

Terms and Conditions for any.cloud a/s (Revision 13th May 2020)

PART I – GENERAL TERMS

1. APPLICATION OF TERMS AND CONDITIONS

- 1.1 The Terms and Conditions ("Terms") govern all offers, orders, confirmations, sales, services and deliveries from any.cloud A/S (the "Company") to a customer ("Customer").
- 1.2 The Company and Customer shall, at all times, comply with the agreement entered into with the Company ("Customer Agreement") and these Terms.
- 1.3 In case of discrepancies between the Customer Agreement and these Terms, the Customer Agreement shall prevail.

2. THE COMPANY

- 2.1 The Company is certified pursuant to ISO27001 and has received an ISAE3402 Type II statement from an independent auditor regarding compliance with internal control procedures, the contents of the internal control procedure and the functionality in connection with the Company's cloud services.
- 2.2 The Company shall maintain certifications/authorizations containing requirements at least corresponding to those applying to those certifications/authorizations set forth in clause 2.1.

3. SOLUTION

- 3.1 The Company shall deliver such cloud services to the Customer, as designated in the Customer Agreement ("Solution").
- 3.2 The term "Solution" shall not include (i) services which the Company temporarily or permanently provides to the Customer free of charge, (ii) support, installation, changes or configurations unless explicitly described as part of the Solution in the Customer Agreement and (iii) matters, events or circumstances that arise as a matter of or in connection with the Customer's own use and handling of the Solution (including information and data) or the Customer's own use of applications, internet solution and other matters outside of the Solution or the Company's control. Further, the term Solution shall only comprise surveillance of the Solution being available and in function.
- 3.3 All services, which the Customer orders or requires from the Company in addition to the specific Solution pursuant to the Customer Agreement, are additional services for which the Customer shall pay separately ("Additional Services").
- 3.4 If the Customer uses the Solution in excess of or in addition to what has been agreed in the Customer Agreement, the Company shall be entitled to automatically and without notice charge additional payment from the Customer for such use.

4. LIMITATIONS

- 4.1 The Company shall have no liability for matters, events or circumstances outside of the delivery of the Solution. In particular, the Company shall have no liability for matters, events or circumstances that arise as a matter of or in connection with the matters described in clause 3.2, unless such matters, events or circumstances is due to the Company's faults or gross negligence.

- 4.2 The Company's obligation to deliver support is limited to the Solution, provided always that the support is required as a direct consequence of the Customer's use of the Solution. Any support in excess hereof shall be considered an Additional Service. All support is carried out as remote support, unless the Company in its discretion. decides otherwise.
- 4.3 The Solution shall be limited by all such matters, assumptions and qualifications contained in the Company's offer to the Customer, the Customer Agreement and/or these Terms. Reference is in particular made to the limitation of liability set out in clause 15.

5. THIRD PARTY PROVIDERS

- 5.1 The Solution may include, require or be based on products, services or solutions ("Third Party Solution") delivered or performed by other parties than the Company and its affiliates ("Third-Party Providers"), as designated by the Company. The Company may, at its discretion, appoint or change Third Party Providers during the term of the Customer Agreement.
- 5.2 The Company shall be liable for the Third-Party Solution in accordance with and to the same extent as set out in these Terms.
- 5.3 The Customer is obligated to obtain and maintain the most recent version of the Third-Party Solution or such version, as designated by the Company. The Company cannot ensure the quality or contents of the Solution, if this is not complied with by the Customer.
- 5.4 Changes in the terms, contents or functionality of a Third Party Solution may cause changes in the terms, contents or functionality of the Solution, and in such event the Company shall be entitled to change, limit or modify the terms, contents or functionality of the Solution at its discretion. Further, if a Third-Party Provider changes its prices, the Company shall, at its discretion, be entitled to change its price accordingly without notice.

PART II – TECHNICAL TERMS

6. DATA CENTERS AND DATA PROCESSING

- 6.1 Data is stored with data centers elected by the Company. All data centers comply with SOC1, SOC 2, SOC 3, ISO 27001, ISO 27017, ISO 27018, ISO 22301 and ISO 31000, EU model clauses and GDPR legislation or equivalent standards and regulations.
- 6.2 The Customer accepts that all data are transferred to the data centers used by the Company and that the Company has access to the Customer's data.
- 6.3 The Company shall, at all times, comply with applicable data protection or data security laws and legislation, inter alia the General Data Protection Regulation, in relation to all personal data that is processed in the course of performing its obligations under this Agreement.
- 6.4 The Customer shall, upon request from the Company, sign such documents and complete such actions as are necessary in order to fulfil the Company's obligations under applicable data protection or data security laws.
- 6.5 Upon the entering into the Customer Agreement and acceptance of these Terms, the Customer accepts that the Company's data processing agreement ("DPA") shall apply in relation to the Company's processing of personal data on behalf of the Customer. Reference is made to the Company's website <https://www.anycloud.dk/dpa> where the DPA is available.
- 6.6 The Customer's data belong exclusively to the Customer and the Customer may without limitations accordingly freely dispose of the data while using the Solution.

