

**Terms of Services**

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# Acceptable Usage Policy

## Introduction

This Acceptable Use Policy (as amended, modified or supplemented from time to time as set forth on OMC's website, this "AUP") of OMC and its affiliates . ("OMC"), is designed to protect OMC's customers, users of OMC's website, OMC's Products and Services and to ensure further compliance with all relevant laws and regulations.

**IF YOU DO NOT AGREE TO THIS AUP, PLEASE DO NOT ENTER TO, CONNECT TO, ACCESS OR USE THE SITE AND/OR ANY OF THE PRODUCTS AND SERVICES.**

This AUP applies to each Customer that subscribes for the Products and Services.

This AUP should be read in conjunction with the Terms, SLA and Privacy Policy.

Capitalized terms used herein without being defined herein shall have the meaning ascribed to such capitalized term in the Terms, the SLA or the Privacy Policy, as applicable.

CUSTOMER HEREBY REPRESENTS AND WARRANTS THAT HE/SHE/IT HAS READ, UNDERSTOOD AND ACCEPTED THE PROVISIONS OF THE TERMS, THE SLA, THE PRIVACY POLICY AND THIS AUP.

By using the Products and Services, Customers are, and shall remain, responsible for complying with the provisions of this AUP and for any violation that are or may be attributed to their customers and users, whether authorized or not by the Customer or by OMC. Customers must take all reasonable steps to ensure that their customers and users will comply with this AUP.

This AUP does not (a) obligate OMC to monitor, review, or police the data and/or content and/or information residing on the OMC's servers and/or are managed by the Customer under his/her/its Account; or (b) create any obligation or duty of OMC to any party that is not a Customer. It is an obligation of the Customer to notify OMC of any violations of law or breach of this AUP.

OMC EXPRESSLY DISCLAIMS ANY LIABILITY FOR THE DATA AND CONTENT TRANSMITTED THROUGH OR INTERMEDIATELY BY OMC, TEMPORARILY OR PERMANENTLY STORED ON ANY SERVER OF OMC OR THE BY USING THE ACCOUNT AND FOR THE ACTIONS OR OMISSION OF CUSTOMERS AND/OR ANY OF THEIR CUSTOMERS AND USERS.

In addition to any other actions it may take under this AUP, OMC reserves the right to cooperate fully with any criminal investigation of data, information or content located on OMC's servers and/or as been used for criminal purposes by using the Products and Services.

#### Customers' Security and Confidentiality Obligations

Customer is responsible for: (a) use reasonable care to ensure the security of their Account; (b) maintaining the confidentiality of her/his/its password account; (c) ensuring that all activities that occur in connection with the Account comply with the Terms, this AUP and Applicable Laws. Customer acknowledges and agrees that OMC is not responsible for the internal management or administration of her/his/its Account and any of the data, content and information stored thereby.

A Customer is solely responsible for any intrusions into, or security breaches of, any of its Accounts, except as otherwise covered by a specifically designated security administration or firewall security service package ordered by the Customer from OMC.

#### Prohibited Activities

A. Customers shall not allow the posting, transmission, or storage of data or content on or through the Account and/or the Products and Services which, in OMC's sole determination, constitutes a violation of any federal, state, local or international law, regulation, ordinance, court order or other legal process ("**Applicable Laws**"). Customers shall be responsible for determining which Applicable Laws are applicable to their use of the Products and Services. Prohibited content includes, without limitation: (a) data, information, content or code that facilitates any violation of, or describes ways to violate this AUP or Applicable Laws; or (b) "harvested" addresses or information; or (c) "phishing" websites; or (d) "spamvertising" sites.

B. Customers may not transmit, distribute, download, copy, cache, host, or otherwise store on their Account any information; data, material, or work that infringes the intellectual property rights of others or violates any trade secret right of any other person. OMC has the exclusive and absolute right to disable access to, or remove, infringing content to the extent required under any law or regulation, including, without limitation, the Digital Millennium Copyright Act of 1998.

C. Customers may not use their Account and/or the Products and Services to (i) send unsolicited bulk messages over the Internet (i.e., "spamming"), (ii) create fake weblog or weblogs which are intended or reasonably likely to promote the author's affiliated websites or to increase the search engine rankings of associated sites (i.e., "splogs"), or (iii) send spam to weblog sites or automatically post random comments or promotions for commercial services to weblogs (i.e., "spamming blogs"). Users must comply with all relevant legislation and regulations on bulk and commercial e-mail, including the CAN-SPAM Act of 2003. Mass Mailings – Customers may not send mass unsolicited e-mail, which is email that is sent to recipients who have not Confirmed Opt-In or Closed-Loop Opt-In in to mailings from the Customer. Customers

who send mass mailings must maintain complete and accurate records of all consents and opt-ins and provide such records to OMC upon its request. If a Customer cannot provide positive and verifiable proof of such consents and opt-ins, OMC will consider the mass mailing to be unsolicited.

Mailing Lists – Customer are prohibited from operating mailing lists, listservs, or mailing services that do not target an audience that has voluntarily signed up and agreed for e-mail information using a Confirmed Opt-In or Closed-Loop Opt-In process or that has made their e-mail addresses available to a Customer for distribution of information. Customers who operate mailing lists must maintain complete and accurate records of all consents and Confirmed Opt-In or Closed-Loop Opt-In elections and provide such records to OMC upon its request. If a Customer cannot provide positive and verifiable proof of such consents and Confirmed Opt-In or Closed-Loop Opt-In elections, OMC will consider the list mailing to be unsolicited. Any Customer maintained mailing list must also allow any party on the list to remove itself automatically and permanently.

D. Without derogating from anything detailed hereto in this AUP, Customer hereby undertakes that he/she/it will not act in any of the following manners:

- Forging, misrepresenting, omitting or deleting message headers, return mailing information, or internet protocol addresses, to conceal or misidentify the origin of a message.
- Creating or sending Internet viruses, worms or Trojan horses, flood or mail bombs, or engaging in denial of service attacks.
- Hacking, and/or subverting, or assisting others in subverting, the security or integrity of OMC's products or systems.
- Soliciting the performance of any illegal activity, even if the activity itself is not performed.
- Threatening bodily harm, or encouraging bodily harm or property destruction.
- Harassing another, or encouraging harassing behavior.
- Engaging in outright fraud, or using services to engage in scams like pyramid schemes.
- Collecting personal information about others without their knowledge or consent.
- Instructing others in prohibited activities.
- Using services to disseminate or display images classified under U.S. law as child pornography, child erotica (regardless of literary or artistic merit) and/or bestiality; and/or
- Acting in any manner that might subject OMC to unfavorable regulatory action, subject us to any liability for any reason, or adversely affect OMC's public image, reputation or goodwill, as determined by us in our sole and exclusive discretion.
- Creating fake weblog or weblogs which are intended or reasonably likely to promote the author's affiliated websites or to increase the search engine rankings of associated sites.
- Sending spam to weblog sites or automatically posting random comments or promotions for commercial services to weblogs.

- Conduct an intellectual property and/or copyright infringement of either OMC's or any other third party, including, without limitation, transmit, or otherwise make available any content that infringes any patent, trademark, trade secret, copyright, or other proprietary rights of any party.
- Causing or initiating security breaches or disruptions of network communication and/or connectivity, including port scans, flood pings, email-bombing, packet spoofing, IP spoofing, and forged routing information.
- Executing any form of network activity that will intercept data not intended for the Customer's server.
- Evading or circumventing user authentication or security of any host, network or account, including cracking, brute-force, or dictionary attacks.
- Interfering with or denying service to any user, host, or network other than the Customer's host, such as a denial of service attack or distributed denial of service attack.
- Conduct designed to avoid restrictions or access limits to specific services, hosts, or networks, including the forging of packet headers or other identification information.
- Soliciting the performance of any illegal activity, even if the activity is not performed.
- Using any program, or sending messages of any kind, designed to interfere with or disable a user's terminal session.
- Use of OMC Network for the receipt of replies to unsolicited mass e-mail.
- Forgery of e-mail headers ("spoofing").
- Spamming via third-party proxy, aggregation of proxy lists, or installation of proxy mailing software.
- Configuration of a mail server to accept and process third-party messages for sending without user identification and authentication.
- Hosting web pages advertised within "spam e-mail" sent from another network ("spamvertising").
- Hosting web pages or providing services that support spam.
- Any other unsolicited bulk messages, postings, or transmissions through media such as weblog posts, IRC/chat room messages, guestbook entries, HTTP referrer log entries, usenet posts, pop-up messages, instant messages, or SMS messages.
- Instructing others in any activity prohibited by this AUP and/or Applicable Laws.
- A Customer shall not use IP addresses that were not assigned to it by OMC. OMC reserves the right to suspend the network access of any server utilizing IP addresses outside of the assigned range.
- Customers may not operate and maintain IRC servers which connect to global IRC networks such as Undernet, EFnet and DALnet. Use of IRC plug-ins, scripts, add-ons, clones or other software designed to disrupt or deny service to other users is prohibited. Harassing or abusive IRC activity is expressly prohibited under the AUP, including (i) disruption or denial of service or (ii) the use or joining of "botnets" or the use of IRC BNC's or other proxy and re-direction software. If a Customer's IRC servers are frequently compromised or attract denial of service or distributed denial of service attacks that disrupt or denies service to other Customers or users, OMC may null-route, filter, suspend, or terminate that Customer's service.

