

**SWIVEL SECURE LIMITED (“SWIVEL”)**

**STANDARD TERMS & CONDITIONS GOVERNING THE  
RESALE OF THE SWIVEL CLOUD SERVICE BY NON UNITED STATES RESELLERS  
WHERE SWIVEL AND THE RESELLER HAVE NOT EXECUTED A CLOUD SERVICE  
RESELLER AGREEMENT (“THE CONDITIONS”)**

1. **DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions the following expressions have the following meanings:

<b>“Advance Payment”</b>	has the meaning given in clause 3.4;
<b>“Advance Subscription”</b>	means a subscription to the Service Offering having the characteristics set out in clause 3;
<b>“Advance Subscription Contract”</b>	means an agreement between Customer and Reseller for the purchase by Customer of an Advance Subscription;
<b>“Billing Quarter”</b>	means each consecutive period of three months during the Subscription Term of a Flexible Subscription, the first such three month period commencing on the Subscription Commencement Date. (By way of example, if the Subscription Commencement Date is 14 February, the first Billing Quarter shall start on 14 February and end on 13 May and the second Billing Quarter shall start on 14 May and end on 13 August);
<b>“Business Day”</b>	means a day (other than a Saturday or Sunday) on which banks are generally open for the conduct of normal banking business in London;
<b>"Customer"</b>	means a person or entity who has contracted to purchase a Subscription from Reseller;
<b>“Distributor”</b>	means a duly authorized distributor of the Service Offering appointed by Supplier;
<b>"EULA"</b>	means the end user license agreement relating to the Service Offering, the terms of which are set forth on the applicable page of Supplier’s website or have been provided to Reseller by Supplier in writing;
<b>"Export Control Laws"</b>	has the meaning given in clause 9.2;
<b>“Flexible Subscription”</b>	means a subscription to the Service Offering having the characteristics set out in clause 4;
<b>“Flexible Subscription Contract”</b>	means an agreement between Customer and Reseller for the purchase by Customer of a Flexible Subscription;

<b>"Highest User Number"</b>	has the meaning given in clause 4.7;
<b>"Intellectual Property Rights"</b>	means 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;
<b>"Percentage Discount"</b>	means such percentage discount as has been agreed in writing between Supplier and Reseller;
<b>"PO"</b>	means a purchase order;
<b>"Price Per User"</b>	has the meaning given in clause 3.4 in respect of Advance Subscriptions and in clause 4.5 in respect of Flexible Subscriptions, as applicable;
<b>"Quarterly Payment"</b>	has the meaning given in clause 4.7;
<b>"Reseller"</b>	means the reseller which places a PO with Supplier in relation to a Subscription;
<b>"Service Offering"</b>	means access to the cloud service provided by Supplier, as such service is more fully described on the applicable page of Supplier's website, including any software component, technology and associated documentation used or provided by Supplier to offer such service;
<b>"Subscription"</b>	means a subscription to the Service Offering, being either an Advance Subscription or a Flexible Subscription;
<b>"Subscription Commencement Date"</b>	has the meaning given in clause 3.3 in respect of Advance Subscriptions and in clause 4.3 in respect of Flexible Subscriptions, as applicable;
<b>"Subscription Contract"</b>	means an Advance Subscription Contract or a Flexible Subscription Contract, as applicable;
<b>"Subscription Term"</b>	has the meaning given in clause 3.2.2 in respect of Advance Subscriptions and in clause 4.2.2 in respect of Flexible Subscriptions, as applicable;
<b>"Supplier"</b>	means Swivel Secure Limited, a company registered in England with company number 04068905 whose

registered office is at Equinox 1, Audby Lane,  
Wetherby LS22 7RD;

**“Support and Maintenance Agreement”**

means the document detailing the maintenance and support services to be provided by Supplier to Customers in respect of the Service Offering, the terms of which are set forth on the applicable page of Supplier’s website or have been provided to Reseller by Supplier in writing;

**"Trade Marks"**

means any registered or unregistered trade or service mark owned by Supplier and used in connection with the Service Offering and such other marks or names as Supplier may from time specify in connection with the Service Offering.

