IBM Multicloud Terms and Conditions

Version 2022-1

IBM Multicloud ("IBM Multicloud") is a software solution, provided as a service over the Internet (Software as a Service, SaaS), consisting of a multi-cloud platform that brings transparency and visibility to the cloud usage and related costs across multi-cloud and application landscapes. IBM Multicloud provides cost transparency and their accurate allocation to organizational context together with multi-cloud cloud search consolidated in one cloud   estate.

IBM Multicloud consists of the following IBM Multicloud components ("IBM Multicloud Components"); 1) IBM Multicloud Accelerator 2) IBM Multicloud Machine Image Toolkit, 3) IBM Multicloud Autopatcher 4) IBM Multicloud Autobackup, and is offered on one of the following support levels ("Support Levels"); 1) Platinum Support 2) Enterprise Support, 3) Premium Support   and   4)   Relaxed   Support.

1.   The Agreement

1.1   These IBM Multicloud Terms and Conditions ("IBM Multicloud Terms and Conditions") together with an accompanying order form, online order or other order for IBM Multicloud ("Order") made by the Customer and accepted by the Provider, constitutes the agreement ("Agreement" or "The Agreement") between the Nordcloud entity or Affiliate of Nordcloud ("Provider") entering into the Agreement and the Customer's entity ("Customer") entering into the Agreement. The Agreement governs the Customer's access to and use of IBM Multicloud and prevails over any other terms and agreements between the Parties for the subject matter of IBM Multicloud.

1.2   These IBM Multicloud Terms and Conditions (including the IBM Multicloud Service Description) are available at the IBM Multicloud Website located at: https://IBM Multicloud.nordcloud.com/terms-conditions/ or any other location as might be designated therein.

1.3   As used in these IBM Multicloud Terms and Conditions "Affiliate" means any company or other entity that directly or indirectly controls, is controlled by, or is under common control with a Party, control being understood as an entity having at least fifty percent (50 %) of the votes in such other entity or is either able to direct its affairs or to appoint a majority of   the   members   of   the   board   of   directors   or   an   equivalent   body.

1.4   Provider and the Customer are also collectively referred to as the "Parties" and individually a   "Party".

2. Authorization & Acceptance

2.1   The Agreement will take effect on the Effective Date and govern the Customers access to and use of IBM Multicloud.

2.2   The Parties agree that despite the Effective Date of the Agreement, the IBM Multicloud services will be provided to the Customer and the Customer will be able to access and use IBM Multicloud 14 days after the Effective Date of the Agreement "Deployment Date",

unless the Parties agree upon another Deployment Date in the Order.

2.2. If an individual is entering into the Agreement for an entity of the Customer, such as the company they work for, the individual represents to the Provider that they have legal authority to bind that entity.

3. Right to use IBM Multicloud

3.1 Provider will latest on the Deployment Date generate the IBM Multicloud accounts ("IBM Multicloud Account"or "IBM Multicloud Accounts") enabling the Customer and End-Users to access and use IBM Multicloud. Such IBM Multicloud Accounts include both administrator accounts and user accounts. The IBM Multicloud Accounts together with the access details shall be set up for the Customer no later than on the Deployment Date.

3.2 Subject to an Order and the Customer's compliance with the Agreement, the Provider hereby grants to the Customer a limited, non-exclusive, non-transferable, non-sublicensable and revocable license to access and use IBM Multicloud services during the Term, limited solely to the IBM Multicloud Components, Support Levels and other IBM Multicloud related services as specified in the Order and detailed in the IBM Multicloud Service Description, starting from the Deployment Date and throughout the Term.

3.3 Except to the extent expressly permitted in these IBM Multicloud Terms and Conditions or required by law on a non-excludable basis, the license granted by the Provider to the Customer is subject to the following prohibitions: (i) the Customer must not transfer or sub-license its right to access and use IBM Multicloud; (ii) the Customer must not permit any unauthorized person to access or use IBM Multicloud; (iii) the Customer must not use IBM Multicloud to provide services to third parties; (iv) the Customer must not republish or redistribute any content or material from the IBM Multicloud and/or the IBM Multicloud platform; (v) the Customer must not make any alteration of the IBM Multicloud and IBM Multicloud platform, except as permitted by these IBM Multicloud Terms and Conditions; and (vi) the Customer must not conduct or request that any other person, company or other entity, conduct any load testing or penetration testing of IBM Multicloud and/or the IBM Multicloud platform without the prior written consent of the Provider; (vi) the Customer must not use IBM Multicloud in any way that causes, or may cause, damage to IBM Multicloud and/or the IBM Multicloud platform or impairment of the availability or accessibility of the IBM Multicloud; (vii) the Customer must not use IBM Multicloud in any way that is unlawful, illegal, fraudulent or harmful or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity, (viii) the Customer must not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the IBM Multicloud;
(ix) the Customer must not modify, translate, or create derivative works based on the IBM Multicloud; (x) the Customer must not remove any proprietary notices or labels of the IBM Multicloud service, (xi) the Customer must not use the IBM Multicloud service for timesharing or service bureau purposes or otherwise for the benefit of a third party.