- Multiple account ownership is prohibited in the platform (in either specific brand or across multiple partners or affiliates).

To remove any doubt, all of Customer's activities and operations are and will remain in accordance with any law, not abusive to any audience and not harmful to any third party, and at all times avoid deceptive, misleading, or unethical practices which are or might be detrimental to OMC or any third party. The User hereby agrees and undertakes that the Services provided by OMC will never be used by User and/or any third party for activities that contain content that is: defamatory; and/or obscene; and/or libelous; and/or discriminatory; and/or offensive; and/or deceptive; and/or abusive - Contains or installs any viruses, worms, bugs, Trojan horses or other code, files or programs designed to, or capable of, disrupting, damaging or limiting the functionality of any software or hardware; and/or violence including promotes, encourages or engages in terrorism, violence against people, animals, or property; and/or child pornography and pedophilia including without limitation, any content that promotes, encourages or engages in the exploitation of children; and/or prescription medication - promotes, encourages or engages in the sale or distribution; and/or unlicensed or unregulated, by law, gambling related; and/or unlawful or promotes or encourages illegal activity.

#### Additional Restrictions and Prohibited Activities

In addition to any of the prohibited activities set forth and detailed in this AUP and without derogating anything to the contrary, the Customer hereby agrees and undertakes that he/she/it will not (a) save multiple copies of identical and/or essentially similar files; (b) use the Products and Services or any of OMC's servers for back-up purposes; and/or (c) use the Products and Services for simultaneously transmitting files to a high volume of users (megauploading), and specifically while using the Cloud File Server service; (d) storing on Cloud File Server service an average of above 1TiB of storage per active user.

#### Customer's Undertakings

- A. Customer shall apply for and obtain any and all licenses permits and other authorizations needed to fulfill its obligations under the Terms, this AUP and any Applicable Laws.
- B. Customer agrees and undertakes that all contents and activities conducted via the Account and/or the Products and Services are on Customer's sole responsibility. Nevertheless, Customer is hereby acknowledges that although OMC does not pre-screen the content that is used by Customer via the Account and/or the Products and Services, OMC has the right, but not the obligation, in its sole discretion to remove or refuse to provide the Products and Services, in any case of abusive content or pursuant to any demand of any legal authority, without compensation of any kind, whether financial or otherwise toward the Customer. Customer agrees that he/she/it must evaluate, and bear all risks associated with, the use of any of its content and activities.

- C. Customer shall at all times comply with all laws, regulations, orders, decrees, rulings and judgments applicable, practices and procedures while performing its obligations hereunder.
- D. Customer warrants that its engagement with OMC for the Products and Services does not require the consent of any person or entity. User hereby warrants and undertakes that, at all times during the Term of engagement with OMC, all of Customer's software, hardware, codes, algorithms, developments and/or otherwise ("**Technological Resources**"), that is being used by Customer, is whether lawfully licensed to Customer by third parties and/or self-developed by Customer, and in any way is being used by the Customer in accordance with this AUP and any law. For the avoidance of any doubt, OMC has the right, but not the obligation, in its sole discretion to remove or refuse to provide the Products and Services in any case of unlawful use of Technological Resources, without compensation of any kind, whether financial or otherwise toward the Customer. User agrees that it must evaluate, and bear all risks associated with, the use of any of its content and activities.
- E. Customer shall refrain from making any representations, warranties, or guarantees to the any other third parties with respect to the specifications, features or capabilities of the Products and Services provided by OMC that are inconsistent with the literature, protocols, trainings, explanations and covenants provided by the OMC in writing to the Customer.

#### Legal Investigations

Customers will promptly cooperate and comply with any civil or criminal investigation regarding use of their Account and/or the Products and Services, including, without limitation, the following: discovery orders, subpoenas, freeze orders, search warrants, information requests, wire taps, electronic intercepts and surveillance, preservation requests, and any other order from a court, government entity or regulatory agency (each an "**Investigation**"). OMC may, upon its sole and absolute discretion, charge a Customer or any person seeking compliance with an Investigation for the reasonable costs and expenses associated with OMC's compliance with any such Investigation. OMC reserves the right to comply with any Investigation without any notice to a Customer. OMC reserves the right to disclose information relating to Customers and their use of their Account and/or the Products and Services or information transmitted, owned by or stored by or on behalf of any Customer, if such information is disclosed in connection with an Investigation or in order to prevent the death of or bodily harm to any individual, as determined by OMC in its sole discretion.

#### Consequences of Violations of This AUP

A. OMC may enforce this AUP, with or without any notice to a Customer, by any action it deems necessary, in its sole and absolute discretion, such that it may, including, without limitation:

- Suspend or terminate Customer's Account.

- Suspend or terminate Customer's access to the Products and Services.
- Remove DNS records from servers.
- Block mail or any other network service.
- Effect IP address null routing.
- Bill the Customer for administrative costs and/or reactivation charges.
- Bring legal action to enjoin violations and/or to collect damages, if any, caused by violations.
- Take any legal action against a Customer to enforce compliance with this AUP and/or any Applicable Laws.

B. If any Customer uses the Products and Services in a manner that causes or may cause OMC to be "blacklisted" or blocked, OMC reserves the exclusive and absolute right to suspend permanently or terminate the Products and Services of such Customer.

C. Block Removal – If, as a result of a Customer's actions, OMC's mail servers or IP address ranges are placed on black hole lists or other mail filtering software systems, OMC shall charge Customer US\$100 upfront and US\$200 per hour thereafter for any necessary remedial actions.

D. Any of the remedial actions set forth in the Terms and/or in this AUP shall not be construed in any way to limit the actions or remedies that OMC may take to enforce and ensure compliance with this AUP and/or Applicable Laws. OMC reserves the right to recover any and all expenses, and apply any reasonable charges, in connection with a Customer's violation of this AUP. No refund or service credits will be issued for any interruption in service resulting from violations of this AUP. OMC reserves the right at all times to investigate any actual, suspected, or alleged violations of this AUP, with such investigation to include accessing of data and records on, or associated with, any server and/or Account.

#### Reporting Violations:

If there is a violation of this AUP, please direct the information to OMC's abuse team at [support@omc.co.il](mailto:support@omc.co.il).

If available, please provide the following information:

- The IP address used to commit the alleged violation.
- The date and time of the alleged violation, including the time zone or offset from GMT.
- Evidence of the alleged violation.

E-mail with full header information provides all of the above, as do system log files. Other situations will require different methods of providing the above information.



# Service Level Agreement

By entering, connecting to, accessing or using the Site and/or the Account and/or using any of the Products and Services, you acknowledge that you have read and understood the following provisions of this Service Level Availability ("**SLA**") and you agree to be bound by them and to comply with all such provisions regarding your use of the Site, Account and the Products and Services and you acknowledge and agree that this SLA constitutes a binding and enforceable legal contract between OMC and you.

Capitalized terms used herein without being defined herein shall have the meaning ascribed to such capitalized term in the Terms, the SLA or the Privacy Policy, as applicable.

**IF YOU DO NOT AGREE TO THIS SLA, PLEASE DO NOT ENTER TO, CONNECT TO, ACCESS OR USE THE SITE, ACCOUNT AND/OR ANY OF THE PRODUCTS AND SERVICES.**

Customer is fully aware and acknowledges that although the Products and Services are operational and available to at least 99.9% of the time, there is still a portion of the Products and Services, for various and multiple reasons, that may not be provided free and clear of interruptions and underperformance, at all times.

1. **Definitions**. The following definitions shall apply to this SLA:

- A. "**Service Year**" means a 12 month period during which OMC provided the Customer with the relevant SLA Service.
- B. "**99.9%**" means a potential unavailability of each of the SLA Services for an aggregate period of 8 hours per each Service Year.

2. **SLA Services**. This SLA shall apply to the Products and Services of the Company as such are described in the Company's Terms of Use available at: [www.omc.co.il](http://www.omc.co.il) (the "**SLA Services**")

3. **Compensation Amount**

If OMC fails to meet the SERVICE LEVEL AGREEMENT (SLA), as set forth in Section 2 above, OMC shall credit the Customer by providing to the Customer with a one month Services (regarding the service that failed only), at no cost to the Customer, (up to services value of US\$5,000, and limited to one time each 12 months).

#### 4. **Service Level Compensation Eligibility**

In order for the Customer to be eligible to receive any compensation under this SLA, the Customer should act and comply as follows:

- A. Submit OMC's customer support with a written claim regarding any incident of which it is believed that compensation is applicable (the "**Claim**"). The Claim must be submitted within 14 days as of the occurrence of such incident.
- B. Customer must provide OMC's customer support with all relevant details regarding the Claim, including, without limitation, detailed description of the incident(s), duration of incident, the affected storage account(s) and any attempts made by Customer to resolve the incident.
- C. OMC will examine and dedicate each Claim with the utmost care. In any case of which OMC using its sole and exclusive discretion will accept the Customer's Claim, then the relevant compensation will be provided, subject to the provisions of this SLA.

