

## EclairSend

### General conditions of sale and use

of **Eclair Media**, a simplified joint stock company registered in the Trade Register of Nanterre under no. 808 351 712, with its registered office at 40 rue Gabriel Crié, 92240 Malakoff, France, hereinafter “**Eclair**”

For Data sending Services and use of the Website (as defined below) denominated “**EclairSend**”.

EclairSend is a solution for sending files and associated data anywhere in the world. It provides Users with different levels of Services which allow them to centralise their files, carry out transcoding operations, create Data packages and manage the sending of Data to Recipients.

#### 1. Definitions

**GCSU:** these general conditions of sale and use;

**Recipient:** the recipient of Data sent as indicated by the User in his/her operations encoded on the Website;

**Data:** any files, including images, sounds, text and metadata in digital form which are transmitted to the Website;

**Intellectual property:** patents, software, designs, trademarks, copyright and performers’ rights, domain names, and all associated or derived rights, including rights of licence, extension, renewal, right of priority and all equivalent rights or forms of protection which subsist now or will subsist in the future, in any part of the world;

**Services:** the set of functionalities that may be offered on the Website. The Services consist of basic functionalities that can be supplemented by optional functionalities chosen by the user;

**Website:** the Website Eclair through which the Services are provided to Users and whose address is <https://www.eclairsend.com>;

**User:** a Guest User or a Registered User;

**Registered User:** a natural or legal person using the Services offered by the Website who registered and created an account using the form on the Website;

**Guest User:** a natural or legal person using the Services offered by the Website who was given access by a Registered User;

A User and Eclair are collectively referred to as the “Parties” and individually as a “Party”.

#### 2. Application of general conditions of sale and use

2.1 These GCSU apply to all Users. They cancel and replace previous versions. All Users acknowledge having read and agreed to (i) these GCSU and (ii) the Privacy Policy published on the Website <https://www.eclairsend.com>. The User is asked to read these documents.

2.2. Registered Users are informed that Guest Users invited by them must accept these GCSU in the same way as Registered Users in order to access a Registered User’s account.

2.3 Eclair reserves the right to modify these GCSU at any time and without notice. In the event of changes to the GCSU, prior orders will be governed by the version of the GCSU applicable on the date of the order. By continuing to use the Services, the User acknowledges and agrees to be bound by the changes to the GCSU.

2.4 In the event of a dispute regarding the GCSU, the User acknowledges and accepts that the information stored in the information system of the Website shall prevail as evidence between the Parties and shall prevail over any other document or information to the contrary.

### **3. Registration and use of account**

3.1 The information provided by a Registered User must be accurate and updated if necessary. The User acknowledges and accepts that if this information is incorrect or out of date, he/she risks not being recognised or having his/her account suspended or cancelled.

3.2 The Registered User declares to be the legitimate holder of the email address used when registering.

3.3 The Registered User is responsible (i) for the security of their password and User ID which he/she shall keep private and secure and (ii) information relating to Guest Users that he/she encodes on the Website.

3.4 Registered User accounts are strictly personal. They may not be assigned or transferred to third parties.

### **4. Website, functionalities and hosting**

4.1 Eclair designs and makes the Website available to Users so that they can send Data, or cause it to be sent by Guest Users, to Recipients. The User acknowledges and accepts that Eclair is only a host such as the concept is defined by French law. Eclair does not carry out any prior checks or moderation as regards the Data transmitted by Users to the Website or transmitted by Users to Recipients via the Services. The Data are processed confidentially. Eclair does not provide public search functions, catalogues or lists of Data transmitted to third parties, nor does it visualise or verify the contents of the Data except for the purposes of the Privacy Policy and when it is required to do so by law.

4.2 The functionalities offered by the Website (including extraction of metadata, integrity checking (*check sum*), mapping of audio tracks, file formats, transcoding) are available depending on the Service option selected by the User.

4.3 Once the Data have been uploaded on the Website by the User, they are available for a limited period of time in the "Desk" area. This area is defined as the workspace that allows the User to carry out his/her operations. The Desk area is assigned for a limited period of time, the automatic expiry of which is specified on the Website. After the expiry period, Eclair permanently erases the uploaded Data which are no longer available or recoverable from that moment on.

4.4 To retain their data on the Website, the User can use the "Library" service. This service allows Data to be classified in folders that the User can customise. It is limited by the size of the storage space that the User holds on the Website, as well as by the duration of the package that the User has subscribed to. In case of non-renewal of a storage space in the "Library" within the specified time and after notification to the User from the Website, the Data are deleted automatically and are no longer available or recoverable from that moment on.

4.5 To store User Data, Eclair has a storage contract with a host selected for the reliability and performance of its services. However, Eclair can in no case be held responsible in case of loss of or damage to User Data which is attributable to this host.