- 6.7 The Customer may in a period of 30 working days after the termination of the Customer Agreement, regardless of the reason for termination, require data to be retrieved. The Company is under no obligation to retrieve Customer data after this time. The Company shall, where reasonably and commercially sound, aim to provide the required data with a period of 30 working days following Customer's request.
- 6.8 The Company reserves the right to keep the Customer's data for a period of 90 days after termination of the agreement, regardless of the reason for termination.
- 6.9 The Company may, in exceptional cases where the Company deems this justifiable and reasonable, for example to avoid loss of value, provide public authorities with access to Customer's data, in connection with a legal obligation, governmental requirements, bankruptcy, death, or the like.

7. AVAILABILITY

7.1 The Solution shall be available 99.9 percent of the time, calculated in accordance with these Terms over the previous invoice period ("Availability Time").

7.2 Availability shall mean:

$$\text{(Availability / (Total time – Planned downtime))} \times 100$$

where

Availability shall mean the total amount of hours in the previous invoice period, where the Solution has been available for the Customer.

Total time shall mean the total amount of hours in the previous invoice period; and

Planned downtime shall mean the number of hours in the previous invoice period, where the Solution has not been available for the Customer due to planned services and maintenance in accordance with clause 8.

7.3 Availability shall not include

- Faults, deviations, delays, changes or similar events on hardware, software, network systems and equipments delivered by a third party and which are out-side of the control of the Company.
- Faults, deviations, delays, changes or similar events in the communication between the Customer and the Company's data center.
- Other matters which are caused by the Customer, Customer's hardware, software, network systems and equipment's, Customer's employees or persons or entities engaged by the Customer ("Customer's IT Environment").

7.4 If the availability in an invoice period is below the Availability Time, the Customer shall be entitled to a compensation of DKK 1,000 per 0.1 percent deviation; however, at maximum DKK 5,000. The compensation shall be deducted in the invoice for the next in-voice period.

8. SERVICE AND MAINTENANCE

8.1 The Company shall, at all times, be entitled to carry out planned service, repair and maintenance of the Solution. All such work is announced at the Website and via email if such is provided to the Company in writing.

8.2 Such planned service, repair and maintenance of the Solution shall be regarded as planned downtime and shall be disregarded when calculating the availability of the Solution.

- 8.3 The Company reserves its right to perform emergency work regarding the Solution. Such emergency work shall be notified to the Customer as soon as practically possible and, to the extent possible, by e-mail to the Company's contact with the Customer. The Company shall, to the extent possible, seek to minimize emergency work and shall aim at carrying out such emergency work in the evening or night hours and/or in the weekend. Emergency work constitutes downtime when calculating the availability of the Solution.
- 8.4 If the Customer wants to change, amend or upgrade the Solution, the Customer shall submit written request to the Company. The Company shall carry out the re-requested change within a period of 10 working days after the receipt of the request, unless the Company, at its discretion, prior hereto notifies the Customer that the requested changes cannot be made. The Customer shall pay for the changed services in accordance with the Company's price list, at all times. The time used by the Company in connection with the change of the Solution, shall be considered extra work and shall be paid separately by the Customer.
- 8.5 The Customer shall, at its own account, assist the Company in connection with all kinds of error tracing and diagnostics upon request from the Company.
- 8.6 The Customer shall keep the Company informed on the technical and administrative contact persons at the Customer and their contact information.
- 8.7 The Company shall commence error tracing as soon as possible after the Company has received information regarding the error in such a manner that, in the reasonable opinion of the Company, enables the Company to identify the nature of the error or the Company becomes aware of an error through the Company's surveillance of the Solution ("Required Information"). The Company shall aim at commencing error tracing within one hour after receipt of Re-quired Information (two hours outside of the Company's normal business hours as determined by the Company). If, in the reasonable opinion of the Company, a material event occurs regarding the Company's infrastructure (and not related to the Customer's IT Environment), the Company shall aim at commencing error tracing within 15 minutes after receipt of Required Information (30 minutes outside of the Company's normal business hours as determined by the Company).

9. RE-ESTABLISHMENT TIME

- 9.1 Re-establishment time means the time, which it takes for the Company to re-establish the Customer's Solution in the event of interruption ("Re-establishment Time").
- 9.2 The Re-establishment Time depends on the Solution, the Customer, the Customer's IT environment and third parties, and therefore the Re-establishment Time depends on the specific circumstances. The Company shall, however, aim at re-establishing data within 3 working days hereinafter. This shall, however, not apply in the event of intentional act of the Customer or a third party or in the event of a matter classed as force majeure in these Terms.

