

SWIVEL SECURE LIMITED - CLOUD SOFTWARE SERVICE

END USER LICENSE AGREEMENT ("EULA")

BETWEEN **SWIVEL SECURE LIMITED** (English company number 04068905) ("**Supplier**") and the person or entity ("**Customer**") which has contracted to purchase a subscription for a Service Offering (as defined below) from Supplier or a reseller appointed by Supplier ("**Reseller**").

ACTIVATION OF CLOUD SOFTWARE. Supplier or the Reseller shall provide Customer with an activation key or registration following Supplier's acceptance of the Customer's order for the cloud software service, the maintenance and support services provided by Supplier in respect of the cloud software service and the associated documentation (collectively, "**Service Offering**").

LICENSE. Supplier grants Customer a personal, non-exclusive license to access and use the Service Offering subject to the terms and conditions set out in this EULA.

Customer agrees:

(i) to use the Service Offering solely for its own internal business purposes and in accordance with the usage level for each activation key or registration;

(ii) not to subvert or attempt to disable the activation key or registration (and any such action shall be conclusively presumed a material breach of this EULA);

(iii) not to reverse engineer, disassemble, reverse translate, decompile, or in any other manner decode the Service Offering, in order to derive the source code form or for any other reason (and any such action shall be conclusively presumed a material breach of this EULA);

(iv) not to make any modifications, enhancements, adaptations, or translations to or of the Service Offering, except as may result from those Customer interactions with the Service Offering associated with normal use and either explained in the associated documentation or as determined by Supplier;

(v) to pay the license and other fees invoiced by the Supplier and/or Reseller. Where license fees are calculated based on Customer's access of the Service Offering, Supplier alone shall determine the level of access, such as the number of Customer's users accessing the Service Offering, from access reports run in connection with the Customer and, if necessary, from Supplier's own enquiries and investigations. In the absence of manifest errors Supplier's determination shall be final;

(vi) that the right to use the Service Offering may be restricted by a measure of access based upon number of users and any expansion beyond the specified access level shall require payment to Supplier or a Reseller of an incremental charge or another license fee at Supplier's prevailing applicable price, following which payment Supplier or Reseller shall provide Customer with an activation key or registration for the additional users;

(vii) not to assign, subcontract, sub-license, lease, rent, loan, distribute, sell or otherwise transfer the Service Offering or any rights acquired under this EULA to any third party except as expressly permitted hereunder;

(viii) not to use the Service Offering for the purpose of providing cloud or managed services, or for commercial purposes to provide services to third parties;

(ix) to adhere to all laws, rules and regulations applicable to Customer's use of the Service Offering;

(x) to be responsible for all activities that occur under Customer's account, regardless of whether the activities are undertaken by Customer, Customer's employees or a third party (including Customer's contractors or agents) and, except to the extent caused by Supplier's breach of this EULA, Supplier and Supplier's affiliates are not responsible for unauthorised access to Customer's account;

(xi) to contact Supplier immediately if Customer believes an unauthorised third party may be using Customer's account or if Customer's account information is lost or stolen; and

(xii) to provide information or other materials related to Customer's use of the Service Offering as reasonably requested by Supplier to verify Customer's compliance with this EULA.

Customer will be deemed to have taken any action that it permits, assists or facilitates in respect of any action taken by any third party in relation to this EULA or use of the Service Offering.

CHANGES. Supplier may change, discontinue, or deprecate any part of the Service Offering (including the Service Offering as a whole) or change or remove features or functionality of the Service Offering from time to time. Supplier will notify Customer of any material change to or discontinuation of the Service Offering by either (i) notifying Customer in writing, including, without limitation, by email or (ii) providing written details at Customer's online login page for the Service Offering, with the changes or discontinuation becoming effective on the date indicated in the written notice or at Customer's online login page, as applicable.

Supplier may modify this EULA at any time by either, (i) updating the EULA and sending the updated version to Customer, including, without limitation, by email or (ii) uploading any change, update or other modification online at Customer's online login page for the Service Offering from time to time and the modified terms will become effective as soon as they are made available to view at such page. Any changes during the term shall not affect Customer's obligations under this EULA or the applicable order and Customer will not be entitled to any refund, credit or other compensation due to any such changes.

