademarks, trade secrets and other intellectual rights with regard to the DCC-portal belong exclusively to Destiny NV and/or its licensors. The Agreement in no way entails the transfer, in part or in full, of these (intellectual) property rights.

The Customer acquires no other rights, whether explicit or implicit, beyond the right to access and (its own) use of the DCC-portal as described in this Agreement.

The usage and access rights to the DCC-portal are supplied "AS IS".

The access rights to the DCC-portal will be withdrawn in the event of termination of the Agreement or if Destiny NV suspends the Cloud Communications Service in accordance with the provisions of the Agreement.

4.2 Access to the CS-functionalities

Soft-phone and Hard IP-phone

Access by the Customer and by its users to the CS-functionalities is possible by means of a Soft-phone or Hard IP-phone supplied by Destiny NV.

Destiny NV is not responsible for any costs or the replacement of the Soft-phone or Hard IP-phone by the Customer in the event that Destiny NV no longer supports a Soft-phone or Hard IP-phone. Where appropriate, Destiny NV will make every effort to notify the Customer as soon as possible in advance of any such change.

Destiny NV is not responsible for the malfunctioning of the Cloud Communications Service if this can be attributed to Soft-phones or Hard IP-phones that are not supported by Destiny NV, or for Soft-phones and Hard IP-phones supplied by third parties.

The Soft-phones and Hard IP-phones supplied by Destiny NV constitute Products and all provisions of the Agreement in this respect remain applicable in full.

Destiny NV is not responsible for the poor functioning or non-functioning of the Cloud Communications Service if this is a result, in part or in full, of the poor functioning or malfunction of the Soft-phones and Hard IP-phones. In such a case, the Customer can only assert those claims that are provided in the applicable terms and conditions of the manufacturer or distributor, conditions that are fully applicable to the Products as supplied by Destiny NV.

Destiny NV reserves the right to release new versions of the Soft-phones, which may include different functionalities and methods of use from previous versions.

DCC App

The DCC App enables the Customer and its users to access the main CS-functionalities from a mobile device.

The DCC App is provided to the Customer in the form of a nontransferable, non-exclusive and limited license to the DCC App, intended for personal, non-commercial use exclusively in execution of the Agreement, on any mobile device whatsoever that is suitable for this use.

The texts, images, video files and/or audio files displayed as part of the DCC App and all associated rights and derivative rights are the exclusive property of Destiny NV or its licensors and may not be reproduced or communicated to third parties.

The Customer undertakes, and vouches for its users in this respect, to refrain from (i) decompiling or reverse engineering the DCC App in order to reproduce and/or translate its source code, (ii) copying, distributing, licensing or creating derivative works based on the DCC App and (iii) using the DCC App in any way that is in violation of the law and/or applicable regulatory framework.

Although Destiny NV makes every effort to ensure that the DCC App is provided error-free, it is delivered on a strictly "AS IS – basis" without guarantees. Its use is therefore strictly at the user's own risk.

In the event of any defects in the functioning of the DCC App, every effort will be made to correct them as soon as possible. However, technical errors or defects in the DCC App cannot be excluded. Destiny NV is not bound to provide maintenance and support services for the DCC App.

Destiny NV reserves the right to release new versions of the DCC App, which may include different functionalities and methods of use from previous versions.

The data entered by the Customer and users or generated by the DCC App may be processed in the automated files of Destiny NV.

No other data will be processed or transferred to third parties by Destiny NV.

Destiny NV will take appropriate technical and organisational measures to protect the personal data against accidental or unauthorised destruction, theft, loss, modification, or any other unauthorised access or processing.

4.3 PBX telephone exchange functionalities

With regard to the PBX telephone exchange functionalities for the handling of incoming and outgoing fixed or mobile telephony calls, the Special Terms and Conditions - Fixed Telephony Service Destiny NV and the Special Terms and Conditions - Mobile Telephony and Internet Service Destiny NV will in any case apply as well as the corresponding applicable rates with regard to the associated call costs.

Calls initiated by the Customer or its users from the DCC App will be considered either a mobile or fixed outgoing call and will be subject to the applicable rates.

In any case, the Customer confirms awareness of the fact that emergency numbers will not be available in the event of nomadic use of the Cloud Communications Service and pledges to inform the users of the Cloud Communications Service of this limitation.

Destiny NV accepts no liability in this respect.