



AGILEOFFICE SUBSCRIPTION TERMS

**PLEASE NOTE THAT THESE AGILEVIEW SUBSCRIPTION TERMS SHALL GOVERN YOUR USE OF THE SERVICE.
PLEASE READ THESE TERMS CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION.**

These AgileOffice Subscription Terms (the “**Terms**”), are entered into by and between Swivel, Inc., a Delaware corporation with its principal place of business at 3108 N Lamar Blvd, Suite 200, Austin, TX 78705 (“**Swivel**”) and the person or entity set forth in the applicable Proposal Form (such person or entity, “**Customer**”). These Terms shall be effective on the earlier of date the initial Proposal Form is entered into or when Customer first accesses the Service (the “**Effective Date**”).

BY REGISTERING FOR AND/OR ACCESSING, USING, OR SUBSCRIBING TO USE THE SERVICE, OR BY CLICKING “I AGREE” OR OTHERWISE AFFIRMATIVELY MANIFESTING YOUR INTENT TO BE BOUND BY THESE TERMS, YOU REPRESENT AND WARRANT THAT YOU HAVE: (i) ALL NECESSARY RIGHTS AND AUTHORITY TO ENTER INTO THESE TERMS ON BEHALF OF CUSTOMER AND (ii) READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS ON CUSTOMER’S BEHALF. IF SWIVEL AND CUSTOMER HAVE A FULLY EXECUTED AGREEMENT THAT EXPRESSLY GOVERNS PROPOSAL FORMS FOR THE SERVICE, SUCH AGREEMENT SHALL SUPERSEDE THESE TERMS. THESE TERMS MAY BE MODIFIED BY SWIVEL AT ANY TIME BY UPDATING AND POSTING A NEW VERSION ON OUR WEBSITE OR BY OTHERWISE NOTIFYING YOU OF THE REVISED TERMS. BY SUBSEQUENTLY USING THE SERVICE, YOU AGREE TO BE BOUND BY THE VERSION OF THE TERMS IN FORCE DURING SUCH USE.

1. DEFINITIONS

As used in these Terms:

“**Confidential Information**” means any information and data of a confidential nature belonging to the disclosing party, its affiliates and/or third-party licensors, employees or clients, including proprietary, technical, developmental, marketing, sales, operating, financial, performance, cost/pricing, business and process information and plans, software (including tools, applications and utilities), sources, trade secrets, and computer programming techniques which are disclosed or made available pursuant to these Terms. For clarity, Swivel’s Confidential Information includes the Swivel Technology.

“**Customer Data**” means the Customer’s data, site dimensions, specifications, and other information of Customer and its Employees that is provided or made available by Customer or its Employees to Swivel in connection with the Service, including, in each case, such information as may be processed by Swivel for purposes of generating Deliverables.

“**Deliverables**” means Software and Tools to facilitate Office Scheduling, Attendance, Health Policies and Utilization.

“**End User**” means a person or entity that Customer provides with access to the Service or any Deliverables.

“**Service Square Footage**” means the aggregate size of the Customer offices that will be managed by AgileOffice, measured in square feet and as specified in a Proposal Form.

“**Proposal Form**” means the written agreement by Customer, as accepted by Swivel, to order and subscribe to the Service, including the Fees to be paid in connection with Customer’s use of the Service, the Subscription Term, the Customer Data, the specifications of the Deliverables, the Hosting Tier and any other transaction-specific terms and conditions.

“**Service**” means Swivel’s hosted software service, which facilitates the generation and hosting of Deliverables.

“**Subscription Term**” means the subscription period specified in the Proposal Form.

“**Swivel Technology**” mean the platform, software, tools, algorithms, software implementation of algorithms, models, renderings, sketches, drawings, methodologies, know-how, processes, data, databases, and other information and technology, and all intellectual property rights therein, owned or licensed by Swivel that may be used, among other things, to create or otherwise deliver the Service.