1.2 In interpreting these Conditions:

- 1.2.1 references to clauses are to clauses of these Conditions unless stated otherwise;
- 1.2.2 references to the singular include the plural and vice versa and references to a gender include both genders;
- 1.2.3 references to a "**person**" include an individual, firm, unincorporated association or body corporate;
- 1.2.4 the headings to these Conditions shall be ignored;
- 1.2.5 where reference is made to a statutory provision this includes all prior and subsequent enactments, amendments and modifications relating to that provision and any regulations made under it;
- 1.2.6 general words introduced by the word "other" shall not be given a restrictive meaning because they are preceded by words indicating a particular class of acts, matters or things; and
- 1.2.7 general words shall not be given a restrictive meaning because they are followed by particular examples intended to be embraced by the general words.

2. **GENERAL**

- 2.1 These Conditions shall govern the purchase of Subscriptions by the Reseller to the exclusion of any other terms and conditions subject to which any PO is made, or purported to be made, by the Reseller. If, however, the Supplier and the Reseller have executed a reseller agreement governing the sale and purchase of Subscriptions, these Conditions shall not apply and the terms and conditions of such reseller agreement shall exclusively govern the sale and purchase of Subscriptions.
- 2.2 No variation to these Conditions shall be binding unless previously agreed in writing between the authorised representatives of each of the Supplier and the Reseller.
- 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

- 2.4 No PO submitted by the Reseller shall be deemed to be accepted by the Supplier unless and until confirmed in writing by an authorised representative of the Supplier. The Supplier shall be entitled to refuse to accept any PO for any reason at its sole discretion without incurring any liability whatsoever, even if the Supplier has previously accepted an order from the Reseller.
- 2.5 No PO which has been accepted by the Supplier may be cancelled by the Reseller except with the agreement in writing of the Supplier and on such terms as the Supplier in its absolute discretion requires.
- 2.6 All POs placed by Reseller for its Customers' end use shall be placed by Reseller with either (a) the applicable Distributor for the country in which the applicable Customer is located or, (b) if there is no such Distributor, the Supplier. POs shall be accepted by Supplier at its office at Equinox 1, Audby Lane, Wetherby LS22 7RD or such other location as Supplier shall notify to Reseller from time to time upon the terms and conditions contained herein. A PO is considered as accepted by Supplier unless Supplier notifies Reseller in writing within 3 Business Days that that order has not been accepted as placed. Each order when accepted by Supplier will constitute a separate contract. Each order which is accepted by a Distributor will constitute a separate contract between that Distributor and Reseller.
- 2.7 Any and all expenses, costs and charges incurred by the Reseller in the performance of its obligations under or in connection with these Conditions and/or Subscriptions shall be paid by Reseller unless the Supplier has expressly agreed beforehand in writing to pay such expenses, costs and charges.
- 2.8 The Reseller shall be responsible for the collection, remittance and payment of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, sale, lease or other distribution of the Service Offering.
- 2.9 All payments to be made by Reseller to Supplier under or in connection with these Conditions shall be made by no later than 30 days (or such later number of days as is stated in a specific, written agreement between Supplier and Reseller) following receipt of the relevant invoice in full in immediately available funds, and free of any set-off or counterclaim or any other deduction whatsoever (other than any deduction or withholding of tax as required by law). If Reseller fails to pay any sum payable by Reseller to Supplier on its due date, it shall pay interest on the unpaid sum at a rate per annum equal to ten per cent from the due date until the date of actual payment.
- 2.10 The sale of Subscriptions is conditional on the acceptance of the EULA by the Customer, the terms and conditions of which must be accepted in order for the Subscription to commence and for the Service Offering to be capable of operation.
3. **PROVISIONS RELATING TO THE ORDERING, DELIVERY AND SALE OF ADVANCE SUBSCRIPTIONS.**
- 3.1 Once a Customer has entered into an Advance Subscription Contract, Reseller will promptly place a PO with either the applicable Distributor, or with Supplier, containing the required information set out in clause 3.2. Reseller shall provide a Customer with no less than 30 days from the effective date of the Advance Subscription Contract to pay for the ordered Advance Subscription. Neither Supplier nor any Distributor will be held responsible for any late or non-payment by a Customer to Reseller and Reseller acknowledges that Supplier (or, as the case may be, the applicable Distributor) may invoice Reseller (in the case of Supplier, in accordance with clause 3.4), and Reseller

shall pay Supplier (or, as the case may be, the applicable Distributor), regardless of whether Reseller has been paid by Customer.