#### 5. **Exclusions to SLA**

Customer shall **NOT** receive any compensation or credit under this SLA in connection with any failure of OMC to provide the SLA Service caused by:

- A. Circumstances beyond OMC's control, including, without limitation, acts of Force Majeure (as defined below), acts or omissions of a third party not engaged or authorized by OMC.
- B. Unavailability, interruption or delay in telecommunications outside of OMC's control.
- C. Failure or delay of third party services or software.
- D. Backup corrupted file.
- E. Customer's failure to comply with any of OMC's recommendations and/or guidance regarding issues concerning the SLA Services and/or to conduct, in accordance with OMC's recommendations and/or guidance, improvements and/or updates in Customer's resources, including, without limitation, to Customer's system, hardware and software.
- F. Usage patterns or traffic that exceeds the reasonable performance parameters of Customers specific installation.
- G. Downtime caused by scheduled maintenance, when at least 7 days prior notice is provided by OMC.

- H. Downtime caused by any outage or stoppage of network connectivity or infrastructure.
- I. Downtime caused by emergency maintenance, when at least 24 hours' notice is provided by OMC.
- J. DNS issues outside the direct control of OMC.
- K. False SLA breaches reported as a result of outages or errors of any OMC measurement system.
- L. Customer's act or omission, including, without limitation, any negligence, willful misconduct, or use of the SLA Services in breach of the Terms and/or any applicable law.
- M. At OMC's sole discretion and for any reason.

Without derogating from the above, OMC shall only offer service level compensation or credit in case of underperformance from OMC's part only, in accordance with the terms and conditions of the Terms and this SLA, and shall neither be liable nor offer any compensation or credit, in any case of underperformance of any third party, including, without limitation, factors outside of reasonable control, avoidance to implement OMC's instructions and modifications and acts or omissions of the Customer or any of customer's employees, agents, contractors, vendors or anyone else on behalf of the Customer.

Without derogating from the above and for the removal of any doubt, this SLA does not cover any unavailability, partial availability, inapplicability and/or malfunction of the SLA Services, derived and/or resulted by any actions, omissions or malfunctions of third parties, including without limitation, any network and communication suppliers, infrastructure suppliers, cloud services suppliers and hardware suppliers.

This SLA and any of the provisions hereto shall cease to be valid and shall immediately expire if such provisions are contrary to the provisions OMC is bound by under those SLA's executed by OMC and any of OMC's providers.

To remove any doubt AND NOTWITHSTANDING ANY OF THE ABOVE, OMC reserves the right to reject any CLAIM FOR compensation OR CREDIT to the Customer under this SLA, at OMC's sole discretion and for any reason.

## **6. Force Majeure**

Neither party shall in any event be held liable with respect to the other party or to others for losses or damages caused by non-performance, or a delay in the performance, of their obligations under this SLA, to the extent that the same resulted from circumstances amounting to force majeure, including, inter alia, strikes, riots, fires, floods, war, terror attacks, hurricanes, earthquakes, windstorms, acts of God and acts of the state or of public authorities, or other causes beyond the reasonable control of the party affected thereby.

## **7. Miscellaneous**

A. The laws of the State of Israel, shall apply to the SLA and the sole and exclusive place of jurisdiction in any matter arising out of or in connection with the SLA shall be the competent courts of Tel Aviv-Jaffa.

B. No failure, delay of forbearance of either party in exercising any power or right hereunder shall in any way restrict or diminish such party's rights and powers under the SLA, or operate as a waiver of any breach or nonperformance by either party of any terms of conditions hereof.

C. Customer may not assign or delegate any of its rights, duties or undertakings under the SLA to any third party without the express prior written consent of OMC, and any unauthorized assignment or delegation shall be null and void. OMC may assign the SLA without the need for any consent but the notification to the Customer.

D. In the event it shall be determined under any applicable law that a certain provision set forth in the SLA is invalid or unenforceable, such determination shall not affect the remaining provisions of the SLA.

E. The preamble to the SLA constitutes an integral and indivisible part hereof.

# Terms of Use

OMC and its affiliates (“**OMC**”, “**we**”, “**our**”, “**Company**”) welcome you (the “**Customer(s)**”, or “**you**”) to our website at [www.omc.co.il](http://www.omc.co.il) (the “**Site**”). Our Site offers basic information regarding the Company, technology and services. In addition Customers with log-in user name and password can access our web based Products and Services (as defined below) through our Site. Each of the Site's Customers may use it in accordance with the terms and conditions hereunder.

## 1. Acceptance of the Terms

By entering, connecting to, accessing or using the Site and/or using any of the Products and Services (as defined below), you acknowledge that you have read and understood the following terms of use, including the terms of our Privacy Policy, AUP and SLA (collectively, the “**Terms**”) and you agree to be bound by them and to comply with all applicable laws and regulations regarding your use of the Site and/or the Products and Services and you acknowledge that these Terms constitute a binding and enforceable legal contract between OMC and you.

**IF YOU DO NOT AGREE TO THESE TERMS, PLEASE DO NOT ENTER TO, CONNECT TO, ACCESS OR USE THE SITE AND/OR ANY OF THE PRODUCTS AND SERVICES.**

## 2. The Site

The Site provides comprehensive information regarding OMC, the Products and Services and resources such as Q&A, and may include any other content related thereto such as contact information, videos, text, logos, button icons, images, data compilations, links, other specialized content, technical data, documentation, know-how, specifications materials, designs, data, the “look and feel” of the Site, algorithms, source and object code, interface, GUI, interactive features related graphics, illustrations, drawings, animations, and other features obtained from or through the Site (collectively, the “**Content**”).

***THE CONTENT ON THE SITE, INCLUDING ANY INFORMATION, MATERIALS AND DATA, IS MADE AVAILABLE FOR PERSONAL USE ONLY.***

***ALL RIGHTS IN AND TO THE CONTENT AVAILABLE ON THE SITE ARE RESERVED TO OMC. TO THE EXTENT LEGALLY PERMISSIBLE, THE SITE AND THE CONTENT AVAILABLE THEREIN ARE PROVIDED ON AN “AS IS” BASIS. OMC WILL NOT BE LIABLE FOR ANY DAMAGES OR LOSS, INCURRED BY YOU OR ANY OTHER PERSON AS A RESULT OF OR IN CONNECTION WITH YOUR USE OF THE SITE AND/OR SERVICES AND/OR THE CONTENT AVAILABLE THEREIN.***

***YOUR USE OF THE SITE AND/OR THE CONTENT AND/OR THE SERVICES IS ENTIRELY AT YOUR OWN RISK.***

**3. The Products and Services**

Subject and pursuant to the Terms, Privacy Policy, SLA and the AUP, OMC shall provide the Customer(s) with such products and services, including, without limitation, a low-cost, low-maintenance, high-performance cloud infrastructure services, such as Cloud Servers, Cloud Web Hosting, CDN, DNS and more (the "**Products and Services**").

**4. Registration and Customer Account**

You do not need to have an account in order to use the Site. However, in order to access the Products and Services through the Site you must have an account with log-in credentials.

In order to use the Products and Services, you must register and create an account (the "**Account**"). Registration can be done by completing the sign-up and registration process in the Site which requires you to provide the Company your full name, e-mail address, user name, password or any other information as OMC may deem fit from time to time. Registration may also be done by submitting the Company with a signed Order Form.

Your Account is password protected. In order to protect the security of your personal information available on your Account to the greatest extent possible, you must safeguard and not disclose your Account log-in details and you must supervise the use of such Account. You must provide accurate and complete information when creating an Account and you agree to not misrepresent your identity or your Account information. You agree to keep your Account information up to date and accurate.

You are solely and fully responsible for maintaining the confidentiality of the password and Account and for all activities that occur under your Account. If we in good faith believe you have created an Account impersonating another person such Account may expose you to civil and/or criminal liability.

You may not assign or transfer your rights or delegate your obligations under the Account without the prior written consent of OMC. You must notify us immediately of any unauthorized use of your Account or any other breach of security and in such events you must change your password immediately via the settings in the Site or contact our technical support. We cannot and will not be liable for any loss or damage arising from any failure of yours to comply with these Terms, i.e., if someone else accesses your Account through the registration information he/she has obtained from you or through a violation by you of these Terms, or for any unauthorized use of your password or Account or any other breach of security.

If you wish to either change your username or password to log-in to the Products and Services, or cancel and remove your Account, please send us an e-mail of your request to:

[support@omc.co.il](mailto:support@omc.co.il).

CANCELING YOUR ACCOUNT, FOR ANY REASON, MAY CAUSE THE LOSS OF CERTAIN INFORMATION AND DATA THAT WERE STORED IN YOUR ACCOUNT AND/OR INFORMATION YOU PROVIDED US. WE DO NOT ACCEPT ANY LIABILITY FOR SUCH LOSS.

