OCP Minimum Service Terms

These Omilia Cloud Platform ("OCP") Minimum Service Terms, together with the OCP Data Privacy Policy, the OCP Security Policy, the OCP Service Level Agreement, the OCP Service Order Form, and all relevant Addendums, either linked herein, attached hereto, or signed separately (collectively, the "OCP Terms") contain the terms and conditions that govern the provision of and access to the Omilia Cloud Platform Services (the "OCP Services" or "Services"), as provided by Omilia Natural Language Solutions Ltd, a company having its registered office at Gladstonos 55 Str., 3040, Limassol, Cyprus ("Omilia"), to the entity or person agreeing to these Terms ("Customer", "You").

BY ACCEPTING THE OCP TERMS, BY ANY ACCEPTABLE MEANS OF ACTIVE AFFIRMATIVE CONSENT (INCLUDING BUT NOT LIMITED TO, SIGNING, ELECTRONIC SIGNING, CLICKING "I ACCEPT"), AND/OR ACCESSING OR USING THE SERVICES MADE AVAILABLE BY OMILIA HEREUNDER, YOU REPRESENT THAT (I) YOU ARE AUTHORIZED TO ACT ON BEHALF OF CUSTOMER AND HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER TO THE OCP TERMS, (II) YOU HAVE READ THESE OCP TERMS, AND (III) CUSTOMER SHALL COMPLY WITH AND BE BOUND BY THESE OCP TERMS. IF YOU DO NOT HAVE AUTHORITY TO BIND CUSTOMER, OR IF YOU OR CUSTOMER DO NOT AGREE TO THE OCP TERMS, YOU AND CUSTOMER MAY NOT USE THE SERVICES.

THESE OCP TERMS TAKE EFFECT ON THE DAY YOU ACCEPT THEM OR, IF EARLIER, WHEN YOU USE ANY OF THE OCP SERVICES (THE "EFFECTIVE DATE"). IF YOU HAVE EXECUTED A SEPARATE AGREEMENT WITH OMILIA SPECIFIC TO THIS TRANSACTION, THAT SEPARATE AGREEMENT WILL TAKE PRECEDENCE AS TO THE TERMS AND CONDITIONS APPLICABLE TO YOUR TRANSACTION.

1. Definitions

1.1.

"Affiliate" means, with respect to a subject entity, any other entity controlling, controlled by, or under common control with the subject entity.

1.2.

"Applicable Law" means all laws, rules, regulations, treaties (and similar governmental obligations), including without limitation local, national and multinational, that are applicable as the context requires.

1.3.

"Claim" means any allegation, claim, cause of action, suit, proceeding, arbitration, mediation, or demand of any nature.

1.4.

"Confidential Information" means any information that Omilia and Customer may disclose (directly or indirectly) to each other, pertaining to private, proprietary, or confidential information of either Omilia or Customer.

1.5.

"Customer End-User" means any employee, representative, user, agent, or any other individual the Customer authorizes to use the OCP Services.

1.6.

"Data Privacy Laws" means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR"), and repealing Directive 95/46/EC (General Data Protection Regulation).

1.7.

"Effective Date" has the meaning set forth in the Recitals.

1.8.

"Intellectual Property Rights" or "Proprietary Rights" means any and all intellectual property rights anywhere in the world, including, without limitation, all rights in, arising out of, or associated therewith (a) procedures, designs, inventions, discoveries, and all patents issued or issuable thereon; (b) works of authorship, copyrights and other rights in works of authorship; (c) trade secrets; (d) know-how; (e) copyrights and trademarks; and (f) mask work rights.

1.9.

"Materials" means source code, software, hardware, servers, networks, and similar materials.

1.10.

"Omilia Marks" or "Marks" means business names, trade names, trademarks, service names, logos, and similar identifiers of Omilia or its Affiliates.

1.11.

"OCP Data Privacy Policy" means the terms set forth at https://www.ocp.ai/privacypolicy

1.12.

"OCP Security Policy" means the terms set forth at: https://www.ocp.ai/securitypolicy

1.13.

