



theCloud
enterprise computing, on demand

DISCLOSURE STATEMENT PREPARED BY

theCloud Limited

AS AT 16th September 2013



NEW ZEALAND  **CLOUDCODE**
CLOUD COMPUTING CODE OF PRACTICE

1 Introduction

For an organisation to be a CloudCode Signatory they must wholly disclose the following information to all clients, both prospective and current, before, during and after the sales process. They must update their Disclosure Document and inform the Register of CloudCode Signatories of these changed disclosures as soon as possible and not later than 28 days after the change is made. Where the change has a material effect on the Cloud product or service being provided, they must notify all clients of these changes.

The CloudCode website provides more information of what constitutes a material change. The standard areas of disclosure required by the CloudCode are:

1. Corporate Identity

Company name: **theCloud Limited**

Company Registration Number: **2507382**

Trading name: **theCloud Limited**

Physical address: **Ground Floor, TetraPak Building, Waikato Innovation Park, 3 Melody Lane, Hamilton 3216, New Zealand**

Postal address: **PO Box 12054, Chartwell, Hamilton 3248, New Zealand**

Company website: **http://www.thecloud.net.nz**

Contact phone number: **0800 425383**

Contact email address: **info@thecloud.net.nz**

Complaints about our service can be made in the first instance to. **theCloud Service Desk, 0800 425838, support@thecloud.net.nz**

Contact person responsible for these disclosure statements can be contacted via the following email address: **legal@thecloud.net.nz**

The disclosures herein apply to the following products or services supplied by us:

- **Virtual Servers** as described at <http://www.thecloud.net.nz/go/virtual>
- **Exchange Mail** as described at <http://www.thecloud.net.nz/go/exchange>
- **Cloud Storage** as described at <http://www.thecloud.net.nz/go/storage>

For the purpose of Legal Jurisdiction, the contracted supplier who provides the service to you is a **Cloud Services Provider** registered in **New Zealand**

The governing law of our contract with you is **New Zealand**

The disclosure statements that follow have been **Self assessed** by **theCloud Management Team**.

2. Ownership of Information

We **do not** claim ownership of any data or information uploaded to our service.

Your data and information may traverse or be stored on our upstream provider's networks or systems. In these instances that provider considers the data and information that you use or transmit via our service as owned by the **client**

Metadata and other statistical information, such as anonymised data generated as a result of the use of our service, is owned by the **service provider** and **is** used for the purposes of **usage statistics, performance analysis, support and training activities.**

3. Security

As at the date of application:

- We **are not** listed on the CSA STAR Registry.

We are currently undergoing the process of acquiring certification against the following security related standard(s) : **CSA STAR**

- We have the following physical security in place at the data centres hosting your data:
Multiple layers of Cardax entry control, some of the sites also include biometrics, all sites operate CCTV.
- We have the following digital security in place on the systems hosting your data:
Multiple firewall layers including IDS, customers control their own network edge within the cloud environments and encryption is an option any customer can employ.

4. Data Location

- Our primary systems that host your data are located in **Hamilton, Auckland, Wellington**
- Our Backup/Disaster recovery systems that hold your data are located **Hamilton, Auckland, Wellington**

Additional information about data location:

theCloud operates multiple geographically diverse sites to both regionalize the workloads for customers and to provide geographic diversity and resilience for customers adopting this option.

5. Data Access and Use

Data access by you:

- Your data may be accessed during the contract period as described in our contract with you.
- Your data can be downloaded from our service during the service provision period via the following formats **Virtual Servers as VMDK files, Exchange Mail can be exported as PST files from outlook, all other data in the same format it was uploaded.**
- At the cessation of our service to you, your data **will not** be available to access

Data access by us:

- Deletion of all customer data at the cessation of our service to you takes place **immediately, however backup data will automatically expire based on the retention period of the backup plan you were on.**
- We use customer data for the following business functions:
Usage metadata for performance analysis

Signup and deployment metadata for statistical reports
Customer proprietary data – never, for anything.

