Terms of Service

Trinico Cloud - Standard Terms of Service

Effective: Thursday, 15 January 2015 | Governed by the laws of the Republic of South Africa
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By ordering, installing, connecting or making use of Trinico Cloud's goods or services from our website **www.trinico.cloud**, or by indicating your acceptance of this Agreement in any other way, you agree to be bound by Trinico Cloud's Standard Terms, the Acceptable Use Policy, and the specific Service Terms applicable to the good or service concerned.

Note: Your attention is drawn in particular to clauses rendered in BOLD CAPITALS, in line with section 49 of the Consumer Protection Act 68 of 2008. The summary that follows is provided for your convenience only and does not form part of the agreement; it remains your responsibility to read the clauses referenced.

In a nutshell

- You consent to a credit check and credit record reporting if required (clause 7.1).
- You are responsible for your own actions when using our services (clause 9.1).
- You are responsible for the hardware and software needed to use our services (clause 9.2).
- You agree to comply with our Acceptable Use Policy (clause 9.4).
- You warrant that you own (or have permission for) all material you store or transmit (clause 11.7).
- You consent to traffic-data monitoring for accounting and quality assurance (clause 14.1).
- You consent to us processing personal information solely to provide the service (clause 14.3).
- Risk in equipment passes to you the moment it leaves our possession (clause 17.4).
- If our equipment sits on premises you do not own, you must reimburse us if the landlord attaches it during a rental dispute (clause 18.3.2).
- Trinico Cloud is not liable for losses arising from your use of the services (clause 19).
- You indemnify Trinico Cloud against third-party claims caused by your unlawful acts or misuse (clause 20).

1. Parties

1.1. "Trinico Cloud" (also referred to as "Trinico", "we", "us" or "our") is Trinico CC, a close corporation registered in the Republic of South Africa in terms of the Close Corporations Act 69 of 1984, trading as Trinico Cloud at the website www.trinico.cloud.

Registered & Postal Address: Somerset West, 7130, Western Cape, Republic of South Africa
Email: info@trinico.cloud · admin@trinico.cloud · support@trinico.cloud · billing@trinico.cloud

1.2. "The Customer" or "You" is the party described as such on any Service Order executed between you and Trinico Cloud, with contact details as entered on the Service Order.

2. Definitions

2.1. The terms listed below will have the following meanings in this Agreement:

2.2. Acceptable Use Policy / AUP. The document with that heading available on the Trinico Website, as amended from time to time.

2.3. Agreement. These Standard Terms, plus the relevant Service Order(s), Service Terms and any schedules or annexures relating to them.

2.4. Affiliate. In relation to a Party, the Party's holding company, its subsidiaries, the subsidiaries of its holding company and any other companies which, directly or indirectly, is controlled by the Party, controls the Party or is under common control with the Party.

2.5. Business Day. Any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa.

2.6. Business Hour. A period of 60 minutes between the hours of 08h00 and 17h00 South African Time, on a Business Day.

2.7. Charges. The rates payable by the Customer for the Services as set out in the Charges Schedule.

2.8. Customer. Defined in section 1.2.

2.9. Customer Data. Information collected for the purpose of identifying customers as well as photographs, websites, videos, data and e-mail messages transmitted via the Trinico System.

2.10. Customer Equipment. Any equipment owned by the Customer, including without limitation servers, peripherals, routers, switches, Software, Databases, data cables, hard drives and uninterruptible power supplies.

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2.11. Customer System. The Customer Equipment and Software operated together by the Customer as a system.

2.12. Customer Support Ticket Area. The online account administration facility provided to Customers at the Trinico Website.

2.13. CPA. The Consumer Protection Act 68 of 2008.

2.14. Data. Electronic representations of information in any form.

2.15. Database. A collection of related data integrated using a method of connecting and displaying the data into a collection of interrelated independent files stored together.

2.16. Trinico Equipment. Any equipment supplied to the Customer by Trinico Cloud under this Agreement but which the Customer does not own, or any equipment possessed by Trinico Cloud.

2.17. Trinico Premises. Any premises where equipment used by Trinico Cloud to provide the Services is located, and which is not owned or occupied by the Customer, including data centres in South Africa and elsewhere.

2.18. Trinico System. Equipment operated together as a system by Trinico Cloud to provide any Service.

2.19. Trinico Website. www.trinico.cloud or another URL that Trinico Cloud notifies the Customer of from time to time.

2.20. Domain. An Internet subdomain registered with an authorised registrar appropriate to its top-level domain ("TLD"), comprising its constituent domain name server records.

2.21. Emergency Maintenance. Maintenance to the Trinico System intended to remedy existing or imminent circumstances likely to cause danger to persons or property, an interruption to the Services, or substantial loss.

