

## COMMANDCTRL TERMS OF SERVICE

Last Updated: August 1st, 2023

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS OF SERVICE BEFORE ACCESSING OR USING THE COMMANDCTRL SERVICE, A CLOUD-BASED PLATFORM AVAILABLE THROUGH [HTTPS://COMMANDCTRL.LIQUIDWARE.COM](https://commandctrl.liquidware.com) ("COMMANDCTRL SERVICE") PROVIDED BY LIQUIDWARE LABS, INC. ("LIQUIDWARE"). BY CLICKING THE ["ACCEPT"] BUTTON AND PROCEEDING TO USE THE COMMANDCTRL SERVICE, YOU ACKNOWLEDGE CUSTOMER'S ACCEPTANCE OF THE TERMS OF SERVICE BELOW AND AS UPDATED BY LIQUIDWARE FROM TIME TO TIME ("TERMS OF SERVICE").

CLICKING THE ["ACCEPT"] BUTTON IS A LEGALLY VALID WAY TO CREATE A BINDING CONTRACT AND CONSTITUTES CUSTOMER'S ELECTRONIC SIGNATURE.

CUSTOMER IS ENTERING INTO THESE TERMS OF SERVICE ON BEHALF OF THE CORPORATION, OR OTHER LEGAL ENTITY INDICATED ON THE ORDER OR IN YOUR REGISTRATION ("CUSTOMER"). BY CLICKING THE ["ACCEPT"] BUTTON YOU REPRESENT AND WARRANT (X) THAT YOU HAVE THE AUTHORITY AND LEGAL ABILITY TO ENTER INTO THESE TERMS OF SERVICE ON BEHALF OF CUSTOMER, AND (Y) CUSTOMER AGREES TO BE BOUND BY THESE TERMS OF SERVICE.

IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, THEN DO NOT ACCESS OR USE THE COMMANDCTRL SERVICE.

Copies of these Terms of Service are available for download and printing by using current web browser software And going to:

[https://cdn.liquidware.com/CommandCTRL/Agreements/Liquidware\\_CommandCTRL\\_SaaS\\_Online\\_Agreement\\_08\\_01\\_23.pdf](https://cdn.liquidware.com/CommandCTRL/Agreements/Liquidware_CommandCTRL_SaaS_Online_Agreement_08_01_23.pdf).

### OVERVIEW.

**Glossary.** A glossary of defined terms has been included at the end of these Terms of Service; other capitalized terms are defined in context.

**Free and Paid Subscriptions.** Liquidware offers free and paid subscriptions to the CommandCTRL Service. These Terms of Service apply to either subscription type, except that use of the free version is limited to only five Machines and 24 hours of History and the following sections of these Terms of Service do not apply to free subscriptions: Indemnification by Liquidware and Support Services. Customer can convert from a free to a paid subscription in Customer's Account by following Liquidware's Order process online and entering appropriate credit card or ACH information or by entering into a separate Order with Liquidware.

**Account Registration.** Customer's designated Owner Administrator will create Customer's Account As part of initial registration for the CommandCTRL Service. As part of creating and updating the Account, Customer will provide an email address for its Owner Administrator and other Customer-related Account Information.

**User Management.** Any Administrator User designated by the Customer's Owner may invite, edit and delete Users and set the Users' level of access. Customer is responsible for ensuring that information regarding Users is accurate and current. Customer and Users' protection of their IDs, passwords and identifying information is an integral part of maintaining the privacy and integrity of data in the

CommandCTRL Service. Customer shall keep confidential and not disclose, nor permit any User to disclose, any such information to third parties. Customer shall notify Liquidware immediately of any unauthorized use of any Account Information or any other known or suspected breach of security with respect to its Users' use of the CommandCTRL Service or Customer's Account. Customer is responsible for ensuring that all Users comply with the terms of this Agreement and for all activities of Users and others that occur through Customer's Account.

**Orders.** Customer has entered into or is entering into an order through Customer's Account (by following the online process there using ACH or credit card payments) or an order via a separate purchase with Liquidware or its authorized reseller (each, an "Order"). The Order will indicate among other things, the name and contact information of the Customer, the fees for the subscription (if any), and whether the subscription is monthly or annual. The "Agreement" means these Terms of Service and any Order between Customer and Liquidware (or its authorized reseller) as described above. If the provisions in an Order and these Terms of Service conflict, the provisions of these Terms of Service will govern and control to the extent of such conflict unless a provision in an Order is expressly agreed to by Liquidware, in which case and only to the extent expressly agreed, the Order will govern. The terms of this Agreement will prevail over any conflicting provision in any purchase order or any other instrument of Customer regardless of execution by Liquidware unless such provision is expressly agreed to in a separate written amendment executed by Liquidware modifying the Agreement.

