

## **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. (d/b/a Acsense) (the "**Company**") and you ("**you**" or "**Customer**"). By accepting this Agreement the execution of an order form incorporating this Agreement by reference (an "**Order**"), 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 for which you accept 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. Definitions**

- 1.1. "**Account**" means an online account registered by you for the purpose of using the Services.
- 1.2. "**Account Data**" means any data relating to Customer's use of the Platform and Services, including but not limited to, information related to:
  - 1.2.1. Customer contact and payment information, including email addresses and credit card or other payment remittance information; You are responsible for ensuring that payment information that is exchanged between You and your clients is not transmitted over the Platform;
  - 1.2.2. Asset pages and asset analysis and reports you create in the Account;
  - 1.2.3. Your Connected Accounts and Customer Data; and
  - 1.2.4. Settings, preferences chosen, and resource usage.
- 1.3. "**Connected Account**" means a Third Party Services account which You connected to the Account for displaying and analyzing Customer Data in the Account.
- 1.4. "**Customer Data**" means any data stored in the Connected Accounts, files, reports, material and information submitted, uploaded and stored by You through the Service, as well as any publicly available information collected from Third Party Services which you enable to be displayed and analyzed through the Account.

### **2. Registration and User Account**

- 2.1. Establishing an Account. You must register and establish an Account in order to use our Services. You may also log on to the Services through Connected Accounts, such as Google or Microsoft. If you do so, Company will have access to information on your account such as your email address, profile picture and other information if you grant Company permission.
- 2.2. Account Information. You must safeguard and not disclose your Account username and password and you must supervise the use of such Account. You must provide Company with accurate and complete information in order to create an Account, including details of the Connected Accounts that are linked to the Account. You agree to keep your Account information up to date and accurate, including with regard to Connected Accounts. Any Services provided in connection with Customer's Account will be charged to Customer's Account. YOU ARE SOLELY AND FULLY RESPONSIBLE FOR MAINTAINING THE CONFIDENTIALITY OF THE ACCOUNT USERNAMES AND PASSWORDS. YOU ARE SOLELY AND FULLY RESPONSIBLE FOR ALL ACTIVITIES THAT OCCUR UNDER THE ACCOUNT. You must notify Company immediately of any unauthorized use of your Account or any other breach of security.

- 2.3. Administrator. When you initially register for and create an Account, you are, or a party that you authorize is, the administrator ("**Administrator**"). Administrators may authorize additional individuals to access the Services through the same Account ("**Authorized Users**"). Authorized Users may include Customer's employees, contractors and agents. This Agreement will apply to any Authorized Users using the Services.
- 2.4. Access Rights. Customer is responsible for Authorized Users' access to the Services. Depending on the types of access rights the Administrator grants to Authorized Users, Authorized Users may be able to add or remove Connected Accounts, delete, copy, or view the Customer Data and data accessible in Customer's Account and subscribe or unsubscribe to Services. Customer is solely responsible for the access to the Services granted to Authorized Users and it is the Customer's sole responsibility to add or remove access rights to Authorized Users. Company is not responsible for the internal management or administration of the Services. You are responsible for Authorized Users' compliance with the terms of this Agreement. A violation of any provision of this Agreement by an Authorized User may result in the termination of an Administrator's or any Authorized User's access to the Services. If Customer chooses to close or terminate its access to any part of the Services, Authorized Users will no longer be able to access such Services or any of the Customer Data within such Services.
- 2.5. Deletion of Account. You may delete your Account at any time. Any Customer Data and other information and data entered into the Services, including Customer Data, may be permanently deleted if you delete the Account.

### 3. Services; License

- 4.1. 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 Company may update the Services from time to time, including add or remove certain features.
- 4.2. During the Term (as defined below) 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 Authorized Users to access the Platform up to the maximum Service Capacity (as defined below), and according to Company's instructions and technical documentation ("**Documentation**").
- 4.3. Services are purchased for the number of protected digital identities corresponding to Customer's number of digital identities, as set forth in the Order (the "**Service Capacity**"). Any additional digital Identities beyond the Service Capacity will be at the applicable price per protected digital identities, and will terminate or renew on the same date as the underlying Term.
- 4.4. Customer acknowledges that the Platform or the Services may include certain Third Party Services (as defined below), 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.
- 4.5. 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](#) (the "**SLA**"), as may be updated by the Company, the terms of which are

incorporated herein by reference.

