

TERMS AND CONDITIONS

These Terms and Conditions together with any other agreements or terms incorporated by reference, (the "**Agreement**") govern Customer's use of the Services and the Platform, as contemplated herein. The Agreement constitute a binding and enforceable legal contract between Empyrean Technologies Ltd. (the "**Company**") and you ("**you**" or "**Customer**"). By accepting this Agreement electronically by clicking a box indicating your acceptance, or by using the Services, you agree to this Agreement (the "**Effective Date**"). You hereby represent that you have the authority to bind the company or any legal entity and its affiliates to this Agreement, in which case the term "You" or "Customer" will refer to such entity and its affiliates. If the legal entity that you represent does not agree with this Agreement, you must not accept this Agreement or use the Services.

1. Services; License

- 1.1. Subject to the terms and conditions of this Agreement, Company shall provide Customer with services designed to backup and store the various configuration settings of Customer's systems, to provide for a smoother transition process in the event of a breach or system failure (the "**Services**"), through Company's proprietary technology as hosted on a third party cloud (the "**Platform**"). The use of the Platform by the Customer and any of its Authorized Users (as defined below), as well as any support, updates and renewals related thereto, is governed by the Platform Terms of Service, available here: ■ [accSenSe Terms of Service.pdf](#) .
- 1.2. During the Term and subject to Customer's compliance with the terms and conditions of this Agreement, Company grants Customer a non-exclusive, non-transferable (except as permitted herein), non-sublicensable (except as permitted herein), limited, revocable right for Customer's employees, agents, representatives and contractors who are permitted to access the Services by Customer ("**Authorized Users**") to access the Platform up to the maximum Service Capacity, for Customer's use, as agreed between the parties, and according to Company's instructions and technical documentation ("**Documentation**").
- 1.3. Services are purchased for the number of protected digital identities corresponding to Customer's number of digital identities (the "**Service Capacity**"). Any additional Digital Identities beyond the Service Capacity will be at the price per protected digital identities, and will terminate or renew on the same date as the underlying Term.
- 1.4. Customer hereby grants Company, during the Term, a non-exclusive, royalty-free, worldwide license to use, reproduce, and prepare derivative works of all data provided to Company in connection with this Agreement (the "**Customer Data**"), solely to permit Company to perform the Services as contemplated hereunder, all subject to Company's compliance with applicable law.
- 1.5. Customer acknowledges that the Platform or the Services may include certain third party services, products and tools (the "**Third Party Services**"), which are subject to special terms, which will be provided to the Customer. Customer acknowledges that Company merely acts as an intermediary platform between the Customer and the Third Party Services providers and shall not be in any way responsible or liable with respect thereto. Company may, at any time and at its sole discretion, subject to a written notice to the Customer suspend, disable access to or remove from the Services, any Third Party Services, or replace such Third Party Services either through an alternate provider or by Company, without any liability to Customer so long as the description of the applicable services remains substantially the same.
- 1.6. Technical support and details regarding the availability of the Services, including access to the Platform and any professional services (if any), shall be in accordance with the SLA available at [Empyrean SLA.docx](#) (the "**SLA**"), as may be updated by the Company, the terms of which are incorporated herein by reference.

2. **Customer Obligations.** Customer hereby undertakes to:

- 2.1. provide Company with the information required by the Platform from time to time in order to provide the Services, including without limitation the Customer Data, and ensure it has obtained the requisite rights and approvals for collecting and transferring to Company such information;
- 2.2. use the Platform, the Services, all related software, and Documentation provided by Company in compliance with all applicable laws and regulations, including but not limited to applicable data security and privacy laws. Customer represents and warrants that no third party agreement prevents it from using the Platform, the Services, all related software, and Documentation as contemplated hereunder; and
- 2.3. manage and secure all login credentials used by Authorized Users in connection with their use of the Platform, and protect the same against unauthorized use or disclosure.

3. **Customer Data**

- 3.1. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all Customer Data. Customer represents and warrants that the Customer Data does not infringe, misappropriate or otherwise violate any proprietary rights of any third party.
- 3.2. The Customer hereby warrants that the Customer Data shall not include any individually identifying or identifiable information ("**Personal Data**"), other than as necessary for the purpose of using the Services.
- 3.3. Company reserves the right to collect, process, use and retain use any aggregate, anonymous data derived from the Customer Data.

