

CLEURA TERMS OF SERVICE – PUBLIC CLOUD

1. BACKGROUND

- 1.1 These Terms of Service apply between Cleura AB, reg. no. 556630-7806 (“**Cleura**”) and the customer (“**Customer**”) in regard of Cleura’s performance of the Public Cloud Services to be provided by Cleura in accordance with the Parties’ agreement. If you are accepting on behalf of Customer, you represent and warrant that (i) you have full legal authority to bind Customer to the Agreement; (ii) you have read and understand the Agreement; and (iii) you agree, on behalf of Customer, to the Agreement.
- 1.2 If Customer has [registered online](#) to use the Public Cloud Services without signing a contract with Cleura drafted specifically for Customer, then the agreement between Customer and Cleura for the Public Cloud Services is comprised of these Terms of Service and the Data Processing Agreement for Public Cloud (jointly the “**Agreement**”). If Customer and Cleura have entered into a Master Service Agreement applicable for the Public Cloud Services, then what constitutes the “**Agreement**” shall be determined under the Master Service Agreement. For clarity, a reseller of the Public Cloud Services may in its agreement with its customer refer to terms in line with these Terms of Service.
- 1.3 These Terms of Service shall take precedence over an applicable Data Processing Agreement for Public Cloud except, and subject to any limitation of liability agreed in the Agreement, in matters relating to data protection and the processing of personal data.
- 1.4 **By using or continuing to use a service, Customer accepts and consent to the rights, obligations and practices described in these Terms of Service.**
- 1.5 The term “**Public Cloud Services**” means Cleura Public Cloud services and associated services provided by Cleura in accordance with and specified in their respective service descriptions as updated from time to time.
- 1.6 The term “**Services**” used in these Terms of Service shall mean the Public Cloud Services.
- 1.7 Cleura and Customer are hereinafter each referred to as a “**Party**” and jointly as the “**Parties**”.

2. PERFORMANCE OF THE SERVICES

- 2.1 Cleura undertakes to provide the Services in accordance with these Terms of Service. The Services shall be provided with care and in a professional manner. Cleura undertakes to

promote and strive for an open and well-functioning collaboration with Customer.

- 2.2 The Services shall, to the extent commercially reasonable be based on generally accepted and used standards, processes, technologies and applications. Where proprietary software is used by Cleura, it shall be used in a professional manner.
- 2.3 The Services may be subject to a service level agreement (“**SLA**”) as updated from time to time on Cleura’s website. The SLA is part of the service description of the Services.

3. CHANGES TO THE SERVICES AND AGREEMENT

- 3.1 Cleura may immediately change the Services in favour of Customer, meaning that core functionality of networking, compute and/or storage services set out in the service description are not reduced. Cleura may also immediately change the SLA. Cleura may notify Customer about any changes via regular communication channels for its services.
- 3.2 During Customer’s use of the Services, Cleura may replace Cleura’s software and/or Cleura’s equipment to develop the Services.
- 3.3 Cleura may make changes to these Terms of Service from time to time. Material changes to the Terms of Service will become effective 30 days after the changed Terms of Service are published on Cleura’s website or Customer is otherwise notified (whichever comes first). However, changes required under applicable law will be effective immediately. Customer’s continued use of the Services after a change to the Terms of Service constitutes Customer’s agreement to be bound by the changes.

4. DEACTIVATION OF SERVICES

- 4.1 If Customer’s use of the Services, the Services or Cleura’s performance of the Services to Customer, in Cleura’s reasonable opinion constitute a security risk for Cleura, Customer, or a third party, Cleura may deactivate the Services without prior notification to Customer. Such deactivation will be allowed until the security risk has been remedied. Such deactivation will not constitute a breach of the Agreement. If the Services have been deactivated, Cleura will without undue delay inform Customer of this in writing.
- 4.2 Customer shall provide Cleura correct and complete identification, contact and payment information for Cleura to know its customer, as well

as any other information requested for the purpose of ensuring compliance with internal processes or legal provisions related to anti-money laundering or export restrictions (the “**Details**”), including e.g. Customer’s legal name and registration number, address and billing information. In case of changes Customer shall update the Details without undue delay. At Cleura’s request, Customer shall within five working days provide documentation which verifies the correctness and completeness of the Details. If Cleura assesses, in its sole discretion, that it cannot sufficiently verify the correctness and completeness of the Details, Cleura may deactivate the Services on written notice to Customer. Such deactivation will be allowed until Cleura assesses the Details are correct and complete. Such deactivation will not constitute a breach of the Agreement.