- We **do not** access customer data for any other purpose **unless there is a breach or suspected breach of the terms of service, namely IP rights and/or any abuse of the service.**
- We **do not** use customer data in order to generate revenue other than through provision of the service. .

Data access by others:

- If we are approached by law enforcement agencies it is our policy to.
Comply with requests that conform to legal obligations as determined by New Zealand law and as reviewed by our lawyers Tomkins Wake.
- We **do not** provide access to customer data to third parties other than law enforcement agencies as set out above.

6. Backup and Maintenance

Understanding the backup procedures of your service provider and their maintenance policies allows the customer to make decisions on what further steps they may need to ensure their data is backed up sufficiently.

- Backups are performed every **day, week, month, year – as determined by the backup profile of the backup plan selected by the customer.**
- Backups include (tick those that apply)
 - ✓ system data (if selected by customer)
 - ✓ client data (if selected by customer)
 - ✓ statistical data
 - ✓ operating system data (if selected by customer)
- Backup data is stored **depending on the backup profile selected by the customer the backup data is stored locally at the source site on disk, remotely at one or more of the alternate sites, off-site with a third party tape media security company.**
- Where backup data is stored offsite, the offsite location is **more than 100 km** from the location of the data being backed up – **for tape media the storage is within 100km but is stored in a disaster-proof bunker.**

We test the restoration of backup data every **quarter (for core systems data), as required under contract with specific customers as per customer requirements.** and the test is conducted.. **by requesting one or more tapes from the off-site tape handling security provider and restoring one or more Virtual Server into the 'lab' environment, then powering it on to ensure data integrity. At the end of the process the lab environment is destroyed and the tape returned to the off-site tape handling security provider.**

- Access to backup data or archive data **is not** available via **any self-service method unless the customer is using one of the Cloud self-service backup products such as CloudSync Backup.**
- Adhoc requests for restoration of customer data will be commenced within **the same day of request if this day is a business day or any other day if the customer has a suitable service level agreement.**
- We **do** allow client audits of backup data, costs of which will be carried by **the customer.**
- Backup data is retained for **14 days (onsite disk level backup), 12 weeks (offsite-tape), 12 months (off-site tape), 7 years (offsite-tape) – based on the profile of the backup plan selected by the customer**
- We **do** undertake a regular maintenance programme to ensure the reliability and stability of our cloud resources
- We **do** undertake a regular maintenance programme to ensure the reliability and stability of our service offerings.

7. Geographic Diversity

- Our service **is** provided via multiple locations
(if the service is provided via multiple locations, the following disclosures should be made, if the opposite is true both these statements can be deleted)
 - Our services are approximately. **120**km apart in distance (Hamilton – Auckland) and 520km (Hamilton – Wellington)
- Our services are provided from the following locations: **Auckland, New Zealand | Hamilton New Zealand | Wellington, New Zealand.**
- We operate offices in the following countries: **New Zealand**

8. SLA and Support

This section sets out the **standard** support mechanisms and service level agreements that apply to services.

- Our standard support hours are. **8:30am to 5:30pm on Business Days** (local time unless stated otherwise).
- In the event of an unscheduled outage or incident, we will communicate the details of the issues and expected resolution times via **theCloud website at www.thecloud.net.nz**

- When communicating an issue to us we prefer you to do so via **the support site located at <http://support.thecloud.net.nz/>**
- Our standard response time to any support issue raised is **four hours within business hours or next business day if out of hours. Customers with specific service level agreements will differ.**
- In the event of a major incident, we will update our notifications every **one** hours.)
- When communicating with you we will use .. **the Service Desk Ticketing system located at <http://support.thecloud.net.nz/> and/or the details of your technical contact as defined on your account (editable by you in the customer portal)**
(e.g. details provided by customer on application / email)
- We **do** make incident reports available to our clients after a major incident.
- We **will** shut down or isolate any service offering that is impacting, or will impact, service level agreements.
- We **do** require service offering specific tools to enable safe service offering shutdown or isolation if needed.
- We operate an **active/active**based service.
If ‘other” **Customers elect to deploy services in one or more of theCloud sites, services are not deployed into multiple sites by default.**

Additional information about SLA's and support:

Can be found on the support site at <http://support.thecloud.net.nz/> or upon request via email to support@thecloud.net.nz.

