**Agreement**

for subscription to Microsoft Online Services

(hereinafter the Agreement)

by and between

[insert reseller name]

(insert business registration no. xx),

hereby designated as the Reseller,

and

[insert customer name]

(insert business registration no. xx),

hereby designated as the Customer,

Signature date: [insert date] (hereby designated as the Effective Date)

# Scope of AND Parties TO THE AGREEMENT

## The Reseller has the right to resell Microsoft Online Services (hereby designated as Cloud-services) to the Customer in accordance with its agreement with Microsoft and Microsoft reseller [insert name] (hereby designated as the Distributor). This Agreement sets out the terms and conditions for the Reseller’s resale to the Customer and the Customer’s subscription to the Cloud-services.

## Microsoft’s terms and conditions for use of the Cloud-services are set out in Appendix 2 to this Agreement. The Customer accepts said terms and conditions as binding by signing this Agreement. The accept of the terms and conditions creates a direct contractual relationship between the Customer and Microsoft. The Reseller is neither a contractual party to such agreement nor responsible for the contractual performance of said agreement. The Customer may therefore not hold the Reseller liable for any breach of such agreement, hereunder errors related to the Cloud-services. The Reseller will, nonetheless, register the Customer’s account with Microsoft, facilitate for the increase or reduction of consumption of Cloud-services, as well as providing support as described in section 4 of this Agreement.

## The Customer acknowledges that Microsoft has a right to refuse orders of specific Cloud-services and/or customers and that Microsoft does not guarantee that all Cloud-services are available for ordering or in the desired volume requested. If such an event occurs after this Agreement has been signed, this Agreement is considered terminated with respect to the applicable Cloud-services, or in general if the Customer is not approved.

## This Agreement does not regulate any consulting services to the Customer by the Reseller, e.g. implementation, operational services or similar. For the assistance with such services, the parties must enter into a separate agreement.

# Cloud-Services - Duration

## The Cloud-services purchased by the Customer through this Agreement as of the Effective Date are set out in Appendix 1 to this Agreement. The Reseller orders the Cloud-services for the Customer immediately upon this Agreement being effective. The initial duration of the subscription for Cloud-services as of the Effective Date is set out in Appendix 1. If Customer already has a Cloud-services subscription within the scope of the agreed services, the Customer approves that such subscriptions will be linked to the Distributors CSP account in order to facilitate that the Cloud-services will be purchased and billed through the Distributor to Customer.

## Upon receiving the Customer’s termination of its subscription for Cloud-services, fully or partially, the Reseller shall notify Microsoft according to Microsoft’s terms and conditions enclosed in Appendix 2 or order confirmations from Microsoft. Provided the Customer has not bound itself to a fixed fee for a fixed duration and simultaneously a given consumption, or the Customer is subscribing to Cloud-services for a particular minimum duration, the Customer may as a main rule, adjust the volume for Cloud services on a daily basis, as well as terminate the Cloud-services in full provided it provide a sixty (60) days prior written notice. For SaaS services, there may be restricted access to adjust the volume.

## Should the Customer fully terminate the Cloud-services from Microsoft according to section 2.2, this Agreement is also terminated, unless the parties agree otherwise. The Customer may also terminate its agreement with the Reseller as a reseller, in order to switch to another reseller (CSP), with a sixty (60) days prior written notice. E.g the Customer may continue its account (tenant) with a new reseller, alternatively directly with Microsoft.

## If Microsoft requests so, discontinues, or alters Cloud-services, the Reseller may terminate the Cloud-services, fully or partially towards the Customer.

## The Reseller may also terminate the Agreement as a reseller with a six (6) months prior written notice to the Customer. If the Reseller’s agreement with Microsoft or the Distributor is terminated for any reason, the Reseller may terminate the Agreement with shorter notice.

# Fees and Payment Terms

## The fees for the Cloud-services are set out in Appendix 1.

## Microsoft has the right to adjust its prices towards the Reseller at any time. The Reseller has the right to adjust its prices towards the Customer corresponding to Microsoft’s price-adjustment with effect from Microsoft’s price-adjustment.

## The Customer is obliged to pay for consumption of the Cloud-services, according to Microsoft’s measuring of consumes Cloud-services. The Reseller is obliged to settle the bill with Microsoft via Microsoft’s Distributor upon receiving the Customer’s payment.

## The Reseller will invoice the Customer for the Cloud-services in accordance with Appendix 1 but reserves the right to invoice as soon as the Reseller receives a corresponding invoice from Microsoft via the Distributor. The Customer has no right to withhold payment to the Reseller, to avoid Microsoft invoking its right to withhold or terminate the Cloud-services according to Microsoft’s terms and conditions. This applies irrespective of the basis the Customer asserts for withholding payment, such as Microsoft’s failing to deliver the Cloud-services, non-compliance of this or other agreements between the parties, or errors in invoicing documentation from Microsoft.

