



### **Terms and Conditions**

These Terms and conditions, including any attached exhibits (collectively, the “**Terms**”) are entered into as of the effective date listed in the Order Form (the “**Effective Date**”), between Gytpol, Ltd. (“**Gytpol**”), and the customer identified on the Order Form (the “**Customer**”). The Terms together with the order form (“**Order Form**”) pursuant to which Customer purchased the right to access and use Gytpol’s proprietary platform accessible on a Software as a Service basis identified in the Order Form (the “**Platform**”) represent a legal agreement between the Customer and Gytpol.

PLEASE READ THESE TERMS CAREFULLY BEFORE SIGNING THE ORDER FORM OR ACCESSING OR USING THE SERVICES. BY SIGNING THE ORDER FORM, OR BY ACCESSING OR USING THE SERVICES, YOU ARE INDICATING THAT YOU HAVE READ THESE TERMS, UNDERSTOOD THEM, AND THAT YOU AGREE TO BE LEGALLY BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO ANY OF THESE TERMS OR ARE NOT AUTHORIZED TO BIND THE ENTITY ON BEHALF OF WHICH YOU ARE ACTING, DO NOT SIGN THE ORDER FORM OR ACCESS OR USE THE SERVICES. WITHOUT LIMITING THE FOREGOING, SIGNING THE ORDER FORM OR ACCESSING OR USING ANY PORTION OF THE SERVICES INDICATES THAT YOU ACCEPT THESE TERMS AND, TO THE EXTENT YOU ENTER INTO THESE TERMS ON BEHALF OF A LEGAL ENTITY, YOU REPRESENT THAT YOU ARE AUTHORIZED TO BIND SUCH LEGAL ENTITY.

Customer acknowledges and agrees that these Terms supersede the terms and conditions of any purchase order or other documentation used by Customer and, except for delivery and billing addresses and prices, any conflicting or additional terms are void and have no effect. Customer may place orders by use of purchase orders and other documentation for its convenience only.

**WHEREAS**, Gytpol is the owner of a certain proprietary cloud based Platform, as further described in this website (the “**Platform**”); and **WHEREAS** Customer desires to receive a right to access and use the Platform, and Gytpol is willing to grant Customer such rights; **NOW, THEREFORE**, in consideration of the conditions herein contained, the parties, intending to be legally bound, agree as follows:

1. **Definitions.** The following definitions shall have the following meanings throughout the Terms:
  - 1.1 “**Intellectual Property Rights**” means all intangible legal rights in the Platform, and any part thereof, including any and all derivatives, changes and improvements thereof, and including without limitation: all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, Confidential Information, and all other proprietary rights in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.
  - 1.2 “**Services**” means services which shall be provided by Gytpol, if applicable, such as training and support and maintenance services provided under these Terms including
2. **Grant of Access to the Platform.** Subject to the terms and conditions of these Terms, including payment of the fees, Gytpol shall grant Customer a non-exclusive, limited, non-transferable, non-sublicensable, revocable right, during the Term, to access and use the Platform as detailed in the Order Form, and subject to the limitations defined in these Terms and in the Order Form.
3. **Title: Intellectual Property Rights.** GYTPOL DOES NOT AND SHALL NOT BE DEEMED TO HAVE SOLD OR TRANSFERRED TITLE IN THE PLATFORM TO CUSTOMER. The Platform and the documentation shall remain the exclusive property of Gytpol. All Intellectual Property Rights evidenced by or embodied in or related to the Platform, and to any customizations, enhancements, or derivatives thereof, or connected to or arising out of the Platform, are and shall be owned solely by Gytpol. Gytpol reserves all rights not expressly granted hereunder, and nothing in these Terms constitutes a waiver of Gytpol’s Intellectual Property Rights under any law.
4. **Restrictions on Use.** Except for any use explicitly permitted under these Terms and the Order Form, Customer shall have no other rights, express or implied, in the Platform, and shall not: (i) attempt to

infiltrate or hack the Platform, or any part thereof; (ii) represent that it possess any proprietary interest in the Platform; (iii) directly or indirectly, take any action to contest Gytpol's Intellectual Property Rights or infringe them in any way; (iv) except as specifically permitted hereunder, use the name, trademarks, trade-names, and logos of Gytpol; (vi) use the Platform to provide third parties with any services whether or not in return for remuneration of any kind.