4.6 During the process of sending Data to a third party, the Website creates a link which is included in the email sent by the Website to the Recipient. This link is active for a limited period of time specified

on the Website and expires automatically. After expiry of the period of availability the Recipient can no longer access the link.

The period of availability of the Data varies according to the User's choice. The Service is considered to have been executed once the availability of the Data has been notified to the Recipient in order for it to be downloaded. The fact that the Recipient does not download the Data does not detract from the proper execution of the Service.

In the case where Data would have been erased from the Website by Eclair, either because the period of availability in the Desk area has expired, or because the User has not renewed his/her Library service, but the period of availability of a link exceeds the date of erasure, then Eclair guarantees that the link for the Recipient of the Data will remain active up to the date of expiry of the link.

4.7 The User hereby acknowledges and agrees that he/she shall (i) accept cookies in order for the services to be available and functional, (ii) retain a copy of all Data transmitted to the Website, and (iii) verify that the Data are free from Trojan horses, malware, logic bombs, malicious or unlawful computer code.

## **5. Price, payment and orders**

5.1 The prices indicated in the Website are in euros and do not include taxes. Eclair reserves the right to modify its prices at any time. Price changes are only applicable to future orders. Prices are valid as long as they are displayed on the website.

5.2 In return for the use of the Services, the Registered User pays by electronic means the amounts which appear at the end of the order on the Website, by payment card or via the payment operators that are partners of the Website. Until the form of payment has been validated and the payment has been accepted by the operator bank, the order cannot be considered to have been accepted. If the payment is accepted by the operator bank but is then subject to subsequent rejection (opposition, lack of funds, fraudulent use, etc.), Eclair shall be entitled to cancel the order without any formality or compensation.

## **6. Intellectual property**

6.1 Guarantee and indemnity: the User expressly guarantees to Eclair that he/she holds the rights in particular relating to the Data to allow execution of the Services. As such, the User holds Eclair harmless regarding any difficulties, claims, recourse or actions that could be formulated in any capacity, in the course of execution of the Services, by any natural and/or legal persons, including third parties, who deem to have any right to do so. The User holds Eclair harmless from all direct and indirect consequences, including the legal fees from such claims or actions.

6.2 Licence: the User grants Eclair, which accepts, a licence to the Data in order to enable it to perform the technical services provided for in these GCSU and in particular encoding, transcoding, storage and provision of Data in favour of the Recipients. These GCSU do not provide any other licence or transfer of rights over the Data to Eclair.

6.3 Guarantee and indemnity: Eclair expressly guarantees to the User that it holds all necessary Intellectual Property rights relating to the Website in order to allow execution of the Services. As such, the User holds Eclair harmless regarding any difficulties, claims, recourse or actions that could be formulated in any capacity, on the occasion of the execution of the Services, by any natural and/or legal persons, including third parties, who deem to have any right to do so. Eclair holds the User harmless regarding all direct or indirect consequences, including the legal fees from such claims or

actions. This guarantee does not apply if these actions were caused, directly or indirectly, as a result of a breach of the GCSU by the User.

6.4 In the case referred to by the article immediately above, Eclair may, at its sole discretion: (i) provide the User with the right to continue to use the Website free of charge, or (ii) replace or modify the Website so that it no longer infringes the rights of third parties, or (iii) terminate these GCSU and refund the amounts paid by the User for Services which have not been rendered.

6.5 These GCSU do not entail any licence or transfer of Intellectual Property rights of the Website in favour of the User other than the right to use it temporarily and non-exclusively in accordance with these GCSU.

6.6 In the context of the guarantees and compensation provided for by this clause, in the event of a complaint or action in violation or infringement by a third party, the Party concerned undertakes to (i) notify the other Party without delay of the existence of such claim or action, (ii) allow the other Party to direct any defence and negotiation, (iii) provide the other Party with all cooperation, assistance and information reasonably necessary for the defence or the action, and (iv) not to compromise or negotiate, without having previously obtained the written agreement of the other Party.

## **7. Warranty and limitation of liability**

7.1 Eclair does not guarantee that the Website will operate without interruption, error or security breaches. The User accepts this limitation of liability and accordingly shall avoid transmitting to the Website sensitive or confidential Data, the publication of which would cause damage to him/her. In the event of a failure of the Website or the Services, the User has the sole and exclusive recourse of asking Eclair to remedy the defect and Eclair is obliged to remedy it as soon as possible. Eclair disclaims any additional guarantees of any kind, whether express or implied.