2.22. Fees. The fees and / or charges due to Trinico Cloud by the Customer in respect of Goods or Services.

2.23. Goods. Any and all goods to be provided by Trinico Cloud to the Customer under this Agreement.

2.24. Good Industry Practice. The exercise of skill, diligence, prudence and foresight reasonably expected from a skilled and experienced service provider providing similar services.

2.25. Hosting Service. The type of hosting service selected by the Customer, either Website Hosting or Cloud

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Server Hosting.

2.26. Intellectual Property Rights. Patents, registered designs, trademarks (whether registered or otherwise), copyright, trade-secret rights, database rights, design rights, service marks and other intellectual-property rights.

2.27. Malicious Code. Anything that contains computer software routine or code intended to allow unauthorised access or use, or to disable, damage, erase, disrupt or impair the normal operation of a computer system; including any back door, time bomb, Trojan horse, worm, drop-dead device or computer virus.

2.28. Party / Parties. Either of Trinico Cloud or the Customer, and "Parties" both of them collectively, including their successors and permitted assigns.

2.29. Personnel. Any director, member, employee, agent, consultant, contractor or other representative of a Party.

2.30. Personal Information. Has the meaning set out in POPIA.

2.31. POPIA. The Protection of Personal Information Act 4 of 2013, as amended (also commonly referred to as "POPI").

2.32. Privacy Policy. The document with that heading available on the Trinico Website, as amended from time to time.

2.33. Provider. Trinico Cloud.

2.34. RICA. The Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002.

2.35. Service. A service provided by Trinico Cloud to the Customer under this Agreement.

2.36. Service Level Availability. A Service Schedule defining levels of service to be met by Trinico Cloud under the Agreement.

2.37. SLA Ticket. The reporting of a service outage or complaint regarding a Service or the Service Level Availability, via the Provider's online portal.

2.38. Service Order / Order. A goods, license, services and / or work order agreed to in writing or by subscription on website by both Parties under this Agreement.

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2.39. Service Terms. A schedule describing the terms on which Trinico Cloud will provide a particular Good or Service, as amended from time to time.

2.40. Standard Terms / Trinico Standard Terms. This document.

2.41. Software. Any computer programme (whether source- or object-code), database structure or content, artistic work, screen layout, cinematograph film, sound recording, preparatory material, user or technical documentation, or any other work created in connection therewith and any modifications, enhancements or upgrades thereto.

2.42. Supplier. A supplier of goods and / or services to Trinico Cloud.

2.43. Time and Materials Rate. Trinico Cloud's standard time and materials fees and charges applicable from time to time, including all expenses reasonably and actually incurred (travel, accommodation and subsistence).

3. How the Agreement Works

3.1. The Goods and Services that Trinico Cloud will provide to the Customer will be described in Service Orders and specific Service Term(s) schedules.

3.2. These Standard Terms apply to all Service Orders.

3.3. More details of particular Goods or Services may be contained in Service Term(s) Schedules.

3.4. The Service Order(s), Service Terms, and this document together form the Agreement between Trinico Cloud and the Customer. If the Parties enter into a Service Level Availability or agree to an annexure to any of these documents, these will also form part of the Agreement.

3.5. If there is any conflict between any of these documents, they will be interpreted in descending order of precedence as follows: Standard Terms (this document), Service Terms, Service Order, Acceptable Use Policy, and Service Level Availability, unless otherwise expressly stated in writing.

3.6. The meanings of any capitalised words in this document are found under the Definitions section above.

4. Service Orders / Orders

4.1. Trinico Cloud will provide the Services to the Customer as described in Service Orders in terms of the Agreement.

4.2. A Service Order may be signed in hard copy (in counterparts or not), entered into via the Trinico Website, per

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email or by another method if confirmed by Trinico Cloud.

4.3. Each Service Order (read with the other documents mentioned above) will be a separate contract between the Customer and Trinico Cloud.

4.4. The terms of one Service Order will not apply to another, unless a Service Order amends or renews an existing Service Order.

5. Term of Agreement and Renewal

5.1. The Agreement will be in force from the date on which the Customer signs or indicates acceptance of a Service Order, and will continue in force for the period stated on the Service Order, where after it will automatically renew for further periods equal to the initial period until terminated as described in clause 5.3. If the Service Order does not specify a time period, the Agreement will operate on a month-to-month basis.

5.2. Where the commencement of a Service is delayed, the termination date of the Agreement will be calculated from the date that the Service commenced.

5.3. Unless otherwise stated in the Service Order, either Party may terminate the Agreement and / or Service(s) on providing one calendar month's notice in writing. Cancellations by the Customer must be confirmed by Trinico Cloud to have effect.

