

## **TERMS OF SERVICE**

These terms of service ("**Terms of Service**") together with the order form or the quote (each a "**Commercial Offer**"), and any other agreements or terms incorporated by reference under these Terms of Service or the Commercial Offer (the "**Agreement**") govern Customer's use of the Services and the Platform, as contemplated herein. The Agreement constitutes a binding and enforceable legal contract between Acsense Inc. (the "**Company**") and you ("**you**" or "**Customer**"). By accepting these Terms of Service electronically or by clicking a box indicating your acceptance, or by executing a Commercial Offer incorporating these Terms of Service by reference or by accessing the Platform or using the Services, you agree to these Terms of Service. You hereby represent that you have the authority to bind the company or any legal entity and its affiliates for which you accept this Agreement, in which case the term "you" or "Customer" will refer to such entity. If the legal entity that you represent does not agree with these Terms, you must not accept these Terms of Services or use the Services. These Terms of Service apply to all visitors, users and others who wish to access or use the Services or the Platform.

### **1. Services; License**

1.1. Subject to the terms and conditions of these Terms, and any applicable Commercial Offer, Company shall provide Customer with services detailed in the Commercial Offer ("**Services**") through its proprietary technology as hosted on a third party cloud service (the "**Platform**"), in accordance with the service level agreement as available at <https://acsense.com/wp-content/uploads/SLA.pdf> ("**SLA**").

1.2. During the Term and subject to Customer's compliance with the terms of this Agreement, Company grants Customer a non-exclusive, non-transferable, royalty-free, non-sublicensable, limited, revocable right (i) for Customer employees, agents, representatives and contractors who are permitted access to the Services by Customer ("**Authorized Users**") to access the Platform, for Customer's internal business use; and (ii) integrate the account designated by Customer and used to connect to the Platform ("**Customer Account**") with the Platform through Okta API token provided by Customer or by OAuth2.0 connection provided by Customer to enable the Services according to Company's instructions and technical documentation provided by Company from time to time ("**Documentation**").

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

2.1. implement the integration of Customer's Okta tenant according to the Documentation;

2.2. provide Company with complete and accurate information necessary to implement the Services. Customer acknowledges and agrees that the accuracy of the Services depends on the quality, completeness and timeliness of the data provided to Company, and on Customer providing Company with prompt notice upon any changes in required information;

2.3. use the Platform, the Services, and all related software and Documentation in compliance with all

applicable laws and regulations, including but not limited to applicable data security and privacy laws;

2.4. 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 using reasonable standard in the industry. Customer shall be liable for all actions taken on the Platform through use of the login credentials of its Authorized Users.

3. **Fees.** In consideration for the Services, Customer shall pay Company all the amounts, as described in the Commercial Offer ("**Fees**"). Fees shall be payable within 30 days of issuance of the applicable invoice. All payments not made when due shall be subject to a late charge of 1.5% per month compounded annually. Payment of Fees shall be made by wire transfer to the account designated by Company. The Fees are exclusive of VAT or any other applicable indirect taxes. In the event that Customer is required by law to deduct and/or withhold any amounts from any payments due hereunder, it shall gross-up and increase the amounts to be paid to Company so that the actual net amount to be paid to Company shall equal the fees that would have been due to Company without such deduction or withholding.

### **4. Intellectual Property Rights; Confidentiality**

4.1. 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, the Services or any part thereof for any purpose or use it to build a competitive service or product; (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; (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 use it 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. Customer shall take no action, directly or indirectly, to register Company trademarks (or their variation), domain names, or copyrights in its own name and shall provide commercially reasonable assistance to Company to prevent the occurrence of such activity by any third parties. All intellectual property rights in the Customer Account, as well as any data, materials or Confidential Information, including any modifications, enhancements and derivatives thereof (collectively, "**Customer IPR**") lie exclusively with Customer or its licensors.

