

EXACT TERMS & CONDITIONS PRIVATE CLOUD



EXACT TERMS & CONDITIONS

PRIVATE CLOUD

1. DEFINITIONS

Unless otherwise described in these Exact Terms & Conditions Private Cloud capitalized terms in the Private Cloud Agreement shall have the meanings ascribed to them in Article 1 of the General Terms & Conditions.

The following capitalized terms in this Private Cloud Agreement shall have the meanings ascribed to them below:

- **Customer Data:** all data entered/uploaded by the Customer into any Private Cloud Software;
- **Hosting Fee:** the fee payable by Customer to Exact for the provisioning of the Private Cloud Services;
- **Private Cloud Agreement:** The agreement concluded between Exact and Customer for the provisioning of Private Cloud Services, incorporating the Exact Terms & Conditions Private Cloud and any agreed Service Level Agreement;
- **Private Cloud Log-in Data:** code or codes exclusively intended for the User for gaining access to the Private Cloud Services;
- **Private Cloud Log-in Procedure:** the procedure prescribed by Exact, which the Customer must follow in order to gain access to the Private Cloud Services;
- **Private Cloud Services:** The services provided by Exact to Customer under the Private Cloud Agreement consisting of i) granting Customer access to Private Cloud Software (and any Third Party Software) hosted by Exact on a Exact or third party system and ii) any agreed additional services thereto;
- **Private Cloud Software:** the Exact proprietary Software licensed by Exact to Customer under a Subscription Agreement or License Agreement accessible to the Customer by means of the Private Cloud Services;
- **Service Level Agreement:** the service level agreement agreed between Exact and Customer in respect to the provision of Private Cloud Services; and
- **Third Party Software:** Any other software proprietary to a third party i) not being (part of) the Private Cloud Software, and ii) not licensed by Exact to Customer under the License or Subscriptions Agreement, to which Exact grants the Customer access by means of the Private Cloud Services;

2. APPLICABILITY OF TERMS

- 2.1 These Exact Terms & Conditions Private Cloud will apply to any Private Cloud Agreement concluded between Exact and Customer for the provisioning of Private Cloud Services and are deemed to have been fully included in the Private Cloud Agreement.
- 2.2 These terms will apply in addition to the terms of any Subscription Agreement concluded between Customer and Exact. As long as a Private Cloud Agreement is in place between Exact and Customer i) the reference in articles 2.2, 2.5 and 4.2 of the Subscription Agreement to a 'computer system' shall be deemed to be a reference to the Exact or third party system used for provision of the Private Cloud Services to Customer, and ii) the articles 5.2, 9.2 and 9.5 of the Subscription Agreement shall not apply.
- 2.3 These terms will apply in addition to the terms of any License Agreement concluded between Customer and Exact. As long as a Private Cloud Agreement is in place between Exact and Customer i) the reference in articles 2.2 and 2.5 of the License Agreement to a 'computer system' shall be deemed to be a reference to the Exact or third party system used for provision of the Private Cloud Services to Customer, and ii) the articles 5.2 and 5.5 of the License Agreement shall not apply.
- 2.4 These terms will apply in addition to the terms of any Maintenance and Support Agreement concluded between Customer and Exact. As long as a Private Cloud Agreement is in place between Exact and Customer the reference in articles 4.2, 5.2 and 5.3 of the License Agreement to a 'computer system' shall be deemed to be a reference to the Exact or third party system used for provision of the Private Cloud Services to Customer.
- 2.5 In addition to these Exact Terms & Conditions Private Cloud the Exact General Terms & Conditions form an integral part of this Private Cloud Agreement and are deemed to have been included in the Private Cloud Agreement.
- 2.6 In the event of any conflict, these Exact Terms & Conditions Private Cloud shall prevail over the Exact General Terms & Conditions, the License Agreement, the Maintenance Agreement and/or the Subscription Agreement.