3.4 The Customer shall use reasonable endeavours, including reasonable security measures relating to the IBM Multicloud Account access details, to ensure that no unauthorized

person gains access to or uses IBM Multicloud using an IBM Multicloud Account or in any other way. The Customer is responsible for all its End-Users and for properly safeguarding all its credentials (such as identifiers, passwords and usernames) related to IBM Multicloud. The Customer remains liable for any use of IBM Multicloud under its credentials regardless of the identity of the user. The Customer must notify the Provider immediately if there is a reason to suspect that any of the credentials have been disclosed to or accessed by an unauthorized third party.

3.5 The Customer is solely responsible, at its own cost and expense, for obtaining and maintaining any and all infrastructure and equipment the Customer needs to properly use IBM Multicloud (including without limitation, supported web browsers, software, systems, applications, devices and data connection), as well as ensuring that all its other software or systems interfacing with IBM Multicloud, if any, are properly configured and interoperable with IBM Multicloud.

4. IBM Multicloud Service Description

4.1 The IBM Multicloud Service Description ("IBM Multicloud Service Description") sets out the main features, scope and functionalities of the IBM Multicloud services including the different IBM Multicloud Components and Service Levels and other IBM Multicloud related services.

4.2 The IBM Multicloud Service Description is available to the Customer at the IBM Multicloud Website ("IBM Multicloud Website") located at: nordcloud.com/ibm-multicloud/service-description/ or any other location designated therein, as it might be amended from time to time. By entering into the Agreement the Customer confirms having familiarized itself with the IBM Multicloud Service Description.

4.3 The Customer will only receive such IBM Multicloud services and the specific IBM Multicloud Components as ordered by the Customer pursuant to the Order. If the Customer during the Term wishes to order additional IBM Multicloud services and IBM Multicloud Components, the Customer shall order the additional IBM Multicloud services and IBM Multicloud Components through a separate Order.

5. Set- Up Services

5.1 The Provider shall provide the Set- Up Services to the Customer as agreed in the Order.

5.2 As used in these IBM Multicloud Terms and Conditions "Set-Up Services" mean services related to the configuration, implementation and integration of IBM Multicloud. The details of what is included in the respective Set-Up Services is described in the IBM Multicloud Service Description.

5.3 The Provider shall use all reasonable endeavours to ensure that all the Set-Up Services are provided latest upon the Service Deployment Date.

5.4 The Customer acknowledges that a delay in the Customer's performance of its obligations in the Agreement may result in a delay in the performance of the Set- Up Services; and the

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Provider shall not be liable to the Customer in respect of any failure to meet the Set-Up Services timetable to the extent that that failure arises due to a delay in the Customer's performing its obligations under the Agreement.

5.5 Any Intellectual Property Rights that may arise out of the performance of the Set-Up Services and the IBM Multicloud services and/or the Customer's upgrades, shall constitute the exclusive property of the Provider.

6. Support Services, Support Levels & Service Availability

6.1 The Provider shall use reasonable endeavours to maintain the availability of IBM Multicloud to the Customer at the access point via public internet but does not guarantee 100% availability of IBM Multicloud. Different levels of availability for various IBM Multicloud Components might apply, detailed information is available in the IBM Multicloud Service Description.

6.2 IBM Multicloud is provided using the service infrastructure and equipment from time to time (such as hardware, software and server capacity) of the Provider or third-party suppliers engaged by the Provider at its discretion ("Service Environment"). The Provider is responsible for setting up and maintaining the Service Environment. The Provider is entitled to make changes to the IBM Multicloud and/or the Service Environment provided that the changes do not have a material adverse effect to the functioning of IBM Multicloud and/or the Service Environment. Such changes may involve changes to software, systems, data connections or other similar components the Provider uses in the provision of providing IBM Multicloud. In the event of a material, detrimental change impacting the Customer, the Customer may terminate the Order at the latest 1 month after the effective date of the change, with no termination costs.

6.3 The Provider will provide support services ("Support Services") to the Customer in relation to the use of, the identification of and the resolution of errors related to IBM Multicloud pursuant to the Support Levels.

6.4 The Support Services are subject to one of the following Support Levels which shall be provided with reasonable skill and care; 1) Platinum Support 2) Enterprise Support, 3) Premium Support and 4) Relaxed Support, each subject to separate fees. The applicable Support Level shall be selected by the Customer in the Order. Detailed information about the scope of the Support Services within each Support Level is available in the IBM Multicloud Service Description.

6.5 The Customer may use the agreed Support Levels, for the purposes of requesting and, where applicable, receiving the Support Services from Provider; and the Customer must not use the support channels instructed by the Provider and not use such channels for any other purpose than receiving Support Services. Detailed information about the support channels is available in the IBM Multicloud Service Description.

6.6 The Customer may also receive Support Services outside of the scope of the agreed Support Level, in such case the Support Services shall be provided to the Customer subject

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to an hourly rate, as defined in the Order.

6.7 The Provider shall (where applicable) respond within the timeframe agreed for the ordered Support Levels respectively perform the requests Support Services ordered by the Customer.