2. SERVICE. Swivel shall use the Swivel Technology to provide Customer with customized Deliverables at such time and in such format as specified in the Proposal Form, which shall be hosted and made available to Customer and its End Users through the Service throughout the Subscription Term. Customer acknowledges that in order to maintain and improve the Service, Swivel may, from time to time, in its sole discretion, make changes to the Service, and that Customer shall be entitled to use only the then-current version of the Service. Swivel's obligations under this Section 2 are contingent upon Customer's performance of certain responsibilities, including the items set forth in Section 4. Customer acknowledges that its failure to satisfy such obligations may result in Swivel being unable to perform its obligations hereunder, and that Swivel shall be excused from any failure to perform resulting, directly or indirectly, from the failure of Customer to perform its responsibilities set forth in Section 4.

3. OWNERSHIP; INTELLECTUAL PROPERTY

3.1 Ownership and Use of the Service and Swivel Technology.

(i) As between Swivel and Customer, Swivel is the sole and exclusive owner of all right, title and interest in and to the Service and the Swivel Technology, including all associated proprietary and intellectual property rights throughout the world, and, except for the licenses expressly granted herein, Customer neither owns nor acquires any rights in any of the foregoing.

(ii) Subject to fulfillment of Customer's payment obligations and all other terms and conditions set forth in these Terms or the applicable Proposal Form, Swivel hereby grants Customer a limited, nonexclusive, non-sublicensable, nontransferable right to access and use the Service during the Subscription Term for purposes of generating and accessing Deliverables. Customer may allow End Users to access and use the Service during the Subscription Term for purposes of accessing and viewing Deliverables, but Customer shall be responsible for all acts or omissions of such End Users, including any such acts or omissions which, if attributable to Customer, would constitute a breach of these Terms.

3.2 Use Restrictions. The Customer shall not (and shall cause the End Users not to): (i) sublicense, sell, transfer, assign, distribute or otherwise grant or enable access to the Service in a manner that allows anyone other than the Customer or End Users to access the Service; (ii) use the Service to provide, or incorporate the Service into, any product or service provided to a third party other than End Users; (iii) use the Service to develop a similar or competing product or service; reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code to the Service; (iv) copy, modify or create any derivative work of the Service; (v) remove or obscure any proprietary or other notices contained in the Service; (vi) publicly disseminate performance information regarding the Service; or (vii) access or use the Service: (a) in violation of applicable law; (b) to send or store material containing software viruses, worms, trojan horses or other harmful computer code, files, scripts, or agents; (c) in a manner that interferes with or disrupts the integrity or performance of the Service (or the data contained therein); (d) to gain unauthorized access to the Service (including unauthorized features and functionality) or its related systems or network; or (e) to disable or bypass the measures that Swivel may use to prevent or restrict access to the Service.

3.3 Ownership and Use of Customer Data. As between Swivel and Customer, Customer is the sole and exclusive owner of all right, title and interest in and to the Customer Data, including all associated proprietary and intellectual property rights throughout the world, and, except for the licenses expressly granted herein, Swivel neither owns nor acquires any rights in the foregoing. Subject to the terms and conditions of the Proposal Form and these Terms, Customer hereby grants Swivel a nonexclusive license and right during the Subscription Term to use Customer Data to create and host the Deliverables.

3.4 Feedback. Customer or any End User, as applicable, may, from time to time, provide suggestions, comments for enhancements or functionality or other feedback to Swivel with respect to the Service or Swivel Technology ("**Feedback**"). Customer hereby grants Swivel an exclusive, royalty-free, fully paid-up, worldwide, transferable, sublicensable, irrevocable, perpetual license to (i) copy, distribute, transmit, display, perform, and create derivative works of the Feedback; and (ii) use the Feedback and/or any subject matter thereof in any manner, including as part of the Service or Swivel Technology. For clarity, Feedback is not the Confidential Information of Customer.