#### **COMMANDCTRL SERVICE.**

**Provision and Use.** Liquidware shall provide the CommandCTRL Service to Customer in accordance with the Documentation and this Agreement. Subject to the terms and conditions of this Agreement, Liquidware grants Customer a nonexclusive, non-transferable, non-sublicensable license for Users to use the CommandCTRL Service for the number of Machines set forth in the applicable Order during the Subscription Term solely to access and manage Machine Data for Customer's internal business use. In addition, Users may access and use the Documentation solely in connection with their permitted use of the CommandCTRL Service.

**Limitations on Use.** The Documentation contains requirements for and limitations on the use of the CommandCTRL Service. Customer's use is subject to the requirements and limitations in the Documentation and any other limitations in the Order, including permitted number of Machines. Customer shall not use the CommandCTRL Service in a manner that violates any laws, infringes the rights of anyone, or damages any person or property. In addition, Customer may not use the CommandCTRL Service for purposes of monitoring the CommandCTRL Service's performance or functionality or for any other benchmarking or competitive purposes.

#### **AGENTS.**

**License.** As part of the CommandCTRL, Customer will deploy certain Agents on its systems for purposes of collecting Machine Data for processing in the Command CTRL Services. Subject to the terms and conditions of the Agreement, Liquidware grants Customer a limited, nonexclusive, nontransferable license to install and run the Agents on Customer's systems solely as necessary to receive the CommandCTRL Services and to make a reasonable number of copies of these Agents in support of such permitted use. Use of the Agents is subject to the applicable user Documentation provided by Liquidware, which includes requirements and recommendations for the installation environment.

**Utility.** The Agent contains a utility that allows the Agent to collect Machine Data as described below for processing in the CommandCTRL Service. Functionality in this utility also allows Liquidware to monitor work flows of this Machine remotely in real time through the CommandCTRL Service; however, Customer may disable the "Share Usability Workflows with Liquidware" function in the Agent if Customer does not want to permit this real-time monitoring by Liquidware.

**Third Party Components.** Customer acknowledges that the Agent may include open source and freeware and materials licensed from third parties ("Third Party Components") and that such third parties may be third party beneficiaries to this Agreement with the ability to directly enforce the provisions pertaining to their Third Party Components. Customer shall comply with the additional license terms, restrictions and conditions (including notices) pertaining to Third Party Products that accompany the Third Party Components or which Liquidware otherwise makes available to Customer ("Third Party Terms"). The Third Party Terms may have additional rights and requirements which apply to the Third Party Components and the terms in this Agreement are offered by Liquidware alone and do not limit the rights that may be granted in those Third Party Terms. However, Customer shall notify Liquidware before attempting to modify any Third Party Components, and Liquidware's support and indemnification obligations (if any) do not apply where Third Party Components has been modified.

**RESERVATION OF RIGHTS.** Except for the limited rights expressly granted in this Agreement, Liquidware reserves all rights, title and interest in and to the CommandCTRL Service, Documentation and Agents (collectively, "Liquidware Technology") including all related intellectual property rights. No rights are granted to Customer other than as expressly set forth in this Agreement. Without limiting the generality of the foregoing, except as expressly set forth in this Agreement, Customer may not (a) distribute, sublicense, copy, modify, or publicly display the Liquidware Technology, (b) use on behalf of any third party, or permit any third party to use, the Liquidware Technology, (c) decompile or reverse engineer any software used to provide Liquidware Technology; (d) remove any proprietary rights notices on the Documentation or any displays of any portions of the CommandCTRL Service (e.g., screen shots), or (e) attempt to gain unauthorized access to the Liquidware Technology or circumvent any security measures within the Liquidware Technology.

**SUPPORT SERVICES.** Support provided as part of the CommandCTRL Service is described in the then-current Liquidware Customer Support Policy located at <http://www.liquidware.com/support-policy>, which is subject to change at the discretion of Liquidware.