3 PRIVATE CLOUD SERVICES

- 3.1 Under the Private Cloud Agreement Exact grants the Customer the non-exclusive and non-transferable right to use the Private Cloud Services during the term of the Private Cloud Agreement. Customers' use of the Private Cloud Services shall be solely for the Customer's internal operations and limited to the type of Private Cloud Software (including the number and type of modules) and the number of Users and/or Administrations that Customer has contracted under the Private Cloud Agreement.
- 3.2 The Customer shall expressly not be permitted to use the Private Cloud Services for/or having it used by more types of Private Cloud Software (including the number and type of modules) and number of Users and/or Administrations than Exact has licensed to Customer under the Subscription Agreement or License Agreement.
- 3.3 Use of the Private Cloud services is limited to the Customer and its Employees only. The Customer may not use the Private Cloud Services for the benefit of any third party (e.g. for third-party training, commercial timesharing, rental or service bureau use, accountancy and/or bookkeeping services).
- 3.4 Exact is entitled to make adjustments to the Private Cloud Services as it sees fit. Exact will inform the Customer in due time of the processing of any adjustments insofar as these are relevant for the use of the Private Cloud Services, all at the sole discretion of Exact.
- 3.5 For the avoidance of doubt, any Updates and/or Upgrades to the Private Cloud Software shall be performed under the conditions of the Subscription Agreement or any Maintenance Agreement entered into between Exact and Customer in respect to such Private Cloud Software.

4 PRICING/PAYMENT

- 4.1 The Customer owes Exact a Hosting Fee pursuant to the Private Cloud Agreement. The Hosting Fee shall be payable in advance on a monthly basis and shall be based on i) the type of Private Cloud Software (including the number and type of modules) and the number of Users and/or Administrations that Customer has contracted under the Private Cloud Agreement, and ii) any additional services provided by Exact to Customer under the Private Cloud Agreement (e.g. following from clause 6, 10, 12 or 14 of these Exact Terms & Conditions Private Cloud). The Hosting Fee is payable, irrespective of whether the Customer uses the Private Cloud Services, from the moment the Private Cloud Agreement has become effective.
- 4.2. For the avoidance of doubt, any fees due and payable under the Private Cloud Agreement shall be separate from any applicable fees under any other Agreement in place between Exact and Customer in relation to the Private Cloud Software (e.g. License Agreement, Subscription Agreement, Maintenance and Support Agreement, Consultancy Agreement), which fees shall be invoiced to Customer in accordance with the terms of such Agreement.
- 4.3. All payments under the Private Cloud Agreement shall be made through direct debit, unless Exact and Customer have expressly agreed otherwise in the Private Cloud Agreement. In order to allow for collection of payments through direct debit Customer shall i) hold a bank account at a (international) bank registered at the local central bank, and ii) provide Exact with the proper authorization for collection of payments through direct debit from such bank account. If collection through direct debit is impossible, the invoiced amount has to be paid within 14 days of the invoice date.
- 4.4 The Customer shall provide Exact with all information and cooperation including correct and current name, address and payment details and shall immediately inform Exact in writing of any change thereof.

5 TERM AND TERMINATION

5.1 The Private Cloud Agreement is entered into for a duration of one (1) month and will be tacitly renewed for a subsequent period of one (1) month, unless either party gives the other party written notice by registered mail, no later than one (1) month prior to the Renewal Date, that it wishes to terminate the Private Cloud Agreement.

5.2 Customer shall at all times have a License Agreement or Subscription Agreement in place in respect to the Private Cloud Software. If the License Agreement or Subscription Agreement is (partly) suspended or terminated, Exact's obligation to provide Private Cloud Services pursuant to the Private Cloud Agreement is automatically suspended in respect of the Private Cloud Software for which there is no (longer) license in place as per the date the License Agreement or Subscription Agreement was suspended or terminated. Any such suspension of the Private Cloud Agreement shall not free Customer of its obligation to pay the Hosting Fee nor result in a reimbursement of any Hosting fees already paid.

5.3 Termination of the Private Cloud Agreement in respect of (part of) the Private Cloud Software results in the right of use being suspended for the respective (part of) the Software licensed under the License Agreement or Subscription Agreement.