4. **Fees.**

- 4.1. **Fees.** Customer shall pay Company the fees due to Company available at [] (the "**Fees**") according to the payment schedule and the payment terms set forth therein. If Customer's use of the Services exceeds the Service Capacity, Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein.
- 4.2. **Payment Terms.** All payments shall be made in U.S. dollars within thirty (30) days of the invoice date issued by Company to Customer. Amounts that are not paid in accordance with the terms stated in this Agreement, will be subject to a late charge of 1.5% per month or, if lower, the maximum lawful interest rate, compounded monthly, until paid in full.
- 4.3. **Taxes.** All amounts payable to Company are exclusive of all taxes, levies or similar governmental charges, however designated, and any and all such taxes will be paid by Customer except for taxes based on the net income of Company. If under applicable law taxes are required to be withheld by Company, Customer shall pay Company, an additional amount to ensure receipt by Company of a final sum equal to the sum Company would have paid had no such deduction or withholding been made or been required to be made.

5. **Intellectual Property Rights.** All intellectual property rights in the Platform, Services, Documentation and any part thereof, including any and all derivatives, changes and improvements thereof, lie exclusively with Company. Customer shall (i) not attempt to infiltrate, hack, reverse engineer, decompile, or disassemble the Platform, Service or any part thereof for any purpose; (ii) not represent that it possesses any proprietary interest in Platform, Service, Documentation or any part or derivative thereof; (iii) not directly or indirectly, take any action to contest Company's intellectual property rights or infringe them in any way; (iv) except as specifically permitted in writing by Company, not use the name, trademarks, trade-names, and logos of Company, or take any action, directly or indirectly, to register Company's trademarks, copyrights or domain names (or any variation of the foregoing), in its own name, and shall provide commercially reasonable assistance to Company to prevent the occurrence of such activity by any third parties; (v) except as specifically permitted herein, not copy any part or content of the Platform, reports or Documentation other than for Customer's own internal business purposes; (vi) not copy any features, functions or graphics of the Platform, or create derivative works of the Platform, or use the Platform to build a competitive product or service; and (vii) not remove the

copyright, trademark and other proprietary notices contained on or in Company's Platform, products, services or Documentation.

6. **Confidentiality**. Each party agrees to use any Confidential Information of the other Party solely for the purpose of this Agreement. The receiving party agrees (i) not to disclose the disclosing party's Confidential Information to any third parties other than to its directors, employees, advisors, or consultants (collectively, its "**Representatives**") on a "need to know" basis and provided that such Representatives are bound by confidentiality obligations not less restrictive than those contained herein; (ii) not to use or reproduce any of the disclosing party's Confidential Information for any purposes except to carry out its rights and responsibilities under this Agreement; (iii) to keep the disclosing party's Confidential Information confidential using at least the same degree of care it uses to protect its own confidential information, which shall in any event not be less than a reasonable degree of care. Notwithstanding the foregoing, if the receiving party is required by legal process or applicable law, rule, or regulation to disclose any of the disclosing party's Confidential Information, then prior to such disclosure, if legally allowed, receiving party will give prompt notice to the disclosing party so that it may seek a protective order or other appropriate relief. The confidentiality obligations hereunder shall expire three years from the date of termination or expiration of this Agreement and shall supersede any previous confidentiality undertakings between the parties. For the purposes hereof, "**Confidential Information**" means any proprietary or trade secret information disclosed by one party to the other which can be reasonably understood under the circumstances to be confidential, but excluding any information that: (i) is now or subsequently becomes generally available in the public domain through no fault or breach on the part of receiving party; (ii) the receiving party can demonstrate in its records to have had rightfully in its possession prior to disclosure of the Confidential Information by the disclosing party; (iii) the receiving party rightfully obtains from a third party who has the right to transfer or disclose it, without default or breach of this Agreement; (iv) the receiving party can demonstrate in its records to have independently developed, without breach of this Agreement and/or any use of or reference to the Confidential Information.
7. **Data Protection**. The parties agree that Company will process all Personal Data provided by, or collected from, Customer hereunder pursuant to and in accordance with the Data Processing Addendum attached hereto as **Exhibit A** (the "**DPA**").
8. **Indemnification**.
 - 8.1. Company shall defend, indemnify and hold Customer harmless, from and against any claims, damages, costs, liabilities and expenses (including reasonable attorneys' fees) arising out of or related to any third party claim that Customer's use of the Service in accordance with the terms hereof infringes such third party's intellectual property right, provided that Company will have no obligation to indemnify Customer to the extent the claim arises out of: (i) the Customer Data; (ii) the Customer's use of the Services together with any Third Party Services or any other software, code, system, data, material or integration of the Customer or any third-party other than as authorized by this Agreement.
 - 8.2. The Customer shall defend, indemnify and hold Company harmless from and against any claims, damages, costs, liabilities, and expenses (including reasonable attorney's fees) arising out of or related to any claim made or brought against Company by a third party alleging that: (i) the collection, storage and use of the Customer Data in connection with the Services or this Agreement violates such third party's privacy, moral, or other personal or proprietary rights; or (ii) the Customer's use of the Services, or any Third Party Services, other than as expressly permitted under this Agreement, infringes or misappropriates the intellectual property rights of a third-party or violates any applicable law or regulation.
 - 8.3. Indemnification under this Section 8 shall be conditioned upon the party seeking indemnification (i) promptly notifying the indemnifying party in writing of the claim; (ii) allowing the indemnifying party to assume sole control of the defense and settlement of the claim; and (iii) providing the indemnifying party with all reasonable assistance in the defense, at the indemnifying party's expense.
 - 8.4. This Section 8 states the indemnifying party's sole liability to, and the indemnified Party's

exclusive remedy against, the other party for any type of claim described in this Section 8.