6.8 The Provider may suspend the provision of the Support Services if an amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 10 days written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

7. IBM Multicloud Integrated Services

7.1 The parties acknowledge and agree that the IBM Multicloud platform includes integrated services ("Integrated Services"). The Parties' respective rights and obligations in relation to the Integrated Services and any liabilities of either party arising out of the use of the Integrated Services shall be subject to these Terms and Conditions, and accordingly these Terms and Conditions shall govern any such use, rights, obligations or liabilities.

8. Interruption of the Service

8.1 The Provider may interrupt the IBM Multicloud service provided to the Customer, either entirely or partly, and without incurring any liability whatsoever if: (1) the interruption of the IBM Multicloud service is necessary for repairs, maintenance or other similar actions, including security updates, in which case the Provider will endeavour to notify the Customer of the interruption in advance to the extent reasonably possible; or (ii) Customer fails to pay any part of undisputed IBM Multicloud Fees after having been notified of the failure by the Provider, it being understood that failure to duly pay the IBM Multicloud Fees is also considered as a material breach of the Agreement; or (iii) Customer's actions or omissions relating to the use of IBM Multicloud interfere with or prevent the normal operation of IBM Multicloud or otherwise cause, or are likely to cause, harm, damage or other detrimental effects to IBM Multicloud, the Provider or other users of the service; or (iv) there are reasons to suspect that the Customer's Account information has been wrongfully disclosed to an unauthorized third party and IBM Multicloud is being used under such Account information; or (v) Customer uses IBM Multicloud in breach of the Agreement and has not remedied the breach without delay after having been notified by the Provider, or uses IBM Multicloud in violation of any Applicable Laws, other laws, regulations or regulatory provisions or instructions given by the Provider; or (iv) Customer enters into liquidation, is declared bankrupt or is otherwise deemed insolvent, or a petition is filed for any of the foregoing, or Customer ceases its business.

8.2 As used in these Terms and Conditions "Applicable Law" means the laws governing the Agreement as per section 27 of these Terms and Conditions.

9. Customer Data

9.1 The Customer hereby grants to the Provider a non-exclusive, unlimited, irrevocable, royalty-free, worldwide and perpetual license to use, copy, reproduce, store, distribute, publish, export, adapt, edit and translate Customer Data to the extent reasonably required

for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement and to further develop IBM Multicloud and the algorithms of IBM Multicloud and the Provider. The Customer also grants to the Provider the right to sub-license its rights to its Affiliates, hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in these IBM Multicloud Terms and Conditions.

9.2 As used in these Terms and Conditions "Customer Data" means all data, works and materials: (i) uploaded to or stored on the IBM Multicloud platform by the Customer; (ii) transmitted by the IBM Multicloud platform at the instigation of the Customer; (iii) supplied by the Customer to the Provider for uploading to, transmission by or storage on the IBM Multicloud platform.

9.3 The Customer warrants that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person or company, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law when used by Provider in accordance with the Agreement. Customer agrees to indemnify Provider for any breach of this warranty obligation.

9.4 The Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data. The Provider does not assume any duty or obligation to correct or modify Customer Data.

9.5 The Provider may monitor and collect any anonymous usage and statistical data based on use and maintenance of IBM Multicloud and use such data to develop and improve the IBM Multicloud services and the Provider's business operations.

10. Intellectual Property Rights & Know-how

10.1 Nothing in the Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer or from the Customer to the Provider.

10.2 As used in these IBM Multicloud Terms and Conditions "Intellectual Property Rights" means all Intellectual Property Rights wherever in the world, whether registrable or un-registrable, registered or unregistered, including any application or right of application for such rights and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semiconductor topography rights and rights in designs and materials.

10.3 The Provider is the owner of and retains the sole and exclusive ownership of, and to all Intellectual Property Rights, rights, title and interest in IBM Multicloud and the IBM Multicloud services, including but not limited to all copyrights, trademarks, proprietary rights, software rights and any other intellectual property rights related to IBM Multicloud, the IBM Multicloud services and anything developed or modified by the Provider or its Affiliates and provided to, or accessed by, or used by, or shared with the Customer

including its End-Users.

10.4 For the avoidance of doubt, the Customer has no right to access the IBM Multicloud software source code (including object code, intermediate code and source code) and the IBM Multicloud platform, either during or after the Term.

10.5 The Customer hereby grants to the Provider and its Affiliates a royalty-free, non-exclusive right and license to use the Intellectual Property Rights owned or held by the Customer solely if they are required for the performance of the IBM Multicloud services.

10.6 After the Term, the Customer undertakes to immediately remove and destroy all by the Provider provided log-in details, documentation and all other materials provided by the Provider or its Affiliates to the Customer.

11. Payment and IBM Multicloud Fees

11.1 The Customer shall pay a fee to the Provider for the access and usage of IBM Multicloud ("IBM Multicloud Fee") in accordance with the Agreement and as specified in the Order.