## **CONFIDENTIALITY AND DATA.**

**Confidential Information.** Each party shall treat all trade secrets and other non-public confidential information provided by the other party (collectively, "Confidential Information") as confidential with the same degree of care as it treats its own proprietary information of like importance, but with no less than a reasonable degree of care. The receiving party will not disclose the disclosing party's Confidential Information without the disclosing party's prior written approval and will use such information solely as permitted in this Agreement. Confidential Information of Customer includes without limitation all Machine Data and Account Information. Confidential Information of Liquidware includes without limitation all nonpublic information related to the Liquidware Technology. Confidential Information does not include information which (a) was in the public domain at the time it was disclosed or becomes in the public domain through no fault of the receiving party; (b) can be shown by written documentation to have been known to the receiving party, without restriction, at the time of disclosure; (c) was independently developed by the receiving party without any use of the disclosing party's Confidential

Information; or (d) becomes known to the receiving party, without restriction, from a source other than the disclosing party without breach of any confidentiality agreement and otherwise not in violation of the disclosing party's rights. If the receiving party is requested or required in a judicial, administrative or governmental proceeding or is otherwise required by law to disclose any Confidential Information of the other party, the receiving party will immediately provide the other party with written notice of that proceeding and of all related proceedings (to the extent permitted by applicable law) so that the other party may seek an appropriate protective order.

**Machine Data.** As between the parties, Customer owns its Machine Data. Customer hereby grants to Liquidware and its affiliates, a worldwide and royalty-free right to copy, modify, display, transmit, perform, prepare derivative works of, and otherwise use the Machine Data during the term of this Agreement and until the deletion of Machine Data as described below, as necessary to provide the CommandCTRL Services and to improve the CommandCTRL Services generally. The CommandCTRL Service stores 30 days of History for each Machine (except that for free subscriptions only 24 days of History).

**Account Information.** Liquidware may use Customer's Account Information as necessary to provide the CommandCTRL Service to Customer.

**Usage Data.** As a part of the CommandCTRL Service, Liquidware and its service providers may collect, process, store, modify, aggregate and otherwise use statistics and other data about Customer's use of the CommandCTRL Service, such as the number and frequency of logins to the CommandCTRL Service ("Usage Data"). Usage Data does not include Customer's Machine Data itself or its Account information. Liquidware may aggregate Usage Data with information from other sources. Among other things, Liquidware uses Usage Data to understand its products and services better and to improve them, and to understand the industry better. Liquidware owns and retains all rights in the Usage Data and any resulting aggregations, but Liquidware will not publicly disclose Usage Data or any resulting aggregation in a manner that identifies Customer or a User as the source or that discloses the Machine Data of a Private Project or Customer's Account Information without Customer's prior consent.

**Data Privacy and Security.** Each party is responsible for complying with applicable data privacy and protection laws for the purposes of its performance under this Agreement. Liquidware shall implement and maintain commercially reasonable technical, administrative, and physical safeguards and security methods designed to prevent any unauthorized release, access, destruction, modification, or disclosure of Machine Data and Account Information. Liquidware maintains SOC 2 Type 2 and ISO 27001 certifications which it will make available to Customer upon request.

**Data Processing Addendum.** If required, the parties shall execute the Liquidware Data Processing Addendum with respect to processing of personal data as part of the CommandCTRL Service (the "DPA").

**Service Providers.** Liquidware uses third party service providers to host, store, process and analyze Machine Data and Account Information as part of the CommandCTRL Service. Liquidware requires these third party providers to abide by confidentiality and security obligations similar to the ones contained in this Agreement, and Liquidware is responsible for their handling of Machine Data and Account information in accordance with this Agreement. In addition, Liquidware may disclose Machine Data, Account Information and Usage Data if required by law or to any government body upon its audit or other inspection of the records or facilities of Liquidware or its providers.

**Feedback.** If Customer or its Users submit to Liquidware suggestions or other feedback related to the CommandCTRL Service or other Liquidware products or services (“Feedback”), then Liquidware will own all rights to the Feedback and may use the Feedback for any purpose without compensation to Customer or any other person and without any obligation of confidentiality to Customer.

## **FEES AND PAYMENT.**

**Fees and Pricing.** Customer shall pay those fees indicated in an Order. If an Order refers to Liquidware’s list prices, then the list prices will be those in effect on the date the Order is entered into by Customer and Liquidware (or its authorized reseller).

