



## **CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (“Agreement”) is made by and between **EME CLOUD, LLC**, a Florida Limited Liability Company (“EmeCloud”), with its principal offices at 1401 Manatee Ave. W., Bradenton, FL 34205, and the entity (“Entity”) named at the end of this agreement (hereby collectively referred to as “Parties” or individually referred to as “Party”)

This Agreement is intended to be governed by the Florida Electronic Transactions Act. You manifest your assent to the terms in this document by any act demonstrating your intent to agree, including clicking any button containing the words “I agree” or similar syntax, below.

You agree that electronic communication (including email) between EmeCloud and you, both now and in the future, is an acceptable and reasonable means of communication. It is suggested that you print this Agreement for your records. If you are unable to print this Agreement, please contact EmeCloud and we will supply you with a copy of this Agreement.

A. The parties anticipate participating in ongoing business relations and/or discussions with each other (the “Transaction”) that will involve the disclosure of Confidential Information (defined below); and,

B. The parties desire to set forth each other’s rights and obligations with respect to the use, dissemination and protection of the Confidential Information.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is understood and agreed as follows:

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1) **Parties.** The party being furnished Confidential Information about or relating to the Transaction, directly or indirectly, is referred to herein as the “Recipient”, and the party furnishing or providing such information is referred to herein as the “Discloser”.

2) **Permitted Use.**

a) *Defined.* The term “Confidential Information” means the following information made available to the Recipient by the Discloser before and after the date of this Agreement: (i) information transmitted in written, oral, magnetic, electronic or any other medium; (ii) all copies and reproductions, in whole or in part, of such information; and (iii) all summaries, analyses, compilations, studies, notes, records and works of authorship which contain, reflect, or are generated or derived from such information. Confidential Information shall not include information that: (w) has become part of the public domain through no act or omission of the Recipient; (x) was lawfully disclosed to the Recipient without restriction on disclosure by a third party; (y) was developed independently by the Recipient; or (z) is or was lawfully and independently provided to the Recipient prior to disclosure hereunder, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.

b) *Use.* Each party hereby agrees that the Confidential Information of the Discloser shall be used solely for the purpose of the Transaction, and agrees to reveal Confidential Information only to its affiliates, subsidiaries, directors, officers, employees and agents (collectively “Affiliates”) on a “need to know” basis. Each party agrees that, at all times, a

Recipient’s disclosure to its Affiliates shall be tailored to reveal only the minimum amount of information necessary to fulfill the Recipient’s duties or obligations hereunder.

c) *Advisors.* Unless expressly authorized under this Agreement, a Recipient shall not disclose to any third party any of the Discloser’s Confidential Information without the Discloser’s prior written consent; provided, however, that the Recipient may disclose Confidential Information to its respective accountants, attorneys and other confidential advisors (collectively, “Advisors”) who need to know such information for the purpose of assisting the Recipient in connection with the Transaction. Recipient agrees to be responsible for any breach of this Agreement by its Affiliates and Advisors, and Recipient agrees that its Affiliates and Advisors will be advised by Recipient of the confidential nature of such information and shall agree to be bound by this Agreement.

d) *Transaction.* Neither party nor its Affiliates or Advisors, without the prior written consent of the other party, will disclose to any person the fact that Confidential Information has been provided, that discussions or negotiations are taking place with respect to the Transaction, or the terms, conditions, or other facts of such Transaction, including the status thereof.

e) *Due Care.* Recipient shall exercise the same degree of care with respect to the Confidential Information it receives from Discloser as Recipient normally takes to safeguard and preserve its own confidential and proprietary information, which in all cases shall be at least a commercially reasonable level of care.

