

# Terms and Conditions

Amended 31 January 2019

**Please note:** By subscribing for the services offered by Dotcoza, you The Customer, will be signifying your acceptance of these terms and conditions of use, which will form a binding agreement between you, The Customer and Dotcoza, which terms and conditions you the customer is deemed to have familiarised yourself with and have irrevocably accepted.

## 1. Definitions

- 1.1. In this agreement, unless inconsistent or otherwise indicated by the context, the following terms have the following meanings
- 1.2. "the customer" – means the subscriber to, user or purchaser of Dotcoza products or services
- 1.3. "you / your" – refers to the customer as is relevant in context
- 1.4. "the / this agreement" – means these terms and conditions, Dotcoza's Acceptable Use Policy, Dotcoza's copyright notice, Dotcoza's Privacy Notice and all other terms and conditions which Dotcoza may, from time to time, impose in respect of products or services, as amended and updated from time to time
- 1.5. "we / us / our / Dotcoza" – means Dotcoza (Pty) Ltd Registration Number 2013/178147/07 and/or its affiliates determined by the context
- 1.6. "effective date" – means the date on which Dotcoza activates the customer's subscription to the service
- 1.7. "service(s)" – means any Dotcoza service that you may subscribe to or which may form part of Dotcoza's offering from time to time
- 1.8. "charge(s)" – means the subscription fee, connection charge, monthly service fee, usage charges and any other charges pertaining to the provision of any Dotcoza product or service provided to you
- 1.9. "parties" – means Dotcoza and the customer and "party" refers to either of them as determined by the context

## 2. Conditions of Access

- 2.1. Dotcoza grants the customer access to services as subscribed to, under the terms and conditions of this agreement.
- 2.2. You hereby acknowledge receipt of access to such services, and agree that:
  - 2.2.1. You will not disclose your username and password, or any access information relating directly to services offered, and will maintain the confidentiality thereof;
  - 2.2.2. In the event that your password is compromised, you will immediately notify Dotcoza and change your password;
  - 2.2.3. You are solely responsible for all payments charged via the service to your Dotcoza account and the entire amount outstanding on your account will be deemed to result from (or relate to) your use of the service;
  - 2.2.4. You will not, at any time, permit and/or initiate a simultaneous network log-in; and
  - 2.2.5. You will not attempt to circumvent Dotcoza's customer authentication processes or engage in attempts to access Dotcoza's network where not expressly authorised to do so.
- 2.3. Should you fail to comply with any of the provisions of 2.2, you agree to pay to Dotcoza immediately, on demand, all costs, loss and/or damages incurred or suffered by Dotcoza as a result of your breach. This may include (without being limited to) the payment of an additional subscription fee.
- 2.4. Dotcoza reserves the right to reclaim your email address during the course of your subscription should Dotcoza, in its sole discretion, deem this necessary.
- 2.5. Upon cancellation of your subscription, you will lose your username and email address. Dotcoza may re-issue your username and email address to a new subscriber after termination of your subscription. It is your responsibility to inform contacts, to ensure email is not inadvertently sent to a reallocated address.

- 2.6. Upon cancellation of subscription or termination of contract for whatever reason, including breach of contract, Dotcoza reserves the right to cancel the service and it will be your responsibility to reinstate the service at your own cost.

### **3. Service Availability and Limitation of Liability**

- 3.1. Dotcoza will use reasonable endeavours to make the service available to subscribers, and keep the service available to such subscribers at all times. However, you agree that Dotcoza shall not be liable in respect of any loss or damage caused by or arising from the unavailability or interruption in the use of the service for any reason whatsoever.  
Exclusions of liability of Dotcoza for loss or damage will include (but is not limited to):
  - 3.1.1. Losses caused by negligent acts of Dotcoza and any of its employees;
  - 3.1.2. Any direct, consequential, incidental, indirect or special loss or damage flowing from business interruption, loss of business information, loss of data or any other cause;
  - 3.1.3. Any loss regardless of whether a claim for such loss is based on breach of contract, delict, breach of implied warranties or otherwise; and
  - 3.1.4. Any loss whether it could have been foreseen or not.
- 3.2. Dotcoza will use its best endeavours to notify you of any maintenance, repairs, discontinuation of products or services, which may result in the service being unavailable or terminated, but does not warrant or otherwise contractually undertake that such notice will be given.
- 3.3. We will use reasonable endeavours to ensure safekeeping of any data which you may upload to our servers from time to time, such as (without being limited to) photographs, websites, videos and e-mail messages (hereafter collectively referred to as "your data"). However, it is your obligation to keep copies of your data, as:
  - 3.3.1. 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 (including as a result of our negligence); and
  - 3.3.2. We will delete all your data from our servers when your subscription is terminated.
- 3.4. We will use reasonable endeavours to ensure the safekeeping of personal information (please refer to our Privacy Notice).