PART III – LEGAL TERMS

10. COMMENCEMENT

- 10.1 The Solution shall be deemed delivered to Customer upon availability for the Customer. The commencement date estimated in the Company's offer or Customer Agreement is the Company's best estimate. If the estimated date is exceeded, the Customer may, by written notice to the Company, demand delivery and set a reasonable deadline for this, which may not be shorter than 3 weeks from the request date. If the Company does not deliver within this extended period, and is not due to any circumstances for which the Customer is responsible or which is otherwise due to matters, events or circumstances outside the control of the Company, the Customer may, by written notification to the Company, cancel the Customer Agreement.
- 10.2 The Customer cannot make claims against the Company as a result of a delay, irrespective of the cause hereto.

11. INVOICING

- 11.1 Unless otherwise is specified in the Company's offer, order confirmations or the Customer Agreement, all prices are in DKK (Danish kroner) and are exclusive of VAT. The Company may, however, request payment in another recognized currency than DKK at its discretion.
- 11.2 The Company reserves the right to make changes to the prices, until the commencement date.
- 11.3 The Customer shall pay for the Solution in the intervals designated in the Customer Agreement. Additional Services are charged separately.
- 11.4 In addition to the price for the Solution, the Customer shall pay any and all fees and costs incurred by the Company in connection with the Company's performances of its duties under the Customer Agreement, including for transportation, fees to Third Party Providers and similar.
- 11.5 The Customer is responsible for and shall incur all costs in connection with the configuration of equipment, IT environment, hardware and software, as well as remedying faults, errors and defects caused by the Customer's own matters, including the Customer's applications of the Solution and the Customer's failure to comply with its obligations under the Customer Agreement and/or these Terms, as Additional Services.

12. PAYMENT TERMS

- 12.1 The Company's payment terms are 14 days net from the invoice date.
- 12.2 When paying after the due date, the Company is entitled to a default interest amounting to 1.5% per month calculated as from the due date. Additionally, the Customer shall pay an administration fee of DKK 100 per reminder which the Company submits to the Customer. The Company submits reminders every 10 days after the due date, and after the third reminder, the debt will be handed over to a third party with the purpose of collecting the debt on behalf of the Company.
- 12.3 Payment with releasing effect can only be made to the Company and in accordance with the information set out in the invoice.
- 12.4 The Customer is not entitled to set off any amount that are not acknowledged in writing by the Company and is not entitled to withhold any part of the fee to be paid for the Solution due to such counterclaims.
- 12.5 In the event of delay with the Customer's payment, the Company is entitled to suspend the Agreement (i.e. that the Customer does not receive the Solution until the Customer has paid). The access to the Solution is reopened within a reasonable time after the Customer has paid all debt to the Company. The Customer is obliged to pay for the Solution during such suspension period.
- 12.6 All prices are adjusted once a year in accordance with the net price index (In Danish: Nettoprisindekset) using the last published index month prior to signing the agreement with a minimum of 3% p.a.
If 'Danmarks Statistik' ceases calculating the net price index, the adjustment shall at the discretion of the Company be made based on a different calculation that reflects the price development.

13. TERM

- 13.1 The Customer Agreement is non-terminable for both parties during the agreed term pursuant to the Customer Agreement ("Minimum Contract Period") and may, at the earliest, be terminated with a written notice of one month to the expiry of the Minimum Contract Period. Unless the Agreement is terminated to the expiry of the Minimum Contract Period, the Minimum Contract Period shall be prolonged with three months at a time.

14. REMEDIES

- 14.1 Fault, errors or defects shall, at the election of the Company, be remedied by way of repairing, replacing or changing the Solution.
- 14.2 Fault, errors or defects shall be remedied as soon as reasonably possible. The Company shall designate the expected remedy time when the Company has received the information from Customer which the Company deems necessary for remedying the fault, error or defect.