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

- 5.1. 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;
- 5.2. 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
- 5.3. 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.
- 5.4. not to misuse the Services, including, without limitation, whether by yourself or anyone on your behalf, not to (a) sell, resell, lease or share the Services or access or attempt to access the Services by any means other than the interface provided or authorized by the Company; (b) circumvent any access or use restrictions put into place to prevent certain uses of the Services; (c) use the Services to store, share or transmit Customer Data which is unlawful, infringing, harmful or which violates any person's rights, including privacy rights and intellectual property rights; or (d) attempt to disable, impair, or destroy the Services, or Platform;

**6. Account Data; Customer Data**

6.1. **Account Data.**

6.1.1. You hereby grant Company permission to collect Account Data available on the Platform and to use such Account Data to improve the Platform performance and functionality and improve services and support to Company customers and for other business purposes including monitoring, statistical data gathering, diagnostics, comparative analyses, press and supplies utilization, complementary solutions usage, security and software integrity assurance, remote control and support and click performance tracking and billing. Company may use third party analytics services in performing the above. Company does not provide an opt-out option from the use of third party analytics services and therefore, you should refrain from registering for the Services if you do not agree to the use of the third party analytics services in connection with the Account Data.

6.1.2. Where applicable, Account Data collected by Company will be shared with you or any service provider who may, directly or indirectly, provide you with support or other supplementary services in connection with the Services or Connected Accounts.

6.1.3. Company may further use Account Data (i) to respond to duly authorized information requests of police, law enforcement, or other governmental authorities; (ii) to comply with any applicable law, regulation, subpoena, discovery request or court order; (iii) to investigate and help prevent security threats, fraud, or other illegal, malicious, or inappropriate activity; (iv) to enforce/protect the rights and properties of Company or its affiliates or subsidiaries; or (v) with the prior informed consent of the data subject about whom the personally identifiable information pertains.

6.2. **Customer Data.**

6.2.1. Customer hereby grants Company a perpetual, non-exclusive, royalty-free, worldwide license to collect, use, reproduce, copy, host and prepare derivative works of all Customer Data, as required by Company to perform the Services as contemplated hereunder, and on an aggregated and anonymized basis, to improve the Services performance to Company's customers and for other business purposes, including statistical data gathering, comparative analyses, and for developing additional related solutions, all subject to Company's compliance with applicable law.

- 6.2.2. 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.
- 6.2.3. 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.
- 6.2.4. Company reserves the right to collect, process, use and retain use any aggregate, anonymous data derived from the Customer Data.

## 7. **Fees.**

- 7.1. **Fees.** Customer shall pay Company the fees due to Company as set forth in the Order (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. All Customer's payment obligations to Company are non-cancelable and all amounts paid in connection with the Platform or the Services are non-refundable.
- 7.2. **Third-Party Additional Costs:** Any costs incurred from Third Party Services ("**Additional Fees**"), shall be fully paid by Customer (e.g. Okta may charge additional fees for additional DR tenants in the future). Company shall make its best efforts to promptly update the Customer regarding any potential Additional Fees that might incur during the provision of Services ("**Notice**"), however, Company shall have no obligation to make such Notice.  
  
"**Third Party Services**" means any service, products, software, tools or application that is provided by a third party and interoperates with the Services. Such Third Party Services may be offered via a dedicated website.
- 7.3. **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.
- 7.4. **Taxes.** All amounts payable to Company are exclusive of all taxes, levies or similar governmental charges, however designated, including, without limitation, value added taxes, sales taxes or use tax, and any and all such taxes will be paid by Customer except for taxes based on the net income of Company. The Company will charge tax if the Company is required to do so. 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.
- 7.5. **Billing Information.** Client is responsible for providing complete and accurate billing and contact information and to update Company of any changes to such information. Billing may be performed by a third party service provider of Company. Company may suspend or terminate the Services if fees are past due.

## 8. **Intellectual Property Rights.**

- 8.1. 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.
- 8.2. 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.

8.3. All rights not expressly granted to you hereunder are reserved by Company and its licensors. Company and its licensors reserve all rights, title and interest to the Services, the Platform and any of their related intellectual property rights. This Agreement does not convey to you an interest in or to Company's intellectual property rights. Nothing in this Agreement constitutes a waiver of Company's intellectual property rights under any law.

8.4. To the extent you provide Company with any feedback, comments or suggestions related to the Platform and/or the Services ("**Feedback**"), you grant Company a royalty-free, fully paid up, worldwide, perpetual and irrevocable license to incorporate the Feedback into the Services or any of the Company's current or future products or services.

9. **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.

**10. 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").

**11. Indemnification.**

11.1. 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 or the Account 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.

- 11.2. 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 or any of its affiliates by a third party alleging that: (i) the collection, storage and use of the Customer Data and/or the Account 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.
- 11.3. Indemnification under this Section 10 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.
- 11.4. This Section 10 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 10.

## 12. **Disclaimer: Limitation of Liability**

- 12.1. 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, WARRANTY OF NON-INFRINGEMENT, 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.
- 12.2. 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.

## 13. **Term: Termination**

- 13.1. This Agreement will become effective upon the Effective Date and will continue in effect for the period of the Services purchased as set forth in the Order (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 12 (the Initial Term together with the Renewal Term are herein referred to as the "**Term**").
- 13.2. 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.

- 13.3. 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 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 shall survive expiration or termination of this Agreement.
14. **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 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 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.
15. **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.
16. **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.