



## **Cynaptic Server/Application Hosting Terms of Service (“TOS”)**

Customer agrees to the following TOS:

### **1. TERM AND TERMINATION:**

Unless requesting Hourly Services (as defined in paragraph 4 below) or otherwise agreed to by the parties in writing, Customer agrees to a month-to-month contract term for services. The month-to-month contract for services is automatically renewed each month in perpetuity subject to written cancellation by the Customer. Please carefully review the Cynaptic cancellation policy set forth in Paragraph 9 below. Cynaptic may terminate this Agreement upon non-payment as set forth in paragraph 11 below. At its sole discretion, Cynaptic may terminate this Agreement if Customer violates any terms and conditions of Cynaptic AUP.

### **2. MONTHLY SERVICE FEES:**

Fees for service(s) ordered by the Customer shall begin on the date of the initial order and that date shall serve as the monthly anniversary date (“Anniversary Billing Date”) for all future billings including one time fees, upgrades, additional services, cancellations and service credits. Fees are due in advance of the monthly service cycle and will be billed on the anniversary date of each month.

### **3. UPGRADE FEES:**

Upgrades ordered on the Anniversary Billing Date will be billed for a full month service and will continue each month on the Anniversary Billing Date. Upgrades ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one-time prorata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.

### **4. HOURLY SERVICE FEES:**

For any services offered by Cynaptic on an hourly basis (“Hourly Services”), Customer shall specify the period of time for which the Hourly Services are requested, or cancel at any time. The minimum period of time for which Hourly Services may be requested is sixty (“60”) minutes and Customer will be billed in sixty minute increments. Unless otherwise specifically stated in the MSA, Customers who request Hourly Services agree to all terms and conditions in Cynaptic’s MSA, including but not limited to these TOS and the AUP. Customers will be billed for Hourly Services and receive any SLA credits, if applicable, on the Anniversary Billing Date (as set forth and defined in paragraph 2 above).

### **5. ADDITIONAL SERVICE FEES:**

Additional services, not including Hourly Services, ordered on the Anniversary Billing Date will be billed for the full month of service and will continue each month on the Anniversary Billing Date. Additional services ordered after the normal Anniversary Billing Date will be pro-rated to the



next anniversary date and billed as a one-time pro-rata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.

## **6. ONE TIME FEES:**

One time fees, such as setup fees, administrative fees and late fees are due and payable at the time they are incurred, and/or agreed upon in writing or via ticket with Cynaptic approval. One time fees, such as bandwidth overages and storage usage overages are due and payable upon an invoice following the billing cycle in which they are incurred, and are based on standard rates, or as otherwise agreed upon in writing or via ticket with Cynaptic approval.

## **7. TAXES:**

Customer is responsible for paying all foreign, federal, state, and local sales, use, value added, excise duty and any other taxes assessed with respect to any services, other than those taxes based on Cynaptic net income.

## **8. SERVICE CREDITS:**

SLA credits will be issued to your Customer account and shall be used to offset future billable services. SLA credits shall not be issued as cash back to the Customer nor shall the service credits be transferable to other account holders. SLA credits shall expire if Customer's account is fully terminated.

## **9. CANCELLATION:**

Cynaptic requires a written cancellation notice via email to [accounts@cynaptic.eu](mailto:accounts@cynaptic.eu), a minimum of ninety ("90") days prior to 00:00:01 GMT on the Anniversary Billing Date for discontinuance or downgrades of month-to-month services. Any service cancellation prior to the minimum deadline will remain online until the automated process reclaims your service on the Anniversary Billing Date. All Customer data remaining after the cancellation date will be destroyed for security and privacy reasons, unless otherwise required by law.

## **10. REFUNDS & DISPUTES:**

All services rendered by Cynaptic are non-refundable. This includes, but is not limited to: setup fees, one time fees, monthly service fees, upgrade fees, additional service fees, administrative fees, and late fees. Customers seeking to resolve billing errors are instructed to email their query to [accounts@cynaptic.eu](mailto:accounts@cynaptic.eu). Customer agrees not to chargeback any credit card payments for services rendered. A chargeback of payment for services rendered will result in an additional charge of one hundred fifty Euro ("€150") and will be subject to collection by an authorized collection agency. Customer is responsible for any fees and costs (including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees) incurred by Cynaptic in enforcing collection.