3.5 Reservation of Rights. All rights not expressly granted in these Terms are reserved to Swivel.

4. CUSTOMER OBLIGATIONS. Customer has exclusive control and responsibility for the accuracy, completeness, integrity, and legality of all data provided or made available by Customer to Swivel hereunder, including Customer Data (collectively, "**Provided Data**"). Customer shall deliver Provided Data at such time, through such means, and in such format as specified in the Proposal Form or as requested by Swivel. Customer shall provide Swivel with reasonable access to, and support from, Customer's management and staff to support the processing of Provided Data and the provision of the Service under the Proposal Form and in accordance with these Terms. Further, Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service and shall notify Swivel promptly of any such unauthorized access or use.

5. FEES & PAYMENT

5.1 Fees and Payment. In consideration for the performance by Swivel of its obligations hereunder, the parties hereby agree that Customer shall pay Swivel service fees ("**Fees**"). The Fees shall be payable in accordance with the terms set forth in the applicable Proposal Form. With respect to any Renewal Period, the Fees will remain consistent with the applicable Proposal Form unless adjusted by Swivel upon thirty (30) days' prior written notice to Customer. Payment obligations are non-cancelable and are non-refundable. Customer may not

decrease the Fees payable under the Proposal Form for the duration of the Subscription Term set forth in the Proposal Form. The Customer may, however, add additional square footage to be managed by the Service, subject to additional Fees based on the increased usage over the original Service Square Footage (the “**Additional Fees**”)

5.2 Taxes. All Fees and Additional Fees are exclusive of all taxes. Customer is responsible for payment of state or local sales or use taxes and state or local property or excise taxes associated with Customer’s receipt or use of the Service (other than income taxes payable by Swivel).

6. TERM AND TERMINATION

6.1 Term. The Subscription Term shall be as set forth in the Proposal Form; *provided*, that the Subscription Term shall automatically renew for subsequent six (6) month terms (each, a “**Renewal Period**”) following the expiration of the Subscription Term set forth in the Proposal Form unless Customer provides at least thirty (30) days’ written notice of non-renewal to Swivel prior to the commencement of a Renewal Period. The Subscription Term shall include the term of any such Renewal Period. If no Subscription Term is set forth in the Proposal Form, these Terms shall commence on the Effective Date and continue for the duration of the applicable Proposal Form, unless terminated earlier in accordance with this [Section 6](#).

6.2 Termination for Cause. Either party may terminate the Subscription Term by written notice if the other party (i) commits a material breach or default in the performance of any of its obligations under these Terms or a Proposal Form (including failure to pay amounts due or any breach of the intellectual property or confidentiality provisions herein) and (ii) if curable, fails to remedy such breach or default within thirty (30) days of receipt of written notice of such breach.

6.3 Termination for Convenience During Renewal Subscription Term. Customer may terminate the Subscription Term during a Renewal Period for any reason or no reason upon sixty (60) days’ prior written notice to Swivel. For clarity, Customer shall have no right to terminate the Subscription Term pursuant to this [Section 6.3](#) other than during a Renewal Period.

6.4 Effect of Insolvency. In addition to the foregoing, either party may terminate the Subscription Term if the other party makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy law, or has liquidated its business voluntarily or otherwise, and the same has not been discharged or terminated within forty-five (45) days of commencement.

6.5 Effect of Termination. Expiration or termination of the Subscription Term in accordance with this [Section 6](#) shall not release the parties from any liability or obligation that has already accrued as of the effective date of such expiration or termination, and shall not constitute a waiver or release of, or otherwise be deemed to adversely affect, any rights, remedies, or claims which a party may have hereunder at law, in equity or otherwise or which may arise out of or in connection with such expiration or termination. Immediately upon expiration or termination of the Subscription Term, Customer shall pay all amounts owed to Swivel. For clarity, immediately upon such expiration or termination, the Customer’s right to use the Service shall terminate as of the effective date of the expiration or termination. The following terms shall survive any expiration or termination of the Subscription Term: [Sections 1, 3.1\(i\), 1.1, 3.2, 3.3, 3.4, 6.5, 8, 9, and 10](#).

7. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

7.1 Mutual Representations and Warranties. Each party represents, warrants and covenants to the other party that: (i) it is duly organized, validly existing and in good standing under the laws of the state or other jurisdiction of its organization and has necessary power and authority to enter into these Terms; (ii) entering into these Terms, exercising its rights hereunder and performing its obligations hereunder do not and will not violate any applicable law or other agreement to which it is a party; and (iii) these Terms constitute a binding obligation of it, enforceable in accordance with their terms.

7.2 Customer Representations and Warranties. Customer and its Employees represent, warrant and covenant to Swivel that Customer and its Employees has full authority to provide Provided Data to Swivel for use and processing in accordance with these Terms.

7.3 Swivel Representations and Warranties. Swivel represents, warrants and covenants to Customer that (i) Swivel has the necessary authority to grant the rights granted to Customer herein, and (ii) to the knowledge of Swivel, neither the Swivel Technology nor Customer’s authorized use of the Service infringes or misappropriates any intellectual property rights of a third party. Swivel further represents and warrants that Swivel shall perform any professional services associated with the creation of Deliverables in a professional and workmanlike manner in accordance with commercially reasonable industry and professional standards. Swivel does not assume any liability for nor warrants the health and safety of Customer’s Employees in using the Service or attending Customer’s physical premises.

7.4 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, (i) ALL SERVICES ARE PROVIDED “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS;” (ii) NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, ARE GIVEN BY OR ON BEHALF OF SWIVEL, AND (iii) CUSTOMER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR CONDITION OR NON-INFRINGEMENT. THE SERVICE

ARE DELIVERED WITH THE EXPLICIT UNDERSTANDING AND AGREEMENT OF CUSTOMER THAT ANY ACTION TAKEN OR EXPENDITURES MADE BY CUSTOMER OR ANY END USER BASED ON ITS EXAMINATION, EVALUATION, INTERPRETATION OR USE OF THE SERVICE, OR ANY REPORTS, DATA OR OUTPUT GENERATED OR INFORMED BY THE DELIVERABLES, SHALL BE AT CUSTOMER'S OR END USER'S OWN RISK AND RESPONSIBILITY AND CUSTOMER SHALL HAVE NO CLAIM AGAINST SWIVEL, AND HEREBY RELEASES SWIVEL FROM ANY LIABILITY, AS A CONSEQUENCE THEREOF.

8. LIMITATIONS OF LIABILITY

8.1 Aggregate Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THESE TERMS SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO SWIVEL FOR THE THEN-CURRENT SUBSCRIPTION TERM UNDER THE APPLICABLE PROPOSAL FORM(S). EXCEPT AS EXPRESSLY PROVIDED, THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS.

8.2 Exclusions. THE LIMITATIONS IN THIS SECTION 8 DO NOT APPLY TO LIABILITY ARISING FROM (i) A PARTY'S INFRINGEMENT, MISAPPROPRIATION OR OTHER VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR (ii) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 9.

8.3 Limitations Fair and Reasonable. EACH PARTY ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 8 REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES UNDER THESE TERMS, AND THAT IN THE ABSENCE OF SUCH LIMITATIONS OF LIABILITY, THE ECONOMIC TERMS OF THESE TERMS WOULD BE SIGNIFICANTLY DIFFERENT.

9. CONFIDENTIAL INFORMATION

9.1 Non-Disclosure. Each party agrees to secure and protect the Confidential Information of the other using at least as great a degree of care as it uses to protect its own Confidential Information of a similar nature, but in no event less than reasonable care. Each party agrees to hold the Confidential Information of the other party in confidence and not disclose it to third parties. The recipient may disclose Confidential Information of the discloser to its employees, agents, contractors and other representatives having a legitimate need to know such Confidential Information or to the extent necessary to perform recipient's obligations under these Terms; *provided, that*, such representatives are subject to obligations of confidentiality similar to those in this Section 9 and the recipient remains responsible to the discloser for any unauthorized use or disclosure of Confidential Information by such representatives.