#### 5. Payment

The Customer(s) shall pay the Company with such Fees detailed and set forth in the Site and/or the Order Form available at: [www.omc.co.il](http://www.omc.co.il). The payment for the Fees shall be available only by credit card or standing order. We may add or change payment methods at our sole discretion. If charges are processed in a currency which is not the same currency as published, the conversion rate of the first invoice will be defined as the minimum conversion rate of all future invoices. All Israeli local customer(s) will be charged in local ILS currency according to Bank Leumi's exchange rate for checks / transfers - sell. Despite the above, the exchange rate will not decrease from 3.70 ILS to 1.00 US\$ and will not exceed 4.30 ILS to 1.00 ILS, plus applicable local Israel Value-Added Tax. On all the above, will be added 2% of the invoice amount, for an administration fee.

Products and Services are billed automatically on a monthly recurring basis. If you were approved for a free trial or any promotional offers, you are hereby notified that upon expiration date of such trial or promotion your services will be deemed chargeable unless you terminate all active servers or services from your account.

From time to time, due to change of prices which are unrelated to OMC, such as, change in tax rates, electricity rates, third parties' licensing rates and/or otherwise, OMC expressly reserves the right to change and modify its prices and fees at any time, and such changes or modifications shall be posted to Customer contact details and effective immediately. To remove any doubt, in the event that the Customer have purchased or obtained Products and Services for a long term, such as a period of months or years, changes or modifications in prices and fees shall be effective immediately upon OMC's decision of such changes. OMC shall update its customers accordingly at its discretion, via email and/or in the invoice.

The customer agrees to receive updates on changes to the terms of engagement, including, without limitation, commercial terms, service terms, or any other terms, via email, or with the periodic invoice, as shall be determined by the company.

In case that the customer has paid a deposit in advance to OMC, if the customer does not use this deposit to receive services from OMC for at least 6 months, OMC will charge the customer 2% of the deposit every month, and after 30 months, the deposit will be deleted, and the customer will not be able to use it for OMC's services.

Customer shall also pay to OMC all expenses incurred by OMC in exercising any of its rights under the Terms or applicable law with respect to the collection of a payment default, including attorneys' fees, court costs and collection agency fees.

All prices and fees are non-refundable unless otherwise expressly noted, even if the Products and Services are suspended or terminated prior to the end of the Products and Services term.

Notwithstanding anything contrary, failure to pay any of the Customer's fees is a material breach by the Customer of these Terms. For the avoidance of any doubt, OMC will not provide the Customer with any Products and Services until the full and final payment of any unsettled or unpaid Fees.

#### 6. Privacy Policy

We respect your privacy and are committed to protect the information you share with us. We believe that you have a right to know our practices regarding the information we collect when you connect to, access or use the Site and/or the Products and Services. Our policy and practices and the type of information collected are described in detail in our Privacy Policy at: [www.omc.co.il](http://www.omc.co.il) which is incorporated herein by reference. If you intend to connect to, access or use the Site and/or the Products and Services you must first read and agree to the Privacy Policy.

#### 7. Intellectual Property Rights

The Site, the Products and Services, the Content and the Company's proprietary assets and any and all intellectual property rights pertaining thereto, including, but not limited to, inventions, patents and patent applications, trademarks, trade names, service marks, copyrightable materials, and trade secrets, whether or not registered or capable of being registered (collectively, "**Intellectual Property**"), are owned by and/or licensed to the Company and are protected by applicable copyright and other intellectual property laws and international conventions and treaties. All rights not expressly granted to you hereunder are reserved by the Company and its licensors.

The Terms do not convey to you an interest in or to the Company Intellectual Property but only a limited revocable right of use in accordance with the Terms. Nothing in the Terms constitutes a waiver of the Company's Intellectual Property under any law.

#### 8. Trademarks and Trade names

"OMC" OMC™, OMC's marks and logos and all other proprietary identifiers used by the Company in connection with the Services ("**Company Trademarks**") are all trademarks and/or trade names of the Company, whether or not registered. All other trademarks, service marks, trade names and logos which may appear on the Site and/or the Services belong to their respective owners ("**Third Party Marks**"). No right, license, or interest to the Company Trademarks and the Third Party Marks is granted hereunder, and you agree that no such right,



license, or interest shall be asserted by you with respect to the Company Trademarks or Third Party Marks and therefore you will avoid using any of those marks.

#### 9. Links to Third Party Sites

Certain links provided herein permit our Customers to leave this Site and enter sites or services of third parties. Those linked sites and services are provided solely as a convenience to you. These linked sites and services are not under the control of OMC and it is not responsible for the availability of such external sites or services, and does not endorse and is not responsible or liable for any content advertising, products or other information on or available from such linked sites and services or any link contained in linked sites or service. Your access to, use of and reliance upon any such sites, services and content and your dealings with such third parties are at your sole risk and expense. OMC reserves the right to terminate any link at any time. You further acknowledge and agree that OMC shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused, by or in connection with use of or reliance on any services, content, products or other materials available on or through such linked sites or resource. Most of such linked sites and services provide legal documents, including terms of use and privacy policy, governing the use thereof. It is always advisable to read such documents carefully before using those sites and services, *inter alia*, in order to know what kind of information about you is being collected.

#### 10. Usage Rules

Your use of the Site and/or the Products and Services is subject to OMC's standard acceptable usage policy ("**AUP**"), as in effect and available at: [www.omc.co.il](http://www.omc.co.il) and subject to all changes, modifications and replacements as OMC may effect from time to time. You undertake to comply with all the provisions of the AUP.

#### 11. Special provisions relating to Third Party Components

The Site and/or the Products and Services may use or include third party software, files and components that are subject to open source and third party license terms ("**Third Party Components**"). Your right to use such Third Party Components as part of, or in connection with, the Products and Services is subject to any applicable acknowledgements and license terms accompanying such Third Party Components, contained therein or related thereto. If there is a conflict between the licensing terms of such Third Party Components and these Terms, the licensing terms of the Third Party Components shall prevail in connection with the related Third Party Components. These Terms do not apply to any Third Party Components accompanying or contained in the Site and/or the Products and Services and OMC disclaims all liability related thereto. You acknowledge that OMC is not the author, owner or licensor of any Third Party Components, and that OMC makes no warranties or representations, express or implied, as to the quality, capabilities, operations, performance or suitability of Third Party Components.

#### 12. Products and Services Availability

The Products and Services' availability and functionality depend on various factors, and such are subject to OMC's Service Level Agreement ("**SLA**") available at: [www.omc.co.il](http://www.omc.co.il) as such may be changed or modified by OMC from time to time.

OMC does not warrant or guarantee that the Products and Services will operate and/or be available at all times without disruption or interruption, or that it will be immune from unauthorized access or error-free, all subject and pursuant to the SLA.

### 13. Changes to The Site and Products and Services

OMC HAS THE EXCLUSIVE RIGHT TO AMEND, ALTER, MODIFY, CORRECT, IMPROVE, MAKE ANY CHANGES, REPLACE, SUSPEND, DISCONTINUE, TEMPORARILY OR PERMANENTLY, FROM TIME TO TIME, IN ITS SOLE DISCRETION, ALL OR ANY PORTION OF THE SITE AND/OR THE PRODUCTS AND SERVICES.

### 14. Disclaimer of Warranties

SUBJECT TO THE SLA, WE DO NOT WARRANT (I) THAT THE USE AND OPERATION OF THE SITE AND/OR THE ACCOUNT AND/OR THE PRODUCT AND SERVICES IS OR WILL BE SECURE, TIMELY, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERRORS, OR FREE OF VIRUSES, DEFECTS, WORMS, OTHER HARMFUL COMPONENTS OR OTHER PROGRAM LIMITATIONS, (II) THAT OMC WILL CORRECT ANY ERRORS OR DEFECTS IN THE SITE AND/OR SERVICES, (III) MAKE ANY REPRESENTATION REGARDING THE USE, INABILITY TO USE OR OPERATE, OR THE RESULTS OF THE USE OF THE SITE AND/OR THE ACCOUNT AND/OR THE PRODUCTS AND SERVICES AND/OR CONTENT AVAILABLE THEREON OR THROUGH THE SITE AND/OR ACCOUNT AND/OR PRODUCTS AND SERVICES. OMC AND OMC'S REPRESENTATIVES DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE USE OF THE SITE AND/OR THE ACCOUNT AND/OR THE PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO THE AVAILABILITY, RELIABILITY OR THE QUALITY OF THE SITE AND/OR THE ACCOUNT AND/OR THE PRODUCTS AND SERVICES, AND ARE NOT AND SHALL NOT BE RESPONSIBLE FOR ANY ERROR, FAULT OR MISTAKE RELATED TO ANY CONTENT AND INFORMATION DISPLAYED WITHIN THE SITE AND/OR THE ACCOUNT AND/OR THE PRODUCTS AND SERVICES.

WE ARE NOT RESPONSIBLE AND HAVE NO LIABILITY FOR ANY ITEM OR SERVICE PROVIDED BY ANY PERSON OR ENTITY OTHER THAN OMC.