## 5. **Customer's Obligations**

5.1 **Security and Compliance with Applicable Laws.** Customer will use reasonable security precautions in the course of using the Platform. Customer represents and warrants that its use of the Platform will be in compliance with any and all applicable laws, rules, regulations, statutes, codes, ordinances, orders, or guidelines of any governmental entity.

5.2 **Viruses and Malicious Code.** Customer will neither insert nor permit the insertion or introduction of any Malicious Code (defined below) into the Platform. Customer will take all commercially reasonable actions and precautions to prevent the introduction and proliferation of Malicious Code into the Platform. Gytpol may immediately suspend Customer's access to the Platform if Gytpol detects Malicious Code or reasonably suspects that Malicious Code was introduced or permitted by Customer or Customer's account. "Malicious Code" means (i) any code, program, or sub-program which causes damage or maliciously interferes with the operation of a computer Platform containing the code, program or sub-program, or halts, disables, or interferes with the operation of the Platform (ii) any device, method, or token that permits any person to circumvent without authorization the normal security of the Platform.

## 6. **Support and Professional Services.**

6.1 **Support Services.** During the applicable subscription period, Gytpol shall provide Customer with access to Gytpol's personnel for problem reporting with respect to the Gytpol Services as further detailed in the Gytpol service level agreement for SaaS.

6.2 **Professional Services.** Gytpol shall provide Customer with professional services to the extent agreed by mutual consent of the parties.

6.3 **Customer Data backup.** Gytpol shall ensure the backup of the Customer data uploaded into the Platform by the Customer in accordance with Gytpol's policies.

## 7. **Fees and Payment**

7.1 **Service Fees.** Customer shall pay the Fee as set forth in the Order Form.

7.2 **Payment Terms.** All payments shall be due and payable under the terms set forth in the Order Form. Unless stated otherwise in the Order Form. Payments shall be made by wire transfer in accordance with the instructions of Gytpol against a valid tax invoice within thirty (30) days from the invoice date. All payments under these Terms are non-refundable.

7.3 **Late Payment.** Amounts that are not paid in accordance with the terms stated in these Terms will be subject to a late charge of 1.5% per month, until paid in full, subject to a seven day grace period.

7.4 **Suspension of Use of Platform.** It is agreed upon the parties that if Gytpol has not received any payment as set forth above in full within 30 business days from the applicable due date, then Gytpol, in addition to any other rights it may have, shall be entitled suspend Customer's use of the Platform and Customer shall have no claims towards Gytpol in connection therewith.

7.5 **Taxes.** All amounts payable to Gytpol are exclusive of all taxes, levies or similar governmental charges, however designated, including penalties and interest imposed by any jurisdiction, except for taxes based on the net income of Gytpol. If under applicable law taxes are required to be withheld, Licensee shall pay Gytpol an amount such that the net amount after withholding of taxes shall equal the amount that would have been otherwise payable under these Terms.

## 8. **Limited Warranty**

8.1 **Warranties.** Gytpol warrants that the Platform shall perform in material compliance with the relevant specifications provided by Gytpol for a period of twelve (12) months following the Effective Date ("Warranty Period"). This limited warranty extends only to Customer. Gytpol's sole liability and Customer's exclusive remedy for any breach of this warranty shall be to use reasonable commercial efforts to remedy any failure of the Platform.

8.2 **Restrictions**. The express warranties specified in this Section 8 shall not apply if the applicable Platform or any portion thereof: (i) has been altered, modified or adjusted in any manner by Customer, or a third party not under Gytpol's responsibility and control, without Gytpol's prior written consent; (ii) has not been used, operated and maintained in accordance with these Terms; or (iii) fails to function due to a malfunction of Customer's equipment.

