

## GENERAL TERMS OF SERVICE

## NETCLOUD A/S

**1. Preamble**

1.1 These General Terms of Service (the "Terms") specify the terms applying to the Customer's use of NetCloud's and its sub-suppliers' software, including without limitation Echo, as well as any other services, *e.g.*, Professional Services, and/or products offered to the Customer (hereinafter collectively referred to as the "Services"), unless otherwise agreed in writing in the Order Form.

1.2 These Terms are divided into two parts, Part I, containing generally applicable terms, and Part II, specific terms for Professional Services.

**PART I: GENERAL TERMS****2. Effective date and duration**

2.1 The Customer's use right to the Services commences on the effective date, cf. the Order Form, and continues until the Agreement is terminated by a party, cf. Clause 19.

**3. Customer's right of use**

3.1 In return for Customer's payment of the subscription fees NetCloud hereby grants the Customer a right to use the Services including the related online documentation and tools hosted by NetCloud. The right of use is granted solely to the Customer, who may use the Services for its own internal business processes, only. The Customer may not transfer the right of use or in other ways grant any third-party access to the Services.

3.2 The number of devices comprised by the license is specified in the Order Form.

**4. Services, maintenance and service levels**

4.1 The current Services description, maintenance description and service levels are found at

[www.netcloud.dk/generalterms](http://www.netcloud.dk/generalterms) and are incorporated herein by way of reference. The Services, maintenance and the service levels may be changed by NetCloud, provided that neither the Services nor the service levels may be materially deteriorated. If the Customer document that such changes render the Services more or less useless for the Customer, the Customer may either 1) claim a reasonable proportionate reduction in the subscription fees, or 2) terminate the Agreement by notice and reclaim any prepaid fees. The Customer has no other remedies in respect of the changes.

4.2 If, in the reasonable opinion of NetCloud, any planned changes will affect the Customer's use of the Services negatively or if such changes necessitate changes to the Customer's systems, configuration or setup, NetCloud will inform the Customer of the planned changes and their consequences as soon as possible and well before the changes are implemented. If, however, the need for changes is caused by imminent or actual security threats or critical errors in the Services which may cause security issues, NetCloud shall be entitled to perform such changes without notice and inform the Customer afterwards.

**5. Availability of Services**

5.1 NetCloud aims at an uptime of more than 99% within the primary performance period but does not warrant any specific availability.

**6. Prices and payment terms**

6.1 Prices and payment terms are stated in the Order Form.

6.2 The Customer may not withhold or "setoff" any amounts due under this Agreement. In case of late payment, NetCloud is entitled to claim interest payments from the due date of 1.5% per month and claim applicable dunning fees in accordance with applicable law.

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- 6.3 If any payment or part thereof has not been settled by the due date, NetCloud is entitled to suspend the Customer's and its users' access to the Services, until the payment in full, *i.e.*, including interest and dunning fees, as applicable, has been received by NetCloud.
- 6.4 Notwithstanding the foregoing, NetCloud will always remind the Customer of its missing payment and grant a grace period of 14 days before suspending the Services.
- 7. Customer Data**
- 7.1 The Customer owns its data processed by the Services (the "Customer Data").
- 8. Customer's Personal Data**
- 8.1 NetCloud will process personal data (as defined in the GDPR) in accordance with a separate data processing agreement, cf. the Order Form, only.
- 9. The Customer's obligations**
- 9.1 The Customer warrants that the Services are used for legal purposes of the Customer, only, and always within the terms of the Agreement.
- 9.2 The Customer accepts that NetCloud is entitled to update software installed on the Customers equipment and to perform anonymized statistical analysis of access to and use of the system for the purpose of measuring the effectiveness of the system, optimizing performance and ensuring compliance with this Agreement.
- 9.3 The Customer is obliged to keep secret any usernames and passwords which the Customer uses to access the Services. The Customer shall be liable for any abuse of said usernames and passwords irrespective of whether the abuse is being committed by the Customer's own employees or any third party having acquired the Customer's usernames and passwords without this
- 9.4 The Customer shall on its own account assist NetCloud to a reasonable extent when, in NetCloud's opinion, this is required for NetCloud to be able to deliver the Services, including without limitation making prompt decisions, providing relevant information and consents, and assist with staff, materials, rooms and other facilities.
- 9.5 The Customer is obliged to perform continuous control of the Services. If the Customer detects any defects in the Services, the Customer shall immediately lodge a written complaint to NetCloud. The complaint shall comprise a sufficient description of the circumstances forming the basis of the complaint, the importance of the circumstances to the Customer and, if the Customer reserves the right to cancel the Agreement, specific indication of this. If complaints are not lodged in due time or do not contain the information stated above, the Customer shall lose its right to invoke the defects in question and the right of cancellation of the Agreement.
- 10. Changes in the Customer's System**
- 10.1 If, without prior agreement with NetCloud, the Customer makes changes to its systems which may affect the Services, the agreed service levels shall automatically be suspended until such time that the Customer demonstrates that the changes have been rolled back and any effect on the Services has been negated. NetCloud shall, subject to payment against payment of a separate fee for any additional work, be obliged to work loyally for operations being continued as agreed. NetCloud is, however, entitled to require

