

Data Processing Terms

These Data Processing Terms form part of your standard terms including your Cloud Software Service and End User Licence Agreement and/ or Terms and Conditions of Sale (each, as relevant, the "Agreement") between you and the entity you represent ("Buyer", "Customer" "you" or "your") and Swivel Secure Limited ("SSL", "us" or "our"). The Buyer/ Customer appoints Swivel Secure to Process Customer Personal Data as part of providing the Services in accordance with these Data Processing Terms.

1. Definitions

1.1 In these Data Processing Terms, the following words shall have the following meaning:

1.1.1 "Controller", "Data Subject", "Personal Data", "Personal Data Breach", "Processor" and "Processes/Processing" shall each have the meanings given in the Data Protection Legislation.

1.1.2 "Customer Personal Data" shall mean any Customer Personal Data which is submitted to, and stored within the Service Offering or accessed as part of providing the Services.

1.1.3 "Data Protection Legislation" means all applicable privacy and data protection laws, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of Customer Personal Data and on the free movement of such data ("GDPR") as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the "UK GDPR"), the Data Protection Act 2018 and any applicable national implementing laws, regulations and secondary legislation relating to the processing of Customer Personal Data pursuant to this Agreement, as amended, replaced or updated from time to time.

1.1.4 "Standard Contractual Clauses" means as applicable (a) the standard contractual clauses available [here](#) ("EU SCCs"); and (b) the International Data Transfer Addendum to the EU SCCs available [here](#) ("UK Addendum")

2. Obligations of the Processor

2.1 These Data Processing Terms shall apply if and to the extent SSL acts as a Processor of any Customer Personal Data on the Buyer/ Customer's behalf when performing its obligations under the Agreement, but only to the extent that such Processing falls within the scope of the Data Protection Legislation.

2.2 SSL will not process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. SSL must notify you if, in its opinion, your instruction would not comply with the Data Protection Legislation.

2.3 SSL shall:

2.3.1 Process the Customer Personal Data only to the extent necessary for the purposes of performing its obligations under the Agreement and otherwise in accordance with the Buyer/ Customer's documented instructions set out at Appendix 1, and applicable laws. Swivel Secure must notify the Buyer/ Customer immediately if, in its opinion, any such instructions infringe applicable laws;

- 2.3.2 ensure that all persons authorised by Swivel Secure to Process the Customer Personal Data are committed to confidentiality or are under a statutory obligation of confidentiality under applicable law;
 - 2.3.3 implement appropriate technical and organisational measures to protect the Customer Personal Data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure, or access;
 - 2.3.4 at the Buyer/ Customer's election, delete or return all Customer Personal Data to the Buyer/ Customer;
 - 2.3.5 make available to the Buyer/ Customer information reasonably necessary to demonstrate compliance with the obligations set out in this clause, and allow for and contribute to audits, including inspections, conducted by the Buyer/ Customer or your representative. The Buyer/ Customer may only exercise its right to audit once per calendar year and any costs shall be borne by the Buyer/ Customer. The parties will discuss and agree in advance on the reasonable start date, scope and duration of, and security and confidentiality controls applicable to, any audit and the Buyer/ Customer shall take all necessary steps to minimize the disruption to the Supplier's business; and
 - 2.3.6 without undue delay after having become aware, notify the Buyer/ Customer of any Personal Data Breach.
- 2.4 Swivel Secure acknowledge that the Buyer/ Customer is under various obligations under the Data Protection Legislation, and agrees to provide reasonable assistance and information required by the Buyer/ Customer to satisfy these obligations.
- 2.5 For the avoidance of doubt Swivel Secure shall be entitled to charge Buyer/ Customer for any reasonable costs it incurs in providing assistance and cooperating with the Buyer/ Subscribe in accordance with these Data Processing Terms save for where any such assistance/ co-operation is caused by a breach of these Data Processing Terms by SSL or if such charges are expressly prohibited by the Data Protection Legislation.

3. Subprocessors

- 3.1 The Buyer/ Customer approves SSL engaging third party subprocessors to Process the Customer Personal Data provided that Swivel Secure:
- 3.1.1 provides at least 5 days' prior notice of the addition or removal of any subprocessors;
 - 3.1.2 imposes data protection terms on any subprocessor it appoints that protect the Customer Personal Data to the same or equivalent standard provided for by these Data Processing Terms; and
 - 3.1.3 remains fully liable for any breach of these Data Processing Terms that is caused by an act, error or omission of its subprocessor.
- 3.2 The Buyer/ Customer consents to the current list of Subprocessors: Swivel Secure Europe SA and ASW Services.

3.3 Where the Buyer/ Customer notifies SSL in writing of any objections relating to the appointment of a subprocessor (on reasonable grounds relating to data protection) following on from being notified in accordance with clause 3.1.1, SSL shall not disclose any Customer Personal Data to the relevant proposed subprocessor until reasonable steps have been taken to address the objections raised. Where no such objections are raised, the Buyer/ Customer shall be deemed to have consented to the appointment. Where an objection is not resolved to the mutual satisfaction of either party within 30 days of the notification, either party may terminate the Agreement (in whole or in part solely to the extent necessary to terminate the relevant part of the Services affected by the addition of the new subprocessor) which will be the Buyer/ Customer's sole and exclusive remedy.