11.2 The Parties agree that the IBM Multicloud Fee is an estimation of the total fee as the IBM Multicloud Fee consist of both fixed fees and variable fees, therefore the IBM Multicloud Fee is an estimation only and subject to changes based on the between the Parties agreed variable fees in the Order.

11.3 Each IBM Multicloud Component, Support Level and other IBM Multicloud services is subject to separate pricing as specified in the Order. Any new or additional IBM Multicloud Components or features shall be agreed through a separate Order and subject to a separate IBM Multicloud Fee.

11.4 IBM Multicloud Fee is charged on a monthly basis. Payment term is 14 days from the date of the invoice. The Customer must pay the IBM Multicloud Fee by bank transfer using such payment details as are notified by the Provider to the Customer from time to time.

11.5 IBM Multicloud Fee is stated in euros (EUR). All amounts stated in or in relation to the Agreement are, unless the context requires otherwise, stated exclusive of any applicable Value Added Taxes, or other applicable Sales Tax, levies, duties or charges imposed by governmental authorities, which will be added to those amounts and payable by the Customer to the Provider.

11.6 The Provider may change the IBM Multicloud Fee at any time, such changes will take effect immediately and will have an impact on the IBM Multicloud Fee for new customers. Provider may change the IBM Multicloud Fee of currently enrolled Customers after the Minimum Term and subject to giving to the Customer not less than 30 days' prior written notice of the change pursuant to these IBM Multicloud Terms and Conditions, should the Customer not accept the changed prices, the Customer has the right to terminate the IBM Multicloud services by providing the Provider at least 30 days' advance notice.

11.7 If the Customer does not pay any amount properly due to the Provider under the Agreement, the Provider may claim interest and statutory compensation from the Customer

pursuant to Applicable Law. Provider has also the right to interrupt the delivery of the IBM Multicloud services subject to these IBM Multicloud Terms and Conditions.

12. Confidentiality

12.1 Each Party undertakes during the Term and indefinitely thereafter to (i) keep each other's Confidential Information strictly confidential; and (ii) not disclose the other Party's Confidential Information to any person, company or other third party without the disclosing Party's prior written consent; and (iii) use the same degree of care to protect the confidentiality of the other Party's Confidential Information as for its on Confidential Information of a similar nature, being at least a reasonable degree of care.

12.2 As used in these Terms and Conditions "Confidential Information" means (i) any information disclosed by either of the Parties during the Term (whether disclosed in writing, orally or otherwise that at the time of disclosure; or (ii) was marked as "confidential"; or (iii) should have been reasonably understood by the receiving Party to be confidential; and (iiii) the Customer Data.

12.3 The receiving Party agrees to keep all Confidential Information of the other Party strictly confidential. The Parties may however disclose each other's Confidential Information to its officers, employees, professional advisers, insurers, agents and subcontractors who are bound by a written agreement or professional obligation to protect the Confidential Information. Each party shall be fully liable for any damages caused by its officers, employees, professional advisers, insurers, agents and subcontractors by disclosing any Confidential   Information.

12.4 The confidentiality obligation imposed in the Agreement do not apply with respect to Confidential Information that: (i) was in the possession of the receiving Party prior to the disclosure and is not subject to any other obligation of confidentiality or; (ii) is or becomes publicly known through no act or default of the receiving Party or; (iii) is obtained from a third party in circumstances where the receiving Party has no reason to believe that there has   been   a   breach   of   an   obligation   of   confidentiality.

12.5 The confidentiality obligations imposed in the Agreement do not apply to the extent that any Confidential Information is required to be disclosed by any Applicable Law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock on any recognized stock exchange.

12.6 Each Party agrees and acknowledges that a breach of the confidentiality obligations will or is likely to cause irreparable harm to the respective Party and that monetary damages alone will be inadequate to remedy a breach of the confidentiality obligations under the Agreement. In case of breach of the confidentiality obligations in the Agreement the breaching Party and/or any of its Affiliates, vendors, suppliers and contractors, shall be entitled to any and from any court or competent jurisdiction relief to protect its interest including but not limited to injunctive relief.

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13. Data protection

13.1 These Terms and Conditions incorporate the IBM Multicloud Data Processing Addendum located at: nordcloud.com/ibm-multicloud/data-processing-addendum ("DPA"), which shall apply when personal data is processed by Provider on behalf of the Customer for the provision of the services in accordance with Agreement. In this context, Provider shall be considered as a data processor to Customer and Customer as a data controller within the meaning of the applicable data protection legislation.

14. Warranties & Warranty Limitations

14.1 The Customer warrants to Provider that it has the legal right and authority to enter into the Agreement, make an Order and accept these IBM Multicloud Terms and Conditions, and to perform its obligations under the Agreement.

14.2 The Provider warrants that the IBM Multicloud services conform in material respects to the applicable IBM Multicloud Service Description. IBM Multicloud is a standardized software and provided as is, Provider is not responsible for and does not warrant that IBM Multicloud being suitable for any particular purpose or use.

14.3 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these IBM Multicloud Terms and Conditions, Provider gives no warranty or representation that IBM Multicloud will be wholly free from defects, errors or bugs.