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exemption from the agreed service objectives as from the time of the change and/or require increase in the hosting fee taking effect from the same time and/or require the hosting fee to be increased from the same time if the changes result in additional work for NetCloud.

**11. Confidentiality**

11.1 The parties shall treat all matters regarding the other party which are not in the public domain with confidentiality.

11.2 NetCloud may enter the Customer on its list of references but is not otherwise entitled to use the Customer's name for marketing purposes without the Customer's prior acceptance.

**12. Supplementary terms of use**

12.1 The Customer shall and its users must observe the supplementary terms of use for the Services, which are available at [www.netcloud.dk/generalterms](http://www.netcloud.dk/generalterms) and are incorporated herein by way of reference.

**13. Intellectual property rights**

13.1 NetCloud and/or its suppliers own all rights to the system, including copyrights, trademark rights and other intellectual property rights. The Customer must not crack or attempt to crack passwords, remove installed barriers on functionalities or exceed the number of users.

13.2 The Customer does not acquire any intellectual property rights to the system or other services delivered including consultancy services.

**14. Third party rights**

14.1 If a third party makes a claim against the Customer that any part of the Services infringes any patent, copyright

or other intellectual property right (hereafter "Claim"), NetCloud will defend the Customer against the Claim and pay all costs, damages and expenses - including reasonable attorney's fees; provided that: (i) the Customer notifies NetCloud in writing no later than ten (10) days after the Customer has become aware of a Claim or a potential Claim; (ii) NetCloud may assume sole control of the legal handling of the Claim and all related actions and negotiations (provided that NetCloud shall not settle without the approval of Customer, if such settlement will have a material adverse impact on Customer); and (iii) the Customer – at its own cost - provide NetCloud with the assistance, information and authority, which in the reasonable opinion of NetCloud will be necessary to perform NetCloud's obligations under this clause.

14.2 Notwithstanding the above, NetCloud shall have no liability (unless otherwise approved by NetCloud) for (i) any Claim based on the combination of the Services with products or services not provided by NetCloud and (ii) the modification of the Services by any entity other than NetCloud. NetCloud's limitation of liability under this Clause 14.2 shall apply to the extent the Claim and the infringement is a direct result of the circumstances listed in (i)-(ii).

14.3 If, due to a Claim or the threat of a Claim, (i) any part of the Services is held by a court having jurisdiction over the matter, or in NetCloud's reasonable opinion may be held to infringe the rights of a third party by such a court, (ii) the Customer receives a valid court order preventing the Customer from using any part of the Services, or (iii) in NetCloud's reasonable opinion the Customer may receive such an order, NetCloud shall at its own expense (i) obtain for the Customer the right to continue the use of this part of the Services, or (ii) replace or modify the Services to make it non-infringing provided that such modification or replacement will provide the Customer with an equivalent result which only immaterially derogates from the functionality and operability of the relevant part of the Services. If none

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of the above options are available on a basis that NetCloud considers to be commercially reasonable, then NetCloud may - in whole or in part - terminate the Agreement and refund to the Customer the subscription Fee paid by the Customer for the infringing part of the Services, as well as the subscription fee paid for any part of the Services that are rendered unusable for the Customer as a result of such unresolved infringement, upon return or deletion as required by NetCloud of the infringing and the unusable parts of the Software by the Customer to NetCloud. Unless otherwise explicitly stated in this clause any claim due to a Claim or the threat of a Claim - including claims for damages and/or pro rata reduction - are limited to the amount stated in Clause 16.1.