4.2. Customer hereby grants to Company: (a) a non-exclusive, non-sublicensable, revocable, non-transferable, royalty-free, worldwide license during the Term to use, reproduce, and prepare derivative works of all data provided to Company by Customer in connection with this Agreement solely to permit Company to perform the Services to Customer as set forth in this Agreement, and (b) a perpetual, non-exclusive, non-sublicensable, non-transferable, royalty-free, worldwide license to analyze anonymized data obtained through Services in order to provide Customer with analytics and reports, and improve the Services, all subject to Company's compliance with applicable law and privacy regulations.

4.3. 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 five years from the date of termination or expiration of this Agreement (and with respect to trade secrets- in perpetuity) and shall supersede any previous confidentiality undertakings between the parties.

4.4. 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. For the avoidance of doubt, Customer IPR shall be deemed Customer Confidential Information.

## 5. **Warranties; Disclaimer; Limitation of Liability**

5.1. **EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, 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.**

5.2. Customer acknowledges that the quality and accuracy of the Services are dependent on the accuracy and completeness of the information provided. **CUSTOMER ACKNOWLEDGES THAT COMPANY SHALL NOT BEAR ANY LIABILITY OR RESPONSIBILITY FOR FAULTS, ERRORS OR ERRONEOUS OUTPUT PROVIDED ON THE BASIS OF UNTIMELY, INCOMPLETE, INACCURATE, FALSE OR MISLEADING INFORMATION PROVIDED BY CUSTOMER OR THE AUTHORIZED USERS.**

5.3. **EXCEPT FOR WILLFUL MISCONDUCT, FRAUD OR BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, 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 12 MONTHS PRECEDING THE DATE THE LIABILITY FIRST ARISES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS, LOSS OF USE, LOSS OF DATA (INCLUDING END-USER INFORMATION), 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.**

5.4. Company shall defend, indemnify and hold harmless Customer, from and against any claims, damages, costs, liabilities and expenses (including reasonable attorneys' fees) arising out of or related to any claim that the Platform, Services and/or Documentation infringes any third party intellectual property right. Indemnification

hereunder shall be conditioned upon: (a) Customer notifying Company of the claim immediately upon becoming aware thereof, (b) Customer allowing Company to assume full control of the defense and settlement of such claim, and (c) Customer reasonably cooperating with Company in the defense and settlement of the claim.

#### **6. Term; Termination**

6.1. Unless explicitly provided otherwise in the Commercial Offer, this Agreement shall be for a period commencing on the Start Date set forth under the Commercial Offer, and until the End Date set forth in the Commercial Offer (the "**Initial Term**"). Following the Initial Term, the Agreement shall automatically renew for consecutive 12-month periods (each, a "**Renewal Term**" and together with the Initial Term, the "**Term**"), unless either party provides written notice of termination at least 30 days prior to expiration of a Renewal Term, as applicable.

6.2. 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 seven 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.

6.3. Upon termination of this Agreement, Customer will immediately cease use of the Platform and any Service, each party shall return to the other party or destroy (at disclosing party's option) all of the other party's Confidential Information in its possession and any outstanding undisputed Fees shall become due and payable. Sections 4, 5, 6.3, 7, and 9 shall survive any expiration or termination of this Agreement.

7. **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 set forth in the Commercial Offer or to such other 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 calendar days after posting.

8. **Publicity.** Company may issue publicity or general marketing communications concerning its involvement with the Customer, including a case study, and Customer agrees to reasonably cooperate with and contribute to such case study.

9. **General.** This Agreement constitutes the entire agreement between Company and Customer and supersedes any previous agreements or representations, either oral or written, with respect to the subject matter of this Agreement. Company may amend these Terms of Service at any time and at its sole discretion without prior written notice; provided, however, that the version of the Terms of Service published at the time the Commercial Offer was executed shall continue to apply to Customer until the end of the Initial Term or Renewal Term then in effect, and any amendments shall only apply upon commencement of a subsequent Renewal Term. Customer shall not transfer or assign its rights or obligations under this Agreement to any third party, except to an affiliate or in the case of merger or sale of all or substantially all of the assigning party's assets. Any purported assignment contrary to this section shall be void. 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. This Agreement is governed by the laws of the State of New York, without regard to its conflict of laws principles, and any dispute arising from this Agreement shall be brought exclusively before the courts of NY, USA.