## The Customer acknowledges that the Reseller has a deadline of twenty-five (25) days from Microsoft issues invoices or consumption to object to any invoice, measured consumption, etc. To ensure that the Reseller may process and forward the objection within the twenty-five-(25)-day deadline that applies between the Reseller and Microsoft, a corresponding deadline of twenty (20) days from the receipt of the invoice is agreed upon between Customer and the Reseller. Any complaints after the deadline have the consequence that Microsoft may disregard the complaint. Any complaints must irrespectively be approved by Microsoft before the Reseller has an obligation to credit the Customer in new invoices.

## Interest will accrue upon overdue payment, in accordance with the [Norwegian Act on Interest on Overdue Payments no 100 of 17 December 1976]. The Reseller may, upon written notice, suspend the services or terminate the Agreement, if the Customer’s full payment is not paid within thirty (30) days after the Reseller was notified that the invoice was overdue.

# Support

## The Reseller shall provide support related to the Cloud-services to the Customer in accordance with the service description in Appendix 3. The Reseller’s obligation to provide support services is conditioned on the Customer maintaining its subscription to the Cloud-services.

## The Reseller shall, as part of its support, provide assistance in connection with the termination of the Cloud-services from Microsoft. The scope of this assistance is set out in Appendix 3.

## For the situation where t Microsoft rejects the Customer as a customer at the time the Cloud-services are ordered by the Reseller, or later, the rights and obligations described in this section four (4) and Appendix 3 shall be discharged and not applicable, unless the parties have agreed otherwise.

# Damages

## Any claim for damages pursuant to a breach of the Reseller’s obligations in relation to this Agreement is limited to a direct, documented loss. The Reseller is not liable for any errors, defects, or other any breach related to the contractual relationship between the Customer and Microsoft. Damages for direct loss each calendar year is under any circumstance limited to the total value (excluded VAT) of the Reseller’s support services within the applicable calendar year.

## The Customer may not claim damages for indirect loss. Such indirect loss includes, but is not limited to, loss of profits of any kind, loss of operational savings, and claims from third parties.

## The limitations of liability do not apply if the breach is caused by gross negligence or wilful misconduct.

# Privacy and Personal Data

## Microsoft will process personal data on behalf of the Customer. By signing this Agreement, the Customer consent that Microsoft may collect, use, transfer, and otherwise process such data, as further described in Microsoft’s data processing terms included in Appendix 2 to this Agreement. The Customer is responsible for notifying the relevant individuals/data subjects in accordance with the. The Customer is responsible for ensuring that the terms and conditions of Appendix 2 are adequate and in accordance with applicable law related to the processing of personal data. Microsoft’s liability in relation to the processing of personal data is regulated by the agreement entered into between the Customer and Microsoft enclosed in Appendix 2.

## The Reseller’s own processing of personal data in relation to the performance of this Agreement between the Customer and the Reseller is regulated by the data processing agreement included in Appendix 4. Appendix 4 specifies personal data the Reseller may have access to. The Customer acknowledges and accepts that the Reseller may share information considered personal data with Microsoft in relation to support matters and otherwise when necessary to administer the Customer’s subscription, such as phone numbers, email addresses, and web addresses.

## The Reseller has an agreement with Microsoft’s Distributor [insert name], a Microsoft authorised distributor of Microsoft Cloud Computing Services. The Distributor is authorised to resell Microsoft Cloud-services though other resellers. Registration of the Customer’s tenant (account) with Microsoft will be done by the use of the Distributors portal. The Distributor therefore has access to the personal data registered in relation to the Customer’s purchase of Microsoft Cloud-Services, including in relation to invoicing. Pursuant to the Reseller’s agreement with the Distributor, the Cloud Supplier will be acting as controller of said personal data due to the information provided being a requisite for using the Cloud Supplier’s portal.

# Overview of important regulations in Microsofts terms and conditions

## As mentioned, Customer acceptance establishes a contractual relationship solely between Microsoft and the Customer. The Customer must familiarise itself with the terms and conditions set out in Appendix 2. Nevertheless, the Reseller wants to highlight to the Customer the following risk and responsibilities:

* Microsoft has an unconditional right, and without notice, to add new functions and functionality to the Cloud-services and to remove or change existing functions and functionality at any time. Material changes of a service will normally be notified to the Customer with several months’ prior notice, but in some instances with shorter notice.
* Microsoft may at any time update the terms and conditions included in Appendix 2. The Customer is deemed to have accepted the, at all times, applicable terms and conditions and is responsible to stay updated on the terms and conditions as applicable at any time.
* Microsoft does not have any responsibility for cloud services that are not a part of Microsoft’s own Cloud-services, including software from third parties.
* Microsoft does not have any responsibility regarding any loss or depreciation of the Customer’s data used in connection with Cloud-services.
* Microsoft is entitled to communicate directly with the Costumer regarding the terms and conditions of Appendix 2, as well as regarding the operation and performance of the Cloud-services.
* Our assessment is that the Customer’s priority should be ensuring compliance with the Acceptable Use Policy, as well as any license restrictions, and the export control regulations in Microsoft’s terms and conditions. Noncompliance of these terms and conditions may result in temporary suspension or termination of the Cloud-services.