- 3) **“Information”, “Intellectual Property” or “IP”** means or includes, but not be limited to, information which relates to:
- a) Pricing and Price Lists as specified in the Reseller Price List and as presented to Reseller in the Control Panel;
  - b) Financial information about, or relating to, sales, financial projections, production and/or operational costs and profit and loss margins.
  - c) Engineering, business, software and/or hardware processes, settings, specifications or configurations;
  - d) Current or prospective clients or customers.
  - e) Former, current or prospective Eme Channel Reseller, Authorized Partners or Sales Agents
  - f) Market information, analysis or research not generally available to the public;
  - g) Marketing materials, training materials and processes not generally available to the public
  - h) Software, software code (whether as a whole or part) or software tools.
- 4) **Ownership.** Recipient acknowledges and agrees that any Confidential Information of the Discloser, in whatever form or format such information is conveyed or disclosed, is the sole and exclusive property of Discloser. Recipient agrees that upon the request of, and as directed by, Discloser, Recipient shall either (at the election of Discloser) return to Discloser all such information, retaining no copies thereof, or destroy all of Discloser’s Confidential Information in Recipient’s possession or control and promptly certify to Discloser the information, and all copies of the information, have been destroyed.
- 5) **Remedies.** The parties acknowledge that all Confidential Information is considered to be proprietary and of competitive value, and in many instances, the trade secrets of Discloser. The parties agree that because of the unique nature of the Confidential Information, any breach of this Agreement would cause irreparable harm and money damages and other remedies available at law in the event of a breach would not be adequate to compensate for any such breach. Accordingly, the non-breaching party shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including, without limitation, injunctive relief and specific performance, as a remedy for any such breach. Such relief shall be in addition to, and not in lieu of, all other remedies available at law or in equity to the non-breaching party.
- 6) **Compelled Disclosure.** If Recipient or any of its Affiliates or Advisors is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information (including the fact that discussions or negotiations are taking place with respect to the Transaction), Recipient shall immediately notify Discloser in writing of such requirement so that Discloser may seek a protective order or other appropriate remedy and/or waive Recipient’s compliance with the provisions hereof. Recipient will use its best efforts, at Discloser’s expense, to obtain or

assist Discloser in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, Recipient may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that Recipient has been advised by written opinion of counsel reasonably acceptable to Discloser that it is legally compelled to disclose; provided, however, that Recipient agrees to use its best efforts to obtain assurance that confidential treatment will be accorded such Confidential Information by the person or persons to whom it was disclosed.

7) **No License.** No license or conveyance of any rights held by either party under any discoveries, inventions, patents, trade secrets, copyrights, or other form of intellectual property is granted or implied by this Agreement or by the disclosure of any Confidential Information pursuant to this Agreement.

8) **No Obligations.** This Agreement shall not constitute, create, give effect to or otherwise imply (i) a joint venture, pooling arrangement, partnership or formal business organization of any kind, or (ii) any obligation or commitment on either party to submit a proposal or to enter into a further contract or business relationship with the other party, or (iii) any obligation to disclose, supply or otherwise communicate any information, general or specific, to the other party.

9) **No Representations / Warranties.** Each Party understands and agrees that the Discloser is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information. Discloser shall not be liable to Recipient or to any other person resulting from the permitted disclosure or permitted use of the Confidential Information.

10) **Term; Termination.** This Agreement shall begin on the latest date of the signatures of the parties below, subject only to the exchange of signature pages by the parties. Unless otherwise terminated by the mutual, written consent of both parties, this Agreement shall continue unabated for a term of five (5) years, calculated from the last date on which Confidential Information was exchanged between the parties. Notwithstanding the foregoing, the parties agree that the parties shall never reveal a Discloser’s trade secrets to any third party at any time and, further, this covenant to keep trade secrets confidential shall survive the termination of this Agreement.

11) **Miscellaneous.** This Agreement shall bind and inure to the benefit of the parties hereto and their successors and permitted assigns. This Agreement shall be governed by the laws of Florida, without reference to conflict of laws principles. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties. Neither party may assign its rights or obligations hereunder without the other party’s written consent. This Agreement

may be signed and transmitted electronically in counterparts,  
and each counterpart shall be deemed an original for all  
purposes.

**AGREED AND ACCEPTED (fields required in the electronic form)**

Date: \_\_\_\_\_

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

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

Title/Position: \_\_\_\_\_

Email address: \_\_\_\_\_

Office Number: \_\_\_\_\_

Mobile Number: \_\_\_\_\_

Company Address and Street: \_\_\_\_\_

Company City, State, Zip Code: \_\_\_\_\_

Company Website: \_\_\_\_\_

**I AGREE & ACCEPT**