5. OBLIGATIONS OF CUSTOMER

- 5.1 Customer shall pay the agreed compensation for the Services in accordance with the applicable price list available on Cleura’s website.
- 5.2 Customer undertakes to promote and strive for an open and well-functioning collaboration with Cleura. Customer declares that it agrees to exchange information by e-mail and that it will always provide a current and monitored e-mail address. Customer is aware that essential information regarding the Services, such as access data and information on modifications to the Services is only sent to the e-mail address provided to Cleura.
- 5.3 Customer shall ensure, on its own or by purchasing backup services if available, that relevant data is backed up at adequate intervals and in a suitable form so that it can be recovered. For the avoidance of doubt, unless Customer has purchased applicable backup services, Cleura has no obligation to back up Customer’s data, nor any obligation to recover Customer’s data. For the avoidance of doubt, a disaster recovery is not considered a long-term backup solution or a redundant configuration of Customer’s environment.
- 5.4 Customer is solely responsible for retrieving the data it needs upon the termination of the Agreement, regardless of reason.
- 5.5 Furthermore, Customer is solely obligated to protect its operating systems and other applications it manages against misuse and to keep them free from malware (e.g., by importing up-to-date security patches, using anti-virus scanners, and an appropriate configuration of the virtual firewall).
- 5.6 Customer is solely responsible for the use of the resources provided to it, and for its capacity management in the Cleura Cloud Management Panel (CCMP) or via application program interfaces

(APIs). Customer will take sole responsibility for ordering, executing and requesting any necessary capacity expansions or reductions.

- 5.7 Customer shall ensure it has and maintains all necessary rights and licenses for the use of the Services to the extent such rights or licenses have not been provided by Cleura in accordance with this Agreement, or another written agreement between the Parties. This applies in particular to software and other intellectual property rights not included in the Services, and to the intellectual property rights (including but not limited to software) held by or licensed to Customer, including their upgrades or updates.
- 5.8 Customer warrants that it will only store and make available content that is in compliance with applicable laws or may otherwise be considered appropriate (including but not limited to content that may constitute infringement of third-party rights or defamation). Cleura may terminate or suspend the Agreement, or suspend the Services, if Cleura determines, in its sole and absolute discretion, that certain use or content does not conform with the requirements set forth in the Agreement, conflicts with Cleura’s code of conduct or interferes with Cleura’s ability to provide services to its customers. If Cleura assesses there is sufficient time before taking action, Cleura shall contact Customer and direct Customer to address the use or content at issue.
- 5.9 Customer shall be responsible for ensuring compliance with all applicable legal provisions, laws, regulations, and industry-specific conditions that are relevant and applicable to Customer in connection with the use of the Services. This includes that Customer has assessed that the Services provide an appropriate level of cybersecurity and resilience under EU and national laws in relation to Customer’s use of the Services.

6. MAINTENANCE OF THE SERVICES

- 6.1 Cleura may perform up to two (2) pre-announced maintenance windows per year and per region. The time and date of such maintenance windows shall be notified to Customer no less than fourteen (14) days in advance via Cleura Status Page. Each maintenance window will primarily be managed weekdays during 08-17 CET/CEST. Customer is responsible to configure and setup its environment in a redundant and effective manner to minimise the impact of Cleura’s service windows.
- 6.2 Changes may at any time be made to:
 - Change and rebuild firewalls,
 - Rebuild and/or expand storage clusters,
 - Perform preventive measures for on-going vulnerability or non-compliance impacting activities external to Cleura,

- Add new services.

6.3 Notwithstanding any other provision in the Agreement, Cleura may always perform urgent maintenance whenever Cleura deems this necessary for the continued provision of the Services or if required to meet requests by the authorities and/or any legal requirements. Cleura shall inform Customer of such urgent maintenance or service as soon as reasonably possible. Customer is aware of and accepts that urgent maintenance may affect the functions of and access to the Services.