WE ARE NOT RESPONSIBLE FOR ANY CONSEQUENCES TO YOU OR OTHERS THAT MAY RESULT FROM TECHNICAL PROBLEMS (INCLUDING WITHOUT LIMITATION IN CONNECTION WITH THE INTERNET SUCH AS SLOW CONNECTIONS, TRAFFIC CONGESTION, OVERLOAD OF SERVERS, DELAYS OR INTERRUPTIONS) OR ANY TELECOMMUNICATIONS OR INTERNET PROVIDERS.

YOU AGREE THAT USE OF THE SITE AND/OR THE ACCOUNT AND/OR THE PRODUCTS AND SERVICES IS ENTIRELY AT YOUR OWN RISK.

INASMUCH AS SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSIONS OR LIMITATIONS AS SET FORTH HEREIN, THE FULL EXTENT OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY.

15. Limitation of Liability

TO THE MAXIMUM EXTENT LEGALLY PERMISSIBLE, IN NO EVENT SHALL OMC, INCLUDING OMC'S REPRESENTATIVES BE LIABLE FOR (i) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE RESULTING FROM THE USE OF THE PRODUCTS AND SERVICES BY THE CUSTOMER OR ANY THIRD PARTIES OR ANY FAILURE OF THE PRODUCTS AND SERVICES; OR (ii) ANY LOSS OF DATA OR CORRUPTION OF DATA, INCLUDING LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS, FAILURE OF OMC, RECLAMATION OF SERVERS BY OMC, FAILURE OF SERVERS, THE RELOADING OF AN OPERATING SYSTEM OR OTHER SOFTWARE ON A SERVER OR THE NEGLIGENCE OF OMC. CUSTOMER IS SOLELY RESPONSIBLE FOR SAFEGUARDING, BACKING UP AND ARCHIVING ALL DATA OWNED, CONTROLLED OR TRANSMITTED BY CUSTOMER THAT RESIDES WITH OMC OR ON ANY SERVER OWNED OR OPERATED BY OMC.

IN NO EVENT SHALL OMC'S AGGREGATE LIABILITY FOR ANY CLAIM UNDER THESE TERMS AND THE SLA SHALL EXCEED THE LOWER OF (I) US\$5,000; OR (II) THE AGGREGATE AMOUNT ACTUALLY PAID BY CUSTOMER TO OMC IN THE 12 MONTHS PRECEDING SUCH CLAIM.

OMC PROVIDES ALL PRODUCTS AND SERVICES "AS IS," WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE PRODUCTS AND SERVICES FOR THE CUSTOMER'S NEEDS AND OMC SHALL HAVE NO LIABILITY THEREFORE.

NO CLAIM MAY BE ASSERTED BY CUSTOMER AGAINST OMC MORE THAN TWO (2) YEARS FOLLOWING THE DATE OF THE EVENT THAT UNDERLIES ANY SUCH CLAIM. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE RECEIPT OF A SERVICE CREDIT AS PROVIDED FOR IN THE SLA CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND NOTWITHSTANDING ANYTHING CONTRARY CONTAINED HEREIN AND SUBJECT TO THE SLA, OMC SHALL NEITHER COMPENSATE THE CUSTOMER NOR BECOME LIABLE TO THE CUSTOMER IN ANY CASE OF WHICH, INCLUDING, WITHOUT LIMITATION (1) INSUFFICIENT HARD DISK SPACE ON THE SERVERS; (2) FIREWALL MALFUNCTIONS; AND (3) DENIAL-OF-SERVICE ATTACK (DOS ATTACK) OR DISTRIBUTED DENIAL-OF-SERVICE ATTACK (DDOS ATTACK).

YOU WILL NOT, AND WAIVE ANY RIGHT TO, SEEK TO RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES FROM US AND FROM OMC'S REPRESENTATIVES. INASMUCH AS SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSIONS OR LIMITATIONS AS SET FORTH HEREIN, THE FULL EXTENT OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY.

16. Backup Assurance Policy.

Any backups to Customer's data are not, and cannot be, guaranteed by OMC. OMC explicitly encourages the Customer(s) to run, on their own or by third parties which are not OMC, periodic backups of their data. To remove any doubt, as a customer you are responsible for backing up your data on your own or any other off-site location.

OMC assumes no responsibility for failed backups, lost data, or data integrity. If any of your data is damaged, deleted, lost or corrupted in any way, or becomes otherwise unavailable due to termination or suspension of your Account pursuant to these Terms and/or the AUP, OMC will have no obligation or liability to you.

In no event shall the OMC be liable to the customer or any third party for any damages resulting from customer's use of the services or any malfunction related to the provision of the services, including but not limited to direct, indirect, special, incidental, or consequential damages, arising from any claimed breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory as a result of customer's use of the services or otherwise relating to the services, including any amount for loss of profit, data or goodwill, whether or not the likelihood of such loss or damage was contemplated hereunder, even if company has been advised of the possibility of such damages. customer undertakes to maintain, at its sole expense throughout the duration of the agreement all required insurances for possible damages, including insurance for data loss, cybersecurity insurance, and third-party insurance.

In any event, the company's maximum aggregate liability under this agreement shall be limited to an amount equal to the service fees actually received by the company in one (1) months prior to the date of any claim arising in connection with this agreement, subject to the final decision of the competent judicial instance regarding the company's liability

17. Indemnification

You agree to defend, indemnify and hold harmless OMC and OMC representatives from and against any and all claims, damages, obligations, losses, liabilities, costs, debts, and expenses (including but not limited to attorney's fees) arising from: (i) your use, misuse of, inability to use and/or activities in connection with the Site and/or the Account and/or the Products and Services and/or Content; (ii) your violation of any of these Terms, the AUP and/or any applicable law; (iii) your violation of any third party rights, including without limitation any intellectual property rights or privacy right of such third party with respect to your use of the Products and Services; and (iv) any damage of any sort, whether direct, indirect, special or consequential, you

may cause to any third party with relation to the Site and/or the Account and/or the Products and Services. It is hereby clarified that this defense and indemnification obligation will survive these Terms.

Without derogating from the foregoing, we reserve the right to assume the exclusive defense and control of any matter which is subject to indemnification by you, which will not excuse your indemnity obligations hereunder and in which event you will fully cooperate with us in asserting any available defense. You agree not to settle any matter subject to an indemnification by you without first obtaining our prior express written approval.

#### 18. Amendments to the Terms

The Company may, at its sole discretion, change these Terms from time to time, including any other policies incorporated thereto, including, without limitation, the AUP, SLA and Privacy Policy, so please re-visit this page frequently. In case of any material change, we will make reasonable efforts to post a clear notice on the Site and/or will send you an e-mail (to the extent that you provided us with such e-mail address) regarding such change. Such material changes will take effect 48 hours after such notice was provided on our Site and/or sent via e-mail, whichever is the earlier. Otherwise, all other Changes to these Terms are effective as of the stated "Last Revised" and your continued use of the Site and/or the Products and Services on or after the Last Revised date will constitute acceptance of, and agreement to be bound by, those changes. In the event that the Terms, AUP, SLA and/or Privacy Policy should be amended to comply with any legal requirements, the amendments may take effect immediately, or as required by the law and without any prior notice.

#### 19. Termination or Suspension of your Account

These Terms shall remain in effect until terminated as set forth herein.

The term detailed in either of the Order Form and/or the sign-up and registration page within the Site (the "**Term**") is deemed to have commenced as of the date of Customer's registration, and shall terminate upon a 30 days advance written notice by either party (the "**Notice Period**"). Customer agrees and confirms that notwithstanding the above, termination by Customer is not applicable during a monthly billing cycle but rather such termination by the Customer shall come into effect by the end of the applicable monthly billing cycle.

Notwithstanding the above, OMC shall have the right, at its sole and absolute discretion, to immediately terminate the Products and Services and/or any engagement with the Customer upon any breach of the Customer of these Terms and/or the Privacy Policy and/or the SLA and/or the AUP and/or applicable law.

For the avoidance of any doubt, in case of termination of the Products and Services pursuant to this Section 19, for any reason, the Customer shall:

- i. Bear the sole and entire responsibility for the transfer of all of Customer's materials and data from OMC to a new entity as instructed by the Customer; and
- ii. Immediately pay to OMC any all unpaid fees.

Without limiting the generality of the forgoing, the Intellectual Property, Disclaimer of Warranties, Limitation of Liability, Indemnification and General sections will survive the termination of the Terms.

Additionally, OMC may at any times, at its sole and absolute discretion, cease the operation of the Products and Services or any part thereof, temporarily or permanently. You agree and acknowledge that OMC does not assume any responsibility with respect to, or in connection with the termination of the Site's and/or Account's and/or Products and Services' operation and loss of any data.

