e-CLOUD Construction™

Terms & Conditions for Registration and/or Subscription **2 Feb 2025**

1.0   Recitals

1.1   The **Customer** acknowledges and agrees that by using **e-CLOUD Construction's Hosting Services**, it accepts the latest **Agreement** between the Parties listed within **e-CLOUD Construction's Hosting Services.** If a **Customer** does not agree to these Terms, the **Customer's** sole and exclusive remedy is to cancel their account, and not make use of the **Hosting Services** and/or **Services**

1.2   Pursuant to Registration**,** the **Service Provider** is providing **Hosting Services** and/or **Services** for the **Customer**

1.3   As part of the **Services**, the **Service Provider** will host the **Hosting Services** and the **Customer Data** on the Terms and Conditions contained in the **Agreement**

1.4   In the event the **Customer** is a corporation, limited liability company, partnership, joint venture, other business entity or group of individuals, the person registering for the **Services** on behalf of the **Customer** hereby certifies that he/she has the authority to and does hereby bind the corporation, limited liability company, partnership, joint venture or other individuals in this manner and in connection with the **Customer's** acceptance of all Terms and Conditions set forth herein

2.0   Definitions

2.1   "Account Holder":
   2.1.1   is defined as the billing entity of the **Customer**

2.2   "Affiliated Provider":

   2.2.1   Shall mean any authorized publisher providing Proprietary Documents for the **Services**

2.3   "Agreement":
   2.3.1   Shall mean the latest Terms and Conditions listed within e-CLOUD Construction's **Hosting Services** at http://www.fh.co.za/cod/?q=user/register which shall constitute the entire record of the **Agreement** between the **Parties** in regard to the subject matter hereof. In the event of ambiguity, discrepancy, divergence or inconsistency in or between them and the Terms and Conditions appended to a **Service Order**, then the Terms and Conditions listed within e-CLOUD Construction's **Hosting Services** at http://www.fh.co.za/cod/?q=user/register shall prevail. The Terms and Conditions appended to a **Service Order** are automatically superseded by the latest Terms and Conditions listed within e-CLOUD Construction's **Hosting Services** at http://www.fh.co.za/cod/?q=user/register

2.4   "Associated Service Provider" :
   2.4.1   means third party organisations who are affiliated to the **Service Provider**, to provide their own Services either as part of **e-CLOUD Construction**, or separately within their own platforms.

2.5   "Customer":
   2.5.1   means the "Registered User" to whom the right of use of the **Hosting Services** is awarded and who has completed the mandated on-line Registration Page, for which the **Customer** registers to use **Hosting Services** from the **Service Provider** from time to time

2.6   "Customer Data":
   2.6.1   means any information entered onto the Host Server by the **Customer** or Third Party Customers in the course of the authorized use of the **Hosting Services** and stored on the Host Server for retrieval by the **Customer** or its Third Party Customers**.** It is recorded that the **Customer Data** shall at all times remain the property of the **Customer** and the **Service Provider** shall not be entitled to use the **Customer Data** in any manner other than provided for in this **Agreement**

2.7   "e-CLOUD Construction®":
   2.7.1   means a Suite of Construction Electronic Services that provided to Construction Industry Professionals, as listed at http://www.e-cloud.co.za/categories/, including the CPD on Demand Service

2.8   "Hosting Services":
   2.8.1   means the systems including CPD on Demand, e-DOCX and the services listed at http://www.e-cloud.co.za/categories/, including the CPD on Demand Service, where the **Customer** has access rights granted pursuant to this **Agreement** and which may or may not be housed on the Host Server

2.9   "POPIA"
   2.9.1   means the Protection of Personal Information Act 4 of 2013

2.10   "Services":
   2.10.1   means any or all of the **Hosting Services**

2.11   "Service Order":
   2.11.1   means the signed and mandated documentation by which the **Customer** orders **Hosting Services** from the **Service Provider** from time to time

2.12   "Service Provider":
   2.12.1   means Contracts On-Demand (Pty) Ltd Reg. No 2016/079656/07, the party so named in the **Agreement** who grants the right of use (license) of the **Hosting Services** to the **Customer** in accordance with the terms and conditions of this **Agreement**

3.0   Hosting

3.1   The **Customer** and Third Party Customers agree to access the **Hosting Services** and to store and retrieve data using third party programs including specifically internet "browser" programs that are appropriate for the **Customer's** and Third Party Customers' needs and that are compatible with the security and other protocols specified by the **Service Provider**