Customer acknowledges that features of the Service Offering may incorporate or interoperate with third parties' software and/or services (each being a "**Third Party Service**") and depend on the continuing availability of each Third Party Service for use with the Service Offering. Furthermore, the use of the Service Offering may depend on the acceptance of separate terms and conditions applicable to the use of Third Party Services which the relevant third parties may change with or without notice in their absolute discretion. Supplier may update, change or modify the Service Offering as a result of a change in, or unavailability of, Third Party Services as described above. If any third party ceases to make its Third Party Service available on reasonable terms for the Service Offering, as determined by Supplier in its sole discretion, Supplier may cease providing access to the Service Offering without any liability to Customer. Any changes to Third Party Services, including their availability or unavailability, during the term does not affect Customer's obligations under this EULA or the applicable order, and Customer will not be entitled to any refund, credit or other compensation due to any such changes.

MAINTENANCE. Supplier shall have no obligation to provide any maintenance or support for the Service Offering except such maintenance and support which Supplier provides under the terms of its then current Cloud Service Maintenance and Support Agreement. Supplier may modify its Cloud Service Maintenance and Support Agreement at any time by either, (i) updating the Cloud Service Maintenance and Support Agreement and sending the updated version to Customer, including, without limitation, by email or (ii) uploading any change, update or other modification

online at Customer's online login page for the Service Offering from time to time and the modified terms will become effective as soon as they are made available to view at such page.

Customer may choose to obtain additional maintenance, support and other services from the Reseller but Supplier shall not be responsible or liable to Customer in any way in connection with the provision or receipt of those services, including where any action or omission by the Reseller causes the Supplier to be unable to comply with its obligations under this EULA.

If Customer is subscribing to the Service Offering as a replacement for an alternative authentication solution provided by Supplier (for example, but without limitation, a perpetual Supplier software license) and Customer purchased maintenance and support in relation to that alternative solution, Customer shall not be entitled to any credit in respect of the unutilised portion of such purchased maintenance and support.

OWNERSHIP. Customer is granted no title or ownership rights, in whole or in part, in or to the Service Offering and/or any modification, update, upgrade, new version or maintenance release provided by Supplier as part of any maintenance and support services ("**M&S Releases**") and Customer acknowledges and agrees that title to all Intellectual Property Rights in and to the Service Offering and all M&S Releases are and shall remain the property of Supplier and/or Supplier's suppliers. All grants of rights to use intellectual property intended to be accomplished by this EULA are explicitly stated. No other grants of such rights shall be inferred or shall arise by implication. Customer shall affix to each copy of the Service Offering made by it a reproduction of the copyright notices, trade-marks, and all other proprietary legends and/or logos of Supplier and/or Supplier's suppliers, appearing on the original copy of such Service Offering delivered to Customer and retain the same without alteration on all original copies.

"**Intellectual Property Rights**", for the purpose of this EULA, shall mean all industrial and intellectual property rights of Supplier arising in connection with the Service Offering including without limitation, the rights of Supplier in patents, trade and service marks (whether registered or unregistered), domain names, inventions (whether or not capable of protection by registration), know-how, registered designs, unregistered design rights, copyrights, databases, applications for any of the foregoing together with the right to make such applications and copyright in all manufacturing data, drawings, specifications, manuals, instructions, plans, designs, topographies, websites and computer programs together with all information of a confidential nature and all rights under any agreement between Supplier and any third party in relation to the use of any of the above in any jurisdiction.

CONFIDENTIALITY. The Service Offering may contain trade secrets and confidential information of Supplier and/or its suppliers including the specific design, structure and logic of individual Service Offering programs, their interactions with other service offerings, both internal and external, and the programming techniques employed therein. Except as explicitly permitted by this EULA, Customer shall not allow anyone other than Customer's employees on a "need to know" basis to have physical access to the Service Offering.

Customer shall:

(i) keep the Service Offering confidential for the benefit of Supplier and Supplier's suppliers using no less a degree of care than it uses to protect its own most confidential and valuable information; and

(ii) issue instructions to each of its authorized employees to whom the Service Offering is disclosed, advising them of the confidential nature of the Service Offering, provide them with a summary of the requirements of this EULA and shall cause them to comply with this EULA.

