

## SWIVEL SECURE LIMITED – SOFTWARE LICENSE ON-PREMISE

### END USER LICENSE AGREEMENT (“EULA”)

THIS LEGAL DOCUMENT IS A LICENCE AGREEMENT (“**LICENCE**”) BETWEEN YOU, THE CUSTOMER (“**CUSTOMER**”) AND SWIVEL SECURE LIMITED (English company number 04068905) (“**SWIVEL**”). BY DOWNLOADING AND/OR INSTALLING THE ACCOMPANYING SOFTWARE PRODUCTS (THE “**LICENSED SOFTWARE**”), YOU, CUSTOMER, AGREE TO BE BOUND BY THE TERMS OF THIS LICENCE.

**ACTIVATION OF LICENSED SOFTWARE.** Swivel shall provide Customer with an activation key or registration on payment of the licence fee (the “**Licence Fee**”) to either Swivel or a reseller appointed by Swivel (the “**Reseller**”) for the Licensed Software and the associated documentation (collectively, “**Licensed Products**”).

**LICENSE.** Swivel grants Customer a personal, non-exclusive licence to use the Licensed Products subject to the terms and conditions set out in this Licence. Swivel shall have no obligation to provide maintenance or support for the Licensed Products except such Swivel maintenance and support for which Customer has a valid, current subscription.

Customer agrees:

- (i) to use the Licensed Software (in object code form only) 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 Licensed Products, 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 full or partial copies of Licensed Products except such limited number of back up copies of the Licensed Software in object code form which are reasonably necessary for Customer's lawful use;
- (v) not to make any modifications, enhancements, adaptations, or translations to or of the Licensed Products, except as may result from those Customer interactions with the Licensed Software associated with normal use and either explained in the associated documentation or as determined by Supplier;
- (vi) that the right to use the Licensed Software is restricted by a measure of usage based upon number of users and any expansion beyond the specified usage level shall require payment to Swivel or a Reseller of an incremental charge or another licence fee at Swivel's prevailing applicable price, following which payment Swivel shall provide Customer with an activation key or registration for the additional users;
- (vii) to keep a current record of the location of each copy of Licensed Products made by it;
- (viii) not to sub-licence, lease, rent, loan, distribute, sell or otherwise transfer the Licensed Products or any rights acquired under this Licence to any third party except as expressly permitted hereunder; and
- (ix) not to use the Licensed Products for the purpose of providing cloud or managed services.

**OWNERSHIP.** Customer is granted no title or ownership rights, in whole or in part, in or to the Licensed Products and/or any modification, update, upgrade, new version or maintenance release provided by Supplier as part of any maintenance and support services and Customer acknowledges and

agrees that title to and all copyrights, patents, trade secrets and/or any other intellectual property rights in and to the Licensed Products and all support services Releases are and shall remain the property of Swivel and/or Swivel's suppliers. All grants of rights to use intellectual property intended to be accomplished by this Licence 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 Licensed Products made by it a reproduction of the copyright notices, trade marks, and all other proprietary legends and/or logos of Swivel and/or Swivel's suppliers, appearing on the original copy of such Licensed Product delivered to Customer and retain the same without alteration on all original copies..

**CONFIDENTIALITY.** The Licensed Products contain trade secrets and confidential information of Swivel and/or its suppliers including the specific design, structure and logic of individual Licensed Products programs, their interactions with other portions of Licensed Products, both internal and external, and the programming techniques employed therein. In order to maintain the "trade secret" status of the information contained within the Licensed Software, the Licensed Software is being delivered to Customer in object code form only. Except as explicitly permitted by this Licence, Customer shall not allow anyone other than Customer's employees, authorized agents and/or authorized representatives with a "need to know" to have physical access to the Licensed Products.

**Customer shall:**

- (i) keep the Licensed Products confidential for the benefit of Swivel and Swivel 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, agents, and/or representatives to whom Licensed Products are disclosed, advising them of the confidential nature of

the Licensed Products, provide them with a summary of the requirements of this EULA and shall cause them to comply with this EULA.

**TERMINATION.**

Customer acknowledges and agrees that Swivel may immediately terminate this Licence by written notice to Customer if:

- (i) Customer commits a material breach of this Licence which is not capable of remedy or
- (ii) Customer commits a material breach of this Licence which is capable of remedy and Customer fails to remedy such breach within 10 business days of receipt of written notice from Swivel requiring it to remedy such breach. Customer may terminate this Licence at any time by giving written notice to Swivel.

**EFFECT OF TERMINATION.** Immediately upon termination of this Licence for any reason, Customer shall have no further right to use the Licensed Products and shall, at Swivel's option, either destroy or deliver to Swivel, at Customer's expense, the originals and all full and partial copies of the Licensed Products (whether or not integrated with other software or documentation) in the possession or under the control of Customer. Customer shall certify to Swivel that it has carried out any destruction required by Swivel. Swivel reserves the right to take such action as it considers reasonably necessary to prevent the use of the Licensed Products following the termination of this Licence and reasonably Customer irrevocably and unconditionally consents to the taking of such action by Swivel.