3.2   **The Service Provider** agrees to host the primary system in a data centre and to back-up in a remote location **Hosting Services** and **Customer Data** using industry standard back up tools and data security protocols and other methods reasonably deemed to be adequate for secure business data and to notify the **Customer** in the event of a breach of security or the loss of **Customer Data**

4.0 Data Ownership

4.1 The **Customer** and Third Party Customers shall retain ownership of all **Customer Data** stored or retrieved in connection with the use of the **Hosting Services**

4.2 The **Customer** and Third Party Customers represent and warrant that they collectively have the rights or the rights to use all **Customer Data** including the right to upload **Customer Data** onto the **Host Server** and that the **Service Provider** is indemnified and held harmless from any third party claims for infringement relating to **Customer Data** usage

4.3 The **Service Provider** undertakes to provide **Hosting Services** with an internet response time that generally mimics conventional internet download speeds and to take care not to design the **Hosting Services** in a manner that will create obvious inefficiencies. The **Customer** acknowledges that it has had the opportunity to test the response time of the **Hosting Services** and finds it acceptable

4.4 The **Hosting Services** may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications and the **Service Provider** or **Affiliated Providers** are not responsible for any disruptions, delays, failures or any consequential impact of such events. The **Service Provider** will facilitate a contingency plan to bring into service the back- up site in such cases within 72 hours if delays persist after notification by the **Customer**

4.5 In the event of such a downtime certain information sent to the Host Server might not have been processed and will have to be resent by the **Customer** or the Third Party Customer. No liability whatsoever is accepted by the **Service Provider** or **Affiliated** and **Associated Service Providers** for any consequences of lost data

5.0 Confidentiality & Privacy Policy

The **Customer** and Third Party Customers acknowledge that:

5.1 They provide their personal information voluntarily / provide the personal information of the registering person voluntarily and with the required authority

5.2 The **Service Provider** will use the information for the purposes of conducting usual business with which you are familiar, processing your information provided, and for purposes reasonably related and ancillary thereto,

5.3 The **Customer** consents to the **Service Provider** processing and further processing the personal information, including but not limited to collecting, recording, organizing, disseminating, making the personal information available

5.4 The **Customer** consents to the **Service Provider** retaining records of the personal information for so long as the **Service Provider** deems it necessary in its sole discretion; and

5.5 The **Customer** accepts the contents of this document as adequate notification of the collection and processing of the personal information by the **Service Provider** and, insofar as is necessary, consent to the **Service Provider** failing to provide full notification as contemplated by Section 18 of the Protection of Personal Information Act 4 of 2013.

5.6 The **Customer** accepts Section 69 "Consent Request" of **POPIA**, that as a Registered User of **e-CLOUD Construction's Hosting Services,** you accept that the **Service Provider** has the right to use the information that you have provided in registering as a User of e-CLOUD Construction's Hosting Services, and to send you electronic communication and carry out "Direct Marketing" regarding e-CCN, that is deisgned to inform you of e-CCN news and or e-CCN purchase opportunities that you and your company can avail yourselves of.

6.0 Confidentiality & Privacy Policy

6.1 The Parties acknowledge that this **Agreement** requires the **Service Provider** to disclose confidential information to the **Affiliated Providers** such as Projects and names of the individuals creating documents The **Service Provider** agrees that it shall keep all information obtained as a consequence of this **Agreement** as strictly confidential

6.2 We know that you care about your personal data and how it is used, and we want you to trust that we use your personal data carefully. When you use our website and our online Services, as a Client, you may provide, and we may collect personal data. Any information provided by our Client's will only be used as our Clients direct. Please find our full Privacy Notice link at the bottom of our Web Pages to understand what personal data we collect, why we collect it and what we do with it.

7.0 Indemnities, Warranties, Disclaimers and Remedies

7.1 Except as expressly stated**,** the **Service Provider, Affiliated Providers** and **Associated Service Providers** do not make any representation warranty or guarantee as to the reliability, timelines, quality, suitability, truth, availability, accuracy or completeness of the **Hosting Services** and/or **Services** or any other content or information except as expressly set forth in these terms and conditions

7.2 The **Service Provider, Affiliated Providers** and **Associated Service Providers** do <u>not</u> warrant that:

    7.2.1 The use of the **Hosting Services** and/or **Services** will be secure, timely, uninterrupted or error-free

    7.2.2 The **Hosting Services** and/or **Services** will operate with any other software system or data.

    7.2.3 The **Hosting Services** and/or **Services** will meet the **Customer's** requirements or expectations

    7.2.4 Any **Customer Data** will be accurate or reliable

    7.2.5 That the **Hosting Services** and/or **Services** are free of viruses or other harmful components

    7.2.6 That the **Hosting Services** and/or **Services** are "fit for use"

7.3 In no event shall the **Service Provider, Affiliated Provider's** and **Associated Service Provider's** aggregate liability exceed the amounts paid or due from the **Customer** in the one month immediately prior to a disruption event