## **11. NON-PAYMENT:**

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All payments are due in full on the Anniversary Billing Date. Failure to remit payment for services on the Anniversary Billing Date is a violation of the TOS. Failure to remit payment by the billing date shall result in a termination of access to all provided services. Failure to remit payment for services within seven (“7”) consecutive days, including the Anniversary Billing Date, shall result in termination of all services and decommissioning of the contracted services. A late fee of twenty Euro (“€20”) will be incurred for failure to remit payment for services on or before the monthly Anniversary Billing Date. A one hundred and fifty Euro (“€150”) reconnect fee will be incurred for failure to remit payment for services after decommissioning. **All Customer data remaining after seven (“7”) days of non-payment will be destroyed for security and privacy reasons, unless otherwise required by law.**

## 12. DATA:

Cynaptic agrees to use best efforts and commercially reasonable best practices when deploying services related to data integrity, backup, security, and retention. These services include, but are not limited to: hard drive storage, raid hard drive arrays, network attached storage, storage area networks, operating system installs, operating system reloads, customer portal information, and other situations involving customer data. Customer assumes ultimate responsibility for data integrity, retention, security, backup, and ownership. In the event that Cynaptic handles Customer data, i.e., when replacing hard drives, Cynaptic will act in accordance with PCI guidelines to ensure data is securely handled.

## 13. IDENTITY USE:

Customer agrees to use the Cynaptic logo, Cynaptic information, and/or related services only as agreed to in writing by Cynaptic.

## 14. PERMITTED USE:

By accepting the MSA, Customer agrees to use Cynaptic services solely for their intended purposes. Customer specifically agrees not to tamper with, make derivative works of, reverse compile, reverse engineer, direct download and/or disassemble any of Cynaptic software or related data. If Customer violates or exceeds the Permitted Use, Cynaptic reserves the right to immediately terminate Customer’s account and will pursue any and all legal remedies available.

## 15. GOVERNING LAW AND JURISDICTION:

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of Cyprus. The parties irrevocably agree that the courts of Cyprus have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

## 16. INDEMNIFICATION:

Customer agrees to indemnify and hold harmless Cynaptic, Cynaptic affiliates, and its respective officers, directors, attorneys, agents, and employees from and against any and all claims,

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demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party under any theory of legal liability arising out of or related to customer's content, illegal activity and/or actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right.

## **17. LIMITATION OF LIABILITY:**

Except as described in the SLA, Cynaptic shall not be liable to customer for harm caused by negligence; gross or otherwise, or wilful misconduct. Similarly, Cynaptic shall not be liable to the customer for lost profits, direct, indirect, special or incidental, consequential or punitive damages. Notwithstanding anything else in this MSA, the maximum aggregate liability of Cynaptic and any of its employees, agents or affiliates, under any theory of law shall not exceed the amount paid by the customer for hosting services for the two months prior to the occurrence of the event(s) giving rise to the claim. This aggregate amount covers all liability arising out of this agreement, covering ALL causes and events.

## **18. ARBITRATION:**

The parties shall attempt to resolve any dispute arising out of or relating to this MSA with a claims value in excess of €1000 through negotiations between senior executives of the parties, who have authority to settle the same.

If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will refer the dispute to arbitration. Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the CAMC Arbitration Rules. The appointing authority shall be the Cyprus' Arbitration and Mediation Centre. The number of arbitrators shall be three ("3"), the place of arbitration shall be Paphos, and the language to be used in the arbitral proceedings shall be English.

Nothing in this clause shall be construed as prohibiting a party or its' affiliate from applying to a court for interim injunctive relief."

## **19. LEGAL COMPLIANCE:**

By accepting this MSA, Customer represents and warrants that he/she has full authority and power to execute this Agreement on behalf of the Company he/she represents, if any. Additionally, Customer warrants that he/she is at least eighteen ("18") years of age or older and are not otherwise legally incapacitated to execute this Agreement.

## **20. ELECTRONIC SIGNATURE:**

Acceptance by Customer of the MSA incorporating the TOS, AUP, SLA, and PA hereby initiates billable services and is deemed complete by payment for the services.