4. International Transfers

4.1 The Buyer/ Customer consents to SSL and its subprocessors processing Customer Personal Data outside of the United Kingdom and European Economic Area ("EEA") where SSL/ the subprocessor ensures it takes such measures as are necessary to ensure the transfer is in compliance with Data Protection Legislation. Such measures may include (without limitation) transferring the Personal Data to a recipient in a country that the United Kingdom and/ or European Commission has decided provides adequate protection for Personal Data, to a recipient that has achieved binding corporate rules authorisation in accordance with Data Protection Legislation, or to a recipient that has executed standard contractual clauses adopted or approved by the United Kingdom and/ or European Commission.

4.2 If an adequate protection measure for the international transfer of Customer Personal Data is required under the Data Protection Legislation (and has not otherwise been arranged by the parties), the Standard Contractual Clauses shall be incorporated into this Agreement as if they had been set out in full, and the provisions of Appendix 2 shall apply.

5. Liability

5.1 For the avoidance of doubt each party's aggregate liability arising out of or related to these Data Processing Terms whether in contract, tort or under other theory of liability is subject to the limitations and exclusions of liability contained within the Agreement.

6. Contact Details

6.1 The Buyer/ Customer can contact Swivel Secure at DataProtection@swivelsecure.com for any further information as to how Swivel Secure processes Customer Personal Data.

7. Changes

7.1 Any such changes to these Data Processing Terms will be posted to this page. SSL shall not reduce the rights of the Buyer/ Customer under these Data Processing Terms without the Buyer/ Customer's explicit written consent.

Appendix 1: Details of Processing

1. Processing Particulars

1.1 Subject matter of Processing:

In connection with the provision of the Services and/ or Service Offering as set out in the Agreement.

1.2 Nature and purpose of Processing:

All reasonable purpose in relation to the Supplier's obligations under the Agreement.

Compute, storage and such Services as described in the Privacy Notice - Cloud and initiated by Customer from time to time.

The purpose of the data processing under this document is provision of the Subscription initiated by Customer from time to time.

1.3 Categories of Personal Data processed:

First name, last name, username, email address, telephone number, street, PO Box, City, State/Province, Zip/Postal Code, Country/Region.

Organization Title, Department, company, manager, direct reports, physical delivery office name.

IP address, Biometric data.

Country of taxation or foreign taxpayer reference, customer due diligence and anti-money laundering requirements

1.4 Categories of Data Subject to whom the Personal Data relates:

Buyer/ Customer or End User, Company, Technical information.

1.5 Frequency and duration of processing:

Continuous transfers for the duration of the Agreement.

Appendix 2:

1. International Transfers of Personal Data

- 1.1 The parties agree that the Standard Contractual Clauses are incorporated into these Data Processing Terms by reference, as if they had been set out in full, and are populated as follows. Unless expressly stated below, any optional clauses contained within the Standard Contractual Clauses shall not apply.
- 1.2 The following Module of the EU SCCs shall apply where Personal Data is transferred to a third country (unless the transfer is permitted on the basis of an adequacy decision):
 - a) CONTROLLER → PROCESSOR (**Module Two**) ("**Controller to Processor Model Clauses**"); and
 - b) PROCESSOR → CONTROLLER (**Module Four**) ("**Processor to Controller Model Clauses**").

2. UK Addendum

- 2.1 The Parties agree that the UK Addendum is incorporated into these Data Processing Terms by reference, as if it had been set out in full, and is populated and shall be read against the EU SCCs as follows. Unless expressly stated below, any optional clauses contained within the UK Addendum shall not apply.

Start Date

The UK Addendum is effective from the date of the Agreement;

Table 1: Parties

Exporter and key contact: As set out in Annex 1 of the Standard Contractual Clauses.

Importer and key contact: As set out in Annex 1 of the Standard Contractual Clauses.

Table 2: Selected SCCs, Modules and Clauses

As applicable, Module 2 or Module 4 of the EU SCCs as incorporated by reference into Appendix 2 of these Data Processor Terms including any supplementary clauses set out within Appendix 2 of these Data Processor Terms.

Table 3: Appendix Information

As set out in Annex 1 and Annex 2 of the of the Standard Contractual Clauses.

Table 4: Ending this Addendum when the Approved Addendum Changes

In the event the Information Commissioner's Office issues a revised Approved Addendum, in accordance with Section 18 of the UK Addendum which as a direct result of such changes has a substantial, disproportionate and demonstrable increase in: (a) the data importer's direct costs of performing its obligations under the Addendum; and/or (b) the data importer's risk under the Addendum, the data importer may terminate this UK Addendum on reasonable written notice to the data exporter in accordance with Table 4 and paragraph 19 of the UK Addendum.

- 2.2 Supplementary clauses to the Standard Contractual Clauses:

GOVERNING LAW AND JURISDICTION

For the purposes of Clauses 17 and 18, Module Two and Four (Section IV to the EU SCCs (Governing law and Choice of forum and jurisdiction)), the parties agree that the laws and courts of Ireland will apply. For the purpose of the UK Addendum, the parties acknowledge and accept that the laws and courts of England and Wales will apply.

3. Appendices and Annexures to the SCCs

3.1 The processing details required by the EU SCCs are set out in paragraph 4.

4. Processing Particulars for the EU SCCs

4.1 The Parties:

4.2 Exporter (Controller): Swivel Secure

4.3 Importer (Processor): Buyer/ Customer

4.4 Description Of Data Processing, categories of data subjects, categories of personal data transferred, sensitive data transferred, nature and purpose of the processing, duration of the processing and approved sub-processors shall be as set out in Appendix 1.

4.5 Frequency of the transfer: Continuous

4.6 Competent Supervisory Authority: Irish Data Protection Commissioner where the EU SCCs apply and the ICO where the UK SCCs apply.