9. **Disclaimer; Limitation of Liability**

- 9.1. EXCEPT AS EXPLICITLY PROVIDED HEREIN, COMPANY PROVIDES THE PLATFORM, SERVICES, AND DOCUMENTATION TO CUSTOMER ON AN "AS IS" BASIS, WITHOUT WARRANTIES OR REPRESENTATION OF ANY KIND, AND COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES - STATUTORY, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ACCURACY. COMPANY FURTHER DISCLAIMS ANY WARRANTY THAT THE OPERATION OF THE PLATFORM OR ANY RELATED SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. The sole remedy for errors in the provision of the services shall be pursuant to the SLA.
- 9.2. EXCEPT FOR WILLFUL MISCONDUCT OR FRAUD, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO COMPANY DURING THE TWELVE (12) MONTHS PRECEDING THE DATE THE LIABILITY FIRST ARISES. EXCEPT FOR WILLFUL MISCONDUCT OR FRAUD, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS, LOSS OF USE, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. **Term; Termination**

- 10.1. This Agreement will become effective upon the Effective Date and will continue in effect for the period of the Services purchased (the "Initial Term"), the Initial Term shall be automatically extended for successive renewal terms of 12 months each (each, a "**Renewal Term**"), unless either party provides written notice of non-renewal to the other party at least sixty (60) days before such expiration or unless earlier terminated in accordance with this Section 10 (the "Initial Term" together with the "Renewal Term" are herein referred to as the "**Term**").
- 10.2. Either party may terminate this Agreement immediately by giving written notice to the other party if: (i) the other party breaches a material provision of this Agreement and fails to cure the breach within fourteen (14) days after being given written notice thereof; (ii) the other party is judged bankrupt or insolvent, makes a general assignment for the benefit of its creditors, a trustee or receiver is appointed for such party; or any petition by or on behalf of such party is filed under any bankruptcy or similar laws.
- 10.3. Upon termination of this Agreement, Customer will immediately cease use of the Platform and any Service, each party shall return to the other party all of the other party's Confidential Information in its possession and any outstanding Fees shall become due and payable. Sections 5, 6, 7, 8, 9, 11 and 13 shall survive expiration or termination of this Agreement.

11. **Notices**. All notices or other communications hereunder shall be in writing and given in person, by registered mail, by an overnight courier service which obtains a receipt to evidence delivery, or by facsimile or email transmission with written confirmation of receipt, addressed to the address as any party hereto may designate to the other in accordance with the aforesaid procedure. All notices and other communications delivered in person or by courier service shall be deemed to have been given upon delivery, those given by facsimile or email transmission shall be deemed given on the business day following transmission, and those sent by registered mail shall be deemed given three (3) calendar days after posting.
12. **Publicity**. Company may display Customer's names, logos, and trademarks solely for identifying Customer as a customer of Company (including, without limitation, on Company's website), and with Customer's prior written approval, issue publicity or general marketing communications concerning Company's engagement with Customer.

13. **General.** All amendments will be made only in writing. This Agreement and any rights under this Agreement may not be assigned by either party, and any such purported assignment shall be null and void. Notwithstanding the foregoing, each party shall be entitled to assign its rights under this Agreement to any affiliate or upon a merger, reorganization or sale of all or substantially all of its assets or such similar transaction without the need to obtain the consent of the other party. If any part of this Agreement is declared invalid or unenforceable for any reason, such part shall be deemed modified to the extent necessary to make it valid and operative and in a manner most closely representing the intention of the parties, or if it cannot be so modified, then eliminated, and such elimination shall not affect the validity of any remaining portion, which shall remain in force and effect. Any failure by a party to insist upon or enforce performance by the other of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement or otherwise by law will not be construed as a waiver or relinquishment of any right to assert or rely upon the provision, right or remedy in that or any other instance. Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Services, or to this Agreement, must be filed within twelve months after such claim or cause of action arose or be forever barred. This Agreement is governed by the laws of the State of Israel, without regards to its conflict of laws principles, and any dispute arising from this Agreement shall be brought exclusively before the courts of Tel Aviv, Israel.