8.3 **Disclaimer**. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH HEREIN, THE PLATFORM AND ANY SERVICE ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. GYTPOL DOES NOT WARRANT THAT THE PLATFORM, OR ANY SERVICES, WILL BE DELIVERED OR PERFORM ERROR-FREE OR WITHOUT INTERRUPTION TO CUSTOMER. WITHOUT LIMITING THE FOREGOING GYTPOL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, COMPLETENESS, AND FITNESS FOR A PARTICULAR PURPOSE AND DISCLAIMS ALL WARRANTIES AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF OTHERS.

## 9. **Indemnification**

9.1 **Indemnification**. Gytpol shall defend and indemnify Customer from and against any and all costs, liabilities, losses and expenses (including, without limitation, reasonable legal fees) finally awarded against Customer pursuant to a third party claim arising out of an allegation that the Platform infringes any intellectual property right. The foregoing indemnification shall not apply with respect to any claims relating to: (i) use of the Platform with software or hardware not provided or authorized in writing by Gytpol; (ii) use of the Platform not in accordance with Gytpol's specifications and instructions or not for its intended purpose; (iii) use of other than the most current, unaltered version of the Platform that was offered to Customer; (iv) to the extent that such liability could have been avoided but for Customer's failure to implement the infringement remedies that Gytpol made available; or (v) willful misconduct or improper acts or omissions by Customer.

9.2 **Indemnification Procedures**. As a condition to the indemnification and defense obligations hereunder Customer shall provide Gytpol with: (i) prompt written notice of the claims; (ii) the right to control and direct the investigation, defense and settlement of such claims; and (iii) reasonable cooperation in connection with such investigation, defense and settlement.

9.3 **Infringement**. If the Platform, or any part thereof, become, or in the sole judgment of Gytpol, may become, the subject of any claim, suit or proceeding for infringement of any Intellectual Property Right, or in the event of any adjudication that the Platform, or any part thereof, infringes any Intellectual Property Right, or if the use of the Platform, or any part thereof, is enjoined, Gytpol may, at its option and expense: (i) procure the right under such Intellectual Property Right to use or sell, as appropriate, the Platform or such part thereof; or (ii) replace the Platform, or part thereof, with other suitable Platform or parts; or (iii) suitably modify the Platform, or part thereof.

9.4 **Sole Remedy**. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, THE TERMS SET FORTH IN THIS SECTION STATE GYTPOL'S ENTIRE LIABILITY AND OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

9.5 **Indemnification by Customer**. Customer shall defend any action brought against Gytpol, its officers, directors, agents and employees, and shall pay all costs, liabilities, damages and legal fees finally awarded against Gytpol, to the extent such action arises from or is connected with: (i) Customer's modification or use of the Platform not in strict accordance with these Terms; (ii) any misrepresentation or any breach of covenant or agreement on the part of Customer; or (iii) any third party claim or action against Gytpol for injuries or damages to persons or property caused or claimed to have been caused by the negligent acts or omissions of Customer's personnel while in the course of performing work under these Terms.

10. **Confidentiality**. During the Term hereof, each party may have access to certain non-public proprietary, confidential or trade secret information or data of the other party, whether furnished before or after the Effective Date, and regardless of the manner in which it is furnished, which given the totality of the circumstances, a reasonable person or entity should have reason to believe is proprietary, confidential, or competitively sensitive (together, the "**Confidential Information**"). Confidential Information shall exclude 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) receiving party rightfully obtains from a third party who has the right to transfer or disclose it, without default or breach of these Terms; (iv) the receiving party can demonstrate in its records to have independently developed, without breach of these Terms or any use of or reference to the Confidential Information. The receiving party agrees: (a) not to disclose the disclosing party's Confidential Information to any third parties other than to its, directors, officers, employees, advisors or consultants (collectively, the "Representatives") on a strict "need to know" basis only and provided that such Representatives are bound by written agreements to comply with the confidentiality obligations as protective as those contained herein; (b) 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 these Terms; (c) 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 receiving party is required by legal process or any applicable law, rule or regulation, to disclose any of disclosing party's Confidential Information, then prior to such disclosure, receiving party will give prompt written notice to disclosing party so that it may seek a protective order or other appropriate relief. The parties' obligations with respect to Confidential Information shall expire five years from the date of termination or expiration of these Terms, unless a longer period of protection applies under applicable law, either as trade secret information or otherwise.