14.4 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these IBM Multicloud Terms and Conditions, Provider gives no warranty or representation that IBM Multicloud will be entirely secure.

14.5 The Customer acknowledges IBM Multicloud is designed to be compatible only with that software, systems and supported web browser specified as compatible in the IBM Multicloud Service Description, and that the Provider does not warrant or represent that IBM Multicloud will be compatible with any other software, systems or web browsers.

14.6 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under the Agreement or in relation to IBM Multicloud.

14.7 All of the Parties' warranties and representations are expressly set out in these IBM Multicloud Terms and Conditions. To the maximum extent permitted by Applicable Law, no other warranties or representations concerning the subject matter will be implied into the Agreement.

15. Limitations and exclusions of liability

15.1 The limitations and exclusions of liability set out in this section and elsewhere in these IBM Multicloud Terms and Conditions govern and prevail all liabilities of the Provider arising

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under the Agreement or relating to IBM Multicloud or the subject matter thereof, including liabilities arising in contract, due to delays, defects, product liability, and for breach of statutory duty, except to the extent expressly provided otherwise in these IBM Multicloud Terms and Conditions.

15.2 To the extent permitted by applicable law, in no event shall the Provider be liable for any incidental, special, indirect or consequential loss or damage, whatsoever including, without limitation any loss of profits, loss of revenue, loss of income, loss of or anticipated savings, business interruption, any loss of production, loss of business, or other commercial or economical loss, loss of goodwill, loss of damage to reputation, loss of contracts or customers, loss of opportunities, loss or corruption of any data, loss or corruption of Customer Data, data program, database or software or any other commercial damages or losses, whether direct or indirect, arising or relating to the Agreement or to the IBM Multicloud, regardless of the theory of liability (contract, tort or otherwise).

15.3 The Provider shall in no event be liable for any loss, damage, destruction or alteration of the Customer Data or other data of the Customer, howsoever caused, or any other loss (including loss of profits or breach of regulations and codes of conduct applicable to Customer's business) arising out of (and to the extent caused by) any failure by Customer to keep adequate and up-to-date security and/ or back-up copies of the Customer Data and other data of the Customer.

15.4 The Provider shall in no event be liable for any loss or damage, resulting from errors, changes or breakdowns in services provided by third parties, any software of the Customer, modifications made by the Customer, third-party operating systems or third-party software.

15.5 The Provider shall in no event be liable for any loss or damage (including due to delay in the performance of the Providers obligations), resulting from delay or errors in the Customer performing its obligations under the Agreement.

15.6 The Provider shall not be liable in respect of any losses or damages arising out of a Force Majeure Event.

15.7 On all areas and concerning all types of claims, damages, losses, penalties, cost, fines and liabilities (in any form whatsoever – "Claim") including such Claims based on series of related events, and which is not subject to other limitations of liability in these IBM Multicloud Terms and Conditions, the Provider's total aggregate liability under the Agreement is limited to the payment, which the Customer has paid in cash for IBM Multicloud services and deliveries during the preceding six (6) months prior to the incident that gave rise to the liability. Notwithstanding the foregoing, the maximum aggregate liability of the Provider pursuant to the Agreement and concerning all Claims shall at no time exceed seventy five thousand euros (75,000.00 EUR) ("Maximum Liability Cap").

15.8 If the Provider fails to deliver the IBM Multicloud services on time, considering provisions in Subsection 5.4, the Customer is entitled to liquidated damages starting 48 hours following the date of the Deployment Date. The liquidated damages amount equal to 1/365 of the agreed annual IBM Multicloud Fee per commenced day of delay. In order to

receive any liquidated damages, Customer must notify Provider within 24 hours from the time Customer becomes eligible to receive liquidated damages. If Customer does not comply with these requirements, Customer will forfeit its right to receive liquidated damages. The liquidated damages due to delay is subject to the combined aggregate Maximum   Liability   Cap.

15.9 The limitations of liability do not apply on a Party's liability resulting from willful misconduct, gross negligence and fraud and fraudulent misrepresentation.

16. Force   Majeure   Event

16.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in the performance caused by a Force Majeure Event. The Party affected by the Force Majeure Event shall promptly notify the other Party in writing when such an event causes a delay or failure in performance and when it ceases to do so. The Party affected by a Force Majeure Event must also take reasonable actions to mitigate the risk.

16.2 As used in these IBM Multicloud Terms and Conditions "Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected including but not limited to failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, pandemics, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars, including such events affecting a subcontractor of a Party.

16.3 If the Force Majeure Event continues for a continuous period of more than sixty (60) days, either Party may, to the extent it is reasonable, terminate the applicable agreement and order or part thereof affected by such Force Majeure Event by written notice to the other Party. In such an event, the Customer shall pay all fees up to the last date on which the Customer   received   the   IBM   Multicloud   services   from   Provider.

16.4 The Parties agree that the Customer's failure to pay the IBM Multicloud Fee shall in no circumstance   be   considered   as   a   Force   Majeure   Event.