We note that we can suspend access to your Account if we believe, in our sole discretion, that one (or more) of the following events have occurred: (a) there is risk to the security or privacy of your Account; (b) there is a threat to the security or integrity of our network or our servers; (c) suspension is needed to protect the rights, property or safety of OMC, its users or the public; (d) there is a basis for termination of your Account; (e) you have violated these Terms, Privacy Policy, AUP and/or applicable law; and/or (f) we are required to by law. We may provide you a notice in the event of any such suspension. During such suspension, you will not have the ability to use or access your Account and/or the Products and Services. In the event that we will determine, in our sole discretion, that the reason for suspension of access to your Account has been resolved, we will restore access to your Account.

## 20. General

(a) These Terms constitute the entire terms and conditions between you and the Company relating to the subject matter herein and supersedes any and all prior or contemporaneous written or oral agreements or understandings between you and the Company, (b) any claim relating to the Site and/or the Products and Services contained therein will be governed by and interpreted in accordance with the laws of the State of Israel without reference to its conflict-of-laws principles, (c) any dispute arising out of or related to the Site and/or the Services will be brought in, and you hereby consent to exclusive jurisdiction and venue in, the competent courts of the Tel-Aviv District, Israel. You agree to waive all defenses of lack of personal jurisdiction and forum non-convenience and agree that process may be served in a manner authorized by applicable law or court rule. Notwithstanding the foregoing, OMC may seek injunctive relief in any court of competent jurisdiction, (d) these Terms do not, and shall not be construed to create any relationship, partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between the parties hereto, (e) no waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained herein is inserted only as a

matter of convenience, and in no way defines or explains any section or provision hereof, (f) YOU ACKNOWLEDGE AND AGREE THAT ANY CAUSE OF ACTION THAT YOU MAY HAVE ARISING OUT OF OR RELATED TO THE SITE AND/OR THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED, (g) if any provision hereof is adjudged by any court of competent jurisdiction to be unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms shall otherwise remain in full force and effect while most nearly adhering to the intent expressed herein, (h) you may not assign or transfer these Terms (including all rights and obligations hereunder) without our prior written consent and any attempt to do so in violation of the foregoing shall be void. We may assign or transfer these Terms without restriction or notification, (i) no amendment hereof will be binding unless in writing and signed by OMC, and (j) the parties agree that all correspondence relating to these Terms shall be written in the English language.

21. For information, questions or notification of errors, please contact:

If you have any questions (or comments) or clarifications concerning the Terms and/or the Products and Services, you are most welcome to send us an e-mail and we will make an effort to reply within a reasonable timeframe: [support@omc.co.il](mailto:support@omc.co.il).

# Privacy Notice

This privacy notice explains how OMC Computers and Communications Ltd. and its affiliates ("Company") collect, use, store and share Personal Data (as defined below) in relation to Company's websites, products, services, and experiences (together, the "Services").

## 1. **Applicability.**

**1.1.** This Privacy Notice ("**PN**") is in effect as of the date set forth below.

**1.2.** This PN does not apply to any content processed stored or hosted by you ("**User**") when using the Services, as Company's customer ("**Customer Data**"). The Company process such Customer Data, in its position as a processor (or under the CCPA, as a service provider, on behalf and under the instruction of the User subject to Company's Data Processing Agreement located: <https://www.kamatera.com/gdpr-and-data-processing/> ("**DPA**"). Also, the PN does not apply to any products, services, websites, links or any other content that might be offered on the Services by third parties. User is advised to check the terms of use, privacy policies of such third parties.

**1.3.** Users are not under any legal obligation to submit Personal Data to Company. However, in case User chooses not to submit Personal Data to Company, User may not be able to become a User and/or use certain Services.

**1.4.** Company may change this PN from time to time, therefore User should check back periodically. Company will post any changes to this PN on its websites (the "**Site**"). If Company makes any changes to this PN that materially affect Company's practices with regard to the Personal Data Company previously collected from User, Company will endeavor to provide User with notice in advance of such change by highlighting the change on the Site. Company will seek User's prior consent to any material changes, if and where this is required by Applicable Data Protection Laws (as defined in the DPA). Terms used in this PN but not defined herein (whether or not capitalized) shall have the meanings assigned to such terms



in the Terms (as defined under DPA or in the Applicable Data Protection Laws, as applicable).

## **2. Personal Data collected by the Company.**

### **2.1. Information provided by User.**

Company collects any data User provides Company with, including but not limited to:

- 2.1.1.** User's contact details (e.g. name, postal address, email address, phone number);
- 2.1.2.** User's payment information (e.g. credit card and bank account information);
- 2.1.3.** User password and other authentication and security credential information;
- 2.1.4.** Any communication between User and the Company, e.g. emails, phone conversations, chat sessions.

### **2.2. Information collected automatically.**

Company automatically collects data when User visits, interacts with, or uses the Services, including but not limited to:

- 2.2.1.** identifiers and information contained in cookies;
- 2.2.2.** User's settings preferences, backup information;
- 2.2.3.** Uniform Resource Locators (URL) clickstream to, through, and from Company's website and Services;
- 2.2.4.** content User viewed or searched for, page response times, and page interaction information (such as scrolling, clicks, and mouse-overs);
- 2.2.5.** network and connection information, such as the Internet protocol (IP) address and information about User's Internet service provider;
- 2.2.6.** computer and device information, such as browser type and version, operating system, or time zone setting; the location of device;

## **3. Company's Use of Personal Data.**

**3.1.** The Company processes User's Personal Data to operate, provide, and improve the Services, including but not limited to:

- 3.1.1.** creating and managing User profiles;
- 3.1.2.** contacting User by the Company and communicating with User with respect to the Services, e.g. by phone, email, chat; responding inquiries from User;
- 3.1.3.** informing User about updates or offers;
- 3.1.4.** personalizing the Services, i.e. identifying User's interests and recommending offers that might be of interest to User;

- 3.1.5. marketing and promoting Company's Services;
  - 3.1.6. providing assistance and support;
  - 3.1.7. fulfilling User requests; meeting contractual or legal obligations;
  - 3.1.8. protecting Users security, e.g. preventing and detecting fraud;
  - 3.1.9. internal purposes, e.g. trouble shooting, data analysis, testing and statistical purposes.
- 3.2. The Company may ask for User's consent to use User's personal data for a specific purpose which will be provided to User.
- 3.3. The Company does not use any Personal Data other than as necessary to execute the Services.

#### **4. Cookies.**

- 4.1. The Company uses tracking mechanisms such as cookies in order to provide the Services.
- 4.2. By clicking on a link to a third-party website or service, a third party may also transmit cookies to User. This PN does not cover the use of cookies by any third parties, and Company is not responsible for such third parties' privacy policies and practices.
- 4.3. The Company uses Google Analytics. Please click on [www.google.com/policies/privacy/partners/](http://www.google.com/policies/privacy/partners/) in order to find out how Google Analytics collects and processes data.
- 4.4. THE COMPANY USES FACEBOOK PIXELS.

#### **5. Sharing Personal Data of User for Legal Purposes.**

- 5.1. Company may be required to retain or disclose personal information in order to:
- 5.1.1. comply with applicable laws or regulations;
  - 5.1.2. comply with a court order, subpoena or other legal process;
  - 5.1.3. respond to a lawful request by a government authority, law enforcement agency or similar government body (whether situated in User's jurisdiction or elsewhere);
  - 5.1.4. engage with third-party service providers and/or sub-contractors which provide services for Company's business operations, a list of which can be received upon request.
  - 5.1.5. disclose to third parties aggregated or de-identified information about Users for marketing, advertising, research, or other purposes;



adequate protection of the Users' Personal Data, as set forth in this PN. For data transfers from the EEA, the UK to countries which are not considered to be offering an adequate level of data protection, Company (and anyone acting on its behalf) have entered into Standard Contractual Clauses, as applicable.

## **9. Data Retention.**

Company may retain certain Personal Data of Users as long as reasonably required for the following purposes, at Company's sole discretion: (i) to preserve the relationship with Users; (ii) to provide Users with the Services; (iii) to comply with Company's legal or contractual obligations; or (iv) to protect Company from any potential disputes.

## **10. Users in The European Economic Area (EEA).**

### **10.1. Legal Basis for Processing of Personal Data**

The Company will only process User's Personal Data if it has one or more of the following legal bases for doing so:

10.1.1. Contractual Necessity: processing of Personal Data is necessary to enter into a contract with User, to perform Company's contractual obligations to User under the terms of use ("**TOU**"), to provide the Services, to respond to requests from User, or to provide User with customer support;

10.1.2. Legitimate Interest: Company has a legitimate interest to process User's Personal Data;

10.1.3. Legal Obligation: processing of User's Personal Data is necessary to comply with relevant law and legal obligations, including to respond to lawful requests and orders; or

10.1.4. Consent: processing of User's Personal Data with User's consent.

### **10.2. User's Rights regarding Personal Data.**

10.2.1. Subject to Applicable Data Protection Laws, User has certain rights with respect to User's Personal Data, including the following:

- 10.2.1.1. User may ask whether Company holds Personal Data about User and request copies of such Personal Data and information about how it is processed;
- 10.2.1.2. User may request that inaccurate Personal Data is corrected;
- 10.2.1.3. User may request the deletion of certain Personal Data;
- 10.2.1.4. User may request the Company to cease or restrict the processing of Personal Data where the processing is inappropriate;
- 10.2.1.5. When User consents to processing User's Personal Data for a specified purpose by Company, User may withdraw User's consent at any time, and Company will stop any further processing of User's data for that purpose.