7.4 Neither the **Service Provider, Affiliated Providers** and/or **Associated Service Providers** shall be liable for any indirect, punitive, special, exemplary, incidental consequential or other damages of any nature including the loss of data, revenue, profits, use or any other economic advantage in any way connected with the **Hosting Services**, or the suspension thereof

7.5 Neither the **Service Provider**, **Affiliated Providers** and/or **Associated Service Providers** shall be liable for any breach of this **Agreement** or their failure to perform any obligations as a result of technical problems, termination of any agreements with **Affiliated Provider's**, acts of God, government control, restrictions or prohibitions or other government acts or omissions, whether local or national, industrial disputes or any other cause beyond their control

7.6 Should the **Customer** commit a breach of any provision or term, and fails to remedy such breach within 21 (twenty-one) days of the date of receipt of written notice from the **Service Provider** requiring it to do so, then the **Service Provider** shall be entitled to terminate the **Hosting Services** and/or **Services** without prejudice and claim damages

7.7 While the **Service Provider** aims to ensure that the documents published by **Affiliated Providers** and / or **Associated Service Providers** and available either within e-DOCX of the **Hosting Services,** or as within their own dedicated websites, they represent best business practice, the **Service Provider** or **Affiliated Providers** do not accept or assume any liability or responsibility for any events or consequences thereof that derive from the use of these documents. These documents are not exhaustive and are only intended to provide general guidance to those who wish to make use of such. These documents are provided "as is" without warranty of any kind, either expressed or implied including but without limitation to warranties of merchantability, fitness for a particular purpose and non-infringement. Expert and legal advice should be obtained whenever appropriate, particularly before contracting within or terminating any of the **Affiliated Provider** or **Associated Service Provider's** agreements

8 Termination

8.1 The **Service Provider** reserves the right to terminate or suspend all or part of the **Hosting Services** and/or **Services** to the **Customer**

8.2 The **Service Provider** reserves the right to automatically terminate or suspend all or part of the **Hosting Services** to the **Customer's** who do not have **Service Orders** and who have not purchased documents within a six (6) month period

8.3 In the event of termination, the responsibility rests with the **Customer** to download copies of **Customer Data** within three (3) months of notice of termination

8.4 Should the **Customer** be advised by the **Service Provider** of the termination of the hosting of a particular service or Suite of Documents, then the **Customer** will be advised and will have six (6) months from such notice, to use any monetary credits that the Customer has purchased, after which any such outstanding monetary credits will be forfeited after expiry of this six (6) month notification period. The **Customer** shall have no claim of whatsoever nature against the **Service Provider** in respect thereof, it being the **Customers** responsibility to ensure that any accumulated and unused credits are used up prior to termination

8.5 After the expiry of the period's stated above, the **Service Provider** will have no obligation to provide the **Customer** and Third Party Customers with access to the **Hosting Services,** nor for the storage and retrieval of **Customer Data** in connection with the **Hosting Services**

8.6 Due to any of the circumstances listed above, the **Service Provider** is not obliged to refund or transfer cash to the **Customer** for unutilized credits

8.7 Termination of **Service Orders** can occur on the date one month after written notice of intent to Terminate by either Party, where this date is not before the minimum period stated in the **Service Order.** If not, then termination date will be 12 (twelve) months from the commencement date stipulated in the **Service Order**

8.8 If **Service Order** subscription payments are not received within 7 (seven days) days of due date, the **Service Order** will be deemed to be terminated

8.9 In the event of late or non-payment of **Service Order** subscriptions, the **Service Provider** reserves the right to suspend the **Hosting Services** and/or **Services**. Late or non-payment will be deemed to be breach of contract

9 Specific Deliverables, Schedule and Contract Specific Information

9.1 The **Service Provider**
    9.1.1 Contracts On Demand (Pty) Ltd Reg. No 2016/079656/07

9.2 The **Customer**
    9.2.1 The "Company Name" stated on the registration form at http://www.fh.co.za/cod/?q=user/register. If registered as an Individual, then the Initials and Surname recorded in these fields.

