

LIQUIDCLOUD General Terms and Conditions

1 Definitions

- 1.1 **“Acceptance Date”** means the date on which you accepted the Agreement, be that in writing or by way of electronic medium, for example by clicking “I agree” on a web page or via your mobile phone, or telephonic acceptance;
- 1.2 **“Activation Date”** means the date on which LIQUIDCLOUD will give you access to and/or enable you to use a product or service;
- 1.3 **“Agreement”** means the agreement concluded between you and LIQUIDCLOUD in respect of the product or service contemplated in the Application Form which agreement will be exclusively governed by these general terms and conditions and the product specific terms and conditions applicable to the relevant product or service (**“Product Terms”**) read together with the Application Form;
- 1.4 **“Application Form”** means the document (including any electronic document) on which (*inter alia*) you selected your service or product of choice;
- 1.5 **“Business Day”** means Monday to Friday, but excludes Saturdays and a day which is an official public holiday in the Republic of South Africa;
- 1.6 **“Business Hours”** means the hours between 08h30 and 17h00 on a Business Day;
- 1.7 **“CPA”** means the Consumer Protection Act, 2008;
- 1.8 **“Electronic Communications Act”** means the Electronic Communications Act, 2005;
- 1.9 **“ECT Act”** means the Electronic Communications and Transactions Act, 2002;
- 1.10 **“Equipment”** means any device, equipment or hardware used to access the services or used in conjunction with the services;
- 1.11 **“Intellectual Property Rights”** means the copyright in any work in terms of the Copyright Act, No. 98 of 1978, and includes without limitation the right to reproduce that work, the rights in respect of a trade mark conferred by the Trade Marks Act, No. 194 of 1993, the rights in respect of a design conferred by the Designs Act, No. 195 of 1993, and the rights in respect of a patent conferred by the Patents Act, No. 57 of 1978 including any applications for the foregoing and any names, licenses, know how, trade secrets and data associated with the foregoing;

- 1.12 "Juristic Person" means a company or close corporation and includes a body corporate, partnership, association or trust;
- 1.13 "Legal Notices Website" means www.liquidcloud.co.za/terms;
- 1.14 "LIQUIDCLOUD Marks" means any trademarks, logos, brand names, trade names domain names or other names or marks of LIQUIDCLOUD whether registered or not;
- 1.15 "LIQUIDCLOUD", "we", "us" and "our" means In the Cloud Services CC, its affiliates and subsidiaries;
- 1.16 "NCA" means the National Credit Act, 34 of 2005;
- 1.17 "Network Coverage" means the geographical area within which the service can be accessed and used by you, as determined at the time coverage was established;
- 1.18 "Network Operator" means a company that owns an electronic communications network, and which makes such network and the electronic communications services conveyed over such network available to other industry players for commercial purposes (e.g. Vodacom, MTN and Telkom);
- 1.19 "Website" means www.liquidcloud.co.za;
- 1.20 "Subscriber", "you" or "Customer" means a user of any of our products and services;
- 1.21 "Uncontrollable Event" means (including without limitation) any fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of LIQUIDCLOUD including the termination or suspension of a service or product provided by a network Operator, that may result in a delay or a failure to provide any product or service; and
- 1.22 "VAT" means Value Added Tax as provided for in the Value Added Tax Act, 1991.

2 Commencement, Duration, Termination and Cooling-off

- 2.1 The Agreement will commence on the Acceptance Date and endure indefinitely until it is cancelled as provided for in this clause 2.
- 2.2 This Agreement may be terminated by either LIQUIDCLOUD or you on one calendar months' notice, save to the extent provided otherwise in the Product Terms, which

termination will take effect on the first day of the month immediately following the end of the applicable notice period.