10.2.2. In certain circumstances, Company may not be able to fully comply with User's request, such as if it is frivolous or extremely impractical, if it jeopardizes the rights of others, or if it is not required by law, however, in those circumstances, Company will still respond to notify User of such a decision.

10.2.3. User can exercise User's rights of access, rectification, erasure, restriction, objection, and data portability by contacting the Company at support@kamatera.com. In some cases, Company may need User to provide Company with additional information, which may include Personal Data, if necessary to verify User's identity and the nature of User's request.

## **11. Users in California, USA.**

11.1. Company will at all times comply with all applicable data protection laws (including the CCPA and CPRA) and only process Personal Data on User's behalf.

11.2. Company will (i) not collect, retain, use, or disclose Personal Data for any purpose other than for the specific purposes set out in the Company TOU , PN and/or the DPA between Company and User; (ii) not sell or share Personal Data (as defined under the CCPA) for the intentions and purposes of the CCPA or CPRA,; and (iii) put in place appropriate technical and organizational measures to protect Personal Data against unauthorized or unlawful processing or accidental destruction, loss or damage.

## **12. Personal Data of Children.**

The Company's Services are not intended for children. Children under 18 years of age, may use the Services only with the involvement of a parent or guardian.

### **13. Questions regarding User's Personal Data?**

If User has any questions about this Privacy Notice or Company data practices generally, please contact us using the following information:

OMC Computers and Communications Ltd.

Yohay Azulay

Email: [support@omc.co.il](mailto:support@omc.co.il)

Last update: May 2023.

# Data Processing Agreement

## 1. Applicability.

This OMC Data Processing Agreement (“DPA”) shall apply to all of your (“User’s”) agreements (“Agreements”) with OMC Computers and Communications Ltd. and its affiliates and/or subsidiaries (“OMC”) and you and/or the entity you represent (“Customer”) supplements the OMC terms of use available at: [https://www.OMC.com/Terms\\_of\\_Use#page\\_390](https://www.OMC.com/Terms_of_Use#page_390), as updated from time to time (“TOU”), or any agreement between Customer and OMC, governing Customer’s use of the Services (“**Agreements**”) to the extent that OMC processes data.

## 2. Definitions.

2.1. Terms used in this DPA but not defined herein (whether or not capitalized) shall have the meanings assigned to such terms in the Agreements, or in the Applicable Data Protection Laws, as applicable.

2.2 “**Applicable Data Protection Laws**” shall mean, to the extent applicable to OMC’s processing of Personal Data hereunder (with respect to each data subject): (i) General Data Protection Regulations (European Parliament and Council of European Union (2016) Regulation (EU) 2016/679) (EU GDPR); (ii) EU GDPR as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 and UK Data Protection Act 2018 (UK GDPR) ; (iii) California Consumer Privacy Act of 2018 (CCPA) and the California Privacy Rights Act of 2020 (CPRA); (iv) Protection of Privacy Law (Israel); and (v) any rules or regulations that amend and/or replace any of the aforementioned Data Protection Laws. In the event of any conflict between the Applicable Data Protection Laws, the most restrictive law applicable to the Customer shall govern.

2.3 “**Customer Data**” shall mean the Personal Data (as defined below) that is uploaded to the OMC Services which may include software, data, text, audio, video, or images that Customer or any of its end customers transfers to OMC for processing, storage, or hosting by the Services. Customer Data does not include account information about Customer relating to and/or in connection with Customer account (e.g., Customer name and surname, phone numbers, email addresses, payment information or other information related to the management

of OMC resources such as access permissions, service usage, etc.) which is governed by the Privacy Notice (“PN”).

2.4 **Personal Data**“ refers to the definition of that term or any other similar term defined under the Applicable Data Protection Laws.

2.5 **“Standard Contractual Clauses or SCCs”** shall mean: where the EU GDPR applies, the standard contractual clauses pursuant to the EU Commission's Implementing Decision 2021/914 of 4 June 2021 currently set out at: [https://eur-lex.europa.eu/eli/dec\\_impl/2021/914/oj](https://eur-lex.europa.eu/eli/dec_impl/2021/914/oj) (“EU SCCs”); (ii) where the UK GDPR applies, the EU SCCs together with the UK Information Commissioner's Office addendum, under S119A(1) of the Data Protection Act 2018 (“UK Addendum”); or any other Standard Contractual Clauses which amended and/or replace such Standard Contractual Clauses in accordance with Applicable Data Protection Law.

2.6. **“Services”** means the services and products provided to Customer by OMC in accordance with the Agreements.

### 3. Processing of Personal Data on behalf of a Customer..

The Parties acknowledge and agree that with regard to the Processing of Personal Data performed solely on behalf of Customer: (i) Customer is the Controller or Business (to the extent the CCPA is applicable) of Personal Data; (ii) OMC acts as a Processor or Service Provider (to the extent the CCPA is applicable) for Customer, and upon the instructions of Customer, as set forth herein, and in the Agreements, as may be amended from time to time by OMC (collectively, the **“Terms”**), pursuant to which personal data may be disclosed to OMC and OMC may process such personal data (the **“Contracted Business Purpose”**).

### 4. Customer Representations.

Customer sets forth the details, including the purpose, the means and the ways in which OMC shall process the Customer Data, as required by Applicable Data Protection Laws in Appendix A (Details of Processing of Processed Personal Data), attached hereto, and Customer represents and warrants that:



- 4.1. It complies with personal data security and other obligations prescribed by Applicable Data Protection Laws for controller/businesses, and that the provision of Customer Data to OMC complies with Applicable Data Protection Laws;
- 4.2. It only processes personal data/personal information that has been collected in accordance with the Applicable Data Protection Laws;
- 4.3. It has in place procedures in case individuals/consumers whose personal data is collected, wish to exercise their rights in accordance with the Applicable Data Protection Laws;
- 4.4. It provides Customer Data to OMC for a business purpose in accordance with the representations Customer makes to consumers in Customer's privacy policy, and Customer does not sell Customer Data to OMC;
- 4.5. It shall provide to OMC as a processor/service provider, or otherwise have OMC (or anyone on its behalf) process such Customer Data which is explicitly permitted under OMC's PN ("**Permitted Personal Data**"). Solely Customer shall be liable for any data which is made available to OMC in excess of the Permitted Personal Data ("**Non-Permitted Data**"). OMC's obligations under the Terms shall not apply to any such Non-Permitted Data;
- 4.6. It is and will remain duly and effectively authorized to give the instruction set out herein and any additional instructions as provided pursuant to the Terms, at all relevant times and at least for as long as the Terms are in effect and for any additional period during which OMC is lawfully processing personal data/personal information;
- 4.7. Notwithstanding anything to the contrary herein, Customer acknowledges that OMC is able to access Customer Data, and might do so when required for operational and maintenance purposes and if required to provide the Services.

## 5. OMC Obligations.

- 5.1. OMC carries out the processing of Customer Data on Customer's behalf;
- 5.2. Pursuant to the provisions of Article 28 of the GDPR, OMC represents and warrants that it will:
  - 5.2.1. Process Customer Data solely on Customer's behalf and in compliance with User's instructions (including relating to international data transfers ), including

instructions in this DPA and all Terms, unless required to do so by EU or applicable Member State law;

5.2.2. Implement appropriate technical and organizational measures to provide an appropriate level of security, including, as appropriate and applicable, the measures referred to in Article 32(1) of the GDPR;

5.2.3. Take reasonable steps to ensure that access to the processed Customer Data is limited on a need to know/access basis, and that all OMC personnel receiving such access are subject to confidentiality undertakings or professional or statutory obligations of confidentiality in connection with their access/use of Customer Data.

5.2.4. It shall provide reasonable assistance to Customer with any data protection impact assessments or prior consultations with supervising authorities in relation to processing of Customer Data by the processor/service provider, as required under any Applicable Data Protection Laws, at the written request of the Customer, and at Customer's sole expense.

5.3. Pursuant to the CCPA, to the extent applicable with respect to each data subject, OMC agrees that:

5.3.1. OMC is acting solely as a service provider with respect to Customer Data for the purposes of the Contracted Business Purpose;

5.3.2. OMC shall not retain, use or disclose Customer Data for any purpose other than for the Contracted Business Purpose

5.3.3. OMC may de-identify or aggregate Customer Data as part of performing the services specified in the Terms.

5.3.4. OMC will limit personal information collection, use, retention, and disclosure to activities reasonably necessary and proportionate to achieve the Contracted Business Purposes or another compatible operational purpose.

