

**TERMS & CONDITIONS OF SALE RELATING TO:
BUNDLE OF (a) SWIVEL SOFTWARE LICENSE, (b) SINGLE VM APPLIANCE AND (c)
FIRST YEAR STANDARD SUPPORT
AND BUNDLE OF (a) SWIVEL SOFTWARE LICENSE, (b) SINGLE VM APPLIANCE, (c)
FIRST YEAR STANDARD SUPPORT AND (d) HARDWARE TOKENS**

1. INTRODUCTION

1.1 These Terms and Conditions (“Terms”) govern the offering, sale and supply by Swivel Secure Limited, a company registered in England with company number 04068905, whose registered office is at Equinox One, Audby Lane, Wetherby LS22 7RD (“Swivel”), of a Standard Bundle and a Tokens Bundle (each as defined below).

1.2 These Terms are in addition to (and not to the exclusion of) Swivel’s prevailing Standard Terms & Conditions of Sale of Products and Supply of Services (“Standard Sale Terms”), which also govern the sale and supply of Bundles and the constituent parts of a Bundle. If there is any conflict between any provision of these Terms and any provision of the Standard Sale Terms, the relevant provision of these Terms shall apply.

1.3 The offering, sale and supply by Swivel of Bundles is aimed at the actual or potential end use of Bundles by persons which are not Swivel Partners and not at the end use of existing or future Swivel Partners. Swivel will not accept an order for a Bundle from a Swivel Partner if such Bundle is for its own end use. However, where a Swivel Partner has received an order for a Bundle from a person, and places an order with Swivel in order to fulfil such order, Swivel will process such order in its normal course of operations and in accordance with these Terms, the applicable agreement between Swivel and such Swivel Partner and/or Swivel’s Standard Sale Terms, as the case may be.

1.4 In these Terms the following expressions have the following meanings:

“Bundle”

means a Standard Bundle or a Tokens Bundle, as applicable;

“Effective Date”

means the date of delivery to an End User of the Licensed Software which such End User has purchased as part of a Bundle, under and in accordance with the related Software License;

“End User”

means a person, not being a Swivel Partner, which, has purchased, or placed an order for, a Bundle;

“EULA”

means Swivel’s standard end user license agreement;

“Licensed Software”

means Swivel software delivered pursuant to a Software License;

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| “Licensed Users” | has means the meaning given in clause 21; |
| “Person” | includes an individual, firm, unincorporated association or body corporate; |
| “PO” | means a purchase order; |
| “Software License” | means a perpetual licence to use Swivel’s authentication software, for the applicable number of licensed users, on the terms and conditions set out in Swivel’s EULA; |
| “Standard Bundle” | means a bundle comprising all of the following Swivel products and services: (a) Software License, (b) single VM Appliance, and (c) Standard Support for a period of 12 months from the Effective Date; |
| “Standard Support” | means Swivel standard maintenance and support in respect of a Software License; |
| “Swivel Partner” | means a duly authorised distributor, value added reseller, sales agent or other sales representative of Swivel products and services; |
| “Token” | means a hardware token, the purpose of which is to enable and/or facilitate authentication using Licensed Software; |
| “Tokens Bundle” | means a bundle comprising all of the following Swivel products and services: (a) Software License, (b) single VM Appliance, (c) Tokens, and (d) Standard Support for a period of 12 months from the Effective Date; and |
| “VM Appliance” | means a virtual appliance. |

1.5 In interpreting these Terms:

1.5.1 references to the singular include the plural and vice versa and references to a gender include both genders;

1.5.2 the headings shall be ignored;

1.5.3 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;

~~1.5.4~~ general words shall not be given a restrictive meaning because they are followed by particular examples intended to be embraced by the general words; and

~~1.5.5~~ where reference is made to a document, this includes that document as it may be revised, amended and/or restated (including, without limitation, where it is restated in more than one document).

2. ORDERING

~~2.1~~ Licensed Software purchased as part of a Bundle shall permit an End User to have a maximum number of user accounts (“Licensed Users”) which can authenticate using such Licensed Software. The price payable by an End User for a Bundle shall vary depending upon the number of Licensed Users required when purchasing the Bundle. Swivel offers Bundles initially permitting 10, 15, 25, 50, 100 or 150 Licensed Users.

~~2.2~~ The PO placed by an End User for a Bundle must state the required number of Licensed Users, which must be 10, 15, 25, 50, 100 or 150. It is not possible to place an order for a Bundle for a different number of Licensed Users.

~~2.3~~ If an End User purchases a Tokens Bundle, it will be provided with a number of Tokens which is the same as the number of Licensed Users purchased by such End User.

~~2.4~~ The only appliance that may form part of a Bundle is a VM Appliance and it is not possible to substitute a hardware appliance for a VM Appliance.

~~2.5~~ The price of a Bundle to an End User shall be the price stated on Swivel’s then prevailing price list. For the avoidance of doubt, Swivel may update its price list from time to time at its sole discretion.