9.3 **The Extent of the Registration excludes:**
    9.3.1 Any use of the **Hosting Services** after termination
    9.3.2 Any unlawful activity applicable to any country or area affected by the use of the **Hosting Services**

9.4 **Training & Support**

    9.4.1 The **Service Provider** will provide "Help and User Guides" for the **Services,** and the **Customer** is obliged to read and familiarize themselves with these Guides
    9.4.2 The **Service Provider** will train a **Customer** on how to use the system providing that such training is done on a quote, accept and execute process
    9.4.3 The right to train trainers will be restricted to the **Service Provider** and may not be undertaken by the **Customer** or his assigns.
    9.4.4 The **Service Provider** will assist with the answering of system related email questions and answers on the same basis as training stated above
    9.4.5 The **Service Provider** will provide support in editing locked fields on the same basis as training stated above
    9.4.6 The **Service Provider** shall provide the **Customer** with technical assistance and endeavor to promptly answer all technical queries raised by the **Customer** or Third Party Customers concerning the use or application of the **Hosting Services** via the **Service Provider's** call centre
    9.4.7 The **Service Provider** shall provide the **Customer** with updates of any new versions of the **Hosting Services** in the event that the **Service Provider** releases any modifications, enhancements or replacements of or additions to the **Hosting Services**

9.5 **Duration and Payment**

    9.5.1 The duration of these Terms and Conditions is from the Commencement Date for an initial period as contained specifically in the **Service Order**. After such period, this **Agreement** is and ongoing on a month to month basis on the same terms and conditions, unless terminated in terms of 7.0 above
    9.5.2 The duration of the Subscription will be in accordance with the specific duration contained specifically in the **Service Order.** If not specified, the duration of the Subscription will be on a monthly basis
    9.5.3 The Subscription fee for the **Hosting Services** will be that amount reflected in the **Service Order**. The **Service Provider** will have the right to adjust its prices from time to time
    9.5.4 Included in the e-CORE™ and e-PROJECT subscription fee is the cost of data storage up to a limit of 3 gigabyte capacity per **Account Holder**. In the event of excessive demand over this limit, the **Service Provider** reserves the right to adjust the subscription amount
    9.5.5 Payment will be due and payable as stated in the **Service Order**
    9.5.6 Any accumulated and unused credits will expire six (6) months after purchase by the **Customer**. The validity of these unused credits will be at the discretion of the **Service Provider** as to how and when the unused credits will be removed, and the display of these unused credits beyond the (6) months period will in no way waive the **Service Providers** rights
    9.5.7 Under no circumstances is the **Service Provider** obliged to refund or transfer cash to the **Customer** for unutilized credits or documents created, either before or after the expiry of the (6) month period after purchase of such credits. The **Customer** shall have no claim of any nature against **Service Provider** in respect thereof
    9.5.8 Our Debit/ Credit Card partner's security protocols are as, if not more, robust than South African banks. They are:
        • PCI-D SS Level 1 Compliant: All Client credit card payments are done in a secure environment.
        • Secure servers: The website and payments page are hosted on secure servers, safeguarding against phishing attacks.
        • Use 3D Secure: This extra layer of security is used for all online transactions using a credit card.
        • GEO IP Tracking: By monitoring where transactions originate from we can look for mismatches with the card's issuing country.
        • BIN/IIN Validation: We check the card-issuing bank locations and can choose to enable/disable payments from certain countries.
        • All suspicious transactions are manually reviewed.
        • There are a multitude of automated and manual checks in place to protect both buyers and sellers from fraudulent transactions.

9.6 **Transferring of Rights**

    9.6.1 The **Customer** may not cede or assign its rights and obligations in terms of these terms and conditions
    9.6.2 The **Service Provider** will have the right to adjust its prices from time to time

10 Copyright

10.1 **PROCSA Documents**

10.1.1 The Professional Consultants Services Agreement Committee reserves all rights to its publications whether in printed or electronic format. No part of these publications may be reproduced, stored in any retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, scanning, recording, or otherwise, without the prior permission of PROCSA. Unauthorized reproduction of the publications is an infringement of copyright. Judicial proceedings can and will be taken to obtain relief and the recovery of damages

10.2 **JBCC Documents**

10.2.1 The Joint Building Contracts Committee reserves all rights to its publications whether in printed or electronic format. No part of these publications may be reproduced, stored in any retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, scanning, recording, or otherwise, without the prior permission of JBCC. Unauthorized reproduction of the publications is an infringement of copyright. Judicial proceedings can and will be taken to obtain relief and the recovery of damages
9.2.2All other e-DOCX Document Suites and **Hosting Services** are under Copyright