**Payment.** Customer may elect to pay by ACH or credit card and enter relevant payment information where indicated as part of Customer’s Account. If Customer is paying by credit card, then Customer authorizes Liquidware to bill the fees to the credit card when they are due. Liquidware’s acceptance of a credit card does not relieve Customer from any obligation to pay for the use of the CommandCTRL Service. Liquidware may invoice Customer for amounts due if credit card payment is not effective for any reason. If Liquidware invoices Customer for fees, then Customer shall pay any invoice within 30 days of the date of invoice. Customer shall pay interest in the lesser of 1.5% per month or the highest amount allowed by law on any amounts not received when due. Fees are exclusive of taxes unless otherwise expressly indicated. Customer shall pay all applicable sales, excise, service, use or other taxes imposed upon or required to be collected by Liquidware or by any authority in connection with the fees charged under this Agreement, excluding taxes based upon Liquidware’s net income. All fees are nonrefundable.

**DISCLAIMERS.** THE COMMANDCTRL SERVICE AND LIQUIDWARE TECHNOLOGY ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LIQUIDWARE DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS INCLUDING (I) IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE; OR (II) THAT THE COMMANDCTRL SERVICE OR LIQUIDWARE TECHNOLOGY WILL BE SECURE, UNINTERRUPTED, VIRUS-FREE OR ERROR-FREE.

## **INDEMNIFICATION.**

**Indemnification By Liquidware.** Liquidware shall defend Customer from any third party claims that the Liquidware Technology provided by Liquidware when used in accordance with this Agreement infringes the intellectual property right of any third party, and shall indemnify Customer against any award of damages and costs made against Customer in a final judgment by a court of competent jurisdiction, or any amount in settlement, arising out of such claims. The foregoing obligation will not apply to claims arising from (a) modifications to the Liquidware Technology made other than by Liquidware, (b) Customer’s use of the Liquidware Technology other than as instructed in writing by Liquidware, (c) Third Party Components; or (d) any combination of the Liquidware Technology with any product, service or software not supplied by Liquidware if the claim would not have arisen but for the combination. If the Liquidware Technology becomes, or in Liquidware’s opinion is likely to become, the subject of an infringement claim, Liquidware may, at its option: (i) obtain for Customer the right to continue using the Liquidware Technology; (ii) modify the Liquidware Technology in order to avoid the claim of infringement; or (iii) if in Liquidware’s reasonable opinion neither (i) nor (ii) is commercially practicable, terminate the right to use Liquidware Technology, in which case Liquidware will return any prepaid, unused fee prorated on a daily basis for the remainder of the applicable Subscription Term. This Section

states Customer's exclusive remedy against Liquidware and the complete liability of Liquidware with respect to any claim of infringement made against Customer regarding the Liquidware Technology.

**Indemnification by Customer.** Customer shall defend Liquidware from any third party claims arising from (a) Machine Data or (b) any use of the CommandCTRL Services in violation of this Agreement, and shall indemnify Liquidware against any award of damages and costs made against them in a final judgment by a court of competent jurisdiction, or any amount in settlement, arising out of such claims.

**Procedure.** The indemnified party shall (a) notify the indemnifying party promptly of the indemnifiable claim, (b) provide the indemnifying party with all reasonably requested cooperation, information and assistance regarding the claim, and (c) give the indemnifying party sole authority to defend and settle the claim. The indemnified party will not be bound by any settlement or compromise involving an action or admission by the indemnified party (other than to stop using the CommandCTRL Service as part of the remedies above) that the indemnifying party enters into without the indemnified party's express prior consent.

**LIMITATION OF LIABILITY.** LIQUIDWARE, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, WILL NOT BE LIABLE FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, USE, OR DATA EVEN IF LIQUIDWARE HAS BEEN ADVISED OF THE POSSIBILITIES OF THOSE DAMAGES, OR (B) ANY AMOUNT EXCEEDING THE GREATER OF (1) FEES CUSTOMER HAS PAID TO LIQUIDWARE FOR THE COMMANDCTRL SERVICE IN THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM OR CAUSE OF ACTION OR (2) US\$500. Certain jurisdictions do not allow the exclusion or limitation of certain damages, so this section may not apply to the extent applicable law does not allow.

## **TERM AND TERMINATION.**

**Subscription Term.** The CommandCTRL Service will be provided for the subscription term Customer purchases as indicated in the Order or, if no subscription term is indicated or if Customer is using the free version of the CommandCTRL Service, then on a month to month basis ("Subscription Term"). If Customer converts from a free subscription to a paid subscription, then the Subscription Term for the paid subscription will begin on the date indicated in the Order for the paid subscription. Unless otherwise specified in an Order, the Subscription Term will automatically renew for additional periods equal to Customer's initial Subscription Term unless either party provides notice of nonrenewal at least 30 days prior to the beginning of the next Subscription Term. Where Customer purchases additional subscriptions (e.g., an additional number of Machines) for the CommandCTRL Service during a Subscription Term, Liquidware will charge Customer for the additional subscriptions pro-rated based on the number of days remaining in the Subscription Term. Any such additional amounts purchased during a Subscription Term will be included in the total to calculate the fees to be invoiced by Liquidware at the beginning of the next Subscription Term unless the parties amend the Order.