- 2.3 Notwithstanding the termination of the Agreement, in the event that you continue to use the products or services despite the termination of the Agreement, you will remain liable for and promptly pay on demand all amounts that would have been due to LIQUIDCLOUD as a result of the use of or access to the product or service and this Agreement shall be deemed to continue to apply until such time as all amounts due to LIQUIDCLOUD have been paid in full.
- 2.4 If the Agreement results from any direct approach to you by LIQUIDCLOUD or is an electronic transaction as contemplated in the ECT Act, you will be entitled to cancel the Agreement on written notice to LIQUIDCLOUD without reason or penalty within 5 (five) Business Days of –
 - 2.4.1 in the case of services only being provided in terms of the Agreement - the Acceptance Date; and
 - 2.4.2 in the case where goods are provided and constitute the subject of the Agreement, whether in conjunction with services or on its own – the date of delivery of such goods.
- 2.5 For purposes of clause 2.5.2, goods include any literature, music, photograph, motion picture, game, information, data software, code or other intangible product or any license to use such intangible product. Where the Agreement relates to the provision of services and you are provided with Equipment or goods to which clause 9 applies then clause 2.4.1 and not clause 2.4.2 will apply.

3 NCA and ECT Act

- 3.1 Although the Agreement is not a credit agreement as contemplated in the NCA, your application for a service or product may be subject to a credit referencing or risk assessment process. This means that LIQUIDCLOUD may utilize the information provided by you including your personal information and request and receive information about you and your credit record (“**Assessment Information**”) from registered credit bureaus in order to determine whether you will be in a position to meet your obligations under the intended Agreement. LIQUIDCLOUD will be entitled to decline to activate a product or service that you apply for if LIQUIDCLOUD reasonably determines that you may not be able to meet your commitments under the Agreement.
- 3.2 LIQUIDCLOUD is entitled to perform these assessments each time you apply for a service or product.

- 3.3 The consumer protection provisions of the ECT Act, apply to transactions and communications that are executed electronically by a natural person. It also does not apply to paper based transactions, e.g. where you apply for a service or product by completing an Application Form in writing.

4 Conditions of access

- 4.1 LIQUIDCLOUD will, unless it declines to activate the service as contemplated in clause 3.1, make the service available to you on the Activation Date.

- 4.2 LIQUIDCLOUD will, where relevant, issue a user name and password to you prior to the Activation Date in order to enable you to gain access to and/or use a service. In such instance, you will not be able to access and/or use a service without a user name and password.

- 4.3 You agree to use the services in terms of our Acceptable Use Policy found at our Legal Notices Website.

- 4.4 You agree that:

- 4.4.1 you will use your user name and password for your own personal use only;

- 4.4.2 you will not disclose your user name and password to any other person for any reason whatsoever and that you will maintain the confidentiality thereof;

- 4.4.3 in the event that your password is compromised, you will immediately notify LIQUIDCLOUD and change your password;

- 4.4.4 you, as the holder of the user name and password, acknowledge you are solely responsible for all payments in respect of a service charged to your LIQUIDCLOUD account, irrespective of whether the service has been utilized or is being utilized by you or not and accordingly the entire amount outstanding on your LIQUIDCLOUD account will be deemed to have arisen from (or relate to) your access to and/or use of a service;

- 4.4.5 you agree to cause all persons who use any products or services under your account or with your authorization to comply with the Agreement. All acts or omissions of all persons who use services under your account or with your authorization will be treated for all purposes as your acts or omissions;

4.4.6 unless such right is specifically and expressly provided to you in terms of any applicable Product Terms you will not, at any time, permit and/or initiate a simultaneous network log-in; and

4.4.7 you will not attempt to circumvent LIQUIDCLOUD's user authentication processes or engage in attempts to access LIQUIDCLOUD's network where not expressly authorised to do so.

5 Service Delivery, Service Availability

5.1 Save as set out in any specific Product Terms, LIQUIDCLOUD will use reasonable endeavors to make its services available to its Subscribers, and to maintain the availability thereof for use by its subscribers. However, we provide the services "as is" and "as available" and do not warrant or guarantee that the services will at all times be free of errors or interruptions, be always available, fit for any purpose, not infringe any third party rights, be secure and reliable, or will conform to your delivery timeline requirements subject always to the provisions of the CPA where applicable.