# MiscelLanious

## The Reseller may assign this Agreement, including the rights and obligations, to a third party, if such assignment takes place in connection with a merger or transfer of shares, or in case of other organisational changes. The Customer assign this Agreement, including the rights and obligations, presuppose written consent by the Reseller, such not to be unreasonable withheld.

## The Customer is obliged to comply with any export control regulation, equivalent to the export control regulations set out in Appendix 2.

## Except for payment obligations, no party will be liable for any delay or failure to perform an obligation under this Agreement where the delay or failure result from any cause beyond its reasonable control, including acts of God, labour disputes or other industrial disturbances, electrical or power outage, utilities or telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes , riots, acts or orders of government, acts of terrorism, or war.

## The Agreement and the content of the Agreement shall be kept confidential by both parties. Notwithstanding, this shall not limit communication with Microsoft that is necessary to comply with this Agreement.

## The terms and conditions of this Agreement, including its appendices, may be updated by the Reseller with one month’s prior written notice to the Customer, in case of corresponding amendments made by Microsoft or the Distributor towards the Reseller.

# Applicable law and legal venue

The Agreement shall be governed by and construed in accordance with the laws of [insert]. The legal venue shall be [insert].

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

This agreement has been signed in 2 – two copies, of which the parties retain one copy each.

|  |  |
| --- | --- |
| Place:……………………… Date:………………………….  For the Reseller  ………………………………………………………………. | Place:……………………… Date:………………………….  For the Customer  ………………………………………………………………. |

**Appendix 1 – Specification of Cloud-services, prices, duration and so forth.**

|  |  |
| --- | --- |
| Overview of the ordered Cloud-services from the Customer as of the Effective Date | [insert description of the Microsoft Online Services that are ordered at the Effective Date. This is a Microsoft requirement.] |
| Location for the Microsoft Cloud-services | [specify the selected data centre location, if relevant. This may differ for the various Online Services.] |
| Start-up Date | As soon as Microsoft confirms the order and the Customer’s account with Microsoft (tenant) is established or an existing account is linked to the Resellers program management account. |
| Term | [insert subscription period, for instance for Azure services: The subscription period is one (1) year with automatic renewal for one year at the time, unless the Agreement is terminated according to section 2 of this Agreement. [If the subscription is for D365, please review the minimum term] |
| Increases and reductions of the Cloud-services during the Agreement | The Customer may increase or decrease the consumption of Microsoft’s Cloud-services itself, including removing or adding particular services, through ordering such amendments via the Reseller’s [portal]. [for D365, please review if Microsoft allows such flexibility in relation to reduction of users and similar]  The Reseller may set a credit limit for the Customer’s monthly consumption, if the Customer’s credit level is below B or if the Customer is overdue with one or several invoices.  Due to Microsoft invoicing for actual consumption at any time, the Customer is encouraged to investigate how consumption may be optimised. The Customer is also encouraged to ensure control on who that may send orders on behalf of the Customer internally.  Please note that if the Customer locks prices for one or more services for a defined time period, in exchange for a defined minimum consumption volume, the Customer is obliged to pay the difference if the committed volume is not consumed, unless Microsoft approves otherwise. |
| Agreed price | Unless the parties have agreed otherwise in writing, consumption will be invoiced according to Microsoft’s guided prices, normally accessible from <https://azure.microsoft.com/en-us/pricing/calculator/>. Additional 3. party solutions/licenses deployed on top of the Microsoft Cloud-services will be invoiced according to Microsoft’s prevailing price list. Prices shown in the Reseller’s portal or elsewhere is purely for informative purposes and Microsoft’s list prices shall precede in case of deviation. |
| Time of payment | Unless otherwise agreed, consumption is invoiced monthly at the beginning of the following month. [Invoices are payable thirty (30) days after the invoice was sent.] |
| Territory | The Cloud-services may only be utilized by the Customer in the Territory as defined in the Microsoft Customer Agreement. This can be changed with 30 days’ notice by Microsoft. |