9. Data Transportability

An API is not relevant to the service we offer.

- Data **will** be available to download after we cease supplying service to you
(if data is available post service cessation, then the following statement will apply)

Data can be obtained via **requesting the data be archived “before” you cease the service. Depending on the size of the data it can be put on an FTP site or copied to USB drive.**

- There **may** be additional charges associated with accessing data after your service has ceased.

10. Business Continuity

theCloud primary site of operations is Hamilton with Auckland and/or Wellington providing compute/storage and networking resilience as appropriate. Personnel are based in both the Hamilton and Wellington locations (Auckland TBD).

Disaster in Auckland: Normal operations in Hamilton and Wellington. Recovery of Auckland specific data and services will be conducted from Hamilton by either restoring locally (Hamilton) replicated data or requesting off-site tapes. Recover of customer ‘tail’ network connections to the Auckland site will take much longer (if at all viable).

Disaster in Hamilton: Normal operations in Auckland and Wellington. Recovery of Hamilton data and services will occur in either Auckland or Wellington depending on the nature of the disaster and the availability of personnel. Recovery of Hamilton specific data and services will be achieved by either restoring locally (alternate site) replicated data or requesting off-site tapes. Recover of customer ‘tail’ network connections to the Hamilton site will take much longer (if at all viable).

Disaster in Wellington: Normal operations in Auckland and Hamilton. Recovery of Wellington specific

data and services will be achieved by either restoring locally (alternate site) replicated data or requesting off-site tapes. Recover of customer 'tail' network connections to the Hamilton site will take much longer (if at all viable).

In all disaster scenarios:

Customers operating active/active configurations across two or more sites will naturally remain active. Core services such as Support, Exchange Mail, DNS and some Voice Services will fail-over in a HA configuration as designed.

11. Data Formats

- All client data **can** be exported at any stage of the service delivery in the following formats: **Virtual Servers in VMDK format, Mailbox data in PST format and all other data in the same format as it was uploaded.**
- Our API requires data to be transmitted in the following formats (n/a)

Additional information can be entered here regarding portability and interoperability features: **theCloud operates industry leading technologies that make use of industry standard structures and formats. For Virtual Servers this means VMware VMDK and in the future HyperV VHD.**

12. Ownership of Application

- The source code for the application that you use on our service ***is not*** available to license on your systems outside of our service provision.
- It **will** be possible to use your data downloaded from our systems in its native form outside of our service (i.e. your local network) by **deploying the same host technology – i.e a VMware Virtual Server will require a VMware ESX host and suitable management environment or any Virtualization technology that supports the importing of a VMDK.**

13. Customer Engagement

- We **do** allow the auditing of our services by customers
- We **do** have an acceptable use policy that is applicable to the services stated in section 5.2. This policy can be found at www.thecloud.net.nz/go/terms
- We **do** operate a Privacy Policy. This policy can be found at www.thecloud.net.nz/go/privacy

14. Data Breaches

- If we discover that your data has been lost or compromised, we will **always** notify you as soon as practicable by **email to the privacy account contact** unless that notification would compromise a criminal investigation into the breach.
- When we are in possession of evidence of criminal activity associated with the breach (such as evidence of hacker activity) we will **always** notify appropriate law enforcement agencies.

15. Law Enforcement

When requested by appropriate law enforcement agencies to supply customer related information without a warrant or legal mechanism to compel disclosure:

- It is our usual policy **not to** comply with such requests.