15. LIMITATION OF LIABILITY

- 15.1 The Company shall be released from any obligation towards the Customer as a result of any matter, event or circumstance which prevent the performance of the Agreement or render the performance unreasonably burdensome because of force majeure events, such as fire, war, riots and strikes.
- 15.2 In no event can the Company be held liable for any operating loss, loss of profit or other indirect loss or consequential loss, including the costs of establishing or locating defective products or damages.
- 15.3 The Company is not responsible for configuring equipment, hardware and software and shall have no liability for any loss suffered based on a matter, event or circumstance relating hereto.
- 15.4 The Company's liability shall, in all events, except in the case of gross negligence or willful misconduct of the Company, be limited to the amount invoiced to the Customer under the Agreement.
- 15.5 The Company has no liability in relation to loss or damage of data or information, unless this is due to gross negligence or willful misconduct of the Company.
- 15.6 The Company has no liability whatsoever for the contents of the Customer's data and it shall be the sole responsibility of the Customer to ensure compliance with applicable legislation.
- 15.7 In the event that the Company becomes liable towards a third party due to the Customer's actions, performances or data, the Customer is obligated to immediately and without limitations indemnify the Company for its loss, including all relating costs.
- 15.8 The Company shall in no case be liable for Customer's use, application or amendment of the Solution, including the use by employees of the Solution, application, internet solutions, functionality and other matters outside of the Solution or the Company's control.
- 15.9 With respect to damages on persons or goods as a result of deficiencies, errors or faults of the Solution (product liability, the Company is solely responsible to the extent that the responsibility follows from mandatory statutory rules. The Company shall not be responsible for damages on goods for commercial use. The limitations set out in this clause 15 shall, to the extent possible, apply to product liability.

16. CONFIDENTIALITY

- 16.1 Any and all information, irrespective of form, provided by the Company to the Customer in connection with the Customer Agreement ("Information") is confidential and may not be copied, disclosed, reproduced or transmitted to third party without the Company's written consent.
- 16.2 Any and all Information is the sole property of the Company and upon termination of the Customer Agreement, such information shall be returned to the Company. Under no circumstances may such Information be used for any other purpose than as set out in the Customer Agreement and these Terms.

17. BREACH

- 17.1 In the event of a material breach of a party's obligation according to the Customer Agreement, including in the event of bankruptcy, liquidation or reconstruction, the other party shall -- be entitled to terminate the Customer Agreement with immediate effect and claim damages pursuant to Danish law. It is specified that any default by the Customer with any payment obligation under the Customer Agreement, infringement of the Company's or a third party's intellectual property rights or non-compliance with the confidentiality obligations, shall constitute a material breach of the Customer Agreement.
- 17.2 If the Customer's data contains criminal material, material that infringes the rights of third parties, material that is in violation of applicable law, or material that violates the Company's user policy as set out in clause 18 ("Prohibited Information"), the Company is entitled to abolish, suspend or terminate with immediate effect the Customer Agreement. The Company shall, without limitations, be entitled to disclose any such Prohibited Information in accordance with clause 6.9.
- 17.3 In the event of a breach of the Customer Agreement or these Terms, the Company is entitled to claim damage in accordance with the general rules of Danish law in this respect.

18. THE COMPANY'S USER POLICY

- 18.1 The Solution may not, in whole or in part, be used for
- i) violating applicable laws, rules and guidelines, including, in particular, any criminal act or copyright act,
 - ii) violating the Company's user policy on the networks, services or servers reached by using the Solution,
 - iii) violating the privacy of other,
 - iv) violating the rules regarding submission of marketing material,
 - v) unauthorized use of machines and networks,
 - vi) attempts to compromise sites and servers,
 - vii) falsify information or user identification
 - viii) distribute malicious programs to networks or machines,
 - ix) monitor or scan networks without permission from the owner or user,
 - x) destroy, limit or interfere with internet communication,
 - xi) obtaining access to third party information,
 - xii) perform any kind of network monitoring in order to obtain data not intended for the Customer,
 - xiii) circumvention of user authentication or security on any host or network,
 - xiv) any program / script / command or send messages of any kind designed to destroy or interfere with machines, servers and networks - both locally or via the internet,
 - xv) send unsolicited bulk email,
 - xvi) maintain and operate an open mail relay or drive a honeypot,
 - xvii) collect email addresses from the internet to send unsolicited bulk email,
 - xviii) send or receive copyright infringing or illegal material,
 - xix) store illegal material on servers, machines, equipment, etc. located on or associated with the Company's network,
 - xx) state false or incorrect data on sign-up forms or
 - xxi) any other act which serves the same purpose or are consistent with the actions referred to above

or otherwise considered by the Company to be an attempt to circumvent the user policy.

- 18.2 A party shall immediately contact the other party, if it becomes aware of any matter that is or might be in violation of the Company's user policy.

19. AMENDMENTS

- 19.1 The Company may make non-material amendments to these Terms without notice.
- 19.2 Material changes to these Terms can only be made by the Company with 3 months' notice to the first of a month, provided the Customer receives written notification of the changes.

19.3 Reference is made to the Company's website <https://www.anycloud.dk> where the applicable Terms are available.

20. LAW AND VENUE

20.1 Any dispute between the Company and the Customer in connection with the Customer Agreement or these Terms, shall (except for provisions relating to choice of law) be governed by Danish law and shall be settled by the ordinary Danish courts at the Company's jurisdiction. The Company is, however, entitled to require that a dispute shall be settled by arbitration pursuant to the rules of the Danish Arbitration Institute.