### **4. Communication**

- 4.1. You hereby agree that Dotcoza may from time to time send you communications regarding (without being limited to) special offers/discounts which Dotcoza may negotiate for its members, operational changes that may affect the service and/or new services launched by Dotcoza from time to time.
- 4.2. Furthermore, Dotcoza provides a password reset service whereby should you forget your password, Dotcoza will enable you to reset your password (instructions provided where relevant).
- 4.3. You indemnify Dotcoza from any and all liability, direct or indirect that may arise from your use of this service.
- 4.4. Information relating to password reset will only be sent to the registered email address specified on the account and should such details change, it is your responsibility to notify Dotcoza thereof and to update your details accordingly.

### **5. Payment**

- 5.1. You agree to pay all charges due under this agreement, which may include (without being limited to) subscription fees, usage fees, and fees of other services you may subscribe to from time to time. Subscription fees are payable monthly in advance, except for usage fees, which is payable monthly in arrears.
- 5.2. You will be charged and an invoice will be forwarded to you on a monthly basis, unless we specifically agree otherwise.
- 5.3. You will pay the subscription fee and any associated line rental, monthly in advance by way of debit order on the first working day of each and every calendar month for the fixed term as agreed prior to service activation.
- 5.4. You will be liable for payment of a re-activation fee should your service be suspended due to a breach of the agreement or these terms and conditions

- 5.5. The subscription fee and all other amounts payable in terms hereof shall be paid free of exchange and without deduction or set-off by way of direct debit order (drawn against a current banking account nominated by you) in favour of Dotcoza as per banking details provided. You agree that by furnishing your bank details, you instruct and authorise Dotcoza to draw all amounts payable in terms of this agreement from the accounts specified on the application form provided (or any other bank or branch to which it may be transferred), commencing on the effective date and continuing until termination of this agreement. Should we require you to, you agree to sign all forms and do all such things as may be necessary to give effect hereto.
- 5.6. Should you fail to pay any amount on the due date for payment, then, without prejudice to any other rights Dotcoza may have:
  - 5.6.1. Dotcoza reserves the right to charge interest at the rate of 2% above the prime overdraft rate of Dotcoza's bankers from time to time on the overdue amount, calculated from the due date until the date of payment (both dates inclusive), which interest, if charged, will be capitalised monthly;
  - 5.6.2. Dotcoza shall be entitled to take all such further steps as may be necessary to recover the outstanding amount from you, in which event you agree to pay all costs associated with such recovery on an attorney and own client basis;
  - 5.6.3. Dotcoza shall be entitled to, without notice, suspend your access to the service until such time as the outstanding amount has been paid in full; and/or
  - 5.6.4. Dotcoza shall be entitled to terminate this agreement with immediate effect.
- 5.7. Dotcoza shall, in its sole discretion, be entitled to increase or decrease the subscription fee at any time. Dotcoza undertakes to give you at least 30 days written notice of any such increase or decrease. Should the amended fee be unacceptable to you, you may terminate this agreement in accordance with paragraph 14 below, failing which the amended fee shall take effect on the date indicated in the written notice.
- 5.8. You may not withhold payment of any amount due to Dotcoza in terms of this agreement by reason of any alleged breach of this agreement by Dotcoza, nor will you be entitled to any discount, refund or other credit under any circumstances.

## **6. Security**

- 6.1. In order to ensure the security and reliable operation of the service to all Dotcoza customers, Dotcoza hereby reserves the right to take whatever action Dotcoza finds necessary to preserve the security and reliability of its network.
- 6.2. You may not utilise the service in any manner which may compromise the security of Dotcoza's network or tamper with the service or the network in any manner whatsoever.