7. AUDITS

Customer may not perform audits related to the Services, except as allowed for under the Data Processing Agreement.

8. TERM AND TERMINATION

- 8.1 The Agreement enters into force when Customer has started to use or continues to use the Services, or has performed its first payment obligation (whichever comes first). The Agreement ceases to be valid if Customer ceases to provide payment under the Agreement for the Services.
- 8.2 Each Party may terminate the Agreement immediately if:
- (a) the other Party is declared bankrupt, enters into negotiations for arrangement with its creditors, or can otherwise be assumed to be insolvent, or
 - (b) either Party materially breaches its obligations under the Agreement or if a Party has repeatedly been negligent in carrying out its obligations under the Agreement, and has not taken effective remedies within thirty (30) days of written request.
- 8.3 Termination in accordance with 8.2 must be made in writing in order to be valid.
- 8.4 Cleura may terminate the Agreement immediately on written notice if Cleura reasonably believes that continued provision of the Services to Customer would violate applicable law, or that Customer has violated or caused Cleura to violate any anti-bribery laws or export control laws.
- 8.5 Without prejudice to grounds for termination elsewhere in the Agreement, Cleura may terminate the Agreement, or part thereof, for convenience by giving one hundred and eighty (180) days' written notice.

9. CONSEQUENCES OF TERMINATION

- 9.1 When the Services are deactivated, for no matter what reason, except those stated in section 4 of

these Terms of Service, all Customer data will be irrevocably deleted. However, if the Services have been deactivated for more than 30 days for reasons stated in section 4 of these Terms of Service, and unless Customer and Cleura have agreed otherwise during the deactivation period, Cleura may terminate the Agreement and all Customer data may be irrevocably deleted.

- 9.2 For the avoidance of doubt, it is Customer's sole responsibility to download its data before access to the Services is deactivated. Customer may request professional services during the termination period for downloading or backing up of Customer's data. Such assistance should be reimbursed in accordance with the price list applicable at the time. For avoidance of doubt, Cleura is not obligated to provide such services, which are subject to availability at any given time.

10. COMPENSATION FOR THE SERVICES

- 10.1 Customer shall pay Cleura for the Services in accordance with the prices specified for the Services on Cleura's web site.
- 10.2 Invoicing takes place monthly in arrears with a thirty (30) day payment period from the date of invoice. All fees and prices are stated exclusive of VAT. The date of invoice will be the last calendar day of each month. Customer can use the services until hours 23:59:59 of the day.
- 10.3 In the event of late payment, Cleura is entitled to late payment interest in accordance with the Swedish Interest Act (1975:635) from the due date until full payment is made. If reminders are sent to Customer, fees may be charged with the amount specified in the Act (1981:739) on Compensation for Debt Collection Costs, etc.
- 10.4 If Customer's payment is delayed more than ten (10) days after receiving a written reminder, or if the payment is delayed more than thirty (30) days after the due date, Cleura may suspend Customer's access to and use of the Services until full payment has been made. Customer is not entitled to any remedy or damages for breach of contract or loss that is directly or indirectly attributable to such suspension. Cleura may take additional remedies in accordance with the Agreement, including termination for breach of contract.

11. NOTICES

- 11.1 Termination of the Agreement or other notices to be submitted in accordance with the Agreement shall be made in writing and by courier, registered letter or email to the address provided by the other Party, or as later updated by the Parties. Cleura may always send notices to an email address indicated in a Customer use account. A notice shall be deemed to have reached the other Party:

- (i) if the notice was delivered by courier,
- (ii) if the notice was sent by registered letter; five (5) days after dispatch by post,
- (iii) if the notice was sent by email; twenty -four (24) hours after dispatch by email.