6. Amendment of Terms

6.1. Trinico Cloud may amend the Standard Terms and Service Terms at any time. The amended versions will be posted on the Trinico Website, and Trinico Cloud will make reasonable efforts to advise the Customer of them by email and via the Customer Support Ticket Area.

6.2. Trinico Cloud must give at least 14 days, or immediate notice under extreme conditions, written notice of the amendments.

6.2.1. In the case of a fixed-term Agreement, the amendments will become effective at the end of the then-current contractual period.

6.2.2. In the case of an indefinite period, the amendments will become effective at the beginning of the first calendar month after the notice period has expired, and the Customer may terminate the Agreement before the end of the notice period if it objects to the amendments.

6.3. If Trinico Cloud increases its Fees, notice of the change must take place as described in clause 6.2.

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7. Initiation

7.1. THE CUSTOMER CONSENTS TO TRINICO CLOUD CARRYING OUT A CREDIT CHECK AT ANY APPLICABLE CREDIT BUREAU IF REQUIRED, AND MAY MAKE THE PROVISION OF THE GOODS OR SERVICES DEPENDANT ON ITS SATISFACTION WITH THE RESULTS. TRINICO CLOUD MAY ALSO PROVIDE INFORMATION ON THE CUSTOMER'S PAYMENT RECORD TO A CREDIT BUREAU.

7.2. If the Customer is a juristic person, Trinico Cloud may require one or more of its officers to stand surety for the Customer's obligations.

7.3. Depending upon the Service provided, Trinico Cloud may be obliged under RICA to obtain certain information from the Customer, and may withhold or suspend Services until such information is provided.

7.4. If the Customer has not complied with a requirement of this clause 7, Trinico Cloud may delay providing the Services. If the Customer does not comply within a reasonable period, Trinico Cloud may terminate this Agreement and will not be liable for any damage.

8. Fees and Payment

8.1. The Customer will pay the Fees as set out in the Service Orders, without deduction or set-off.

8.2. Trinico Cloud may at its sole instance require the Customer to make payment by way of debit order.

8.3. Unless otherwise agreed:

8.3.1. Billing will commence on the date that Service provision commences.

8.3.2. Partial months (if applicable) will be charged pro rata.

8.3.3. All other invoices must be paid within ten (10) calendar days of invoice date.

8.3.4. Pre-paid Fees must be paid by the 7th day of the relevant month.

8.3.5. All Fees and other amounts payable are quoted inclusive of VAT.

8.3.6. All transactions are processed in South African Rands (ZAR) unless otherwise agreed in writing.

8.3.7. Should the Customer elect to pay via Cash or Cheque payments, services shall only be activated once proof of payment has been received and amounts cleared by the bank.

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8.3.8. All cash / ATM and / or Teller deposits will be subject to bank fees as set out by the bank.

8.4. Interest will be charged on overdue amounts at 2% above prime overdraft rate (per annum), up to a maximum of 2% per month, calculated and compounded monthly in arrears.

8.5. Trinico Cloud may at its sole discretion suspend Services in respect of which any amount is outstanding:

8.5.1. Immediately where a debit order fails (with delay in reconnection of up to 72 hours for multiple bounces); or

8.5.2. On 5 (five) Business Days written notice in any other case;

8.5.3. Unless the amount is the subject of a legitimate billing complaint.

8.6. Reconnection of any Service suspended in terms of clause 8.5 will be subject to a reasonable reconnection fee published in our Fees Schedule on the Trinico Cloud Website.

8.7. Termination of any annual or bi-annual account before its pre-paid term ends will be subject to a reasonable administration fee published on the Trinico Website.

8.8. Should any amount be outstanding by more than 60 Business Days, Trinico Cloud may refer the matter to a debt-collection agency or attorney for collection. The Customer will be liable for a reasonable administration fee, plus any legal costs arising from collection.

8.9. If a Service is provided by calendar month and the commencement date is not the beginning of a calendar month, the first-month Fee will be reduced proportionately.

8.10. Trinico Cloud may increase or decrease the Fee for any Service from time to time, in the same way as an amendment of this Agreement (see clause 6).

8.11. The Customer will reimburse all reasonable expenses necessarily and actually incurred by Trinico Cloud and its Personnel in fulfilling its obligations under this Agreement.

8.12. The Parties agree that, in the event of a payment dispute, Trinico Cloud may retain Customer Equipment in its possession as security and, after 60 days from due date, dispose of such Equipment to recover amounts owing.

8.13. A referrer discount will be forfeited if the referee terminates within three (3) months of commencement.

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8.14. If a Customer does not settle an outstanding invoice within 7 days of due date, the related services will be terminated. A reasonable re-activation fee will be levied for re-instatement, as published in our Fees Schedule on the Trinico Cloud Website.