5.2 LIQUIDCLOUD will use its best endeavors to notify you in advance of any maintenance and repairs which may result in the unavailability of a service, but can not always guarantee this.

6 Data Retention

6.1 We will use reasonable endeavors to ensure the safekeeping of any data or content which you may receive or upload to our servers from time to time, such as (without being limited to) photographs, websites, videos, data and e-mail messages (hereinafter collectively referred to as "your data"). However, it is your obligation to keep copies and back-ups of your data, as:

6.1.1 we will not be liable for any direct or indirect loss or damages of any kind, which you may suffer as a result of the loss of your data, or any part thereof, for any reason whatsoever; and

6.1.2 we will, unless otherwise required by law, delete all your data from our servers upon termination of the Agreement and any other agreement between us.

7 Communication, Complaints Handling and Dispute Resolution

7.1 You agree that LIQUIDCLOUD may from time to time send you communications regarding (without being limited to) special offers or discounts which LIQUIDCLOUD may

negotiate for and offer to its Subscribers, operational changes that may affect the services and/or new services or products launched. All communications will abide by our Privacy Policy and applicable law. You will always be entitled to notify us in writing that you do not wish to receive or continue to receive such communications and if you are a consumer as contemplated in the CPA, to pre-emptively block the receipt of such communications.

7.2 Complaints must be submitted to LIQUIDCLOUD and will be dealt with by LIQUIDCLOUD in accordance with the provisions of this clause 7.

7.3 Any payment default by you arising from, or in connection with, any service or product rendered or provided by LIQUIDCLOUD, will be excluded from the provisions of this clause, and LIQUIDCLOUD will be entitled to proceed to institute legal action against you.

7.4 Without prejudice to your rights in law, you are required, to first approach us with any complaint or dispute and afford us an opportunity to resolve a complaint before you approach any relevant authority, court or other dispute resolution body or refer the matter to Arbitration as contemplated in clause 7.10 below.

7.5 Please direct all complaints to complaints@liquidcloud.co.za. Your complaint should include the following:

7.5.1 your name and surname;

7.5.2 your account number;

7.5.3 the date on which the complaint arose; and

7.5.4 a brief description of what gave rise to the complaint.

7.6 In the event of a billing complaint you should also include the following:

7.6.1 a copy of the bill concerned or the particulars thereof, e.g account number;

7.6.2 the reason for the dispute;

7.6.3 the amount in dispute; and

7.6.4 supporting information or documentation, if any.

- 7.7 LIQUIDCLOUD will acknowledge receipt of your complaint within 3 (three) working days of receipt thereof.
- 7.8 LIQUIDCLOUD will formally respond with a view to proposing a resolution of your complaint in writing within 14 (fourteen) working days of receipt thereof, or within such longer period as we reasonably require under circumstances where the resolution of the complaint is for example (but without limitation) in the hands of a supplier or third party service provider.
- 7.9 You may approach any relevant authority, court or dispute resolution body or refer the matter to Arbitration as set out in clause 7.10 below, for resolution of the dispute, should you not be satisfied with the proposed resolution of the dispute by LIQUIDCLOUD.
- 7.10 Any dispute between the parties may be referred to arbitration and finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa. Such arbitration shall be held either in Cape Town or Johannesburg, and conducted in the English language before one arbitrator appointed in accordance with the said rules. Any award will be final and not subject to appeal. This agreement to arbitrate shall be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either party notifies the other party in writing to that effect.
- 7.11 The arbitrator shall have the power to give default judgement if any party fails to make submissions on due date and/or fails to appear at the arbitration.
- 7.12 The provisions set out above shall not prevent either party from approaching any court of competent jurisdiction to obtain interim or other relief in cases of urgency.

8 Payment

- 8.1 Billing will commence on the Activation Date.
- 8.2 You agree to pay all amounts due under this Agreement in consideration for a service or product in accordance with the Product Terms under which that service is rendered or that product is offered.
- 8.3 To the fullest extent permitted by law, all amounts due and payable in terms hereof shall be paid free of exchange and without deduction or set-off.