~~2.6~~ If, after purchasing a Bundle, an End User wishes to increase the number of Licensed Users who can authenticate using the Licensed Software purchased as part of that Bundle, it may do so, provided that additional Licensed Users may only be purchased in blocks of 10 (ten) and the maximum aggregate number of Licensed Users permitted to authenticate using Licensed Software purchased as part of one Bundle is 150. The price payable for additional Licensed Users is the applicable prevailing Swivel list price.

~~2.7~~ If an End User has purchased a Tokens Bundle, and purchases additional Licensed Users in accordance with clause 2.6, it will be provided with a number of Tokens which is the same as the number of additional Licensed Users purchased by such End User.

~~2.8~~ A Bundle is a discrete, stand-alone offering by Swivel and the VM Appliance and Licensed Software acquired by an End User in connection with the purchase of a Bundle may only be used for the authentication of such number of Licensed Users purchased by the End User as part of that Bundle (including any additional Licensed Users purchased pursuant to clause 2.6), up to a maximum of 150 Licensed Users. Therefore, if an End User has purchased Swivel Licensed

Software (which is not part of a Bundle) prior to purchasing a Bundle, or if an End User purchases Swivel Licensed Software (which is not part of a Bundle), after purchasing a Bundle, it will not be permitted in either case to transfer licensed usage to or from the Bundle. The licensed usage under a Bundle and under a separate purchase of Swivel Licensed Software are entirely separate, may not be merged, and must be run on separate appliances.

2.9 Whereas Swivel would not expect an End User to do so, it is permitted for an End User to purchase more than one Bundle for its own end use. However, each Bundle and the Licensed Software acquired as part of each Bundle, must be treated and operated entirely separately of each other and the licensed usage under one Bundle may not be transferred to and/or merged with another Bundle and the licensed usage for each Bundle purchased must be run on separate appliances.

3. SUPPORT

3.1 There is included within the price of a Bundle, Standard Support in relation to the Licensed Software purchased as part of such Bundle, for the number of Licensed Users initially purchased, for a period of 12 months from the Effective Date (the "Initial Support Period"). Standard Support purchased as part of a Bundle entitles the purchasing End User to make a maximum of 4 (four) calls to Swivel's support team during the Initial Support Period and during each subsequent 12 month support period.

3.2 Whereas, as part of its business, Swivel provides a 24/7 support service as well as Standard Support, 24/7 support is not available in connection with any Software License purchased as part of a Bundle and no End User which has purchased a Bundle may upgrade its support for the Software License purchased as part of such Bundle to 24/7 support.

3.3 In the first instance, an End User must contact the Swivel Partner from which it purchased a Bundle with any support issues. If such Swivel Partner is, acting reasonably, unable to assist the End User with any such support issue, the End User may, subject to clause 3.1, contact Swivel.

3.4 If an End User increases the number of Licensed Users who can authenticate using the Licensed Software purchased as part of a Bundle, in accordance with clause 2.6, it can purchase Standard Support for the additional number of Licensed Users at the prevailing Swivel list price (pro-rated if necessary where support is for less than a full period). If additional Licensed Users are purchased during the Initial Support Period, the period for which support applies for those additional Licensed Users shall end on termination of the Initial Support Period.

3.5 An End User which wishes to renew Standard Support at the end of the Initial Support Period must renew it with effect from immediately after expiry of the Initial Support Period. Standard Support for the period immediately after the end of the Initial Support Period and for each subsequent period must for a period of 12 months and be in respect of the aggregate number of Licensed Users held at the end of the then current support period (i.e. the initial number of Licensed Users plus all additional Licensed Users purchased).

3.6 Standard Support purchased for additional Licensed Users purchased during any support period which follows the Initial Support Period, shall end on termination of the then current support period and the End User must then renew Standard Support from immediately after expiry of the then current support period for the aggregate number of Licensed Users held by it at the end of the then current support period.

3.7 It is the responsibility of an End User to ensure that at all times after the end of the Initial Support Period and of each subsequent support period, it has support in force for the Licensed Software. Neither Swivel nor any Swivel Partner is responsible for ensuring that any End User has such support nor for reminding the End User of the forthcoming expiry of a current support period.

3.8 An End User may not renew Standard Support in respect of a number of Licensed Users which is less than the aggregate number of Licensed Users held by the End User as at the end of the current support period.

4. GENERAL

4.1 For the avoidance of doubt, Swivel is not obliged to accept any order for a Bundle from any person, including, without limitation, any Swivel Partner.

4.2 A failure by Swivel to exercise, or a delay in exercising, any right or remedy under these Terms shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which Swivel may otherwise have and no single or partial exercise of any right or remedy under these Terms shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy. Any waiver of a breach of any of these Terms shall not be deemed a waiver of any subsequent breach or default and shall not affect the other Terms.

4.3 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected thereby.

4.4 These Terms shall be governed by and construed in accordance with English Law and the English courts shall have exclusive jurisdiction in connection with any dispute.

4.5 Swivel may amend these Terms at any time in its sole discretion