9. Use of Services

9.1. THE CUSTOMER ACCEPTS THAT IT IS RESPONSIBLE FOR ALL OF THE CONSEQUENCES OF ITS OWN ACTIVITIES AND THOSE OF ITS EMPLOYEES, OFFICERS, AGENTS, INDEPENDENT CONTRACTORS AND ALL OTHERS UNDER ITS CONTROL WHEN USING THE SERVICES.

9.2. THE CUSTOMER IS RESPONSIBLE FOR OBTAINING, INSTALLING AND MAINTAINING ALL HARDWARE AND SOFTWARE REQUIRED TO ACCESS THE TRINICO SYSTEM AND MAKE USE OF THE SERVICES, UNLESS OTHERWISE AGREED IN WRITING.

9.3. The Customer must use the Services in a considerate and lawful way. The Acceptable Use Policy is available on the Trinico Website.

9.4. THE CUSTOMER MUST COMPLY WITH THE ACCEPTABLE USE POLICY AND ENSURE THAT ANYONE UNDER ITS CONTROL THAT USES THE SERVICES ALSO DOES SO. A BREACH OF THE ACCEPTABLE USE POLICY IS A BREACH OF THE CUSTOMER'S DUTY TO ACT IN A CONSIDERATE AND LAWFUL WAY.

9.4.1. Website content must be linked from a standard HTML / similarly coded web page with content freely available to the public; the hosting account should consist mostly of html and php files.

9.4.2. Inode limits per shared hosting plan:

Hosting Plan	Maximum Inodes
1 GB Shared Hosting	15 000
2 GB Shared Hosting	30 000
3 GB Shared Hosting	45 000
5 GB Shared Hosting	75 000
10 GB Shared Hosting	150 000
Unlimited Shared Hosting	250 000

Accounts above 100 000 inodes are excluded from weekly backups; above 250 000 inodes is a violation of the AUP and may be flagged for review or suspension.

9.4.3. Downloadable files, media and databases are each limited to 10 GB of a shared hosting account by category (multimedia / archives / databases / executables). Trinico Cloud may, in its sole discretion, determine unfair or

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inappropriate usage. The AutoBackup tool covers accounts up to 20 GB / 100 000 inodes.

9.4.4. Email send / forward limits per hour per domain:

Hosting Plan	Emails / hour / domain
100 MB Shared Hosting	5
1 GB Shared Hosting	10
2 GB Shared Hosting	20
3 GB Shared Hosting	30
5 GB Shared Hosting	50
10 GB Shared Hosting	100
Unlimited Shared Hosting	200

Concurrent connection caps and per-mailbox storage limits apply per the AUP.

9.5. Trinico Cloud may amend the Acceptable Use Policy at any time. Amendment of the AUP does not constitute amendment of this Agreement.

9.6. Trinico Cloud may use upstream Suppliers in providing certain Services; the Customer agrees to abide by their acceptable use policies.

10. Email Accounts

10.1. Trinico Cloud may filter incoming email for Spam, viruses and Malicious Code on a best-effort basis without warranty.

10.2. Email servers receive the same level of security as the rest of the Trinico System.

10.3. The Customer may send bulk email but not unsolicited bulk email (per AUP).

10.4. Trinico Cloud may take whatever steps it deems necessary to prevent unsolicited bulk email.

10.5. Trinico Cloud may suspend the Customer's email account or domain to prevent IP-block listings caused by such email.

10.6. If Trinico Cloud incurs costs unblocking IPs as a result of the Customer's bulk unsolicited email, the Customer will be liable.

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10.7. If email accounts are held on Trinico Cloud servers: emails older than 90 days may be deleted; mailbox-size and 20 MB per-message limits apply; on Service termination all email is deleted; webmail is provided as a complimentary service without uptime warranty; individual messages may be limited to 5 MB; Trinico Cloud reserves the right to refuse domain and hosting services at its sole discretion.

11. Intellectual Property

11.1. Nothing in this Agreement grants either Party a license to deal in any way with the other Party's Intellectual Property, nor an assignment of Intellectual Property, unless agreed in writing.

11.2. Where Trinico Cloud provides Software it owns, it grants the Customer a non-exclusive, non-transferable licence for the Customer's own purposes, for use of the Services, for the duration of this Agreement and subject to its terms.

11.3. Where Trinico Cloud provides third-party Software, the Customer must comply with all license terms imposed by the third party.

11.4. Copyright in any Software or other works created by Trinico Cloud under this Agreement vests in Trinico Cloud.

11.5. The Customer is prohibited from reverse engineering, disassembling or decompiling any Software supplied where the Intellectual Property is not owned by the Customer.