12. PERSONAL DATA

- 12.1 Each Party undertakes to, in accordance with applicable legislation, inform its employees and other representatives that their personal data may be processed as a result of the services.
- 12.2 Customer may share or otherwise transfer personal data to Cleura in connection with the use of the Services only if Customer ensures it complies with applicable legislation, including on ePrivacy and data protection. If Customer nevertheless shares or otherwise transfers personal data in connection with the use of the Services without ensuring compliance with applicable legislation, Customer is solely responsible for any costs, damages or penalty fees that may be imposed on either Party in connection with this.
- 12.3 Customer acknowledges and accepts that it shall be responsible for verifying whether the data processed by it in connection with the use of the Services is personal data and whether processing of this personal data is compliant with applicable legislation.
- 12.4 If Cleura shall process personal data on behalf of Customer as a result of the Services, thus acting as a data processor, the Parties shall enter into a separate data processing agreement in accordance with applicable legislation.

13. LIABILITY

- 13.1 Each Party shall be liable for direct damages which the Party causes the other Party through negligence, subject to the limitations set forth below.
- 13.2 Cleura's liability per calendar year shall, in any event, be limited to twenty-five (25) percent of the annual fee for the agreed Services. The annual fee for the Services shall, in this context, be calculated based on the compensation during the last twelve (12) months for the agreed Services, counted from the time the damage occurred.
- 13.3 Cleura shall not be liable under any circumstances for loss of profit or any other indirect damage or loss. Any obligation to compensate a third party or any loss of data or information incurred by Customer shall constitute indirect damage.
- 13.4 Cleura is only liable for defects attributable to its performance of the Services. Cleura is thus not liable for defects in hardware, products or software

belonging to Customer or any other circumstance for which Cleura is not responsible.

- 13.5 Cleura is not in any event liable for defects caused by Customer, or a third party appointed by Customer. Furthermore, Cleura is not liable for defects caused by Customer modifying the Services without Cleura's approval, or for defects due to Customer using the Services in violation of Cleura's instructions or these Terms of Service.

- 13.6 Customer shall make any claim for damages no later than thirty (30) days after Customer discovered the grounds for the claim, however not later than three (3) months from the date of the termination of the Agreement.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 Customer is granted a royalty-free, non-exclusive, non-transferable and non-sublicensable license, during the term of these Terms of Service, to use the Services and any other material or documentation pertaining to the Services which is provided by Cleura to Customer.
- 14.2 All intellectual property rights, including but not limited to source code, patents, trademarks, designs, or other intellectual property rights developed, written, designed, registered or produced by a Party prior to the effective date of the start of services ("**Existing IPR**") are the sole property of the Party that created the Existing IPR. Nothing in this Agreement is intended to grant any rights to either party, unless specifically set forth herein.
- 14.3 If Cleura under the Agreement will process data, or use, or interact with Customer's soft- or hardware, Cleura is granted a royalty-free, non-exclusive license during the term of the Agreement to process and use such data, software and/or hardware for the purpose of providing the agreed Services. Cleura may solely transfer or sub-license this license to a company within the company group.
- 14.4 Furthermore, Customer is responsible for ensuring that its data or soft- and/or hardware do not infringe on the rights of third parties or in any other way is incompatible with applicable law. Customer shall indemnify and hold Cleura harmless for any claim that arises due to Customer not acting in accordance with this provision.
- 14.5 If a third-party claims that the use of a Party's intellectual property rights, either Existing IPR or other rights, infringes the third party's intellectual property rights, the infringing Party shall indemnify and hold the other Party harmless from any claim (and cost arising therefrom) directed against the other Party in connection therewith. The other Party shall notify the infringing Party of the receipt of claims and, at the request of the Party, entrust to

the Party to defend and/or conduct negotiations on settlement. Provided that the infringing Party takes over the defence and continuously reimburses the other Party for the costs that arise, the other Party shall not, without the infringing Party's written consent, enter into a settlement with the third party.

14.6 Cleura may refer to Customer's name in its marketing and use Customer's trademark for the sole purpose of stating that Cleura provides its Services to Customer, unless the Parties specifically agree otherwise in writing.

14.7 Cleura's use of Customer's name and trademark must comply with any reasonable brand guidelines set forth by Customer.

15. CONFIDENTIALITY

15.1 Each Party undertakes to not without the consent of the other Party disclose to third parties such information about the other Party's activities that may be regarded as a trade or professional secret or information that is covered by confidentiality by law.