16. Region specific Disclosures

Please list the countries to which you are becoming a signatory to the CloudCode. (Currently just New Zealand).

- New Zealand

Schedule 1:

New Zealand specific Content

S1.1 Data Breach Notification

The Office of the Privacy Commissioner has published voluntary breach notification guidelines, which can be found at www.privacy.org.nz/privacy-breach-guidelines-2

- The Data Breach Notification we will make in Section 5.15 **will** be made consistent with the Voluntary Breach Notification Guidelines issued by the Office of the Privacy Commissioner in New Zealand.
- Where we are able to determine that there has been significant loss or compromise of information and a risk of harm to individuals we **will also** notify the Office of the Privacy Commissioner directly.

S1.2 New Zealand Legislation

- We affirm that we always comply with the Privacy Act, Fair Trading Act, Commerce Act, Copyright (Infringing File Sharing) Amendment Act 2011 and other relevant legislation.
- We **do** have a current Fair Trading Act Compliance policy, a copy of which is attached.

THECLOUD LIMITED - FAIR TRADING ACT COMPLIANCE POLICY

PURPOSE

1. The purpose of this policy is to ensure that:
 - all advertising and marketing used by theCloud Limited will comply with New Zealand's Fair Trading Act 1986; and
 - the advertising or marketing materials that we use and the associated activities we undertake will not (and could not) mislead or deceive our consumers.

SCOPE

2. This policy relates to all the things we say and do about the promotion and sale of the products and/or services we supply to consumers. This includes sales techniques and financing as well as advertising and marketing using print materials, broadcast advertising, electronic advertising, verbal messages and other forms of promotion.

WHY WE HAVE THIS POLICY

3. Consumers come from a wide range of social, cultural and educational backgrounds. Because of this, we need to be clear about the things we say and in doing so we reduce the risk of consumers misinterpreting our intentions or of us misleading them and therefore potentially breaching the Fair Trading Act.
4. The benefits for theCloud Limited having in place a Fair Trading Act policy and compliance programme include:
 - having better informed staff and improved customer service;
 - having better customer relations;
 - enhancing our business culture; and
 - maintaining and enhancing our good reputation.

RULES AND RESPONSIBILITIES

5. All advertising and related activities will be truthful and only contain statements and visual representations which ensure an overall impression that:
 - does not and is not likely to mislead or deceive consumers;
 - does not make false and misleading representations; and
 - does not abuse the trust of the consumer or exploit their lack of experience or knowledge.
6. All staff with trading/sales responsibilities must be informed of this policy and know how it applies to the work they do.
7. Managers are responsible for ensuring that their staff with trading/sales responsibilities are aware of all current promotions and advertising (representations) being made about the products and/or services that they supply.
8. All staff are responsible for immediately notifying suspected breaches of this policy to management.
9. Initial Fair Trading Act induction training will cover:
 - awareness of this policy;
 - the responsibilities of staff and management relating to Fair Trading Act compliance; activities;
 - what is a false or misleading representation; and
 - what to do if a breach of this policy occurs.
10. theCloud Limited will operate an effective product safety and recall program.
11. theCloud Limited will operate a 'rain check' system for goods and services requested that are out of stock or otherwise unavailable but are subject of a current advertisement

THECLOUD LIMITED - FAIR TRADING ACT COMPLIANCE POLICY

or advertising campaign at the time of request.