11.6. The Customer undertakes to comply with all intellectual-property laws.

11.7. THE CUSTOMER WARRANTS THAT IT EITHER OWNS THE INTELLECTUAL PROPERTY RIGHTS TO ALL MATERIAL TRANSMITTED, ACCESSED, STORED, DISPLAYED OR REPRODUCED USING THE TRINICO SYSTEM, OR THAT IT HAS THE PERMISSION OF THE OWNER OF THE MATERIAL TO MAKE USE OF THAT MATERIAL IN THAT WAY.

11.8. Trinico Cloud may make copies of Customer Data if necessary to provide a Service.

11.9 - 11.12. IP addresses assigned to the Customer are not property and cannot be owned. On termination, IPs may be removed from the Customer with no recourse.

12. Security

12.1. Trinico Cloud will implement measures in line with Good Industry Practice and the AUP for the security of the Trinico System and the physical security of the Trinico Premises and / or Data Centres, but gives no warranty that breaches will not occur.

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12.2 - 12.3. The Customer must immediately notify Trinico Cloud of any actual or imminent security violation. The Customer will be liable for damage from violations that were the Customer's fault.

12.4. The Customer must take all reasonable measures to ensure no unlawful access, no Malicious Code, safeguarded Customer Data, protected IP ranges, and AUP compliance.

12.5. On a security event, Trinico Cloud may take steps including changing passwords, preventing access to the Customer System, and preventing access to the Trinico System.

12.6. Trinico Cloud takes reasonable disaster-recovery measures but does not warrant successful recovery within any time limit.

12.7. The Customer must cooperate fully in Trinico Cloud investigations; Investigation fees apply at the Time and Materials Rate.

12.8. If the Customer provides any service to third parties using the Trinico System, the Customer must contractually bind those third parties to equivalent security terms.

13. Suspension of Service

13.1. Trinico Cloud is entitled to suspend Service(s) where:

13.1.1. The Customer breaches the AUP;

13.1.2. The Customer has not made payment by due date, subject to clause 8.5;

13.1.3. Such suspension is necessary to maintain security (clause 12);

13.1.4. Trinico Cloud or its contractors need to carry out Emergency Maintenance;

13.1.5. The Customer fails to co-operate in an investigation under clause 12.7;

13.1.6. A court orders the suspension.

13.2. Suspension may be immediate and without notice; for grounds 13.1.1 to 13.1.3, at least 7 (seven) days' notice is required unless immediate action is necessary to avoid loss.

13.3. The Provider may place a non-payment page on a suspended domain.

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13.4 - 13.5. Suspension period will be reasonable; reconnection is subject to a reasonable Fee.

14. Data and Content

14.1. WHILE TRINICO CLOUD RECOGNISES THE CUSTOMER'S RIGHT TO PRIVACY OF ITS DATA, THE CUSTOMER CONSENTS TO TRINICO CLOUD MONITORING THE CUSTOMER'S TRAFFIC DATA USING THE TRINICO SYSTEM FOR ACCOUNTING PURPOSES AND TO ENSURE THAT THE TRINICO SYSTEM IS OPERATING PROPERLY.

14.2. The Customer must not upload, store or transmit data or content via the Trinico System that is unlawful, harmful, or in breach of the AUP.

14.3. THE CUSTOMER CONSENTS TO TRINICO CLOUD PROCESSING PERSONAL INFORMATION TRANSMITTED TO THE TRINICO SYSTEM IN A WAY WHICH IS CONSISTENT WITH THE SERVICE BEING PROVIDED. WHERE THE CUSTOMER'S USE OF A SERVICE LEADS TO THE TRANSMISSION OF PERSONAL INFORMATION TO OR FROM THE REPUBLIC OF SOUTH AFRICA, THE CUSTOMER ACKNOWLEDGES THAT IT HAS A DUTY TO COMPLY WITH ALL RELEVANT STATUTORY PROVISIONS DEALING WITH DATA PRIVACY EITHER IN THE REPUBLIC OF SOUTH AFRICA OR IN ANY FOREIGN COUNTRY TO WHICH THE PERSONAL INFORMATION IS TRANSMITTED. THE CUSTOMER WARRANTS THAT IT HAS OBTAINED THE CONSENT OF ANY THIRD PARTY FOR THE USE OF THAT PARTY'S PERSONAL INFORMATION IN THIS WAY.

14.4. Trinico Cloud has no knowledge of or interest in Customer Data and no duty to monitor any content unless required under clause 15.

15. Statutory Compliance

15.1. Trinico Cloud is obliged to comply with certain statutory provisions including, but not limited to (each as amended from time to time, with associated regulations):

- The Films and Publications Act 65 of 1996, as amended (including by the Films and Publications Amendment Act 11 of 2019);
- The Electronic Communications and Transactions Act 25 of 2002 ("ECTA");
- The Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 ("RICA");
- The Electronic Communications Act 36 of 2005;
- The Protection of Personal Information Act 4 of 2013 ("POPIA");
- The Cybercrimes Act 19 of 2020.