**Termination.** A party may terminate this Agreement if (i) the other party commits any material breach of this Agreement and does not remedy the breach within 30 days after the date that it receives notice of the breach, or (ii) the other party enters into bankruptcy or liquidation or has a receiver appointed as to substantially all of its assets or takes or suffers any similar action in consequence of debt.

**Effect of Termination.** Upon termination or expiration of this Agreement, the following apply: (a) Customer may no longer use the CommandCTRL Service but for a period of up to 90 days after termination or expiration will have the opportunity to reactivate the CommandCTRL Service solely to

retrieve Machine Data stored in the CommandCTRL Service through Customer's Account; (b) Agents will self-uninstall after this 90-day period and Customer shall return or destroy them promptly; (c) Liquidware will delete Machine Data from its systems in accordance with Liquidware's data management procedures after this 90 day period, but Liquidware may securely retain all Account Information and Machine Data that cannot readily be deleted subject to commercially reasonable backup and archival procedures; and (d) except as set forth above each party will return or destroy all Confidential Information of the other party in its possession. The following sections of these Terms of Service will survive termination: RESERVATION OF RIGHTS, Confidential Information, Payment, DISCLAIMERS, LIMITATION OF LIABILITY, Effect of Termination, GOVERNING LAW AND DISPUTES; and MISCELLANEOUS.

**SUSPENSION OF ACCESS.** Liquidware may suspend Customer's or any User's access to the CommandCTRL Service for any violation of this Agreement or if Liquidware reasonably believes that Customer's or its Users' activity is harming the CommandCTRL Service or the rights or property of any person. No access to Machine Data in the CommandCTRL Service will be available during any suspension. Liquidware may exercise these suspension rights prior to exercising its rights under the termination provisions of this Agreement and without prior written notice to Customer. Unless the Agreement is terminated, Liquidware will remove the suspension upon resolution of the cause of the suspension.

**FORCE MAJEURE.** Liquidware will not be responsible, nor incur any liability for any failure or delay in performing its obligations due to causes beyond its control, including, without limitation, fire, storm, flood, acts of war, accident, insurrection, sabotage, labor disputes, acts of God, acts of third parties, acts of federal, state or local government or judicial action.

**ASSIGNMENT.** Customer may not assign or transfer this Agreement or any portion of it without the prior written consent of Liquidware. Any attempt by Customer to assign or transfer any rights, duties, or obligations in violation of this Section is null and void. Liquidware may assign its rights or obligations under Agreement in whole or in part without notice to Customer. Liquidware may subcontract portions of the CommandCTRL Services and will be responsible for such subcontractors in their performance of any CommandCTRL Services.

**GOVERNING LAW AND DISPUTES.**

(a) This Agreement will be exclusively construed, governed and enforced in all respects in accordance with the internal laws (excluding all conflict of law rules) the State of Illinois, USA. The United Nations Convention on Contracts for the International Sale of Goods will not apply in any respect to this Agreement or the parties thereto.

(b) If Customer is located in the United States, then the exclusive jurisdiction and venue for all disputes regarding this Agreement will be a court of competent jurisdiction in Cook County, Illinois. Otherwise, all disputes regarding this Agreement shall be finally resolved by binding arbitration before a single arbitrator pursuant to the then-existing Rules of Conciliation and Arbitration ("Rules"), and under the auspices, of the International Chamber of Commerce ("ICC"). The arbitrator shall be knowledgeable in the chosen law and the software industry. At either party's request, the arbitrator shall give a written opinion stating the factual basis and legal reasoning for the decision. The arbitrator shall have the authority to determine issues of arbitrability and to award damages as permitted by this Agreement. The parties, their representatives, and any other participants shall hold the existence, content, and result of arbitration in confidence. The arbitration proceedings will be in English and will take place in

Chicago, Illinois, USA. Judgment on the arbitration award may be entered in any court having jurisdiction. Notwithstanding the foregoing, Liquidware may, at its sole discretion, seek preliminary judicial relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief) as necessary to enforce its rights in its Proprietary Information or intellectual property.