3.2 Reseller may place POs for Advance Subscriptions with either the applicable Distributor, or with Supplier. Each PO must state the following items with respect to the applicable Advance Subscription in order to be capable of acceptance:

3.2.1 that it is an Advance Subscription and the name and details of the Customer;

3.2.2 the term of the Advance Subscription Contract from the Subscription Commencement Date ("**Subscription Term**") which, subject to clause 3.6, must be a number of complete months with a minimum of 12 months; and

3.2.3 the number of users of the Service Offering (the "**Fixed User Number**").

If any item is absent, or does not comply with the above requirements, the PO may be rejected.

3.3 Immediately upon acceptance by Supplier of a PO for an Advance Subscription (from either Reseller or a Distributor), Supplier shall be deemed to be irrevocably authorized, by the entity which placed the PO with Supplier, to install and activate an appliance for the purpose of the operation of that Advance Subscription. The date upon which Supplier activates such appliance shall be the date upon which the Advance Subscription shall commence (the "**Subscription Commencement Date**"). Supplier shall notify Reseller promptly following activation of such appliance. It shall be the responsibility of Reseller to notify the Customer of such activation and of the Subscription Commencement Date.

3.4 Supplier, or, as applicable, the Distributor, shall invoice Reseller at the commencement of the Subscription Term for an amount (the "**Advance Payment**") equal to the sum of the Fixed User Number multiplied by the price per user per month ("**Price Per User**") multiplied by the number of months of the full Subscription Term, minus the Percentage Discount. The Price Per User shall be, in the absence of a specific, written agreement between Supplier and Reseller which states an alternative price per user, the then current applicable per user per month list price of Supplier for the applicable usage band.

3.5 It shall not be permitted to reduce the Fixed User Number at any time during the Subscription Term. If at any time during the Subscription Term, the Customer's actual usage of the Service Offering is below the Fixed User Number (including, without limitation, where the Customer does not use the Service Offering at all), no credit shall be given for such lower usage and neither Supplier, nor, if applicable, the Distributor, shall be liable to repay to Reseller any amount of the Advance Payment because of such lower usage.

3.6 If during the Subscription Term, the Customer wishes to increase its usage of the Service Offering above the Fixed User Number stated in its original Advance Subscription Contract, it shall be required to enter into a new, separate Advance Subscription Contract with Reseller for the additional usage which must have a term consisting of a complete number of months ending on the same date as the original Advance Subscription Contract and under which payment in advance for the full term is required. Reseller shall place a PO with either the applicable Distributor, or with Supplier, in accordance with clause 3.2, for such additional usage and the Subscription Term shall consist of a complete number of months ending on the same date as the Customer's original Advance Subscription Contract, and the Fixed User Number shall be the number of additional users required by the Customer. The Subscription Term for an Advance Subscription Contract entered into for the purpose of increasing usage is not required to be for a minimum period of 12

months but must end on the same date as the original Advance Subscription Contract to which it relates.

- 3.7 Each Advance Subscription Contract must contain, and Reseller shall ensure that each Advance Subscription Contract does contain, a provision that the Advance Subscription Contract shall automatically continue in force for a further term of 12 months unless either Reseller or Customer has given to the other written notice that it does not wish the Advance Subscription Contract to continue beyond the end of the then current Subscription Term no later than 30 days before the end of such Subscription Term. Unless Reseller provides written evidence satisfactory to Supplier or the Distributor, as applicable, that an Advance Subscription Contract has not automatically renewed, Supplier, or the Distributor, as applicable, shall be entitled to assume that it has done so and to invoice Reseller (in the case of Supplier, in accordance with clause 3.4) as if such Advance Subscription Contract has renewed.

#### 4. **PROVISIONS RELATING TO THE ORDERING, DELIVERY AND SALE OF FLEXIBLE SUBSCRIPTIONS**

- 4.1 Once a Customer has entered into a Flexible Subscription Contract, Reseller will promptly place a PO with either the applicable Distributor, or with Supplier, containing the required information set out in clause 4.2. Neither Supplier nor any Distributor will be held responsible for any late or non-payment by a Customer to Reseller and Reseller acknowledges that Supplier (or, as the case may be, the applicable Distributor) may invoice Reseller (in the case of Supplier, in accordance with clause 4.7) and Reseller shall pay Supplier (or, as the case may be, the applicable Distributor) regardless of whether Reseller has been paid by Customer.