- 8.4 Your first bill may be for part of a month and you will be charged for the number of days left in the month in which you signed up or switched over, plus the subscription for the next month.
- 8.5 Should you fail to pay any amount on the due date for payment then LIQUIDCLOUD may, without prejudice to any of its other rights and remedies:
- 8.5.1 take all such further steps as may be necessary to recover the outstanding amount from you, including without limitation the use of debt collection mechanisms;
 - 8.5.2 suspend your access to the service or the use of any product without notice to you until such time as the outstanding amount has been paid in full; or
 - 8.5.3 subject to clause 2, terminate this agreement with immediate effect.
- 8.6 In the event of LIQUIDCLOUD suspending your access to the service, LIQUIDCLOUD reserves the right to continue to charge you for the period of suspension.
- 8.7 If any changes are proposed to any terms of an agreement between LIQUIDCLOUD and a Network Operator which impacts on the provision of any services or products in terms of this Agreement, LIQUIDCLOUD shall subject to clause 2 above, be entitled to amend the terms, fees or charges for its services or products at any time on 30 (thirty) days notice to you as provided for in clause 19 below. The amendment will take effect on the date indicated in the notice.
- 8.8 To the extent that LIQUIDCLOUD incurs any additional expenditure relating to the tracing and/or collection of unpaid amounts, those costs shall be for your account to the extent permitted by law.

9 Equipment and Software

- 9.1 Except for Equipment that you have fully paid for, all Equipment installed or provided by us remains our property and you agree that:
- 9.1.1 you will take reasonable care with such Equipment;
 - 9.1.2 you may not sell, lease, mortgage, transfer, assign or encumber such Equipment;
 - 9.1.3 you may not re-locate such Equipment without our knowledge and permission;

- 9.1.4 you will inform any landlord that such Equipment is owned by LIQUIDCLOUD and therefore not subject to any landlord's hypothec; and
- 9.1.5 you will return such Equipment to us at your own expense upon termination of the services to which the Equipment related.
- 9.2 If such Equipment is lost, stolen or damaged or sold, leased, mortgaged, transferred, assigned, encumbered or not returned, you agree to pay us the undiscounted retail value of such Equipment, together with any costs incurred by us in seeking possession of such Equipment.
- 9.3 You authorise us and our representatives to enter or have access to your premises as reasonably necessary, at mutually agreed upon times, to install, maintain, inspect, repair or remove the Equipment or to maintain, investigate, protect, modify or improve the operation of our services or our facilities.
- 9.4 Equipment and related software may have to meet certain minimum requirements and be maintained in certain ways and in certain locations in order to access the services or for the proper operation of the services (e.g. 112 emergency services). Such requirements may be changed from time to time as we may reasonably require. Unless otherwise specified by us, you are solely responsible for updating or maintaining your Equipment and software as necessary to meet such requirements, and you may not be entitled to customer support from us if you fail to do so.
- 9.5 You must immediately notify us, at any of the points of contact specified below, if your Equipment is lost, stolen or destroyed. Should you then wish to terminate the services, your obligations under the Agreement will continue to apply save as provided for in clause 2.
- 9.6 Any software and accompanying documentation we provide to you remains our property or that of our licensors. You will take all reasonable steps to protect such software or documentation from theft, loss or damage. You will be obliged to review and agree to the applicable end user license agreement before installing or using the software or documentation. Unless otherwise provided in the applicable end user license agreement, all end user license agreements will terminate upon termination of the Agreement.

10 Return, Exchange and Refunds

- 10.1 LIQUIDCLOUD's exchange, return and refund policies in respect of products, in particular Equipment, provided to you under this Agreement are dealt with in the service and product specific schedule.

- 10.2 LIQUIDCLOUD's policy in respect of exchanges, returns and refunds depends on, inter alia, the type goods and the policy of the manufacturer or supplier thereof. Where the CPA applies to you, LIQUIDCLOUD's policy in this regard will comply with the requirements of the CPA in relation to exchanges, returns and refunds.
- 10.3 Warranties, if any, will ordinarily be included in the hardware packaging.
- 10.4 Where the CPA applies to you and/or the product or service in question, LIQUIDCLOUD will provide, the warranties, undertakings and assurances as required under the CPA but subject to any limitations and restrictions as allowed under the CPA.