**Appedix 2 – Microsoft’s standard terms and conditions**

Microsoft’s standard terms and conditions include the Microsoft Customer Agreement, comprising general terms and conditions for the use of Microsoft Cloud-services. Updated and prevailing terms and conditions are available from the following destination at any time: <https://www.microsoft.com/licensing/docs/customeragreement>

Microsoft Customer Agreement also reference other contractual documents that form part of Microsoft’s terms and conditions. Normally will the following contractual documents at a minimum also form a part of the agreement:

|  |
| --- |
| Navn: |
| Microsoft Customer Agreement |
| Product Terms |
| SLA |
| Microsoft Online Services Data Protection Addendum (DPA) |
| Financial addendum |

The prevailing version of such documents are found here: https://www.microsoft.com/licensing/docs/view/Licensing-Use-Rights

Please note that Microsoft’s standard terms and conditions allow for Microsoft to amend and update the terms and conditions during the duration of the Agreement, mainly at renewal of a subscription period or at the time of ordering new services. Updated terms and conditions may therefore apply during the duration of the Agreement, and the Customer must monitor the above-mentioned URLs and succeeding sites for updated versions of the terms and conditions. Our experience is that the Microsoft Customer Agreement is exceptionally updated more than once a year, while the SLA, DPA, and Product Terms often are updated on a monthly basis.

If Microsoft upon signing of this Agreement or a subsequent amendment of the standard terms and conditions during the duration of the Agreement, requests documentation or confirmation that the Customer has accepted Microsoft’s terms and conditions or later amendments, the Customer is obliged to provide the Reseller with the necessary documentation or issue the necessary confirmations to Microsoft.

**Appendix 3 – Cloud Support**

This Appendix 3 describes the Reseller’s obligations pursuant to section 4 of this Agreement.

# Establishment and management of the Cloud-services

## The Reseller shall provide the support necessary to establish the Customer’s account (tenant) in Azure, provide necessary access rights, and establish access to the Microsoft Partner Portal so that the Customer may itself manage further orders or adjustments related to volume or services.

## If the Customer has existing subscription(s) with Microsoft that shall be included under this Agreement, the Customer will grant necessary rights to Reseller to link the subscription(s) to the Reseller’s CSP account. Customer must accept the reseller relationship in its own, existing subscriptions for the relationship to be established and for the Reseller to be able to deliver according to this Agreement. In that process, Customer accepts that Reseller will have access to Customer’s subscription(s) for the purpose of providing support.

# Consecutive support

## The Reseller is the contact point for the Customer in relation to Microsoft and will communicate relevant information related to the Cloud-services, including both operational and technical requests between the Customer and Microsoft. The Customer shall not contact Microsoft directly for support.

## The Reseller shall provide consecutive support to the Customer during the duration of the Agreement. This includes responding to requests to provide high-level descriptions of capabilities of the different Cloud-services provided by Microsoft, questions related to pricing and use in general, questions related to measuring of consumption, and similar from Microsoft, as well as other support necessary for the Customer to utilise the Cloud-services.

## As part of the Reseller’s responsibility to follow up the agreement with Microsoft, the Customer may bring support requests (notify error situations) related to Microsoft’s Cloud-services, and the Reseller shall forward such requests to Microsoft. The same applies for claims from the Customer for reimbursement according to Microsoft’s SLA terms and conditions, that the Reseller will follow up with Microsoft. If Microsoft accepts the Customer’s claim, the Reseller shall, upon receiving the settlement from Microsoft, ensure an equal sum is deducted from the Customer’s future invoices. Please notice that Microsoft under normal circumstances has a thirty-(30)-day deadline for claiming reimbursements of SLA penalty.

## Support services are normally provided Mondays through Fridays 08:00 to 16:00 CEST, unless the parties have agreed otherwise.

## Support services do not include assistance with the setup and establishment of Cloud-services (such as implementation of D365, Office 365, moving of applications to Azure, and so forth), consequences of amendments Microsoft do to its Cloud-services, or consecutive assessments of consequences for the Customer and the Customer’s solutions. Assistance outside of the scope of the Reseller’s support services is available as a payable service on the Reseller’s terms and conditions for such.

# Assistance during the Discountinuation of the Cloud-services

## Upon the termination of the Agreement according to section 2 of the Agreement, the Reseller shall provide assistance to the Customer regarding the discontinuation of the Agreement with Microsoft. This includes notification of termination to Microsoft or assistance with transfer of the Customer’s account to another reseller, and removal of any Reseller specific attributes from the Customer account.

## Other support, such as support related to transfer of Customer data, deletion of the Customer’s applications from Microsoft’s Cloud-services, is available as a payable service on the Reseller’s terms and conditions.

**Appendix 4 – Data Processing Agreement between the Customer (Controller) and Microsoft (Processor)**

[Insert Data Processing Agreement]