12. All marketing decisions and strategies will be reviewed by management to ensure they meet the requirements of this policy.
13. Product managers (or others with product management responsibilities) are responsible for ensuring that all advertising is fit for purpose and checked for compliance with this policy before it is cleared for use.
14. An in-house system for checking and approving all publicity material against the requirements of this policy and the Fair Trading Act will be used by relevant staff, managers, contractors and advertising agencies (refer to Check Sheet 1: Fair Trading Act advertising/promotion compliance).
15. The person who checks the material should have reasonable product knowledge about the products and/or services being promoted. The person who then approves the material must have the authority to approve advertising representations in theCloud Limited.
16. The Fair Trading Act complaints register will be used by theCloud Limited.
17. All Fair Trading Act complaints made by consumers and competitors will be:
 - recorded in a complaints register;
 - managed promptly to ensure any potential breaches are rectified immediately and suitable action(s) put in place to reduce the likelihood of reoccurrence; and
 - reported periodically to the senior management team.
18. Any mistakes in published advertising materials will be remedied immediately, including destroying or carefully altering the advertising materials and alerting consumers to the error. As appropriate, managers should be assigned to handle any dissatisfied consumers.
19. Out of date advertising materials will no longer be displayed or used in promotions.

BASICS ABOUT THE FAIR TRADING ACT

20. The following information covers the basics about the Fair Trading Act. The Act:
 - prohibits people in trade from engaging in misleading or deceptive conduct generally;
 - prohibits certain types of false or misleading representations about goods or services (eg, false claims about skills, qualifications, success, test and survey results);
 - prohibits certain types of false or misleading representations or conduct in relation to land;
 - prohibits certain unfair trading practices (eg, bait advertising, offering gifts as part of a promotion with no intention of supplying them or misrepresenting the nature of the gift, using packaging that misrepresents the products inside);
 - provides for consumer information and product safety standards regulations and unsafe goods notices; and
 - prohibits misleading conduct in relation to employment offers.
21. The Ministry of Consumer Affairs is responsible for administering the Fair Trading Act, including reporting to Government on the need for changes to the current law and other policy matters. The Minister also has the power to order compulsory recall of goods which fail to meet a product safety standard or which may cause injury.
22. The Commerce Commission is responsible for enforcing the Fair Trading Act. In taking action against a business that may have breached the Act, the Commerce Commission's

THECLOUD LIMITED - FAIR TRADING ACT COMPLIANCE POLICY

focus is not on whether theCloud Limited ever intended to deceive or mislead consumers, but whether the things we have said and done are liable, or likely, to deceive or mislead consumers.

This policy is authorised by

Andrew Clausen – Director, National Sales

Date

Bruce Trevarthen - CEO

Date

DEFINITIONS AND EXAMPLES

Advertising	<p>Any form of communication made to the public or a section of the public for the purpose of promoting the supply of products or services or the sale of property. Examples include:</p> <ul style="list-style-type: none">▪ broadcast advertising. This can include television and radio advertising and infomercials;▪ electronic advertising. This can include website, text messages and email;▪ print materials. This can include product labelling, guarantees, pledges, mailers, flyers, newspapers, brochures, magazine and journal advertisements, billboards, point-of-sale and other display material; and▪ verbal messages. This can include sales pitches, promises and general product and service information provided verbally in person or by phone.
Complaints handling system	<p>A customer feedback system for collecting and recording complaints about our Fair Trading Act compliance activities. An effective complaints handling system enables us to properly manage each complaint and learn and improve on what we do.</p>
Deceive	<p>To cause to believe what is false, to mislead as to a matter of fact, to lead into error; to delude, take in.</p>
Mislead	<p>To lead astray in action or conduct, to lead into error, to cause to err.</p>
Representation	<p>A representation is any factual statement made about a product or service, either orally or in writing. A representation may also be an impression given by pictures, advertisements, promotional material or a sales pitch, by general conduct, including by keeping silent when critical information should be given. Representations can also be made in specifications and product descriptions, warranties and contracts.</p>
Supply	<p>For products, supply can include supply by gift, sale, exchanges, lease, hire or hire purchase.</p> <p>For services, supply can include the providing or giving of a service.</p>
Trade	<p>Any trade, business, industry, profession, occupation, activity of commerce or undertaking relating to the supply or getting of products or services or land. Few undertakings, except one-off private transactions, escape the jurisdiction of the Fair Trading Act.</p>