6 THIRD PARTY SOFTWARE

6.1 Exact and Customer may agree in the Private Cloud Agreement to use of the Private Cloud Services for Third Party Software. Any use of the Private Cloud Services for Third Party Software shall be at the sole discretion of Exact and the Customer acknowledges and agrees that Exact may i) impose additional terms and conditions to, and ii) charge additional fees for Customers use of the Private Cloud Services for Third Party Software

6.2 Customer acknowledges and agrees that Exact is not the proprietor of any Third Party Software and that the use of any Third Party Software by Customer is not covered by the Private Cloud Agreement but subject to any (license) terms and conditions applicable to Third Party Software set by third parties. Customer shall at all times hold a valid license in place in respect to its use of any Third Party Software. If Customers license for the use of Third Party Software is (partly) suspended or terminated, Exacts obligation to provide Private Cloud Services for Third Party Software is pursuant to the Private Cloud Agreement is automatically suspended in respect of the Third Party Software for which Customer no (longer) has license in place as per the date such license was suspended or terminated. Any such suspension of the Private Cloud Agreement shall not free Customer of its obligation to pay the Hosting Fee nor result in a reimbursement of any Hosting fees already paid.

6.3 For the avoidance of doubt, the provisions of clause 6.2 will also apply in the situation where Exact i) acts as agent for and/or as reseller of any Third Party Software to Customer and/ or ii) provides maintenances and/or support services to the Customer in respect to any Third Party Software.

6.2. Customer indemnifies Exact in full on demand against any and all claims, costs, losses, damages, expenses, actions, fines and/or penalties which Exact may suffer or incur or have imposed on it relating to Customers use of Third Party Software and/or use of the Private Cloud Services for Third Party Software.

7 LOGIN

7.1 Customer shall only access the Private Cloud Software via the Private Cloud Log-In Procedure using the Private Cloud Log-In Data that was provided to Customer by Exact. Exact is entitled to adjust the Private Cloud Log-In Procedure as it sees fit and shall inform the Customer thereof in a timely manner.

7.2 The Customer and the User are responsible for the Private Cloud Log-in Data and must treat this data with due care and shall have the sole responsibility for the Private Cloud Log-in Data. The Private Cloud Log-in Data are personal to the individual User and may not be transferred to any other party or person, neither within nor outside the Customer's organization. The Customer and User must observe absolute secrecy concerning the Private Cloud Log-in Data. The Customer is liable for all use of its Private Cloud Log-in Data and all actions by the Users in this context are at the Customer's expense and risk. Exact does not accept any liability in this respect.

8 CUSTOMER EQUIPMENT

8.1 The Customer is responsible for the operation of its hardware, software, configuration, peripheral equipment and internet connections necessary to use the Private Cloud Services. The Customer guarantees that the equipment and software it uses for the Private Cloud Services satisfies the System Requirements. The Customer is responsible for taking the necessary measures to protect its equipment, software and telecommunication and Internet connections against viruses, cybercrime and unlawful use by third parties.

9 USER RIGHTS AND OBLIGATIONS

9.1 The Customer shall access and use the Private Cloud Services solely in accordance with:

- a) the provisions of the Private Cloud Agreement;
- b) the General Terms and Conditions;
- c) netiquette;
- d) all applicable laws, statutes and regulations.

Customer shall not use the Private Cloud Services for action(s) and/or behavior that exposes Exact to negative publicity.

9.2 The Customer guarantees that the Users will handle their access to the Private Cloud Services and the information thus obtained in a responsible manner, while the Customer retains and/or accepts unconditionally the ultimate responsibility for any information the Users add to or changes in the Private Cloud Software.

9.3 The Customer shall at all times act with due care and lawfully towards third parties, particularly by respecting the intellectual property rights and other rights of third parties, by refraining from disseminating information in a manner that is contrary to the law, from granting unauthorized access to systems and from spreading viruses and other harmful programs or data, by refraining from committing criminal acts and violating any other legal obligation.