SUSPENSION. Supplier may suspend Customer's right to access or use any portion or all of the Service Offering immediately upon notice to Customer if Supplier determines that:

(i) Customer's use of or registration for the Service Offering (a) poses a security risk to the Service Offering or any third party, (b) may adversely impact the Service Offering or the systems of any other customer of Supplier or Reseller, (c) may subject Supplier, its affiliates, or any third party to any liability, or (d) may be fraudulent; or

(ii) Customer has ceased to operate in the ordinary course of business, made an assignment for the benefit of creditors or similar disposition of Customer's assets, or has become the subject of any bankruptcy, reorganisation, liquidation, dissolution or similar proceeding; or

(iii) Customer is in breach of this EULA; or

(iv) Customer is in default under its payment obligations to Supplier or Reseller in respect of the Service Offering.

EFFECT OF SUSPENSION. If Supplier suspends Customer's right to access or use any portion or all of the Service Offering:

(i) Customer remains responsible for all fees and charges that it has incurred through the date of suspension; and

(ii) Customer remains responsible for any applicable fees and charges for the Service Offering to which it continues to have access and fees and charges for in-process tasks completed after the date of suspension.

Supplier's right to suspend Customer's right to access or use the Service Offering is in addition to Supplier's right to terminate this EULA pursuant to this EULA.

TERM. Access to and use of the Service Offering shall be provided for the period of time defined in the relevant purchase order document, unless earlier suspended or terminated in accordance with this EULA or the purchase order.

TERMINATION.

Supplier may immediately terminate this EULA by written notice to Customer if:

(i) Customer commits a material breach of this EULA which is not capable of remedy;

(ii) Customer commits a material breach of this EULA which is capable of remedy and Customer fails to remedy such breach within 10 business days of receipt of written notice from Supplier requiring it to remedy such breach;

(iii) Customer's performance under this Agreement results in material reputational harm to Supplier;

(iv) in the reasonable opinion of Supplier, Customer behaves in a manner which is likely to bring Supplier into disrepute or otherwise to compromise or adversely affect the reputation and standing of Supplier or the Service Offering.

(v) any act or omission by Customer results in a suspension described in this EULA;

(vi) Supplier's relationship with a third party partner who provides software or other technology Supplier uses to provide the Service Offering expires, terminates or requires Supplier to change the way it provides the Service Offering;

(vii) Supplier believes that providing the Service Offering could create a substantial economic or technical burden or material security risk for Supplier;

(viii) termination is required in order to comply with the laws or requests of government entities; or

(ix) Supplier determines that use of the Service Offering by Customer or Supplier's provision of the Service Offering to Customer has become impractical or unfeasible for any legal or regulatory reason.

EFFECT OF TERMINATION. Immediately upon termination of this EULA for any reason, Customer shall have no further right to use the Service Offering and shall, at Supplier's option, either destroy or deliver to Supplier, at Customer's expense, the originals and all full and partial copies of documentation associated with the Service Offering in the possession or under the control of Customer. Customer shall certify to Supplier that it has carried out any destruction required by Supplier. Supplier reserves the right to take such action as it considers reasonably necessary to prevent the use of the Service Offering following the termination of this EULA and Customer irrevocably and unconditionally consents to the taking of such action by Supplier.

The provisions of the paragraphs labelled Ownership, Confidentiality, Indemnification, Limitation of Liabilities, Use of Name and Choice of Law and others which by their nature are intended to survive together with any interpretative provisions and reporting requirements needed to interpret this EULA and/or Customer's use of the Service Offering shall survive any termination of this EULA. Any termination of this EULA shall be without prejudice to any accrued rights of either party and any other rights and remedies that either party may have at law or in equity.

WARRANTIES

- (i) Supplier warrants that it has the right to enter into this EULA and to grant to Customer a license to use the Service Offering as contemplated by this EULA.
- (ii) Supplier warrants that the Service Offering will conform in all material respects to the specification contained in the associated documentation for the Service Offering for a period of 5 business days from the date on which Customer first accesses the Service Offering (the "**Warranty Period**");
- (iii) If, within the Warranty Period, Customer notifies Supplier of any material non-compliance of the Service Offering with its associated documentation, in consequence of which there is a failure to conform to any of the warranties in (ii) above, Supplier shall, at Supplier's sole determination, as the sole available remedy, do one of the following within 21 days of receipt of Customer's notification:
 - (A) repair the Service Offering; or
 - (B) provided that Supplier has used all reasonable efforts to repair the Service Offering, terminate this EULA in respect to the affected components of the Service Offering and at Supplier's sole determination, refund, (or procure the refund to) Customer a proportion of the fees paid by Customer that reflects the period of time during which and the extent to which Customer was unable to use the affected components of the Service Offering.