## 15. No warranties

15.1 The Services Platform are made available to the Customer on an "as is" and "as available" basis without any warranties of any kind, and NetCloud expressly disclaims any and all warranties, whether express or implied, including, but not limited to, the implied warranties of merchantability, and fitness for a particular purpose.

## 16. Limitation of liability

16.1 IN NO EVENT SHALL NETCLOUD, ITS OFFICERS, AGENTS, EMPLOYEES, OR SUPPLIERS BE LIABLE TO ANY PERSON OR ENTITY FOR THE LOSS OF PROFITS OR FOR INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES, EVEN IF NETCLOUD OR ITS OFFICERS, AGENTS, EMPLOYEES, OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE AVOIDANCE OF DOUBT LOSS OF DATA AND THE COST OF RESTORATION THEREOF SHALL BE CONSIDERED INDIRECT DAMAGES HEREUNDER. THE TOTAL, CUMULATIVE LIABILITY IN ANY CALENDAR YEAR, INCLUDING WITHOUT LIMITATION FOR DAMAGES, PROPORTIONAL REDUCTIONS, AND INDEMNIFICATIONS, OF NETCLOUD AND ITS SUPPLIERS

SHALL NOT EXCEED THE SUBSCRIPTION FEES PAID BY THE CUSTOMER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT CAUSING THE CLAIM.

16.2 The monetary cap of 12 months subscription fee shall not apply if the damage has been caused by NetCloud's gross negligence or wilful misconduct.

## 17. Force Majeure and other delivery hindrances

17.1 NetCloud is not liable for any damage and loss the Customer may suffer directly or indirectly as a result of NetCloud's delay or hindered performance of its obligations pursuant to this Agreement due to a force majeure situation. A force majeure situation is *e.g.*, war, mobilization, terror attacks, natural disasters, strikes, lockout, fire, import and exportation restrictions, virus, DOS, DDOS attacks or hacking, sickness of key employees, pandemics and epidemics, orders or binding recommendations (as *e.g.*, seen under the Corona pandemic) from public authorities power failure, cut/breakdown in third party telephone connections and other unforeseeable circumstances (collectively "Force Majeure Events") that NetCloud should not reasonably have avoided or prevented. The burden of proof that a Force Majeure Event should have been prevented or avoided lies with the Customer.

17.2 If a force majeure situation has lasted more than 90 days, the Customer is entitled to terminate the Agreement with effect as of the occurrence of the Force majeure Event and claim a refund of any prepayment amounts. The Customer has no other remedies in respect of the changes.

## 18. Assignment

18.1 NetCloud may without consent of customer assign its rights under this Agreement in connection with a merger or a sale of all or substantially all of the assets of NetCloud. NetCloud's use of subcontractors is subject to