15.2 Cleura's prices, models, security information and working methods as well as such other information that either Party has stated to be confidential shall always be regarded as trade or professional secret.

15.3 Customer's data processed within the Services provided by Cleura shall also be considered as trade or professional secret.

15.4 The confidentiality undertaking does not apply to information that is generally known or that the Party can show has become known to the Party in other ways than through breach of the Agreement. Furthermore, the confidentiality undertaking does not apply when a Party is obliged by law, court or a decision by a competent authority or according to binding stock exchange rules to disclose information. If a Party is obliged to disclose information, the other Party shall, to the extent possible, be informed of this before such disclosure takes place in order to be given the opportunity to take appropriate protective measures.

16. FORCE MAJEURE

16.1 If either Party's performance of its obligations is prevented, aggravated or delayed due to force majeure, the other Party may not impose any sanctions for this reason. The term "force majeure" means pandemic, epidemic or other disease outbreak, war, terrorism, rebellion or riot, mobilization or unexpected call-up for military service of similar dimensions, requisition, seizure, currency restrictions, export or import restrictions, general scarcity of merchandise, shortage of transportation, labour dispute, natural disasters, restrictions on fuel and power, fire, defects or

delays in deliveries from sub-contractors due to any of the above, as well as any other circumstance beyond the reasonable control of the Party.

16.2 Notwithstanding the foregoing, shortage of liquidity and/or a distressed financial situation will not in any event be considered a force majeure event with respect to payment obligations under this Agreement.

17. THIRD PARTY SOLUTIONS

17.1 Customer may use certain third party solutions together with the Services, such as third-party applications and services on Cleura Marketplace or which Customer otherwise chooses to install or integrate ("**Third Party Solutions**"). Third Party Solutions are governed by third party terms, such as license agreements, terms of service and data protection terms and notices. Customer's use of Third Party Solutions is solely between Customer and the applicable Third Party Solutions provider, and it is Customer's responsibility to identify and comply with applicable third party terms. Unless otherwise agreed in writing, Customer agrees to assume all risk and liability related to Third Party Solutions, Cleura is not responsible or liable for Third-Party Solutions or the information in Cleura Marketplace, and Cleura may remove or prohibit use of solutions from Cleura Marketplace at any time. Cleura may change its terms relating to Third Party Solutions at any time.

18. MISCELLANEOUS

18.1 The Agreement may not be assigned in whole or in part without the consent of the other Party. However, Cleura may assign all or part of its rights and obligations, or the Agreement, to a company within the same company group as Cleura.

18.2 The Parties confirm that the Agreement represents the entire understanding and constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, agent, employee or representative of either of the Parties.

18.3 The provisions of the following sections herein; Liability, Intellectual Property Rights, Consequences of Termination, Confidentiality, and Governing Law and Jurisdiction, shall continue to apply even after the termination of the terms.

18.4 Cleura may send customer surveys (Net promoter score) to Customer.

19. GOVERNING LAW AND JURISDICTION

- 19.1 Except as follows from the next section, any dispute, controversy or claim arising out of or in connection with the Agreement, or the breach, termination or invalidity thereof shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the “**SCC**”). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the arbitral tribunal shall be composed of one or three arbitrators. The seat of arbitration shall be Stockholm Sweden and the language to be used in the arbitral proceedings shall be English.
- 19.2 If Customer is a Swedish public authority or equated with a public authority under Chapter 2 of the Public Access to Information and Secrecy Act (2 kap. offentlighets- och sekretesslagen), and unless the Parties have agreed otherwise, any dispute, controversy or claim arising out of or in connection with the Agreement, or the breach, termination or invalidity thereof shall be finally settled by the general courts of Sweden, with Stockholm District Court as the court of first instance, and the language to be used in the proceedings shall be Swedish.
- 19.3 The Agreement shall be governed by the substantive laws of Sweden.
- 19.4 The Parties undertake and agree that all arbitral proceedings conducted with reference to the arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not be disclosed to a third party without the prior written consent by the other Party.
- 19.5 However, this requirement for consent does not apply when a Party is obliged by law, court or a decision by a competent authority or according to binding stock exchange rules to disclose information.
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