17. Term and Termination

17.1   The Agreement will take effect ("Effective Date") from the date specified as the Effective Date in the Order, and the Customer agrees to be bound by the Agreement from the Effective Date. If the Customer for any reason access the IBM Multicloud earlier then the Effective Date these IBM Multicloud Terms and Conditions shall be applicable from the point the Customer is accessing/using the IBM Multicloud and/or authorizing or permitting anyone else, such as its End-user to access/use IBM Multicloud.

17.2   Within 45 days starting from the Effective Date, the Customer has the right to terminate the Agreement immediately upon notice ("Satisfaction Period"). Satisfaction Period is not valid for the next IBM Multicloud Order Form, if the Customer already uses the IBM Multicloud Service.

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17.3　Provided that the Customer has not terminated the Agreement during the Satisfaction Period, the Agreement shall be in effect from the Effective Date and for one (1) year or the longer term ("Minimum Term"), the Parties have agreed in the Order.

17.4　After the end of the Minimum Term each party may terminate the Agreement giving no less than sixty (60) days' written notice of termination. In case of such termination notice the Agreement will terminate at the end of a calendar month.

17.5　If the Agreement has not been terminated within 60 days prior to the end of the Minimum Term, the Agreement shall automatically be renewed and be prolonged for an additional period of one (1) year ("Additional Term"). The same notice of termination and automatically renewal terms shall apply on all Additional Terms.

17.6　Either Party may terminate the Agreement immediately by giving written notice of termination to the other Party if: (i) the other Party commits a material breach of the Agreement, and the breach is not remediable or; (ii) the other Party commits a material breach of the Agreement, and the breach is remediable, but the other party fails to remedy the breach within the period of thirty (30) days following the giving of a written notice to the other party requiring the breach to be remedied.

17.7　Either Party may terminate the Agreement immediately by giving written notice of termination to the other party if the other party: (i) is under a procedure ending with its termination without a legal successor; or (ii) ceases to conduct all (or substantially all) of its business; or (iii) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganization where the resulting entity will assume all the obligations of the other party under the Agreement.

17.8　Provider may terminate this Agreement immediately by giving written notice to the Customer if: (i) any amount due to be paid by the Customer to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that written notice of termination is given; and (ii) Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate the Agreement.

17.9.　Provider may terminate the Agreement immediately by giving written notice of termination to the Customer if the Customer (i) is or becomes unable to pay its debts as they fall due; (ii) is or becomes insolvent or is declared insolvent; or (iii) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the business or assets of the other party.

18.　Changes

18.1　These IBM Multicloud Terms & Conditions may be reversed at any time by updating and publishing the updated Terms & Conditions at the IBM Multicloud Website located at: https://IBM_Multicloud.nordcloud.com/terms-conditions/ or any other location as might be designated therein, such revision applies immediately at publishing. If the Provider however makes a material change to these IBM Multicloud Terms and Conditions (including the IBM Multicloud Service Description) or changes to IBM Multicloud which will have a material adverse effect on the functioning of the IBM Multicloud, such changes must be notified to the Customer, under which the Customer can choose to terminate the Agreement immediately.

19.　Effects of termination

19.1　Upon the termination, the provisions of the Agreement shall cease to have effect, except of such provisions which by their nature should survive termination, including

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without limitation, accrued rights to payment, any Customer warranties, section 10 Intellectual Property Rights and Know-How, section 12 Confidentiality, section 14 Warranties and Warranty Limitations, section 21 Limitations and exclusions of liability, section 26 Indemnification, section 27 Governing Law and Dispute Resolution. For clarification it is stated, that if a Party has terminated the Agreement, the Agreement will remain in force as long as the Customer is able to use IBM Multicloud or has access to IBM Multicloud.

19.2   Upon the termination of the Agreement, the Customer shall cease to have access to the IBM Multicloud services. For the avoidance of doubt if the Customer only terminates part of the IBM Multicloud services, all other non-terminated parts shall continue subject to the Agreement. For clarification it is stated that any license rights granted to the Customer under the Agreement shall cease to have effect after the termination of the Agreement.

19.3   Within 30 days following the termination of the Agreement for any reason and the receipt of the Provider's respective invoice: (i) the Customer must pay to the Provider any IBM Multicloud Fee and other charges in respect of the IBM Multicloud services provided to the Customer before the termination; and (ii) Provider must refund to the Customer any IBM Multicloud Fees and other charges paid by the Customer to Provider in respect of IBM Multicloud services that were to be provided to the Customer after the termination, without prejudice to the Parties' other legal rights.

20.   Notices

20.1   Provider may provide any notice to the Customer under the Agreement by: (i) posting a notice on the IBM Multicloud Website; or (ii) sending a message to the email address associated with the Customer's IBM Multicloud Account. Notices provided by posting on the IBM Multicloud Website will take effect upon posting, unless otherwise stated in these IBM Multicloud Terms & Conditions, and notices provided by email will be effective when the email is sent. The Customer has a responsibility to keep email address and other contact information up to date. The Customer will be deemed to have received any email sent by Provider to the email address then associated with the Customer's IBM Multicloud Account, whether or not the Customer actually receives the email.