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	the terms and conditions set out in this Agreement and does not release NetCloud from its obligations vis-à-vis the Customer.	19.2.1	The Agreement may be terminated by a Party with a written notice of three (3) months to the end of the Initial License Term or the license Term, as applicable.
18.2	Customer may assign its rights and obligations under this Agreement in whole or in part to any company owned by Customer group (meaning Customer and any other entity that, directly or indirectly, controls, is controlled by or is under common control with Customer) provided that such company has the financial capacity to honor the Agreement or in the case of a business transfer of all or a substantial part of its business. For the avoidance of doubt, for the purpose of this Clause 18.2 "Control" means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.	19.2.2	NetCloud may, however, terminate the Agreement by giving a shorter notice provided such termination is due to a sub-supplier's termination of a service that is important for NetCloud's delivery of the Services to the Customer.
		19.3	<b>Breach</b>
		19.3.1	If one of the Parties materially breaches the Agreement and the breach has not been remedied within 30 working days of the receipt of request hereof from the non-breaching party, the non-breaching party is entitled to terminate the Agreement for cause without further notice.
		19.3.2	If the Agreement is terminated by the Customer for breach, the Customer is entitled to receive a refund of any prepaid subscription fees.
<b>19.</b>	<b>Term and Termination of subscription</b>	19.3.3	If the Agreement is terminated by NetCloud, NetCloud is entitled to claim payment of its subscription fees until the end of the Initial License Term or the License Term, as applicable.
19.1	<b>Automatic renewal</b>	<b>20.</b>	<b>Termination assistance</b>
19.1.1	The Initial License Term is stated in the Order Form.	20.1	On expiry of the Agreement, irrespective of the reason, including NetCloud's cancellation or termination, NetCloud shall, according to further agreement and in conformity with good industry practice, be obliged to assist the Customer in transferring the Customer Data to the Customer. It is a prerequisite for NetCloud's obligations in this context that the Customer has paid all fees due. NetCloud's assistance in connection with the transfer is to be settled in accordance with NetCloud's then current list price for consultancy, and NetCloud is entitled to require the Customer to prepay NetCloud's fee or to provide sufficient security for its payment.
19.1.2	Upon the expiration of the Initial License Term and/or any License Renewal Term (as defined below), any licenses will automatically renew (i) for additional terms of one (1) year (each, a "License Renewal Term", and collectively with the Initial License Term, the "License Term"), and (ii) for the number of devices including minimum billable devices applicable immediately prior to the prolongation, and (iii) at the subscription rate applicable before the prolongation (subject to indexation in accordance with the Order Form).		
19.1.3	Except as stated in Clause 19.2 and Clause 19.3, the Agreement is non-terminable.		
19.2	<b>Termination by notice</b>		

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<b>21.</b>	<b>Waiver and variation</b>		Agreement or not) which is not set out in this Agreement.
21.1	No failure or delay by either party in enforcing the provisions of the Agreement shall prejudice or restrict the rights or remedies of that party nor shall any waiver of its rights or remedies operate as a waiver of any subsequent or other breach and (save as otherwise provided in the Agreement) no right or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right or remedy available to that party by law and each such right or remedy shall be cumulative.	<b>25.</b>	<b>Disputes</b>
<b>22.</b>	<b>Severability</b>	25.1	<b>Governing law</b>
22.1	Any provision of the Agreement which is declared unlawful, void or unenforceable by any competent authority or court shall to that extent be deemed to be severed and the other provisions of the Agreement shall continue unaffected.	25.2	This Agreement shall be construed and interpreted pursuant to the laws of Denmark to the exclusion of any rule that would refer the subject matter to another jurisdiction.
<b>23.</b>	<b>Notices</b>	25.3	<b>Negotiation</b>
23.1	Any notice or other communication given under the Agreement shall be in writing and shall be delivered by e-mail for the attention of the relevant party set out in the Agreement.	25.4	Should any disagreement arise between the parties in connection relating to this Agreement, including the validity and interpretation thereof, the parties shall in a co-operative and responsible manner seek to open negotiations for the purpose of resolving the dispute. If necessary, attempts must be made to transfer negotiations to executive level in the parties' respective organisations.
<b>24.</b>	<b>Entire agreement</b>	25.5	<b>Legal and technical issues</b>
24.1	The Agreement and attached or referenced appendices constitute the entire and only agreement and understanding between the parties and supersedes any previous agreement or understanding (whether in either case oral or written) relating to the subject matter of the Agreement.	25.5.1	Any party may invoke the procedure established by the Danish IT-lawyers Association (DITA) whereby the parties may request a non-binding opinion on legal and technical matters from an independent expert. Such procedure is subject to the rules governing it at the time when the complaint is submitted.
24.2	Each party agrees that it shall have no right of action or remedy against the other arising out of or in connection with any statement, representation, warranty or understanding of any person (whether a party to this	25.6	<b>Mediation</b>
		25.6.1	If the parties are unable to negotiate a solution, the dispute must be referred to mediation following the procedure established by the Danish IT-lawyers Association (DITA).
		25.6.2	Each party is obliged to take part in at least one meeting, called by the mediator.