10.3 **NEC Documents**

10.3.1 ECS Associates (Pty) Ltd reserves all rights to its publications whether in printed or electronic format. No part of these publications may be reproduced, stored in any retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, scanning, recording, or otherwise, without the prior permission of ECS. Unauthorized reproduction of the publications is an infringement of copyright. Judicial proceedings can and will be taken to obtain relief and the recovery of damages

10.4 **CESA Documents**

10.4.1 Consulting Engineers South Africa reserves all rights to its publications whether in printed or electronic format. No part of these publications may be reproduced, stored in any retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, scanning, recording, or otherwise, without the prior permission of CESA. Unauthorized reproduction of the publications is an infringement of copyright. Judicial proceedings can and will be taken to obtain relief and the recovery of damages

10.5 **All Other e-DOCX Document Suite Documents**

10.5.1 COD reserves all rights to its publications and **Hosting Services** whether in printed or electronic format. No part of these publications may be reproduced, stored in any retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, scanning, recording, or otherwise, without the prior permission of COD. Unauthorized reproduction of the publications is an infringement of copyright. Judicial proceedings can and will be taken to obtain relief and the recovery of damages

11 Domicilium and Notices

11.1 The Parties choose domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from the Terms and Conditions, as follows -

11.1.1 Contracts On Demand (Pty) Ltd
189 Olympic Duel Avenue
Northlands Business Park
Newmarket Road
North Riding
Tel: 011-704 6965
Email: admin@contractsondemand.co.za

11.1.2 Any Party shall be entitled from time to time, by written notice to the others, to vary its domicilium to any other address within the RSA which is not a post office box or poste restante

11.1.3 Any notice given and any payment made by any Party to another ("addressee") which:
is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be rebuttably presumed to have been received by the addressee at the time of delivery;
is posted by prepaid registered post from an address within the RSA to the addressee at the addressee's domicilium for the time being shall be rebuttably presumed to have been received by the addressee on the tenth business day after the date of posting

11.1.4 Any notice given by any Party to another which is sent by telefacsimile or email shall be rebuttably presumed to have been received by the addressee on the first business day succeeding the day on which the telefacsimile or email is successfully transmitted.

11.2 Notwithstanding anything to the contrary contained herein a written notice actually received by a Party shall be an adequate notice notwithstanding that it was sent via telefacsimile and/or all email and not sent to its chosen domicilium

12. Dispute

12.1 Should any disagreement arise concerning this **Agreement,** either Party may declare a dispute by notice to the other Party. All disputes shall be referred to arbitration

12.2 Prior to such submission to arbitration the Parties may by mutual consent refer the dispute to mediation by a mutually agreed mediator. Should the Parties fail to appoint a mediator within 20 days or should the Parties fail to reach a binding agreement within 20 days of the mediator's appointment it shall be deemed that the mediation process has been abandoned

12.3 Mediation shall not be construed as a compulsory procedure

12.4 The arbitrator shall at the request of either Party be appointed by the Chairman of the Association of Arbitrators (Southern Africa). The arbitration shall be conducted according to the Summary Procedure Rules for The Conduct of Arbitrators published by the Association of Arbitrators (Southern Africa)

13. Force Majeure

13.1 No Party shall be liable to the other in respect of non-performance of any term of this **Agreement** in the event that such non-performance is directly caused by force majeure, which means any event beyond the reasonable control of any Party

14. Breach

14.1 Should either Party commit a breach of any provision or term of this **Agreement** and fails to remedy such breach within 30 (thirty) days of the date of receipt of written notice from the other party requiring it to do so, then the aggrieved Party shall be entitled, without prejudice to its other rights in law, to cancel this **Agreement** or to claim specific performance of all of the defaulting Party's obligations whether or not such obligations would have fallen due for performance, in either event without prejudice to the aggrieved Party's rights to claim damages

15. General

15.1 The **Agreement** constitutes the entire record between the Parties in regard to the subject matter hereof

15.2 No Party shall be bound by any express or implied term, undertaking, representation, warranty, promise or the like not recorded herein

15.3 No indulgence, extension of time, relaxation or latitude which any Party ("grantor") may show, grant or allow to another ("grantee") shall constitute a waiver by the grantor of any of its rights and the grantor shall not thereby be prejudiced or estopped from exercising any of its rights against the grantee which may have then already arisen or which may thereafter arise

15.4 The **Agreement** is personal to the Parties and the **Customer** shall not be entitled to cede, assign, transfer or otherwise make over any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party

15.5 This **Agreement** shall be governed by the laws of South Africa