11 Security and Privacy

- 11.1 You may not utilize any service in any manner which may compromise the security of LIQUIDCLOUD's network, or any other network connected to LIQUIDCLOUD's network, or tamper with a service or such a network in any manner whatsoever.
- 11.2 LIQUIDCLOUD takes reasonable steps to secure your payment information. LIQUIDCLOUD uses a payment system that is in LIQUIDCLOUD's reasonable opinion, sufficiently secure with reference to accepted technological standards at the time of the electronic transaction and the type of the transaction concerned.
- 11.3 LIQUIDCLOUD will deal with your personal information in accordance with the provisions of our Privacy Policy which is available on our Legal Notices Website and in compliance with all relevant laws.

12 Intellectual Property Rights

- 12.1 You agree to comply with all laws applicable to any Intellectual Property Rights in respect of any data, files and/or information accessed, retrieved or stored by you through your use of any of our services and/products.
- 12.2 You are prohibited from using any LIQUIDCLOUD Marks without the prior written approval of LIQUIDCLOUD.
- 12.3 Other than as specifically provided in the product or service specific terms and conditions, LIQUIDCLOUD will wholly and exclusively retain all existing Intellectual Property Rights and become the exclusive and unencumbered owner of all intellectual property right(s) employed in or otherwise related to software used by LIQUIDCLOUD, its network infrastructure, e-commerce network infrastructure, business and the

provision of any of the services in terms of the product or service specific terms and conditions.

13 Breach

13.1 Subject to any other provisions set out in these general terms and conditions or the Product Terms and without prejudice to any of these provisions, should you be in breach of any provision of this Agreement, then LIQUIDCLOUD shall be entitled, without prejudice to any other rights that it may have and to the extent required or permitted, as the case may be, by law, to forthwith:

13.1.1 afford you a reasonable opportunity to remedy the breach, taking into account the nature of the breach in question; or

13.1.2 suspend your access to a service;

13.1.3 cancel all agreements concluded between us; or

13.1.4 claim immediate performance and/or payment of all your obligations in terms hereof.

13.2 Should LIQUIDCLOUD suspend, disconnect or terminate your service, LIQUIDCLOUD will be entitled to, charge you a fee for reconnecting your service.

14 Indemnity

14.1 You hereby unconditionally and irrevocably indemnify LIQUIDCLOUD and agree to indemnify and hold LIQUIDCLOUD harmless against all loss, damages, claims, liability and/or costs, of whatsoever nature, howsoever and whensoever arising, suffered or incurred by LIQUIDCLOUD as a result of any claim instituted against LIQUIDCLOUD by a third party (other than you) as a result of (without limitation):

14.1.1 your use of our services or products other than as allowed or prescribed in the Agreement;

14.1.2 any other cause whatsoever relating to the Agreement or the provision of services or products to you where you have acted wrongfully or failed to act when you had a duty to so act.

15 No representations, warranties or guarantees and Limitation of liability

- 15.1 Save to the extent otherwise provided for in this Agreement or where you are entitled to rely on or receive, by operation of law, any representations, warranties or guarantees, we do not make or provide any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality or security of any product or service.
- 15.2 Without limiting the generality of the provisions of clause 15.3, LIQUIDCLOUD shall not be liable for and you will have no claim of whatsoever nature against LIQUIDCLOUD as a result of -
- 15.2.1 the loss of or access to any usernames and passwords which you are required to safeguard and not allow unauthorized access on the understanding that we will be entitled to assume that you are the person so using or gaining access to any service or account where your username and password is used;
- 15.2.2 any unavailability of, or interruption in the service due to an Uncontrolled Event;
- 15.2.3 any damage, loss, cost or claim which you may suffer or incur arising from any suspension or termination of the service/s for any reason contemplated in the Agreement.
- 15.3 In addition to and without prejudice to any other limitations of liability provided for in the Agreement and to the fullest extent permitted by applicable law, LIQUIDCLOUD shall not be liable to you for any direct damages howsoever arising and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement, whether resulting from negligence, breach or any other cause. To the extent that a competent court or tribunal or other competent dispute resolution body or authority finally determines, notwithstanding the exclusion contained in this clause, that LIQUIDCLOUD is liable to you for any damages, LIQUIDCLOUD's liability to you for any damages howsoever arising shall be limited to the amounts paid by you under this Agreement in consideration for a service or product during the immediately preceding 12 (twelve) month period in respect of the service or product which gave rise to the liability in question.