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## 25.7 Arbitration

25.7.1 If the above measures do not resolve the dispute, the dispute must be settled finally by arbitration in accordance with the "Rules of arbitration procedure of Danish Arbitration", modified as below:

25.7.2 Unless the parties agree on following the rules of simplified arbitration, the arbitral tribunal will be appointed by Danish Arbitration in accordance with the "Rules of arbitration procedure of Danish Arbitration". Where the dispute is to be decided by three arbitrators, the claimant may propose an arbitrator in its statement of complaint. The respondent may propose an arbitrator in its statement of defence. The third arbitrator, who will be the chairman of the arbitral tribunal, will be proposed by Danish Arbitration, unless the Parties jointly propose a chairman before the expiry of the time limit for the submission of the respondent's statement of defence. The arbitrators shall be knowledgeable in IT-matters.

25.7.3 The place of arbitration shall be Copenhagen, Denmark, and the language of the arbitration shall be the Danish and the English languages.

25.7.4 The award or decision made by the arbitration tribunal will be final and conclusive and have binding effect upon the Parties to the arbitration and may be enforced in accordance with Danish Law. The costs of the arbitration shall be fixed and paid as specified in the award. The arbitration tribunal will determine the dispute by applying the provisions of this Agreement, the governing law and otherwise as determined by the arbitration tribunal.

25.7.5 By submitting to arbitration, the Parties to the arbitration do not intend to deprive any court of its jurisdiction to issue, at the request of one of the Parties, a pre-arbitral injunction, pre-arbitral attachment, or any order in aid of the arbitration proceedings and the enforcement of any award.

## PART II: SPECIFIC TERMS FOR PROFESSIONAL SERVICES

In addition to PART I, the following shall apply to NetCloud's consultancy services (supplemental terms):

**26. NetCloud's consultancy services**

26.1 NetCloud's consultancy services are described in a separate appendix to the Order Form in which the scope and prices of the supply and the estimated times of delivery are specified.

26.2 Unless the Order Form specifies that NetCloud is to deliver a specific result, NetCloud shall only supply assistance in the form of working hours. In such cases, NetCloud shall be entitled to its remuneration when the working hours have been supplied.

**27. Supply of consultancy services**

27.1 NetCloud's services shall be supplied as specified in the Order Form (including Appendix B).

27.2 All delivery times are estimated and shall not be binding on NetCloud unless they are expressly stated as being "fixed".

27.3 In case of a significant delay which is Primarily caused by NetCloud's conduct, the Customer shall be entitled to terminate the Agreement if NetCloud has not made delivery at the latest 30 (thirty) business days after receipt of the Customer's written complaint of the delay.

27.4 If the Customer chooses to terminate the Agreement, NetCloud shall be obliged to supply the results available at the time of termination, and the Customer shall be obliged to pay for these and to reimburse NetCloud any reasonable outlays.

27.5 If NetCloud is obliged to supply a specific result at a fixed price in accordance with the Agreement and if this is not

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available at the time of the Customer's termination, the provisions of clause 8.4 shall apply. However, the Customer shall be entitled to a reasonable, proportionate reduction of the fixed price agreed upon.

license fees, cf. Clause 16.1 or 12 months consultancy fees, cf. Clause 29.1.

27.6 In case of a delay which is caused by the Customer's conduct, NetCloud shall be entitled to postpone the time of delivery to the extent that NetCloud deems necessary. If NetCloud is unable to occupy resources because of the delay, the Customer shall pay for these resources having been available and at the current hourly rate. However, NetCloud shall loyally seek to occupy these resources through work for a third party, if possible.

**28. Warranties**

28.1 NetCloud's consultancy services shall be produced by NetCloud, including NetCloud's sub-suppliers. To NetCloud's knowledge, these services are not contrary to the rights of any third parties.

28.2 NetCloud's consultancy services shall be performed by qualified staff.

28.3 NetCloud services shall be supplied in accordance with the requirements of the Agreement and shall comply with applicable industry standards among professional providers of similar services.

**29. Limitation of liability**

29.1 For NetCloud's liability, Clause 16 of the Terms shall apply, however, the monetary cap (12 months license fee) shall be replaced by the amount paid for consultancy services during the preceding 12-months period for losses caused exclusively or partly by NetCloud's consultancy services.

29.2 For the avoidance of doubt, with the exception of Clause 16.2, in no event shall NetCloud's total aggregate liability under the Agreement exceed either 12 months