15.2. Compliance with these provisions may require measures that would otherwise be infringements of the Customer's privacy, such as lawful interception or examination of Customer Data. No action will lie against Trinico Cloud for damages, save where Trinico Cloud has acted unlawfully or in bad faith.

16. Loss of License

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16.1. If Trinico Cloud cannot continue with provision of any Service because a necessary legal requirement is withdrawn, Trinico Cloud must use best endeavours to provide an alternative service within 10 (ten) Business Days.

16.2. If unsatisfied, Trinico Cloud must cease provision and reduce the Fee accordingly.

16.3. If dependent Services cannot be provided as a result, the Customer may terminate.

16.4. Trinico Cloud must give timely notice if reasonably possible.

17. Risk and Ownership in Equipment

17.1. Ownership. Ownership of all Equipment is retained by Trinico Cloud (or the supplier).

17.2. Purchase of Equipment. The Customer may purchase Equipment by written agreement, with ownership transferring on full payment.

17.3. Delivery. Delivery occurs when Trinico Cloud passes possession to the Customer, its Freight Forwarder, or a third party nominated by the Customer.

17.4. RISK. RISK IN THE EQUIPMENT (IF ANY) WILL PASS TO THE CUSTOMER ON DELIVERY, FROM WHICH MOMENT ALL RISK OF DAMAGE AND LOSS IN THE EQUIPMENT WILL FALL ON THE CUSTOMER, WHICH MUST TAKE RELEVANT STEPS TO INSURE THE EQUIPMENT AND OTHERWISE MITIGATE ITS RISK OF LOSS THEREIN.

17.5. Delivery to 3rd Parties. Risk passes upon delivery to the nominated Freight Forwarder.

18. Use and Maintenance of Equipment

18.1. This clause applies only where the Customer is not the owner of the Equipment but risk has passed to the Customer (e.g. lease or instalment).

18.2. Customer's Duties. The Customer must keep the Equipment in a safe environment, use it with care, notify Trinico Cloud of any loss or damage, use only Trinico Cloud-supplied parts, insure the Equipment, not encumber it, provide ownership-protection information, keep the Equipment in possession with only Personnel using it, allow access for maintenance, and reimburse repairs at the Time and Materials Rate (with prior authorisation).

18.3. Third Party Premises. Where Equipment is on premises not owned by the Customer, the Customer must obtain consents and inform any landlord in writing that the Equipment belongs to Trinico Cloud. The Customer indemnifies Trinico Cloud for breach of this clause.

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18.4. Maintenance. The Customer must not authorise or carry out technical maintenance without the prior written permission of Trinico Cloud.

19. Limitation of Liability

19.1. TRINICO CLOUD WILL NOT BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS THAT RELATES TO OR ARISES FROM THE SERVICES OR THIS AGREEMENT, WHETHER EITHER PARTY SHOULD HAVE FORESEEN IT OR NOT. LOSS INCLUDES DAMAGES AND LEGAL OR OTHER COSTS. DIRECT DAMAGES ARE EXCLUDED, AS ARE INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES.

19.2. IN PARTICULAR, TRINICO CLOUD WILL NOT BE LIABLE FOR LOSS ARISING FROM:
19.2.1. TERMINATION OF THE AGREEMENT BEFORE COMMENCEMENT, DUE TO TECHNICAL INFEASIBILITY;
19.2.2. THE CUSTOMER'S FAILURE TO TAKE ADEQUATE SECURITY MEASURES;
19.2.3. ANY ACT OR OMISSION RELATING TO THE TRANSMISSION OF DATA, INCLUDING FALSE POSITIVES IN SPAM FILTERING;
19.2.4. ANY ACTION TAKEN UNDER CLAUSE 12 OR 13.1;
19.2.5. COMPLIANCE WITH ANY STATUTE DESCRIBED IN CLAUSE 15;
19.2.6. INTERRUPTION, SUSPENSION OR TERMINATION THROUGH NO FAULT OF TRINICO CLOUD;
19.2.7. LOSS OF DATA, DAMAGED DATA OR DELAY IN TRANSMISSIONS; AND/OR
19.2.8. THE CUSTOMER'S BREACH OR UNLAWFUL ACT.

19.3. IF TRINICO CLOUD IS NONETHELESS FOUND TO BE LIABLE, THE TOTAL AMOUNT OF LIABILITY WILL BE LIMITED TO THE FEES PAID BY THE CUSTOMER FOR THE SERVICE FROM WHICH THE DAMAGE AROSE IN THE 3 (THREE) MONTHS IMMEDIATELY PRECEDING THE EVENT.