In the absence of a manifest error, the Supplier's determination under this clause shall be final.

INDEMNIFICATION. Customer will defend, indemnify, and hold harmless Supplier, its affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs and expenses (including attorneys' fees) arising

out of or relating to any claim concerning: (a) Customer's use of the Service Offering (including any activities under Customer's account and use by Customer's employees and personnel) and (b) breach of this EULA or violation of applicable law by Customer. If Supplier or its affiliates are obligated to respond to a legal order or process described above, Customer will also reimburse Supplier for legal fees, as well as Supplier's employees' and contractors' time and materials spent responding to the legal order or process at Supplier's then-current hourly rates.

Supplier will promptly notify Customer of any claim subject to the above paragraph, but Supplier's failure to promptly notify Customer will only affect its obligations under the above clause to the extent that Supplier's failure prejudices Customer's ability to defend the claim. Customer may: (a) use counsel of its own choosing (subject to Supplier's written consent) to defend against any claim; and (b) settle the claim as Customer deems appropriate, provided that Customer obtains Supplier's prior written consent before entering into any settlement. Supplier may also assume control of the defence and settlement of the claim at any time.

LIMITATION OF LIABILITIES.

THE SERVICE OFFERING IS PROVIDED "AS IS". EXCEPT AS EXPRESSLY STATED IN THIS EULA SUPPLIER AND ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERING, INCLUDING ANY WARRANTY THAT THE SERVICE OFFERING OR THIRD PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT PROVIDED BY CUSTOMER, WILL BE SECURE OR WILL NOT BE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, SUPPLIER AND ITS AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

SUPPLIER AND ITS AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER SUPPLIER NOR ANY OF ITS AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE SERVICE OFFERING, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS EULA OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICE OFFERING, (II) SUPPLIER'S DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERING, OR, (III) (WITHOUT LIMITING ANY OBLIGATIONS UNDER SERVICE LEVEL AGREEMENT(S)), ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY CUSTOMER IN CONNECTION WITH THIS EULA OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICE OFFERING; OR (D) ANY UNAUTHORISED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF CUSTOMER'S CONTENT OR OTHER DATA. IN ANY CASE, SUPPLIER AND ITS AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT AND THE CLOUD SERVICE MAINTENANCE AND SUPPORT AGREEMENT WILL BE LIMITED TO THE AMOUNT CUSTOMER ACTUALLY PAYS FOR THE SERVICE OFFERING THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

The limits on liability set out in this section (*Limitation of Liabilities*) shall not apply in respect of:

- (i) any liability for death or personal injury resulting from a party's negligence;
- (ii) any liability for fraud or fraudulent misrepresentation by a party or its employees or agents; and
- (iii) any other liability to the extent it cannot be lawfully excluded.

USE OF NAME. Customer agrees that Customer's purchase of a Service Offering may be disclosed by Supplier to third parties through the use of Customer's name and logo (if any) on Supplier's website and in Supplier's marketing and promotional materials.

Supplier acknowledges and agrees that all intellectual property rights as exist in and to Customer's name and logo are, and shall remain, the property of Customer, and the use by Supplier of Customer's name and/or logo shall not grant Supplier any intellectual property rights in and to such name and logo for any other purpose.

If Customer gives written notice to Supplier that it wishes Supplier to cease disclosing Customer's purchase of a Service Offering to third parties and to cease using Customer's name and logo (if any) on Supplier's website and in Supplier's marketing and promotional materials, Supplier shall as soon as reasonably practicable following receipt of such notice comply with such request. For the avoidance of doubt, Supplier shall not be required to recall marketing and promotional materials already in circulation at the time that Supplier receives such notice from Customer.

HOSTING. The hardware required to operate the Service Offering may be hosted by either Supplier itself or by a third party (as applicable, the "**Host**"). Supplier reserves the right to change Host at any time and to change Customer's unique IP address relating to Customer's use of the Service Offering. Supplier shall notify Customer in writing of any change in Host and Customer IP address.

ACCEPTANCE OF LICENSE. In the event of any conflict between the terms and conditions of this EULA and the terms and conditions of any license agreement accepted by Customer on accessing the Service Offering, the latest version of the EULA made available to Customer under the second paragraph of the section entitled "CHANGES" above shall take precedence and if no such version has been made available, this version shall take precedence.