## 6. Sub-Processing.

- 6.1. Customer authorizes OMC to appoint sub-processors in accordance with the provision of the Terms. Any subcontractor used must qualify as a service provider under the Applicable Data Protection Laws. OMC cannot make any disclosures to the subcontractor that the CCPA would treat as a sale.
- 6.2. OMC may continue to use those sub-processors already engaged by OMC as of the date of this DPA. Customer acknowledges and agrees that as of the date of this DPA OMC uses certain subprocessors; a list of such sub-processors will be provided upon request.
- 6.3. OMC may appoint new sub-processors and shall give reasonable notice of the appointment of any new sub-processor. Customer's continued use of the applicable services after such notification constitutes Customer's acceptance of the new sub-processor.

## 7. Data Subjects' Rights.

- 7.1. Customer shall be solely responsible for compliance with any statutory obligations concerning requests to exercise data subject rights under Applicable Data Protection Laws (e.g., for access, rectification, deletion of processed Customer Data, etc.). OMC shall reasonably endeavor to assist Customer insofar as feasible, to fulfil Customer's said obligations with respect to such data subject requests, as applicable, at Cutseomr's sole reasonable expense.
- 7.2. OMC shall (i) without undue delay notify customer if it receives a request from a data subject under any Applicable Data Protection Laws in respect of Processed Personal Data; and (ii) not respond to that request, except on the written instructions of Customer or as required by Applicable Data Protection Laws, in which case OMC shall, to the extent permitted by Applicable Data Protection Laws, inform controller/business of that legal requirement before it responds to the request.

## 8. Personal Data Breach.

8.1. OMC shall notify Customer without undue delay upon OMC becoming aware of any personal data breach within the meaning of Applicable Data Protection Laws relating to Customer Data which may require a notification to be made to a supervisory authority or data subject under Applicable Data Protection Laws "**Personal Data Breach**").

8.2. At the written request of the Customer and at Customer's sole expense, OMC shall provide reasonable co-operation and assistance to Customer in respect of Customer's obligations regarding the investigation of any Personal Data Breach and the notification to the supervisory authority and data subjects in respect of such a Personal Data Breach; provided, however, that OMC shall, at its own expense, use reasonable efforts to contain and remedy any Personal Data Breach caused by OMC (or its agents, representatives, or subcontractors) without undue delay and prevent any further Personal Data Breach, including, but not limited to taking any and all reasonable action necessary to comply with Applicable Data Protection Laws.

9. Deletion or Return of Processed Personal Data.

9.1. Subject to the terms hereof, OMC shall within up to sixty (60) days, unless a sooner time period is required by Applicable Data Protection Laws, return and then destroy the Customer Data, except such copies as authorized including under this DPA or required to be retained in accordance with Applicable Data Protection Laws.

9.2. OMC may retain Customer Data only to the extent authorized or required by Applicable Data Protection Laws, provided that OMC shall ensure the confidentiality of such Customer Data and shall ensure that it is only processed for such legal purpose(s). The provisions of this DPA shall govern any such retained Customer Data.

9.3. Upon Customer's prior written request, OMC shall provide written certification to Customer that it has complied with this Section 9.

10. Audit Rights

10.1. Subject to the terms hereof, and not more than once in each calendar year, OMC shall make available to a reputable auditor mandated by Customer in coordination with OMC, at the reasonable cost of the Customer upon prior written request, within normal business hours at OMC premises, such information

necessary and relevant to reasonably demonstrate compliance with this DPA, and shall allow for audits by such reputable auditor mandated by the Customer in relation to the processing of the Customer Data by OMC, provided that such third-party auditor shall be subject to confidentiality obligations.

10.2. Customer shall use (and ensure that each of its mandated auditors use) its best efforts to avoid causing (or, if it cannot avoid, to minimize) any damage, injury or disruption to OMC's premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection.

## 11. International Data Transfers

11.1. Customer may select the datacenters locations as offered by OMC where Customer Data will be processed. Once Customer has made its choice, KAMTERA will not transfer Customer Data from Customer's selected locations, except as necessary to provide the Services initiated by Customer, or as specifically required by the Customer, or as necessary to comply with applicable law.

11.2. Subject to Section 11.1, Personal Data may be transferred from the European Economic Area and the United Kingdom ("**UK**") to countries that offer an adequate level of data protection under or pursuant to the adequacy decisions, as determined by the European Commission pursuant to Article 45 of GDPR, and by the Secretary of State, pursuant to Section 17A of the United Kingdom Data Protection Act 2018, respectively, or other adequate authority, as determined by the EU and the UK ("**Adequacy Decisions**"), as applicable, without any further safeguard being necessary.

11.3. To the extent that OMC transfers (either directly or via onward transfer) Personal Data to countries outside of the European Economic Area and/or outside of the UK, which have not been subject to a relevant Adequacy Decision, or such transfers are not performed through an alternative recognized compliance mechanism as may be adopted by OMC for the lawful transfer of Personal Data (as set out under the GDPR), and to the extent applicable with respect to each data subject, such transfer of Customer's Personal Data to other countries, shall be subject, where the application of such SCCs, as between the parties, is required under Applicable Data Protection Laws, to the Standard Contractual Clauses, as such are incorporated into this DPA by reference, and shall be implemented as follows:

11.3.1. In the case of transfer of Personal Data between Customer to OMC, the parties shall implement Module II - "Controller to Processor", of the Standard

Contractual Clauses, with modifications detailed under this Section 11.3.2. However, when Customer is acting as a processor Module III (“Processor-to-Processor”) shall apply, provided that, taking into account the nature of the processing, Customer agrees that it is unlikely that OMC will know the identity of Customer’s controllers, as OMC has no direct relationship with Customer’s controllers and therefore, Customer will fulfil OMC’s obligations to Customer’s controllers under the Processor-to-Processor SCCs.

11.3.2. The parties are deemed to have accepted and executed the SCCs, including the associated annexes. The contents of Annex I of the SCCs are included within Appendix A to this DPA. The contents of Annex II of the SCCs are included within Appendix B to this DPA. The parties further agree to the following implementation choices under the SCCs:

11.3.2.1. Clause 7: shall not be applicable.

11.3.2.2. Clause 9(a): The parties choose Option 2, “General Written Authorization” and specify a time period of thirty (30) days.

11.3.2.3. Clause 11: The parties choose not to include the optional language relating to the use of an independent dispute resolution body.

11.3.2.4. Clause 17: The parties select Option 1 and specify the law of Ireland.

11.3.2.5. Clause 18(b): The parties specify the courts of Ireland.

11.3.3. In the case of transfer of Personal Data between OMC and its Sub-Processors for the purposes of carrying out specific Processing activities (on behalf of Customer) the Parties will enter into Module III (“Processor-to-Processor”) of the Standard Contractual Clauses.

11.3.4. If applicable, when transferring Personal Data governed by the UK GDPR, the parties agree to implement the applicable SCCs, as modified by the UK Addendum. The information required by Table 1 of the UK Transfer Addendum appears within Appendix A to this DPA. In addition, the parties adopt the SCCs, as modified by the UK Transfer Addendum, as to applicable international transfers of UK Personal Data in exactly the same manner set forth in Section 11.1 above, subject to the following:

11.3.4.1. Clause 13: The UK Information Commissioner's Office ("ICO") shall be the competent supervisory authority.

11.3.4.2. Clause 17: The SCCs, as modified by the UK Transfer Addendum, shall be governed by the laws of England and Wales.

11.3.4.3. Clause 18: The parties agree that any dispute arising from the SCCs, as modified by the UK Transfer Addendum, shall be resolved by the courts of England and Wales. A UK Data Subject may also bring legal proceedings against the Data Exporter and/or Data Importer before the courts of any country in the UK. The parties agree to submit themselves to the jurisdiction of such courts.

11.4. Appendixes A and B, attached to this DPA shall also apply in connection with the processing of Personal Data, subject to Applicable Data Protection Law.

11.5. OMC reserves the right to adopt an alternative compliance standard to the SCCs for the lawful transfer of Personal Data, provided it is recognized under Data Protection Law. OMC will provide 30 days' advance notice of its adoption of an alternative compliance standard.

## 12. General Terms.

12.1. Governing Law and Jurisdiction. All disputes with respect to this DPA shall be determined in accordance with the laws of the State of Israel and shall be handled at a competent court in Tel Aviv-Yafo.

12.2. Conflict. In the event of any conflict or inconsistency between this DPA and any other agreements between the parties, including agreements entered into after the date of this DPA, the provisions of this DPA shall prevail.

12.3. Changes in Applicable Data Protection Laws. OMC may by at least forty-five (45) calendar days' prior written notice to Customer, request in writing any changes to this DPA, if they are required, as a result of any change in any Applicable Data Protection Law, regarding the lawfulness of the processing of Customer Data. If Customer provides its modification request, OMC shall make commercially reasonable efforts to accommodate such modification request, and Customer shall not unreasonably withhold or delay agreement to any consequential changes to this DPA to protect OMC against any additional risks, and/or to indemnify and compensate OMC for any further costs associated with the changes made hereunder.

12.4. Severance. Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall either be (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

**IN WITNESS WHEREOF**, the parties have executed this DPA:

**Company:**

\_\_\_\_\_

OMC \_\_\_\_\_.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Customer:**

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