16 Certificate of Indebtedness

- 16.1 The amount due and payable by you to LIQUIDCLOUD in terms of any agreement between us at any time, shall be determined and proved (on a *prima facie* basis) by a certificate signed by one of LIQUIDCLOUD's directors, whose appointment, qualification and authority need not be proved.

- 16.2 Such certificate shall be deemed to be a liquid document for the purpose of obtaining summary judgment, provisional sentence and/or any other judgment against you, unless you have reason to direct a dispute in connection with a payment to us in accordance with the Billing Complaints Handling Procedure as contemplated in clause 7.

17 Cession and Delegation

You may not sell, cede, assign, delegate or in any other way alienate or dispose of any or all of your rights and obligations under and in terms of this Agreement without the prior written approval of LIQUIDCLOUD. LIQUIDCLOUD shall be entitled to sell, cede, assign, delegate, alienate, dispose or transfer any or all of its rights and obligations under and in terms of this Agreement without your consent and without notice to you.

18 Jurisdiction

Notwithstanding clause 7 above, you hereby consent to the jurisdiction of the Magistrate's Court in the Republic of South Africa in respect of any proceedings that may be initiated by LIQUIDCLOUD arising out of this Agreement, provided that LIQUIDCLOUD shall be entitled, in its reasonable discretion, to institute such proceedings in the High Court of South Africa and, in such event, you consent to the jurisdiction of such court. The jurisdiction of the Small Claims Court is specifically excluded, as the parties agreed to follow the arbitration process set out in clause 7 above.

19 Amendment of this agreement

LIQUIDCLOUD reserves the right to amend this agreement from time to time. Any new version of the Agreement will be displayed on our Website together with the date on which it will become effective, which will never be less than 30 (thirty) days after the date on which it is first published. It is your obligation to visit our web site on a regular basis in order to determine whether any amendments have been made.

20 General

- 20.1 The parties acknowledge and agree that this Agreement constitutes the whole of the agreement between them and that no other agreements, guarantees, undertakings or representations, either verbal or in writing, relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on the parties. No variation or addition of this Agreement or the Application Form will be binding on any of the parties unless recorded in writing and signed by both parties.
- 20.2 LIQUIDCLOUD is in terms of section 43 of the ECT Act required to make its contact details, its *domicilia citandi et executandi* and certain other information available to its

Subscribers who enter into electronic transactions with LIQUIDCLOUD. This information is available under "Company information" on our Legal Notices Website.

- 20.3 You agree that any notices we send to you in terms of any agreement concluded between us may be sent via e-mail unless otherwise prescribed by law.
- 20.4 No indulgence, leniency or extension of time which LIQUIDCLOUD may grant or show to you shall in any way prejudice LIQUIDCLOUD or preclude LIQUIDCLOUD from exercising any of its rights in the future.
- 20.5 In the event of a discrepancy between these Terms and Conditions and the Product Terms, the Product Terms will take precedence.
- 20.6 You warrant that as at the date of signature of the Application Form, all the details furnished by you to LIQUIDCLOUD are true and correct and that you will notify LIQUIDCLOUD in the event of any change to such details.
- 20.7 All our terms and conditions can be accessed, stored, and reproduced electronically by you.
- 20.8 The physical address where the parties will receive legal service of documents/ *domicilium citandi et executandi* will be the addresses set out on the Application Form.