"OCP SLA" means the OCP Service Level Agreement as per the terms set forth at
https://www.ocp.ai/sla

2. License – Intellectual Property Rights

2.1.

Omilia grants to Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license for the duration of the provision of the OCP Services to access and use the OCP Services described within the OCP Service Order Form(s) and any software provided by Omilia to access those OCP Services, including Omilia proprietary interface elements, application program interfaces and/or software development kits, and the related documentation, data, code, sample applications and materials (collectively, "Software"), solely for applicable business purposes.

2.2.

Customer acknowledges and agrees that Omilia exclusively owns all right, title and interest to the OCP Services and Software, including without limitation code, deliverables copyrights, know how, Marks, trade secrets, service marks, logos, copyrights, know-how, information and system data, technologies, intellectual property, information and data generated by Omilia or Omilia's systems, whether pre-existing, or created after the effective date of the OCP Terms, including any modifications, enhancements and derivatives thereof (including, without limitation, metrics, data and information generated by such Services and Software).

2.3.

Customer does not acquire any rights, express or implied, in the OCP Services, except as expressly granted herein. Customer acknowledges and agrees that its rights in and to Omilia's technology and the OCP Services are limited to the license rights set forth in this Section. Customer shall not claim ownership or proprietary rights in Omilia's technology or the OCP Services. Customer agrees that any deliverables, Omilia products or Omilia services, that are based on an existing product of Omilia that have been improved or enhanced with extra functionalities, as well as any model of Omilia, and in particular (i) software, (ii) tools, (iii) acoustic models, (iv) semantic and/or language model(s), improved or enhanced as a result of training with Customer data as well as any and all derivative works of the above deliverables shall constitute Omilia's Intellectual Property.

3. Provision of Services

3.1.

Omilia provides and maintains through itself and authorized third parties the hardware, equipment, technical support, systems, and personnel necessary to ensure the hosting and controlling of the OCP Services. All patches and fixes and standard new releases and new versions of the OCP Services will be provided to Customers at no additional charge when generally available. Non-standard upgrades and optional product enhancements, such as other Omilia products, integration work, extensive customization and non-standard features, may be made available for an additional fee.

3.2.

The infrastructure used to provide the OCP Services and Customer data may be hosted on servers that are controlled by Microsoft Azure ("Azure") and/or Amazon Web Services ("AWS"). By using the Services, Customer consents to this processing and storage of Customer Data and the Azure and/or AWS Service Terms which can respectively be consulted at: https://azure.microsoft.com/en-us/support/legal/ and https://aws.amazon.com/legal/

3.3.

Customer's use of the OCP Services is subject to the OCP Service Level Agreement (SLA), which is provided at https://www.ocp.ai/sla/, except for:

(i)

occasional planned downtime at non-peak hours (for which advance notice will be provided); or

(ii)

any unavailability caused by circumstances beyond Omilia's reasonable control, including failure or delay of Customer's Internet connection, misconfiguration by Customer or any third party, issues on Customer's network, or telecommunications services contracted by or for Customer, or

(iii)

unavailability as a result of the actions of Azure or AWS, including (a) any maintenance or planned downtime of the Azure or AWS services, (b) any fault or failure of the Azure or AWS services, or (c) Azure or AWS either terminating the Azure or AWS Customer Agreement or suspending Omilia's or Customer's use of Azure or AWS services.

3.4.

Omilia may terminate the provision of Services immediately and without liability to Customer if:

(i)

Customer or any Customer End-User infringes (or will likely or threatens to infringe) Omilia's intellectual property rights; or

(ii)

Customer or any Customer End-User willfully violates or otherwise fails to comply to the Acceptable Use Terms and Other Restrictions set forth in sections 6 & 7 of these OCP Terms; or

(iii)

Customer files for (or is involuntarily forced into) bankruptcy proceedings;

(iv)

Customer has not accessed the OCP Console or if the Services have had no network activity for a period of 60 days.

(v)

Customer does not accept proposed amendments to the OCP Terms as set forth in Section 12.

3.5.