The provisions of the paragraphs labelled Ownership, Confidentiality, Disclaimer of Warranties, Limitation of Liabilities, Use of Name and Choice of Law together with any interpretative provisions required to interpret this Licence shall survive any termination of this Licence. Any termination of this Licence 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.

**DISCLAIMER OF WARRANTIES.** THIS LICENCE DOES NOT CONFER OR GRANT ANY WARRANTY TO CUSTOMER FROM OR BY SWIVEL.

THE LICENSED PRODUCTS ARE PROVIDED BY SWIVEL "AS IS" AND WITHOUT WARRANTY OF ANY KIND OR NATURE, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

THIS LIMITATION OF WARRANTIES WAS A MATERIAL FACTOR IN THE ESTABLISHMENT OF THE LICENCE FEE CHARGED FOR EACH SPECIFIC ITEM OF SOFTWARE LICENSED.

#### **LIMITATION OF LIABILITIES.**

IN NO EVENT WILL SWIVEL AND/OR ITS DIRECTORS, OFFICERS OR EMPLOYEES BE LIABLE TO OR THROUGH CUSTOMER FOR ANY (I) LOSS OF PROFIT, GOODWILL, BUSINESS OPPORTUNITY, ANTICIPATED SAVING OR (II) INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OF ANY KIND, ARISING AS A RESULT OF USE OF OR INABILITY TO USE THE LICENSED PRODUCTS OR BREACH OF ANY TERM OF THIS LICENCE, REGARDLESS OF WHETHER SWIVEL WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

SWIVEL'S LIABILITY FOR DAMAGES TO CUSTOMER PURSUANT TO THIS LICENCE FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION, SHALL NOT EXCEED THE AGGREGATE FEES PAID BY CUSTOMER FOR THE LICENSED PRODUCTS IN THE 12 MONTHS IMMEDIATELY PRIOR TO THE DATE OF THE RELEVANT CLAIM OR THE DATE OF THE FIRST OF A NUMBER OF CONNECTED CLAIMS.

NOTWITHSTANDING THE ABOVE LIMITATIONS OF LIABILITY, NOTHING IN THIS LICENCE SHALL EXCLUDE OR LIMIT A PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR FOR FRAUDULENT MISREPRESENTATION.

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

Swivel 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 Swivel of Customer's name and/or logo shall not grant Swivel any intellectual property rights in and to such name and logo for any other purpose.

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

**ACCEPTANCE OF LICENSE.** Customer represents and warrants to Swivel that any such person(s) as accepts the terms of this Licence on behalf of Customer is fully authorized to do so on behalf of Customer. If a representative of Customer authorizes a representative of Swivel to accept this Licence on behalf of Customer, for example (but without limitation) by the checking of a box accepting the terms of this Licence, Customer represents and warrants to Swivel that such Customer representative is fully authorized to do so on behalf of Customer. If Swivel and Customer have executed a

separate legally binding written agreement governing Customer's use of the Licensed Products, that agreement (as it may be amended or varied from time to time) shall apply to Customer's use of the Licensed Products notwithstanding acceptance by Customer of this Licence upon installation of the Licensed Software. Upon acceptance (or deemed acceptance) by Customer of the terms and conditions of this Licence, this Licence shall supersede each licence agreement previously accepted by Customer (other than any separate legally binding written agreement executed by both Swivel and Customer) relating to Customer's use of Swivel software (but without prejudice to the rights of Swivel or Customer for breach of any such previously accepted licence agreement), and this Licence shall govern the use of all licensed usage previously acquired by Customer, as well as the new licensed usage acquired upon acceptance of this Licence.

**ASSIGNMENT.** Customer may not assign all or any of its rights under this Licence without the prior written consent of Swivel. Any attempted assignment of rights and/or transfer of Licensed Products not specifically allowed shall be void and conclusively presumed a material breach of this Licence.

**ENTIRE AGREEMENT.** This EULA constitutes the entire agreement between Swivel and Customer with regard to the subject matter hereof. No modification or change of terms of this EULA shall bind either party unless in writing and signed by both parties.

**WAIVERS.** The waiver by Swivel 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 Licensed Products or into which Customer directly or indirectly distributes (in accordance with this EULA) the Licensed Products.

**PERSONAL DATA.** Any personal data processed by Swivel as part of the Licensed Products will be done so in accordance with the Swivel's [Privacy Policy](#) (where Swivel is a data controller) or the Swivel's [Data Processing Terms](#) (where the Swivel is a data processor).

**EXPORT LAWS.** Customer shall not export or re-export Licensed Products except pursuant to all applicable export laws and regulations.

**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 1200 Century Way, Thorpe Park – Leeds, LS15 8ZA.
- (ii) if given by Swivel, 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 Licensed Products.