- 4.2 Reseller may place POs for Flexible Subscriptions with either the applicable Distributor, or with Supplier. Each PO must state the following items with respect to the applicable Flexible Subscription in order to be capable of acceptance:

4.2.1 that it is a Flexible Subscription and the name and details of the Customer;

4.2.2 the term of the Flexible Subscription Contract from the Subscription Commencement Date (being a minimum period of 3 months) ("**Subscription Term**"); and

4.2.3 the highest number of users likely to use the Service Offering in any calendar month.

If any item is absent, or does not comply with the above requirements, the PO may be rejected

- 4.3 Immediately upon acceptance by Supplier of a PO for a Flexible Subscription (from either Reseller or a Distributor), Supplier shall be deemed to be irrevocably authorised, by the entity which placed the PO with Supplier, to install and activate an appliance for the purpose of the operation of that Flexible Subscription. The date upon which Supplier activates such appliance shall be the date upon which the Flexible Subscription shall commence (the "**Subscription Commencement Date**"). Supplier shall notify Reseller promptly following activation of such appliance. It shall be the responsibility of Reseller to notify the Customer of such activation and of the Subscription Commencement Date.

- 4.4 Each Flexible Subscription Contract must contain, and Reseller shall ensure that each Flexible Subscription Contract does contain, a provision that the Flexible Subscription Contract shall automatically continue in force for a further term of three months unless either Reseller or Customer has given to the other written notice that it does not wish the

Flexible Subscription Contract to continue beyond the end of the then current Subscription Term no later than 30 days before the end of such Subscription Term. Unless Reseller provides written evidence satisfactory to Supplier or the Distributor, as applicable, that a Flexible Subscription Contract has not automatically renewed, Supplier or the Distributor, as applicable, shall be entitled to assume that it has done so and to invoice Reseller (in the case of Supplier, in accordance with clause 4.7) as if such Flexible Subscription Contract remains in force.

- 4.5 The applicable price per user ("**Price Per User**") means, subject to clause 4.6 or a specific, written agreement between Supplier and Reseller which states an alternative price per user, the then current applicable per user per month list price of Supplier for the applicable usage band.
- 4.6 Where a Customer indicates to Reseller that five hundred (500) or more users may access the Service Offering on any particular day in each calendar month of the Subscription Term, Reseller shall notify Supplier about this in advance of entering into a Flexible Subscription Contract with the Customer and Supplier shall notify the Reseller of any reduction to the Price Per User that can be offered to the Customer where five hundred (500) or more users access the Service Offering on a particular day in each calendar month. Reseller shall offer any reduced Price Per User to Customer under the Flexible Subscription Contract to be entered into in accordance with the remainder of this clause 4.
- 4.7 Supplier, or, as the case may be, the applicable Distributor, shall invoice the Reseller at the end of each Billing Quarter for the Customer's access of the Service Offering in that Billing Quarter during the Subscription Term for an amount (the "**Quarterly Payment**") equal to the sum of:
- 4.7.1 the highest number of users applicable to the Service Offering on any day in the first month of the relevant Billing Quarter, multiplied by the applicable Price Per User, minus the Percentage Discount, plus
  - 4.7.2 the highest number of users applicable to the Service Offering on any day in the second month of the relevant Billing Quarter, multiplied by the applicable Price Per User, minus the applicable Percentage Discount, plus
  - 4.7.3 the highest number of users applicable to the Service Offering on any day in the third month of the relevant Billing Quarter, multiplied by the applicable Price Per User, minus the applicable Percentage Discount

i.e, where the highest number of users applicable to the Service Offering on any day in the applicable month is the "**Highest User Number**" and shall be determined from the highest number of Customer users present in Supplier's data base for the Service Offering to Customer at the relevant time:

Quarterly Payment = ((The Highest User Number in month 1 x applicable Price Per User) – Percentage Discount) + ((The Highest User Number in month 2 x applicable Price Per User) – Percentage Discount) + ((The Highest User Number in month 3 x applicable Price Per User) – Percentage Discount)

Where the Highest User Number for any particular month during the Subscription Term is below twenty-five (25), the Highest User Number for that particular month shall in any event be deemed to be twenty-five (25).

- 4.8 Supplier alone shall determine access to the Flexible Subscription for each month of the Subscription Term 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.