## **7. User Etiquette and Abusive Behaviour**

- 7.1. You hereby agree to adhere to generally acceptable Internet and e-mail etiquette (refer to the Acceptable Use Policy). In this regard, without being limited to the examples listed below, you agree not to:
- 7.2. engage in any abuse of e-mail or spamming, including (without being limited to) the posting or cross-posting of unsolicited articles with the same or substantially the same message to recipients that did not request to receive such messages;
- 7.3. take any action aimed at deceiving or misleading any person, attempt to impersonate or misrepresent your affiliation to any person or forge headers or otherwise manipulate identifiers in order to disguise the origin of anything posted or transmitted through the service;
- 7.4. use the service to post or transmit anything which is defamatory, discriminatory, obscene, offensive, threatening, abusive, harassing, harmful, hateful or which carries child pornography, religious or racial slurs or threatens or encourages bodily harm or the like or which may violate any person's personality rights;
- 7.5. use the service to make fraudulent offers to sell or buy products, items or services or to offer or solicit for any type of financial scam such as "pyramid schemes" and "chain letters";
- 7.6. use the service in a manner that may infringe the intellectual property rights (for example copyright or trademarks) or other proprietary rights of others, including (without being limited to) the transmission of pirated software;

- 7.7. use the service in any manner which could damage, impair, overburden or disable the service or interfere with any other party's use or enjoyment of the service;
- 7.8. use the service to post or transmit anything which contains viruses or any other destructive features, regardless of whether or not damage is intended;
- 7.9. cancel Usenet post other than your own;
- 7.10. repeatedly post gratuitous off the topic postings;
- 7.11. gather e-mail addresses and/or names for commercial, political, charity or like purposes or use the service to collect or attempt to collect personal information about third parties without their knowledge or consent; and
- 7.12. violate the privacy of any person or attempt to gain unauthorised access to the service or any other network, including (without being limited to) through hacking, password mining or any other means; and/or
- 7.13. Use the service to engage in any illegal or unlawful activity.
- 7.14. Should you engage in any one or more of the above practices, which shall be determined in Dotcoza' s sole discretion and which decisions shall be final, then Dotcoza shall be entitled, without prejudice to any other rights it may have, to:
  - 7.14.1. without notice suspend your access to the service;
  - 7.14.2. terminate this agreement with immediate effect;
  - 7.14.3. invoice you for any costs incurred by Dotcoza, including (without being limited to) bandwidth, administration costs, downtime, usage of Dotcoza' s name or registered domain names and CPU cycles; and/or
  - 7.14.4. Notwithstanding Dotcoza' s privacy notice, disclose any information relating to you, whether public or personal, to all persons affected by your actions.
- 7.15. Dotcoza shall be entitled to take such steps to fight spam/junk-mail/unsolicited mail/viruses as Dotcoza may deem necessary and/or appropriate from time to time, including (without being limited to) not delivering any mail which Dotcoza, in its sole discretion, suspects as being or containing spam/junk-mail/unsolicited mail/viruses.

## **8. Use of Applications**

- 8.1. You are required to be a Dotcoza customer with a valid account and username;
- 8.2. Your account/subscription must be current (outstanding amounts must be settled as per paragraph 7);
- 8.3. You will adhere to requirements of use as per the Acceptable Use Policy; Use of the application is for the customer only and may not be distributed or shared in any manner which would result in breach of existing licence agreements;
- 8.4. The right of use of applications given to you is not transferable, and breach of this will result in the right to use the application being revoked.

## **9. Indemnity**

- 9.1. You hereby unconditionally and irrevocably indemnify Dotcoza and agree to hold Dotcoza free from all loss, damages, claims and/or costs, of whatsoever nature suffered or incurred by Dotcoza or instituted against Dotcoza as a direct or indirect result of:
  - 9.2. your use of the service;
  - 9.3. your failure to comply with any provision of this agreement or any other requirements which Dotcoza may impose from time to time; and
  - 9.4. Any unavailability of, or interruption in the service, as contemplated in section 3 above.

## **10. Breach**

- 10.1. Should you be in breach of any provision of this agreement, then Dotcoza shall be entitled, without prejudice to any other rights it may have and without notice to you, to forthwith:
  - 10.2. claim immediate payment of all outstanding amounts payable in terms of this agreement;
  - 10.3. suspend your access to the services; and/or
  - 10.4. terminate this agreement, retain all amounts already paid by you and recover all costs incurred by Dotcoza, including (without being limited to) legal costs on an attorney and own client basis.