20.2   Any notice from the Customer to Provider under the Agreement must be given by one of the following methods: (i) sent by email to the relevant email address specified in the Order, in which case the notice shall be deemed to be received upon receipt of the email by the recipient's email server; or (ii) sent using the contractual notice mechanism incorporated into IBM Multicloud (if any), in which case the notice shall be deemed to be received upon dispatch, providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when the next Business Hour on the first Business Day begins after the stated time.

20.3   "Business Day" means any weekday (Monday-Friday) other than a bank or public holiday in the country of registration of the Provider's entity which has entered into this Agreement.

20.4   "Business Hours" means the hours of 09:00 to 17:00 CEST on a Business Day.

21.   Subcontracting

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21.1 Subject to any express restrictions elsewhere in these IBM Multicloud Terms and Conditions, Provider may subcontract any of its obligations under the Agreement, without providing the Customer any written or other formal notice.

22. Assignment of Agreement

22.1 Provider is entitled, at any time and in its sole discretion, to assign or transfer any of its rights or obligations under the Agreement to any Affiliates or a successor to all or a substantial part of the business of Provider from time to time.

22.2 Except as provided in the foregoing, neither Party may assign or transfer their respective rights or obligations under the Agreement without the prior written consent of the other Party.

23. General

23.1 No breach of any provision of the Agreement shall be waived except with the express written consent of the Party not in breach.

23.2 If any provision of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the Parties, in which case the entirety of the relevant provision will be deemed to be deleted).

23.3 The Agreement is made for the benefit of the Parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the Parties to terminate, rescind, or agree to any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.

23.4 Subject to any limitation of liability stated in these IBM Multicloud Terms and Conditions, these IBM Multicloud Terms and Conditions together with the Order, shall constitute the entire Agreement between the Parties in relation to the subject matter of IBM Multicloud, and shall supersede all previous agreements, arrangements and understandings between the Parties in respect of that subject matter.

23.5 Both Provider and the Customer are independent contractors. This Agreement does not create an agent or employment relationship, partnership or joint venture between Provider and the Customer. Neither Party shall have any authority to incur any obligations or commitments or make any representations, warranties or guarantees or to act for or on behalf of the other Party. A Party is not permitted to sign any agreements or to agree on any details of agreements on behalf of the other Party, without the explicit written consent of that Party.

24. Publicity

24.1 Customer accepts that the Provider and its Affiliates uses and publishes the Customer's name, trademarks and logo on its websites and in other media for the context that the Customer is a customer of the Provider and a IBM Multicloud customer. The Provider and its Affiliates shall further have the right to use Customer's name and logos for other marketing purposes provided that the Provider provides a beforehand written information to Customer about its intended marketing use, after which the Customer shall have the right to forbid such intended marketing use upon written notice to Provider. Such written notice shall be made before the deadline of Provider's intended

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marketing use. Provider may, with the prior written approval of Customer, prepare and publish for its sales, marketing and advertising purposes, one or more case studies describing the Klairty services delivered to the Customer under this Agreement. Should the Customer have not given the prohibiting notice as described above, the Provider shall have the right to use without limitation the Customer's name, trademarks and logos on advertising, promotional or publicity materials, displays and websites.

25. Interpretation

25.1 In the Agreement, a reference to a statute or statutory provision includes a reference to: (i) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and (ii) any subordinate legislation made under that statute or statutory provision.

25.2 The Section headings do not affect the interpretation of the Agreement.

25.3 References in the Agreement to "calendar months" are to the 12 named periods January, February and so on into which a year is divided.

25.4 In the Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

26. Indemnification

26.1 The Provider is responsible for ensuring that IBM Multicloud, when used in accordance with the Agreement, does not violate any third-party's Intellectual Property Rights enforceable in the agreed country of use.

26.2 The Provider agrees to, at its own expense, defend the Customer against claims made by third parties alleging that IBM Multicloud, when used in accordance with the Agreement, infringes any Intellectual Property Rights of that third party provided that the Customer (i) promptly notifies Provider in writing of such claims; and (ii) makes no admissions or other commitments or statements that could prejudice the successful defense of the claim; and (iii) permits Provider to defend or settle the claims and gives Provider all necessary information and assistance available to the Customer.

26.3 If, in the justified opinion of Provider, IBM Multicloud infringes or risks to infringe any copyrights of a third party, Provider may at its own expense either (i) obtain the right of continued use of IBM Multicloud for the Customer, or (ii) replace or modify IBM Multicloud, or parts thereof, in order to eliminate the infringement. If none of the foregoing alternatives are available to Provider on reasonable terms, the Customer must, at Provider´s request, stop using the IBM Multicloud services and the Agreement will terminate immediately.

26.4 Provider does not, however, have the foregoing liability in this section 26 if the claim (i) is asserted by the Customer's Affiliate; or (ii) results from alteration of the IBM Multicloud service by other than Provider or from compliance with the Customer's instructions; or (iii) results from the use of IBM Multicloud in combination with any product or services not supplied by Provider; or (iv) could have been avoided by the use of a released and equivalent product offered for use to the Customer without separate charge.