- 4.9 Where Supplier has offered a reduced Price Per User based upon a certain minimum usage but the Highest User Number for a Subscription in a particular month does not equal or exceed such usage, then Supplier shall in its sole discretion be entitled to charge (or to require the applicable Distributor to charge) for that particular month under clause 4.7 a sum calculated by reference to Supplier's standard list Price Per User rather than the reduced Price Per User.
- 4.10 For the avoidance of doubt, where a Subscription has terminated during a month, the payment in respect of that month shall still be calculated in accordance with clause 4.7. The Reseller will not be entitled to pay a pro-rated Quarterly Payment or any other reduced amount to reflect Customer's reduced access to the Service Offering during that calendar month. Under no circumstances will Supplier or the Distributor, as applicable, be obliged to make a payment to the Reseller or set off an amount against other amounts owed by Reseller where the deduction of the Percentage Discount results in a negative amount payable by Reseller in respect of any particular month.

## 5. **CHANGES, MARKETING AND MANAGEMENT**

- 5.1 Supplier reserves the right at its sole discretion to modify, alter, improve or change the Service Offering and/or any terms that govern the way Subscriptions are sold or marketed on written notice to the Reseller from time to time. Supplier reserves the right to change, update or otherwise modify the EULA and/or the Support and Maintenance Agreement at its sole discretion by either updating them online on the applicable page of Supplier's website from time to time or by giving written notice to Reseller of any such change, update or modification which may include providing a new version of the EULA or Support and Maintenance Agreement, as applicable. Reseller shall make Customer aware of its responsibility to check for updates to the terms of its license and/or support. Reseller may provide its own maintenance, support and other services to Customer in addition to Supplier but Supplier shall not in any way be responsible or liable in connection with the provision of those services by Reseller.
- 5.2 The Reseller shall not represent itself as an agent of the Supplier for any purpose, nor pledge the Supplier's credit or give any condition or warranty or make any representation on the Supplier's behalf or commit the Supplier to any contracts. Further, the Reseller shall not without the Supplier's prior written consent make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of the Service Offering which are inconsistent with those contained in the promotional material supplied by the Supplier (including without limitation, the EULA) or otherwise incur any liability on behalf of the Supplier howsoever arising.
- 5.3 The Reseller shall not sell any Subscriptions through a sales agent or to a sub-reseller without the express written permission of the Supplier. Where the Supplier agrees to any such appointment, the Reseller shall ensure that it enters into a written contract with such sales agent or sub-reseller on terms which provide at least the same level of protection to the Supplier as set out in these Conditions.
- 5.4 Reseller agrees to follow all instructions given by the Supplier in relation to (a) the sale and marketing of Subscriptions and/or (b) the management of any Service Offering to a Customer including by enforcing any term of the EULA as instructed by Supplier.
- 5.5 Reseller acknowledges and agrees that 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 a



Customer's unique IP address relating to Customer's use of the Service Offering. Supplier shall notify each affected Customer in writing of any change in Host and Customer IP address.

## 6. **INTELLECTUAL PROPERTY**

- 6.1 Reseller shall have no right to use any Trade Mark(s) unless authorised to do so by the Supplier in writing.
- 6.2 Reseller shall not alter or remove any copyright notices or other proprietary notices in or on any documentation or other materials relating to the Service Offering.
- 6.3 Reseller acknowledges and agrees that at all times Supplier shall own the Service Offering, all improvements, adaptations, updates and other modifications howsoever made to the Service Offering and all Intellectual Property Rights relating to the Service Offering and Reseller shall not acquire any rights of any kind in relation thereto.
- 6.4 Reseller shall not (a) copy the Service Offering or any part of any of it except to the extent and for the purposes expressly permitted by these Conditions, nor (b) modify, adapt, develop, create any derivative work, alter, enhance, decompile, disassemble, reverse engineer or carry out any act otherwise restricted by the copyright or other Intellectual Property Rights in the Service Offering.
- 6.5 Reseller agrees that it shall not (a) contest the validity of any Intellectual Property Rights of Supplier nor their applicability to the Service Offering, nor (b) do, or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of the Supplier and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 6.6 Reseller shall promptly give notice in writing to Supplier in the event that it becomes aware of any claim or allegation that any Service Offering or the manufacture, use, sale or other disposal of any Subscription infringes Intellectual Property Rights or other rights of any third party.
- 6.7 Supplier shall indemnify Reseller in respect of any proven claim that the normal use or possession of any Service Offering infringes the intellectual property rights of any third party, provided that:
  - 6.7.1 Reseller notifies Supplier immediately it becomes aware of any claim or threatened claim that the Service Offering infringes the intellectual property rights of that third party;
  - 6.7.2 Supplier is given immediate and complete control of such claim;
  - 6.7.3 Reseller makes no admissions or statements without Supplier's prior written consent;
  - 6.7.4 Reseller gives Supplier all reasonable assistance at Supplier's expense with such claim; and
  - 6.7.5 Reseller does not enter into any settlement of any such claim without the prior written consent of Supplier.
- 6.8 In the defence or settlement of such a claim (as described in clause 6.7), the Supplier may obtain for the Reseller the right to continue selling Subscriptions in the manner contemplated by these Conditions or modify the Service Offering so that it becomes non-

infringing. The Supplier shall not in any circumstances have any liability if the alleged infringement is based on:

- 6.8.1 any products sold by the Reseller that belong to it or to a third party, whether in whole or in part;
  - 6.8.2 a modification of the Service Offering by anyone other than the Supplier;
  - 6.8.3 the Reseller's marketing, advertising, sale or use of Subscriptions in a manner contrary to the instructions given to the Reseller by the Supplier;
  - 6.8.4 the Reseller's marketing, advertising, sale or use of Subscriptions after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 6.9 Clauses 6.7 and 6.8 state the Reseller's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, in the case of any matter falling under clause 6.6.

## **7. DUTIES AND OBLIGATIONS OF RESELLER**

7.1 Reseller shall:

- 7.1.1 ensure that Customers are aware of and accept the terms and conditions of the EULA before using the Service Offering;
- 7.1.2 refrain from amending or varying the terms of the EULA, always ensuring that Supplier will have the right to enforce such terms against the Customer;
- 7.1.3 within 14 days of a written request from the Supplier made from time to time, provide such information as is reasonably requested by the Supplier about the Reseller's processes and controls to support compliance with these Conditions; and
- 7.1.4 provide the Supplier such information about the Customers as is required by the Supplier for the purposes of managing such Customers' use of the Service Offering.

## **8. LIMITATION OF LIABILITY**

- 8.1 Neither Supplier nor Reseller excludes or limits liability to the other for fraud (including fraudulent misrepresentation) or for death or personal injury arising from its negligence.
- 8.2 Neither Supplier nor Reseller shall be responsible or liable to the other for, and shall not pay, any amount of special, incidental, consequential or other indirect damages whatsoever, including, but without limitation, damages based on lost revenue, loss of business profits, loss of business information, business interruption, loss of goodwill, loss of anticipated savings or otherwise, regardless of whether advised of the possibility of such losses in advance.
- 8.3 Subject to clause 8.1 and without prejudice to clause 8.2, the aggregate liability of Supplier to Reseller under or in connection with these Conditions and/or Subscriptions and/or Service Offerings shall not exceed the aggregate amounts paid by Reseller to Supplier in connection with Subscriptions and/or Service Offerings in the twelve months immediately prior to the date of the relevant claim or the date of the first of a number of connected claims.

8.4 Each of Supplier and Reseller shall use its reasonable endeavours to mitigate any loss for which the other is responsible.

## 9. EXPORT CONTROL

9.1 The Reseller acknowledges that the Service Offering has been designed without regard to geographic location of the Reseller or any Customers. The Reseller acknowledges that the Customers are solely responsible for the authorization and management of their user accounts, as well as export control and geographic transfer of Customer data.

9.2 The Reseller shall not, in any circumstances, market or sell Subscriptions to Customers that 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 the relevant Customer first obtaining such licence or approval. The Reseller shall not market or sell Subscriptions to Customers that intend to use or 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.

## 10. DISCLAIMER

THE SERVICE OFFERING IS PROVIDED "AS IS". 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 NOT OTHERWISE 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.

## 11. MISCELLANEOUS

11.1 Supplier may transfer, assign, hold on trust, license or sub-contract all or any part of its rights and/or obligations under any contract between Supplier and Reseller entered into in connection with these Conditions, any Subscription(s) and/or any Service Offering(s) (a "**Relevant Contract**").

11.2 Reseller may not transfer, assign, hold on trust, license or sub-contract all or any part of its rights and/or obligations under any Relevant Contract.

11.3 Neither party intends that any of the terms of any Relevant Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

11.4 A failure by the Supplier to exercise, or a delay in exercising, any right or remedy shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which the Supplier may otherwise have and no single or partial exercise of any right or remedy shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

- 11.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 11.6 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.7 Any dispute arising under or in connection with these Conditions and any Relevant Contract shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.