## **11. Certificate of Indebtedness**

- 11.1. The amount due and payable by you to Dotcoza in terms of this agreement at any time shall be determined and proved by a certificate signed by one of Dotcoza's directors, whose appointment, qualification and authority need not be proved.
- 11.2. 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.

## **12. Cession and Delegation**

- 12.1. You may not cede any of your rights or delegate any of your obligations under this agreement without Dotcoza's express written consent.
- 12.2. Dotcoza shall be entitled, in its sole discretion and without notice to you, to cede and transfer or delegate to any third party all or any of its rights or obligations under this agreement.

## **13. Jurisdiction**

- 13.1. 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 Dotcoza arising out of this agreement, provided that Dotcoza shall be entitled, in its sole discretion, to institute such proceedings in the High Court of South Africa and, in such event, you consent to the jurisdiction of such court and agree that costs shall be calculated with the tariff of such court.

## **14. Duration**

- 14.1. The duration of the agreement will be a minimum of 1 calendar month or up to a maximum of 12 calendar months, as selected by you from date of service activation. Upon termination of this agreement, any outstanding amounts remain payable and have to be settled within 30 days of termination.

## **15. Amendment of this agreement**

- 15.1. Dotcoza reserves the right to amend this agreement from time to time without notice to you. It is your obligation to visit our website on a regular basis in order to ascertain whether any amendments have been made.

## **16. Access to and Disclosure of Information Relating to the Customer**

- 16.1. You authorise Dotcoza and its affiliates:
  - 16.1.1. to access from credit bureaux, who are members of the credit bureau Association and subscribed to its Code of Conduct, your personal information concerning financial risk and payment habits (payment profile) for purposes of credit information sharing, fraud prevention and debtor tracing;
  - 16.1.2. to disclose your personal identifiable information:
    - 16.1.2.1. to credit bureaux for purposes of credit information sharing, fraud prevention and debtor tracing;
    - 16.1.2.2. to Dotcoza's affiliates for informing you about new products and services and product or service development of those affiliates.
  - 16.1.3. Refer to Dotcoza's Privacy Notice for information regarding the use of identifiable and non-identifiable customer information.

## **17. General**

- 17.1. The parties acknowledge and agree that this agreement sets out the whole of the agreement between them and that there are no other agreements, guarantees or representations, either verbal or in writing, in regard thereto upon which any party rely in concluding this agreement.
- 17.2. The parties choose their respective domicilia citandi et executandi for the purposes of giving any notice, the serving of any process and for any other purposes arising from this agreement as follows:
  - Liberty Centre, 1 Ameshoff Street, Braamfontein, 2001; and

- You: the address you provided to us upon subscription of the service on the Dotcoza Application Form.
- 17.3. You agree that any notices we send to you in terms of this agreement may be sent via e-mail.
  - 17.4. No indulgence, leniency or extension of time which Dotcoza may grant or show to you shall in any way prejudice Dotcoza or preclude Dotcoza from exercising any of its rights in the future.
  - 17.5. You warrant that as at the effective date, all the details furnished by you to Dotcoza are true and correct and that you will notify Dotcoza forthwith in the event of any change to such details.
  - 17.6. Any relaxation or indulgence which we may show you at any time in regard to the Agreement are without prejudice to, and do not constitute a waiver of, any rights we may have, either in terms of the Agreement or any law.

**18. Disclosures In Terms Of The Electronic Communications And Transactions Act No. 25 Of 2002**

- 18.1. The full name and legal status of the web site owner is: Dotcoza (Pty) Ltd Registration Number 2013/178147/07
- 18.2. The address of this web site is: <http://www.dot.co.za>.
- 18.3. Physical address for receipt of legal service: Liberty Health, 1 Ameshof Street, Braamfontein, 2001
- 18.4. Membership of self-regulatory or accreditation bodies:
  - 18.4.1. Internet Service Providers Association of South Africa,
  - 18.4.2. Wireless Access Providers Association,
  - 18.4.3. Wireless Access Service Providers Association
- 18.5. Main Business: Provider of Internet related Services
- 18.6. Directors: Philip Timberlake