26.5 Provider's liability for infringements of Intellectual Property Rights is exhaustively set out in this section.

27. Governing Law and Dispute Resolution

27.1 Depending on Provider's contracting entity the following governing law and dispute resolution clauses shall apply to the Agreement.

Provider Contracting Entity (entity entering the Order for IBM Multicloud with the Customer)	Governing Law:	Dispute Resolution and Venue:
Nordcloud Hosting Sweden	The Agreement is governed and construed under the laws of Sweden, excluding its choice of law and conflict of law provisions.	Any dispute, controversy or claim arising out of or relating to the Agreement, or the breach, termination or validity thereof shall be finally decided by arbitration in accordance with the arbitration rules of The Arbitration Institute of the Stockholm Chamber of Commerce. The place of arbitration shall be Stockholm, Sweden and the language of the arbitration proceedings shall be English. The Parties undertake and agree that all proceedings conducted shall be kept confidential by the Parties and constitute Confidential Information.
Nordcloud Oy	The Agreement is governed and construed under the laws of Finland, excluding its choice of law and conflict of law provisions.	Any dispute, controversy or claim arising out of or relating to the Agreement, or the breach, termination or validity thereof shall be finally decided by arbitration in accordance with the arbitration rules of Finland Chamber of Commerce. The place of arbitration shall be Helsinki, Finland and the language of the arbitration proceedings shall be English. The Parties undertake and agree that all proceedings conducted shall be kept confidential by the Parties and constitute Confidential Information.
Nordcloud AS	The Agreement is governed and construed under the laws of Norway, excluding its choice of law and conflict of law provisions.	Any dispute, controversy or claim arising out of or relating to the Agreement, or the breach, termination or validity thereof shall be finally decided by arbitration in accordance with the arbitration rules of the Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce. The place of arbitration shall be Oslo, Norway and the language of the arbitration proceedings shall be English. The Parties undertake and agree that all proceedings conducted shall be kept confidential by the Parties and constitute Confidential Information

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Nordcloud Aps	The Agreement is governed and construed under the laws of Denmark, excluding its choice of law and conflict of law provisions.	Any dispute, controversy or claim arising out of or relating to the Agreement, or the breach, termination or validity thereof shall be finally decided by arbitration in accordance with the arbitration rules of The Danish Institute of Arbitration. The place of arbitration shall be Copenhagen, Denmark and the language of the arbitration proceedings shall be English. The Parties undertake and agree that all proceedings conducted shall be kept confidential by the Parties and constitute Confidential Information.
Nordcloud UK Ltd	The Agreement is governed and construed under the laws of England and Wales, excluding its choice of law and conflict of law provisions.	Any dispute, controversy or claim arising out of or relating to the Agreement, or the breach, termination or validity thereof shall be finally decided by arbitration in accordance with the arbitration rules of The London International Chamber of Commerce. The place of arbitration shall be London, United Kingdom and the language of the arbitration proceedings shall be English. The Parties undertake and agree that all proceedings conducted shall be kept confidential by the Parties and constitute Confidential Information.
Nordcloud Deutschland GmbH	The Agreement is governed and construed under the laws of Germany, excluding its choice of law and conflict of law provisions.	Any dispute, controversy or claim arising out of or relating to the Agreement, or the breach, termination or validity thereof shall be finally decided by arbitration in accordance with the arbitration rules of The German Arbitration Institute. The place of arbitration shall be Munich, Germany and the language of the arbitration proceedings shall be English. The Parties undertake and agree that all proceedings conducted shall be kept confidential by the Parties and constitute Confidential Information.
Nordcloud B.V	The Agreement is governed and construed under the laws of the Netherlands, excluding its choice of law and conflict of law provisions.	Any dispute, controversy or claim arising out of or relating to the Agreement, or the breach, termination or validity thereof shall be finally decided by arbitration in accordance with the arbitration rules of The Netherlands Arbitration Institute. The place of arbitration shall be Rotterdam, Netherlands and the language of the arbitration proceedings shall be English. The Parties undertake and agree that all proceedings conducted shall be kept confidential by the Parties and constitute Confidential Information.

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Nordcloud sp. Z.o.o	The Agreement is governed and construed under the laws of Poland, excluding its choice of law and conflict of law provisions.	Any dispute, controversy or claim arising out of or relating to the Agreement, or the breach, termination or validity thereof shall be finally decided by arbitration in accordance with the arbitration rules of the Arbitration Court at the National Chamber of Commerce in Warsaw. The place of arbitration shall be Warsaw, Poland and the language of the arbitration proceedings shall be English. The Parties undertake and agree that all proceedings conducted shall be kept confidential by the Parties and constitute Confidential Information.
Other Affiliates of the Provider	As specified in the Order	As specified in the Order

27.2   Notwithstanding the above the Provider has the right to refer to a court of competent jurisdiction any claims that relate to Customer's failure to pay any IBM Multicloud Fees or other payments under the Agreement or as may be required to obtain an injunction against Customer based on Customer's infringement of Provider´s Intellectual Property Rights, breach of its confidentiality obligations or to restrain use of IBM Multicloud occurring in breach of the Agreement.