11. **Limitation of Liability.** IN NO EVENT SHALL GYTPOL'S LIABILITY UNDER, ARISING OUT OF OR RELATING TO THESE TERMS, EXCEED THE AMOUNT PAID TO GYTPOL BY CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM. WITHOUT DEROGATING FROM THE ABOVE, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR FOR LOST PROFITS, LOSS OF USE, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE. THESE LIMITATIONS SHALL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. **Term and Termination**

- 12.1 **Term.** The term of these Terms shall commence on the Effective Date and shall continue as long as an Order Form referencing this Terms remains in effect (the "Term").
- 12.2 **Termination for Cause.** Either party may terminate these Terms (i) by giving written notice to the other party if the other party breaches a material provision of these Terms and fails to cure the breach within 30 days after being given written notice thereof; or (ii) if the other party becomes the subject matter of any voluntary or involuntary petition pursuant to applicable bankruptcy or insolvency laws, or request for receivership, liquidation, or composition for the benefit of creditors and such petition, request or proceeding is not dismissed with sixty (60) days of filing.
- 12.3 **Consequences.** Upon termination of these Terms for any reason: (i) all outstanding fees shall be accelerated and become due and payable by the effective date of termination; (ii) each party shall return to the other party any information in tangible form obtained in connection with these Terms; (iii) the right to access the Platform shall expire; (iv) Customer shall return to Gytpol or erase or otherwise destroy all copies of the Platform in Customer's possession, including such that are fixed or resident in the memory or hard disks of Customer's computers, as well as all copies of the documentation; (v) at Gytpol's request, Customer shall certify in writing to Gytpol that all copies and partial copies of the Platform have been either returned to Gytpol or otherwise erased or destroyed and deleted from any computer, libraries or storage devices and are no longer and will not in the future be used by Customer.

13. **General Terms**

- 13.1 **Governing Law.** These Terms are governed by and construed in accordance with the laws of the State of Israel, without regard to the principles of conflict of laws. Any and all disputes and controversies arising out of or in connection with these Terms shall be brought exclusively before the competent courts of Tel Aviv, Israel.
- 13.2 **Survival.** Sections 3, 4, 8.3, 9, 10, 11, 12.3 and 13 shall survive termination of these Terms without limitation of time.

- 13.3 **Severability**. If any provision of these Terms be held to be invalid, that provision shall be replaced with a valid provision implementing the intent of the parties at the time of accepting these Terms.
- 13.4 **Force Majeure**. Except for Customer's obligation to pay amounts due, neither party hereto shall be liable for any loss, damage, or penalty resulting from such party's failure to perform its obligations hereunder when such failure is due to flood, earthquake, fire, acts of God, military insurrection, acts of terrorism, civil riot, or labor strikes.
- 13.5 **Relationship of the Parties**. Gytpol and its employees shall perform the Services as an independent contractor and not as an employee, agent or representative of Customer. Gytpol shall not be deemed to be an employee of Customer.
- 13.6 **Publicity**. Gytpol shall be entitled to issue a press release with respect to the subject matter of this Agreement, and include the name of the Customer and its trademark in its website and marketing materials.
- 13.7 **Entire Agreement**. These Terms, any Exhibits and the Order Form constitute the entire agreement between Gytpol and Customer and supersedes any previous agreements or representations, either oral or written. Customer acknowledges that it has not relied upon any representations or warranties other than those expressly contained in these Terms. These Terms may be amended, terminated, or altered only by an instrument in writing signed by both parties.
- 13.8 **Assignment**. A party may not transfer, assign or novate its rights or obligations under these Terms to any third party without the prior written approval of the other party, and any such purported assignment shall be null and void, except for an assignment and novation to an affiliated company or to a successor of all assets of a party via a merger or acquisition of substantially all assets of the applicable party.
- 13.9 **Notices**. All notices given under these Terms shall be in writing and shall be deemed to have been duly given: when delivered, if delivered by messenger during normal business hours of the recipient; when sent, if transmitted by email during normal business hours of the recipient; or on the third business day following posting, if posted by international air mail.