9.4 The Customer shall not:

- (a) use or attempt to use the Private Cloud Services for any illegal or unlawful purpose and/or for the purposes of publishing or otherwise distributing materials which are offensive, defamatory or in breach of any intellectual property rights belonging to any third party;
- (b) use or attempt to use the Private Cloud Services in any way which disrupts, restricts or interferes with the provision of the Private Cloud Services by Exact and/or its availability to and use by other users authorized by Exact;
- (c) access or attempt to access any part of the Private Cloud Services which the Customer is not authorized to access and/or to access any data which is held on or accessible via the Private Cloud Services other than any data which has been entered by the Customer together with any data which is made publicly available by Exact to all users on or via the Private Cloud Services;
- (d) access or attempt to access any part of the Private Cloud Services via automated means like [f.i. via a "scrape", "crawl" or "spider"];
- (e) use any form of automated integration other than automated integration via the API's provided or approved by Exact;

- (f) reverse engineer, decompile, copy, distribute, disseminate, sub-license, modify, translate, scan, adapt or in any other way modify and/or reproduce any software or other code or script which forms part of the Private Cloud Software and/or is accessible via the Private Cloud Services; and/or
- (g) cause, by its actions or omissions, any direct or indirect disruption of the functioning of Exact's infrastructure, or a part thereof, the infrastructure of third parties and/or links between these infrastructures by the content or size of its data traffic.
- 9.5 Without prejudice to the foregoing, the Customer shall refrain from using the Private Cloud Services for disseminating spam or facilitating spam (which includes having open SMTP relays and/or proxies, having open proxies, hosting or enabling the hosting of websites advertised by means of unsolicited messages and providing DNS services for such websites). The Customer bears the burden of proof for demonstrating that permission was granted in advance by the addressee in the event of large quantities of communication sent by or on the Customer's behalf. The Customer is liable for the damage caused by the dissemination of spam. Damage is understood to include, but not be limited to, the compensation for time spent by Exact on removing the IP addresses of Exact and other Customers of Exact that, as a result of the spam, have been included on spam filters' blacklists, as well as the costs arising from dealing with the complaints about the spam disseminated by the Customer.
- 9.6 If the Customer finds at any time that it is able to enter Exact's network layers, it must report this to Exact immediately.
- 9.7 If Exact, in its sole discretion, feels that there is a potential threat to the undisturbed functioning of Exact's infrastructure and/or of service provision to Exact's Customers, such as but not limited to viral infections, denial of service attacks, port scans, hacking, spam from or because of the Customer, or otherwise, Exact may give instructions that must be followed immediately by the Customer, as well as suspend service provision entirely or partially as long as the particular danger exists. The Customer is in default, without further notice of default being required, if the instructions are not followed by the Customer immediately.
- 9.8 Exact is entitled to conduct or have an audit and/or inspection carried out in order to investigate whether the Customer is complying with the provisions of the Private Cloud Agreement, provided such audit and/or inspection takes place during normal office hours and in such a way that the Customer's business operations are not unreasonably obstructed. Such an audit shall be carried out by an expert chosen and deployed by Exact. The Customer is required to give this expert the information, support and access to its buildings and systems that is reasonably necessary to enable the expert to carry out his or her audit/inspection properly. This expert will submit a summary outlining his or her findings in respect of the reports delivered by the Customer and the Customer's compliance with the Private Cloud Agreement, but will never provide Exact with any other information of which he or she becomes aware during the audit and/or inspection. The costs of this audit are at Exact's expense, unless the audit proves that the Customer is not complying with the conditions of the Private Cloud Agreement, in which case the costs will be at the Customer's expense.
- 9.10 For every (expected) misuse or other improper use of the Private Cloud Services or any violation of the provisions of the Private Cloud Agreement, Exact may, at its discretion and effective immediately:
- a) demand Customer temporarily or permanently remove any offending data from equipment and/or (in the event of hosting) the Customer's servers; and/or
 - b) temporarily or permanently limit or block the Customer's access to or use of the Private Cloud Services;
 - c) entirely or partly stop or suspend its service provision;