19.4. NOTHING IN THIS CLAUSE LIMITS THE CUSTOMER'S LIABILITY FOR CHARGES INCURRED FOR ONGOING SERVICES.

19.5. Where the CPA applies, any provision of this clause 19 found unfair, unreasonable or unjust will be severed; the remainder will have full force.

19.6. In the case of ambiguity, this clause 19 will take precedence over any contrary expression elsewhere in this Agreement.

20. Indemnity

20.1. THE CUSTOMER WILL INDEMNIFY, DEFEND, AND HOLD TRINICO CLOUD HARMLESS FROM ALL CLAIMS BROUGHT AGAINST TRINICO CLOUD BY THIRD PARTIES AS A RESULT OF:
20.1.1. THE CUSTOMER'S USE OF THE GOODS OR SERVICES OTHER THAN AS ALLOWED IN THIS AGREEMENT OR THE ACCEPTABLE USE POLICY;
20.1.2. BREACH OF PRIVACY RIGHTS OR INFRINGEMENT OF ANY DATA-PROTECTION OR CROSS-BORDER DATA-FLOW LAW;
20.1.3. THE INFRINGEMENT OF ANY INTELLECTUAL-PROPERTY RIGHT (CLAUSE 11);
20.1.4. ANY OTHER WRONGFUL ACT OR OMISSION BY THE CUSTOMER.

20.2. THE INDEMNIFIED CLAIMS WILL INCLUDE LEGAL COSTS ON THE SCALE AS BETWEEN ATTORNEY AND OWN CLIENT.

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20.3. Where the CPA applies, any provision of this clause 20 found unfair, unreasonable or unjust will be severed.

21. Warranties

21.1. Trinico Cloud warrants that it has the facilities, infrastructure, capacity and capability to provide the Services; that it will employ a sufficient number of suitably trained staff; and that it will provide the Services with promptness and diligence in a workmanlike manner and in accordance with all applicable laws and regulations.

21.2. Equipment is guaranteed under the manufacturer's product-specific warranties only; all other guarantees and warranties are excluded.

21.3. Trinico Cloud does not make any other representation or warranty; the Services are provided on a "reasonable effort" basis.

21.4. Trinico Cloud does not warrant connection quality (throughput, availability, jitter, latency, packet loss); confidentiality, integrity or availability of any Customer Data; correctness of spam identification; or success of any backup or disaster recovery.

21.5. Where the CPA applies, the Customer's rights under sections 54, 55 and 56 of the CPA are not excluded, but apply only to the minimum possible extent.

22. Assignment, Subcontracting and Reselling

22.1. Neither Party will cede, assign, delegate or transfer this Agreement without prior written consent, not unreasonably withheld.

22.2. Trinico Cloud may sub-contract its obligations provided it remains responsible for performance and the sole point of contact.

22.3. The Customer may not resell any Service unless specified in a Service Order.

23. Relationship between the Parties

23.1. The relationship between the Parties is one of commissioner and independent contractor; nothing creates an employer-employee relationship.

23.2. No agency relationship arises; neither Party may conclude agreements on behalf of the other unless authorised in writing.

23.3.

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Trinico Cloud's right to terminate is regulated by the law of contract alone; neither Trinico Cloud nor its employees, officers or agents is "an employee" as defined in section 213 of the Labour Relations Act 66 of 1995, section 1 of the Basic Conditions of Employment Act 75 of 1997, or any similar statute.

23.4. The relationship is non-exclusive.

23.5. Both Parties undertake to use best endeavours and exercise good faith in implementing this Agreement.

23.6. The Customer will allow Trinico Cloud reasonable access to its premises, comply with reasonable instructions, enter into supplier agreements where necessary, and respond to requests as soon as reasonably possible.

24. No Solicitation

24.1. Neither Party may employ any current or recent (12-month) employee of the other; restriction lasts during the Agreement and for 6 months after termination.

24.2. This clause does not prohibit considering unsolicited applications or responses to general advertisements.

25. Application of the Consumer Protection Act

25.1. If the Customer is a juristic person, the CPA applies to this Agreement only if both the Customer's asset value and annual turnover are less than R 2 000 000 ("Threshold Value") on the Service Order date.

25.2. Trinico Cloud will act on the Customer's information; the Customer warrants its accuracy and may be required to provide financial statements as proof; misstatements may result in retroactive application of provisions and liability for costs and damages.

25.3. Where the CPA applies, its provisions take precedence where contradicted.

26. Breach and Termination

26.1. If either Party:

26.1.1. Fails to remedy a breach within 5 Business Days of written notice;

26.1.2. Resolves to begin business-rescue proceedings (Chapter 6 of the Companies Act 71 of 2008);

26.1.3. Is placed in provisional or final liquidation, sequestration or judicial management;

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26.1.4. Enters into compromise arrangements with creditors;

26.1.5. Fails to satisfy a judgment within 10 Business Days; or

26.1.6. Falls under the controlling interest of a competitor;

...the other Party may either hold the Party in breach or cancel the Agreement.