7.2 The User acknowledges that he/she uses the Services under his/her full and sole responsibility and that Eclair is not responsible, in particular in the following cases: the time allocated for the User to upload Data to the Website, the completeness and the quality of the User Data, the time limit for the Recipient to carry out the operations suggested by the Site and their omissions and actions in general.

7.3 In no event is Eclair liable for any damages of any kind caused to the User or to third parties, including the Recipients, that constitute lost profits, interruption of business, loss of information or any other financial loss arising out of the use of or inability to use the Website, even when the User was informed of the possibility of such damages. Eclair's liability towards the User, in the context of these GCSU, shall be limited in all cases to direct damages and shall not in any case exceed the amounts paid by the User in the twelve (12) months preceding the complaint. The User acknowledges that the guaranties and limitations of liability set forth above form a reasonable allocation of risk and responsibilities between the Parties given the context and the financial conditions governing the provision of the service. The User acknowledges that Eclair would not enter into these GCSU without the limitations of liability and of guarantee established within them.

7.4 The indemnification provided for by the article immediately above is not due if the complaint or the action is the result of (i) use of the Website not in compliance with these GCSU or with the related documentation, or (ii) because of the combination of the Website with products or services not

authorised by Eclair. In each of these cases, Eclair has no responsibility with respect to the User and third parties.

## **8. Restrictions**

8.1 In addition to the guarantee relating to Intellectual Property of Data, the User agrees not to use the Website to violate these GCSU, to commit, promote, make possible, or facilitate crimes, offences or violations of the laws and regulations in France or in the countries to which the Data are destined, or to facilitate or promote third parties to accomplish such actions.

8.2 The User acknowledges and agrees that he/she may not use the Services to (i) impair the right to image, privacy, honour and consideration of a third party, (ii) justify terrorism or crimes against humanity, (iii) incite hatred, violence, unlawful discrimination, consumption of substances classified as narcotic drugs, (iv) carry out harassment, (v) store or transmit pornographic content or content related to voluntary infringements of the integrity of persons, (vi) store or transmit content relating to gambling, (vii) impair systems for the automated processing of data or the secrecy of correspondence, (viii) send "spam", messages, prospecting or solicitation, of any kind, commercial or otherwise, which are prohibited by the act on data processing and individual liberties, (ix) spread false or misleading information.

8.3 The User acknowledges and agrees that (i) he/she is prohibited from using the Services outside of the interfaces of the Website, including via scripting and (ii) that he/she cannot (attempt) to access areas of the Website to which he/she does not have reserved access.

8.4 The user is informed that each time that the law or regulations require it, Eclair shall comply with its obligation to promptly inform the competent public authorities of all illegal activities that have been reported to it. Any person may report prohibited behaviour or unlawful activity to the address: [contact@eclairsend.com](mailto:contact@eclairsend.com).

8.5 The Registered User agrees to be regarded as jointly responsible for the actions and omissions of a Guest User to whom he/she has given access to his/her account.

## **9. Modification or termination of the Services**

At any time Eclair may modify, restrict or terminate the Services without compensation of any kind whatsoever for the Users. Orders placed shall however be executed.

Eclair shall also be entitled to terminate immediately and without notice all Services to a User who does not comply with these GCSU.

In the event of termination, all rights and licences will stop automatically and Eclair can terminate the account and use of the Website and delete or remove the Data from the Website.

## **10. Miscellaneous**

**10.1 Capacity:** each Party declares and guarantees to the other Party that it has the legal capacity to be bound by and execute these GCSUs.

**10.2 Force Majeure:** A Party may not be held liable for non-performance (with the exception of payment of a sum of money) if it is caused by a Force Majeure event and is not the result of a fault of said Party. The Parties undertake to provide reasonable efforts to limit the effects of a Force Majeure event. If the Force Majeure event has effect for more than 90 days, each Party has the right to terminate the Services with immediate effect.

**10.3 Invalidity and severability:** If one or several provisions of these GCSU were or became void, these GCSU would not be affected and would continue to be effective without that/those provision(s).

**10.4 Non-waiver:** The fact that a Party does not execute the rights that are conferred upon it by these GCSU shall not be considered a waiver of those rights nor shall it be considered to prevent their exercise at any time.

**10.5 Non-assignability:** the rights and obligations of these GCSU are deemed to be non-assignable and non-transferable, in whole or in part, without the permission of the Parties concerned except that they may be transferred in their entirety by a Party (i) to any of its Subsidiaries, (ii) to an entity that it merges with, or (iii) to an entity to which it transfers all or a substantial part of its assets.

**10.6 Applicable law:** The GCSU are governed by French law without regard to any conflicts of law.

**10.7 Jurisdiction:** All disputes on the interpretation or execution of these GCSU are of the exclusive competence of the commercial court of Nanterre.

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