- d) terminate the Private Cloud Agreement, all without prejudice to the Customer's obligation to pay the remaining fees pursuant to the Private Cloud Agreement and without Exact being required to pay the Customer any damages or other compensation. When feasible, it is Exact's preference to give notice so that violations may be addressed voluntarily; however, Exact reserves the right to act without notice when necessary, as determined by Exact, in its sole discretion. Refunds or credits are not issued in connection with actions taken for violations of the rules of use.
- 10 FAIR USE POLICY (VOLUME RESTRICTIONS)
- 10.1 Exact provides the Private Cloud Services on the basis of a fair use policy. This means that Exact it does not in principle impose any restrictions on the nature and size of the Customer's use of the Private Cloud Services other than referred to in Article 10.2. Exact offers the Private Cloud Services for an amount of information stored by it and the volume of data transport realized by it which can be expected as average in similarly sized enterprise. This is on the understanding that Exact reserves the right to take measures in the event of excessive use, which is use that significantly exceeds an average Customer's use. The Customer must immediately take measures to end the aforementioned excessive load after the first notification from Exact. Exact has the right to suspend the Private Cloud Services in the event of persistent excessive load. Exact may charge to the Customer the costs associated with this excessive load at the prices and rates effective at Exact at that time. Excessive load is understood to include excessively high use of processing, memory, network, disk and storage capacity, as well as excessive use of support and management services.
- 10.2 If the Customer and Exact have agreed in the Private Cloud Agreement and/or the Service Level Agreement on a limitation on the amount of storage capacity and/or the number of transactions, mutations, or [financial] entries registered by the Customer, whether or not for a specified period of time, Exact is, if that number is exceeded, entitled to charge Customer for the numbers exceeded per the amount and/or size exceeded at the rate specified in the Private Cloud Agreement and/or Service Level Agreement, or in absence thereof, at the prices and rates effective at Exact at that time. The Customer hereby agrees that Exact may access Customers Data to report the amount of storage capacity used and/or the number of transactions, mutations, or financial entries registered by the Customer, solely to be used to determine whether the amount and/or size agreed on by the parties has been exceeded. Exact's records shall constitute conclusive evidence, subject to proof to the contrary by the Customer.
- 11 ACCESS AND BLOCKING RIGHTS
- 11.1 Without prejudice to any other rights or remedies available to it, Exact may suspend without liability the performance of any of its obligations under the Private Cloud Agreement and/or block Customers access to the Private Cloud Services in the event that Customer has committed any breach of its obligations under the Private Cloud Agreement.
- 11.2 If the Private Cloud Agreement is terminated, the Customer may download all Customer data up to date of termination of the Private Cloud Agreement. After termination of the Private Cloud Agreement, the Customer will immediately and permanently cease use of the Private Cloud Services and will likewise no longer have access to the Private Cloud Software and any data stored therein.
- 11.3 For up to three [3] months after the termination of the Private Cloud Agreement, the Customer may request Exact to reactivate the Private Cloud Agreement effective when the first payment of any applicable [reactivation] fee is received by Exact. After the reactivation the Customer may again have access to its data, as it was recorded in any back-up copy last created by Exact prior to Customer's termination of the Private Cloud Agreement.

12 SERVICE LEVEL AGREEMENT AND AVAILABILITY.

- 12.1 Exact shall use commercially reasonable endeavors to ensure that the Private Cloud Services are available for use by the Customer as specified in the Service Level Agreement. The Service Level Agreement forms an integral part of the Private Cloud Agreement.
- 12.2 Exact is allowed to amend the Service Level Agreement at its sole discretion. Any amendment to the Service Level Agreement will be communicated to the Customer as early as reasonably possible prior to such amendment taking effect. If any amendment to the Service Level Agreement is not acceptable to the Customer, Customer may terminate the Private Cloud Agreement in accordance with the provisions of clause 5.1. However, no termination of the Private Cloud Agreement shall take effect prior to any amendments to the Service Level Agreement becoming effective.
- 12.2 Notwithstanding clause 12.1 Exact is entitled, without any prior notice, to (temporarily) block or disable access to the Private Cloud Services or limit the use thereof insofar as may be reasonably necessary from time to time in order to:
- a) carry out preventative or regular maintenance and upgrade work in respect to the Private Cloud Services;
 - b) carry out Maintenance under the Subscription Agreement or any applicable Maintenance Agreement;
 - c) in the event of any actual or suspected security breach; and/or
 - d) in the event of any other emergency, all without the Customer thereby being entitled to seek compensation from Exact. Exact will endeavor to limit these measures to a minimum and, to the extent commercially practicable, inform the Customer in a timely manner.
- 12.3 The Customer acknowledges and accepts that the Private Cloud Services can never be perfect or be 100% free of defects and that not all defects can or will be remedied.