(c) The official language of this Agreement is English. All contract interpretations, notices and dispute resolutions are to be in English. Any attachments or amendments to this Agreement are to be in English. Translations of any agreement documents are not to be construed as official or original versions of the documents.

**LIMITATION OF ACTIONS.** No action arising out of this Agreement, regardless of form, may be brought by Customer more than one year after the date the cause of action has accrued.

**U.S. GOVERNMENT END USE PROVISIONS.** The following applies to all acquisitions of the Liquidware Technology by or for the U.S. government or by any prime contractor or subcontractor under any contract, grant or other activity with the U.S. government. The Liquidware Technology provided under these Terms of Service are “commercial items” as that term is defined at 48 C.F.R. 2.101 consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and other applicable acquisition regulations and are provided to the U.S. Government only as a commercial item. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202, all U.S. Government users and licensees acquire the Liquidware Technology with only those rights and subject to the restrictions set forth in these Terms of Service. Notwithstanding the foregoing, the Liquidware Technology may not be acquired by the U.S. government pursuant to a contract incorporating clauses prescribed by FAR Subpart 27.4 or DFARS Subpart 227.4.

**COMMUNICATIONS.** Any notices to Liquidware regarding this Agreement must be made to legal@liquidware.com. Liquidware may contact and notify Customer at the email address indicated on the Order or in Customer’s Account. Customer agrees to Liquidware’s receipt of the contact information that Customer provided to Liquidware’s authorized reseller, if applicable. All notices will be deemed received upon the party’s actual receipt of the notice.

**AMENDMENTS.** Liquidware reserves the right to change these Terms of Service from time to time without advance notice by posting the changes at the URL indicated in the preamble above. Customer acknowledges and agrees that it will be bound by the amended Terms of Service if Customer continues to access or use the CommandCTRL Services after the change is posted and that it is not necessary for Customer to accept the updated Terms of Service in order for them to be valid and effective. If, within 30 days of Liquidware posting the updated Terms of Service, Customer does not agree to the updated terms, then Customer may terminate the Agreement by notifying Liquidware pursuant to the COMMUNICATIONS section above.

**MISCELLANEOUS.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, or employment relationship between the parties. There are no third-party beneficiaries to these Terms of Service. Except as set forth above in the AMENDMENTS section, no waiver, amendment or modification of any provision of these Terms of Service will be effective unless it is in writing, refers to these Terms of Service, and is signed by authorized representatives of the parties. No failure or delay by either party to exercise any right, power, or remedy constitutes a waiver of that right, power, or remedy. A party’s waiver of the performance of any covenant or any breach is not to be construed as a waiver of any succeeding breach or of any other



covenant. If any provision of these Terms of Service requires judicial interpretation, the provision is not to be more strictly construed against one party than the other. If any provision of these Terms of Service is declared invalid by a court of competent jurisdiction, the provision will be ineffective only to the extent of the invalidity, so that the remainder of that provision and all remaining provisions of these Terms of Service will continue in full force and effect. This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes any prior communications, agreements or understandings, whether oral or written, between the parties relating to the subject matter of this Agreement.

## **GLOSSARY.**

"Account" means Customer's account online with Liquidware for the CommandCTRL Service.

"Account Information" means the contact information for Customer's Owner Administrator, the login information for Customer's Users for the CommandCTRL Service, and the payment-related information provided by Customer's Owner to set up Customer's Account.

"Administrator User" means a User designated by the Owner Administrator and who may invite, edit and delete Users from the CommandCTRL Service and set their level of access to the CommandCTRL Service.

"Agent" means the client-side software agents downloaded from Liquidware onto Customer's Machines.

"Documentation" means the guides, instructions, recommendations, FAQs, restrictions and other documentation regarding the CommandCTRL Service which can be found within the CommandCTRL Service.

"History" means the number of days of Machine Data that the CommandCTRL stores regarding a Machine.

"Machine" means a computer, device or similar endpoint on Customer's system designated by Customer and onto which an Agent is downloaded by Customer for purposes of monitoring the Machine with the CommandCTRL Service.

"Machine Data" means the data collected by Agents regarding a Customer's Machine (such as user names, end user device names, IP address, geolocation and process names as well as work flow information about a Machine, such as page clicks, error clicks, or thrashed cursors) and processed and stored in the CommandCTRL Service.

"Owner Administrator" means the Customer User who initially registers for Customer's Account and is able to designate other Administrator Users.

"User" means an employee and authorized individual contractor of Customer invited by the Owner or other Administrator User to use the CommandCTRL Service through Customer's Account.