Upon termination of the provision of the OCP Services, Omilia will make Customer Data (as it existed at the end of the OCP Services Term) available for retrieval by the Customer for a retrieval period of ninety (90) days. At the end of such retrieval period, and except as may be required by law, Omilia may delete or otherwise render unrecoverable any Customer Data that remains in the OCP Services. Customer may request that such data be exported in a readable format during this retrieval period and provided to Customer for an additional fee.

4. Confidentiality

Customer will maintain the confidentiality of all Confidential Information. Customer acknowledges and agrees that Omilia and Customer may share information pertaining to the use of the Omilia OCP Services by the Customer and Omilia may have access to Customer Data.

5. Data Processing, Security and Usage

5.1.

Customer shall provide an unlimited, unrestricted, non-exclusive license to Omilia to use Customer Data related to OCP Services, to the full extent permitted by applicable laws and regulations (such as, but not limited to, GDPR), for the provision of Omilia's Products and Services.

5.2.

Customer hereby grants Omilia a perpetual, irrevocable right to de-identify and use Customer data (and text files derived from such data), to allow Omilia to develop, improve and model Omilia's machine learning technology. Customer Data that has been de-identified and/or aggregated ("Training Data") is no longer deemed Customer Data. To the extent permitted by law, Omilia retains the right to move the Training Data to other data center and / or data center locations.

5.3.

Customer shall, as required by applicable laws or regulation, provide notice to its own end customers or users and obtain valid consent if required for the use of OCP Services and related technology to the provision of the Services (such as, regarding Omilia's monitoring features, the use of cookies, messaging functionality, etc.), in Customer's privacy policy and as otherwise required;

5.4.

If Customer decides to use SMS or other messaging functionality, Customer shall comply with all applicable consumer regulations as well as with opt-in and opt-out requirements applicable to Customer's business use of SMS or other messaging functionality, including, but not limited to obtaining and maintaining valid consumer consent to receive SMS or other messages.

5.5.

Customer agrees that OCP Services include monitoring of user activity and generate system data based on such activity, and understands that Omilia shall not use or disclose personally identifiable user information to any third party without the prior written consent of the Customer, as applicable, except to subcontractors performing services for Omilia who are bound by confidentiality terms. It is understood that non-personally identifiable data, transcripts and information generated by Omilia's systems may be used by Omilia for purposes such as, but not limited to, troubleshooting, optimization and tuning, system improvements, customer support and reporting. Omilia may, in its sole discretion, review, modify, relocate, remove or otherwise eliminate any content or other material sent through or otherwise included in the OCP Services by the Customer or anyone on behalf of or for the benefit of the Customer in the event such content is not in compliance of the OCP Services. Omilia shall be permitted to process Customer's data for the following purposes: (a) to provide the OCP Services; (b) to operate, maintain, enhance and support such OCP Services (and related services) and the infrastructure used to provide the OCP Services; and (c) to respond to customer support requests.

5.6.

Customer may select the geographical region or country where certain Customer Data will be stored ("Data Location"), and Omilia will store it there in accordance with these OCP Terms and the applicable OCP Data Privacy and OCP Security Policies. If Customer does not specify a Data Location with respect to any Customer Data, Omilia may process and store the Customer Data in any data center where servers providing the OCP Services are located. To the extent permitted by law, Omilia retains the right to move the Data to other data center and / or data center locations, within the selected Data Location. By using the Services, Customer consents to this processing and storage of Customer Data.

5.7.

Customer will ensure to undertake all necessary measures to meet all requirements of the applicable "Data Privacy Laws". If, under applicable Data Privacy Laws, Customer is a data processor (or data importer) and Omilia is a sub-processor (or sub-importer), Customer shall ensure that Omilia shall be permitted to process Customer's data for the following purposes: (a) to provide the Services; (b) to operate, maintain, enhance and support such Services (and related services) and the infrastructure used to provide the Services; and (c) to respond to customer support requests.

5.8.

Any data handling and processing performed by Omilia enabling it to provide the agreed OCP Services to the Customer is subject to the OCP Security Policy and the OCP Data Privacy Policy which form an integral part of these OCP Terms. Customer may not impose any obligations on Omilia without Omilia's express written consent.

6. Acceptable Use

6.1.