13 DATA PROTECTION

- 13.1 Where the provisioning of the Private Cloud Services involves the processing a personal data, [e.g. any personal data contained in the Customer Data], Exact shall be deemed the (sub-)processor (as defined in the privacy directive 95/46/EC) on behalf of the Customer with regard to this personal data.
- 13.2 The Customer shall ensure that it has secured all necessary consents and authorizations which are required to enable it to process and store its personal data via the Private Cloud Services and Exact shall have no responsibility or liability to the Customer to secure such consents or authorizations on its behalf. The Customer guarantees that it will process, store and use its personal data in accordance with all applicable laws, regulations and codes of practice. The Customer indemnifies Exact in full on demand against any and all claims, costs, losses, damages, expenses, actions, fines and/or penalties which Exact may suffer or incur or have imposed on it relating to any data which is processed by the Customer and/or Exact in the scope of the Private Cloud Agreement (including as a result of any claim or allegation that such processing is an infringement of any local and/or international data protection legislation and/or other legislation related to the processing of personal data) save that such indemnity shall not apply to the extent that any matter complained of is reasonably attributable to any failure by Exact to comply with any of its obligations under the Private Cloud Agreement.
- 13.3 Exact hereby warrants that it shall take appropriate technical and organizational measures against the unauthorized or unlawful processing of any data which the Customer has entered via the Private Cloud Services and against the accidental loss or destruction of or damage to that data.

- 13.4 Except to the extent specifically provided in the Subscription Agreement, License Agreement, Maintenance Agreement and/or Private Cloud Agreement, or as may be reasonably required to enable Exact to comply with its obligations under the Private Cloud Agreement, Exact will not examine the data which the Customer has placed with Exact through the Private Cloud Services and will not make data available to third parties (with the exception of subsidiaries and/or affiliates of Exact), unless Exact must do so pursuant to statute, a regulation, a judicial order or an order by a government agency.
- 14 DATA RETENTION, BACK-UP
- 14.1 The Customer will at all times remain the proprietor of the Customer Data and Customer is solely responsible for the content and accuracy of the Customer Data. Customer's compliance with government laws and regulations associated with the creation, retention or disposition of computer generated data is the responsibility of Customer. Exact will not be subject to any statutory retention period regarding the data entered by the Customer.
- 14.2 Exact warrants that the Customer Data is protected as commercially reasonably as possible against loss but cannot guarantee that no loss of data will occur. Exact shall create a snapshot (copy) of the Customer Data that the Customer has entered via the Private Cloud Services on a regular basis. However, this copy is solely created for internal security reasons of Exact only (e.g. in case of calamities, disaster recovery etc. at Exact) and will not be distributed to (individual) Customers. Unless agreed otherwise in the Service Level Agreement, the Private Cloud Services does not include the provision of any backup, disaster recovery or business continuity services available to the Customer. Therefore, Exact advises the Customer to make a backup of all data entered through the Private Cloud Services itself at frequencies that are appropriate to enable it to recover such data with minimal impact on its business.
- Such back-ups need to be stored outside the (environment of the) Private Cloud Services. In no event shall Exact be liable for the costs of (reproducing) mutilated corrupt or lost data, nor or for any (consequential) damage or loss of profit on the part of the Customer.
- 15 TRANSFER
- 15.1 The Customer is prohibited from transferring rights or obligations arising from the Private Cloud Agreement or these Exact Private Cloud Terms & Conditions to subsidiaries, affiliates and or third parties without the prior written consent of Exact.

Vigorous business software. That's what Exact builds, for more than 200,000 businesses around the world. For entrepreneurial Doers who dare and, if they fall, always get up again.

Exact breathes that same spirit. Thirty years ago, six students launched Exact as a garage start-up. Now we're a global company with 1,550 employees in 15 countries. We love the energy of fast-growing companies. We love the bumpy road of innovation.

Our business software enables you to focus on the next goal, and look ahead to the next challenge. So dare to challenge the status quo. Analyze, test and improve your product, your organization, or your business model—constantly. With our vigorous business software, the future is what you make of it.

Exact. Focus on what's next.

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