ASSIGNMENT. Customer may not assign all or any of its rights under this EULA without the prior written consent of Supplier. Any attempted assignment of rights and/or transfer of the Service Offering not specifically allowed shall be void and conclusively presumed a material breach of this EULA. Customer may not sub-contract any of its obligations under this EULA without the prior written consent of Supplier. If such consent is given, Customer will still be responsible for the performance of any of its obligations under this EULA and Customer will not be relieved from liability for the performance of any sub-contracted obligations.

AUDIT. The Customer shall provide Supplier and its auditors with, and allow Supplier and its auditors access to, such information, records, materials and explanations as Supplier or its auditors reasonably requires in relation to its compliance with this EULA. Supplier shall provide as much notice of the audit as is reasonably practicable. Each party shall bear its own costs of the audit.

ENTIRE AGREEMENT. This EULA constitutes the entire agreement between Supplier and Customer with regard to the subject matter hereof.

WAIVERS. The waiver by Supplier or Customer of a breach or a default of any provision of this EULA by the other shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either to exercise or avail itself of any right,

power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such party.

NO AGENCY OR PARTNERSHIP. Nothing contained in this EULA shall be deemed to imply or constitute either party as the agent or representative of the other party, or both parties as joint ventures or partners for any purpose.

COMPLIANCE WITH LAWS. Customer shall comply with all applicable laws, legislation, rules, regulations, governmental requirements and industry standards existing in any jurisdiction in which Customer uses the Service Offering or into which Customer directly or indirectly distributes (in accordance with this EULA) the Service Offering.

SERVICE ANALYSIS. Supplier may (i) compile statistical and other information related to the performance, operation and use of the Service Offering, and (ii) use data from the Service Offering in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses (i) and (ii) are collectively referred to as "**Service Analyses**"). Supplier may make Service Analyses publicly available; however, Service Analyses will not incorporate information in a form that could serve to identify the Customer or any individual and Service Analyses will not constitute personal data. Supplier retains all Intellectual Property Rights in Service Analyses.

EXPORT LAWS. Customer acknowledges that the Service Offering has been designed without regard to geographic location of the Customer or its users. The Customer is solely responsible for the authorization and management of its user accounts, as well as export control and geographic transfer of its data. Customer shall not, in any circumstances export, directly or indirectly, any data or any products, including software, incorporating any such data, in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval. The Customer shall not use the Service Offering for any purpose prohibited by Export Control Laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

INVALIDITY. If any provision of this EULA is deemed illegal, invalid, unenforceable, unlawful or void then that provision shall be deemed severed from this EULA and shall not affect the validity and enforceability of any remaining provisions.

INTERPRETATION. In this EULA: (i) "**business day**" means a day other than a Saturday or Sunday, when banks are open for the transaction of normal banking business in the City of London; (ii) **general words** shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things; and (iii) any **English statutory provision** or English legal term for any action, remedy, method of judicial proceeding, document, legal status, court, official or other legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English statutory provision or English legal term.

NOTICE. Except where otherwise indicated in this EULA, any notice or other communication under or in connection with this EULA shall be in writing in the English language and:

- (i) if given by Customer, must be sent marked for the attention of the CEO or Managing Director and shall be delivered personally or sent by pre-paid registered

or recorded delivery post (and air mail if overseas) to Supplier's address at Equinox 1, Audby Lane, Wetherby LS22 7RD.

- (ii) if given by Supplier, can be delivered personally, sent by pre-paid registered or recorded delivery post (and air mail if overseas), by facsimile or by email to a Customer's address, or can be given by making it available on Supplier's website or by sending it using other electronic media.

In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:-

if delivered personally, when left at the address referred to above;

if sent by mail, other than air mail, two days after posting it;

if sent by air mail, seven days after posting it;

if made available on any website address, at the time it was first made available to read at any of those websites; or

if sent by facsimile, email or other electronic media, when sent in full.

THIRD PARTY RIGHTS. The parties do not intend this EULA (or any part of it) to be enforceable by any person who is not a party to these terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

CHOICE OF LAW. This EULA shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts in connection with any dispute, matter or action arising out of this EULA.

EXECUTION. Customer has shown its acceptance of the terms of this EULA by accessing the Service Offering.