Customer agrees to use the OCP Services only in full compliance with applicable laws and regulations and with the terms set forth in this Section 6 of these OCP Terms ("Acceptable Use Terms").

6.2.

If Omilia becomes aware that the Customer's (or any Customer End-User's) use of the Services violates or otherwise fails to comply with the Acceptable Use Terms, Omilia will give Customer notice of the violation by requesting that Customer correct the violation. Omilia may Suspend all or part of Customer's use of the Services until the violation is corrected

6.3.

As specified in article 3.4 of these OCP Terms, Omilia reserves the right to terminate the provision of Services in case of Customer's (or any Customer End-User's) repeated or willful violations of the Acceptable Use Terms, or failure to correct such violations.

6.4.

As a condition of using the OCP Services, Customer shall be responsible for any Customer's End-Users.

6.5.

Customer agrees not to, and not to allow third parties to use the OCP Services in any manner:

(i)

to engage in, or promote or encourage illegal activity or to commit fraud;

(ii)

to damage, disable, overburden, or impair any Omilia server, or the network(s) connected to any Omilia server;

(iii)

to interfere with the use of the OCP Services or the equipment used to provide the Services, by other customers, authorized resellers, or other authorized users;

(iv)

to attempt to gain unauthorized access to any OCP Services, other accounts, computer systems or networks connected to any Omilia server or to any of the OCP Services by any means;

(v)

to operate robots or spiders to scan Omilia's databases or web pages, or to use "deep linking" to Omilia's web pages;

(vi)

to violate any patent, trademark, trade secret, copyright, or any other intellectual property right;

(vii)

to falsify or delete any copyright management information, such as author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material;

(viii)

to generate, distribute, publish or facilitate contests, pyramid schemes, chain letters, mass email, spamming or any duplicative or unsolicited messages (commercial or otherwise);

(ix)

to violate, or encourage the violation of, the legal rights (such as rights of privacy and publicity) of others;

(x)

for any unlawful, invasive, infringing, defamatory or fraudulent purpose (for example, this may include phishing, creating a pyramid scheme or mirroring a website);

(ix)

to store or produce telephone numbers to be called, using a random or sequential number generator, and dial such numbers.

7. Additional Restrictions

7.1.

Unless otherwise stipulated herein in these OCP Terms, Customer will not, and will not allow third parties under its control to:

(i)

modify, decompile, reverse-engineer, disassemble or otherwise attempt, directly or indirectly to obtain, or derive source code for the OCP Services,

(ii)

use any Omilia Confidential Information or Omilia intellectual property to create, distribute, sell, license, market or promote any Customer technology or service or any third-Party technology or service without the prior written approval of Omilia,

(iii)

use any Omilia Confidential Information or Omilia intellectual property in conjunction with any third-Party technology without the prior written approval of Omilia or

(iv)

introduce into the OCP Services any threats known as software viruses, time bombs, logic bombs, Trojan horses, trap doors, or other malicious computer instructions, intentional devices or techniques that can or were designed to threaten, infect, attach, assault, vandalize, defraud, disrupt, damage, disable, or shut down a computer system or any component of such computer system, including its security or user data.

8. Warranties

8.1.

Omilia and Customer represent and warrant to each other that:

(i)

they have the right to perform their respective obligations in the manner contemplated by these OCP Terms, and in a professional workmanlike manner, and

(ii)

these OCP Terms do not and shall not conflict with any other agreement entered into by it.

8.2.

Except for the foregoing warranties and any warranties contained in any applicable Addendum, if any, and to the fullest extent permissible under applicable Law, both Omilia and Customer disclaim all representations and warranties, express and implied, concerning or related to these OCP Terms and any of the services provided hereunder or under the applicable Addendum, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