26.1.7. Damages remedies are unaffected.

27. Notices

27.1. Each Party chooses its *domicilium citandi et executandi* as set out in clause 1.1 (Trinico Cloud) and the most recent Service Order (Customer).

27.2. Either Party may vary its postal address by written notice; postal addresses must be within the RSA.

27.3. Notices must be in writing. Hand delivery is deemed received on date of delivery; email is deemed received upon confirmation of receipt (not automated); registered post within RSA is deemed received on the 7th day after posting.

27.4. Email sent by Trinico Cloud to a hosted account is deemed received on transmission; actual receipt of any written notice is sufficient.

28. Disputes

28.1. The Parties will attempt good-faith resolution within 30 days of notice of dispute.

28.2. Unresolved disputes will be resolved by arbitration in English by a single arbitrator appointed by the Arbitration Foundation of South Africa under the AFSA Rules.

28.3. Either Party retains the right to seek interim relief from any competent court.

28.4. Pending resolution, the Parties continue performing their obligations.

28.5. The Customer consents to the jurisdiction of the Magistrate's Court for recovery of overdue payments, even where the amount exceeds its jurisdiction.

28.6. Nothing restricts the Customer's right to approach a CPA tribunal of its choice.

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28.7. This clause survives termination.

29. Force Majeure

29.1. Neither Party is liable for delay or failure due to causes beyond reasonable control, including industrial action, sabotage, terrorism, civil commotion, riot, war, fire, explosion, storm, flood, natural disasters, government acts, sanctions, boycott or embargo, or termination / suspension of upstream service.

29.2. The Agreement is suspended for the duration of the cause; if longer than three months, either Party may terminate by written notice.

30. Interpretation

30.1. Governed by and construed in accordance with the law of the Republic of South Africa.

30.2. Standard interpretation conventions: gender-inclusive, singular includes plural, natural persons include juristic entities.

30.3. Defined terms apply within their clauses.

30.4. Substantive provisions in definitions clauses have full effect.

30.5. Headings are for convenience only.

30.6. The contra proferentem rule does not apply.

31. General

31.1. This Agreement is the whole agreement between the Parties; only written variation, waiver or cancellation signed by both Parties is effective.

31.2. Non-enforcement of any part is not a waiver; severability applies.

31.3. Signatories warrant their authority and accept personal liability for unauthorised representation.

31.4. Partial unenforceability does not affect the remainder.

31.5. By using the Products and Services, the Customer consents to receive communications from the Provider, including newsletters about features, specials and promotions.

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32. Domain Registration, Renewal, Redemption, Deletion and Domain Parking

32.1 - 32.4. The Registered Name Holder enters into a Registrar Registrant Agreement on registration / transfer. Domain ownership transfers only on full payment. Domain registration payments are non-refundable; the WHOIS record is held for one year ("Domain Parking"), excluding hosting / email facilities.

32.5 - 32.7. The Customer indemnifies the Provider for any infringing Domain Name. The Provider does not guarantee Domain availability and is reliant on third-party WHOIS updates. The Customer agrees to all relevant registry / registrar terms.

32.8. Registration, Renewal and Redemption Fees are non-refundable.

32.9 - 32.11. Renewal grace: 10 days after Expiry. Redemption Grace Period: 20 days at the prevailing redemption fee (see Fees Schedule on the Trinico Cloud Website). Thereafter the Domain is deleted from the Registry.

32.12. Auto-renewal: Customer is invoiced 30 days before expiry; renewal occurs on payment.

32.13. Misspelt Domain Names are billable to the Customer.

32.14. The Provider, through Trinico Cloud, is an accredited Registrar of UniForum SA; all .co.za Domains are registered via the EPP system.

32.15 - 32.16. EPP-registered .co.za Domains can only be transferred between Registrars. The Customer must instruct the Provider in writing if pointing nameservers to a non-EPP-enabled ISP.

32.17 - 32.18. Renewal notification cadence (consumer): 90 / 60 / 30 / 14 / 7 / 1 day prior. Reseller cadence: 60 / 30 / 14 / 7 days prior.

32.19. Premium domains: Premium-marked domains cost more; full refund of regular price applies if a premium pricing was incorrectly applied.

32.20. Domain Availability: WHOIS data may be inaccurate; full refund applies where the Provider could not secure the Domain.

32.21. Time-lapse: The Domain is provisioned to the first paying party.

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To register a Domain, the Customer / End User must provide: the name being registered; their name and address (or those of the registrant); technical information; and contact information (technical, administrative, billing, zone). This may be displayed on the WHOIS server.

End of Standard Terms of Service
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