9. Limitation of Liability

In no event shall either Omilia or Customer be liable for any indirect, incidental, consequential or punitive damages, or for any damages for lost profits, loss of use, loss of business, loss of revenue, arising out of or in relation to these OCP Terms or the services relating to such documents. Additionally, in no event shall either Omilia or Customer be liable for any cause or claim whatsoever arising out of or related to these OCP Terms in excess of the fees actually received by Omilia for the provision of the OCP Services to Customer during the twelve (12) month period immediately preceding the date on which the cause of action arose. The limitations and exclusions contained herein will apply regardless of whether the cause of action arises in contract, tort or otherwise. Neither Omilia nor Customer shall be liable for any acts or omissions of third Parties not under its control. Omilia shall not be liable for any third-Party services, code, technology, applications, policies, procedures, or products. In the event that Applicable Law does not allow the limitation of liability as set forth in this Section 9, the limitations detailed in this Section 9 will be deemed modified solely to the extent necessary to comply with Applicable Law. Notwithstanding anything contained herein to the contrary, neither Omilia nor Customer excludes or limits liability for death or personal injury arising from its gross negligence or willful misconduct.

10. Indemnity

10.1.

Omilia and Customer agree that third party claims pertaining to their respective intellectual property shall be addressed and managed in accordance with the process outlined below.

10.2.

Customer Indemnity. If a third party claims against Omilia that Customer's intellectual property (including, without limitation, applications and data) or content provided to Omilia or used by Customer to perform its duties hereunder infringes such third party's patent(s) issued as of the Effective Date, copyright or trademark, Customer shall defend and pay all costs of defense of such claim, and will indemnify and hold Omilia harmless from and against any settlement amounts agreed to by Customer or damages finally awarded by a court of competent jurisdiction or administrative authority to such third party. In addition, Customer shall indemnify and hold harmless Omilia from any third party claims, actions, suits, procedures, penalties, fines, liabilities, losses or damages asserted against Omilia based upon or arising out of Customer's acts or omissions or failure to perform, or its wrongful performance of, any of its obligations or duties under these OCP Terms, and/or an Addendum.

10.3.

Omilia Indemnity. If a third party claims against Customer that the OCP Services infringe such third party's patent issued in the EU and the US, as of the Effective Date, copyright or trademark (a "Claim"), Omilia will defend the Claim and pay all reasonable costs of defense of such claim, and will indemnify and hold harmless Customer from and against all settlement amounts agreed upon by Omilia or damages finally awarded by a court of competent jurisdiction or administrative authority to such third party. The indemnification set forth in this Section 10.3 is Omilia's entire liability, and Customer's sole and exclusive remedy, for third party Claims. In the event that Omilia determines a risk of an infringement, at Omilia's option and expense, Omilia may replace or modify the OCP Services with substantially equivalent services or replacement services so that such services are no longer infringing, or obtain for Customer the right to continue using the OCP Services

11. Force Majeure

Omilia and Customer shall not be liable to each other or any other person for any delay or failure in the performance of their respective obligations set forth in these OCP Terms or for loss or damage of any nature whatsoever due to disruption or unavailability of communication facilities, utility or Internet service provider failure, acts of war, pandemic, acts of terrorism, acts of god or mother nature, acts of vandalism, lightning, fire, strike, unavailability of energy sources or any other causes beyond Omilia or Customer's reasonable control.

12. Amendments

12.1.

To the Services: Omilia may make commercially reasonable updates to the Services from time to time. If Omilia makes a material change to the Services, Omilia will inform Customer, provided that Customer has subscribed with Omilia to be informed about such change.

12.2.

To the OCP Terms. Omilia may make changes to these OCP Terms, including any linked documents, from time to time. Unless otherwise communicated by Omilia, material changes to the OCP Terms will become effective 30 days after they are posted by either: (i) sending an email to Customer's primary point of contact; (ii) posting a notice upon logging in the OCP Console; or (iii) posting a notice to the applicable Terms or Linked Document. If Customer does not agree to the revised OCP Terms, they shall stop using the Services and the terms set forth in section 3.5 ("Provision of Services") of this Agreement will be applicable.

12.3.

To the Data Processing, Security and Usage Terms. Unless otherwise expressly permitted in the terms set forth in Section 5 of these OCP Terms, Omilia may change the Data Processing, Security and Usage Terms where such change is required to comply with applicable law, court order, or guidance issued by a governmental regulator or agency. If Omilia makes a material change to the Data Processing and Security Terms in accordance with this Section, Omilia will post the modification to the URL containing those terms.