9.2 Authorized Disclosure. A party may disclose Confidential Information that is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority; *provided, that*, the recipient gives the discloser reasonable advance notice thereof so as to afford the discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure. For purposes of clarity, any Confidential Information disclosed pursuant to any legally required disclosure shall retain its confidentiality, non-disclosure and non-use protections for all purposes other than such legally required disclosure.

9.3 Injunctive Relief. In the event of any breach or threatened breach by the recipient of its obligations under this Section 9, the discloser shall be entitled to seek injunctive and other equitable relief to enforce such obligations.

10. GENERAL TERMS

10.1 Notice. All notices required or permitted to be given under these Terms shall be in writing and shall be delivered by first-class mail, overnight courier or prepaid post and shall be sent (i) with respect to Swivel, to the address identified on the first page of these Terms and (ii) with respect to the Customer, to the address identified in the applicable Proposal Form. All notices shall be deemed given seventy-two (72) hours after mailing or upon confirmed delivery or receipt, whichever is sooner. Notice may also be sent via email to the email address identified by a party from time to time; *provided, that*, such email notices shall only be deemed given upon confirmation of receipt by the intended recipient. Either party may from time to time change its address for notices under this Section 10.1 by giving the other party notice of such change in accordance with this Section 10.1.

10.2 Compliance with Applicable Law. Customer shall be solely responsible for its compliance with all federal, state and local laws, rules, and regulations applicable to Provided Data or Customer's use of the Service.

10.3 Governing Law; Jurisdiction and Venue. All disputes, claims or controversies arising out of or related to Customer's use of the Service, these Terms or a Proposal Form, whether based on contract, tort, or any other legal or equitable theory, shall in all respects be governed by, and construed and interpreted under, the laws of the State of Texas, without reference to conflict of laws principles that would

cause the application of the laws of a different jurisdiction, and shall be subject to the exclusive jurisdiction of the state and federal courts located in Austin, Texas. Customer and Swivel each submit to the personal jurisdiction of such courts and waive all objections to such jurisdiction and venue for such disputes.

10.4 Assignment. Customer's rights and obligations under these Terms or any Proposal Form may not be assigned, directly or indirectly or by operation of law without prior written consent of Swivel.

10.5 Amendments; Waivers. No supplement, modification, or amendment of these Terms shall be binding without both parties prior written consent. No waiver shall be implied from conduct or failure to enforce or exercise rights under these Terms, nor shall any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.

10.6 Force Majeure. Neither party shall be responsible for any delay in performing or failure to perform due to circumstances beyond its reasonable control, including acts of God, acts of terrorism, war, riot, embargoes, acts of civil or military authorities, medical epidemics or pandemics, fire, flood, earthquake or labor strike (each a "**Force Majeure Event**"). The party claiming the benefit of a Force Majeure Event shall promptly notify the other party of the occurrence and the anticipated duration of such Force Majeure Event, and shall promptly resume performance at the end of such Force Majeure Event. Notwithstanding the foregoing, Customer payment obligations that arose prior to the occurrence of the Force Majeure Event shall not be extinguished or delayed by virtue of the Force Majeure Event or the termination of these Terms by reason thereof.

10.7 Independent Contractors. The relationship of the parties to these Terms is that of independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party shall have the power to bind the other or incur obligations on the other party's behalf.

10.8 Entire Terms; Interpretation; Severability. These Terms and the Proposal Form are the complete and exclusive statement of the mutual understanding of the parties and supersedes all previous written and oral agreements and communications relating to the subject matter of these Terms. In these Terms, headings are for convenience only and "including", "e.g.", and similar terms shall be construed without limitation. In the event of a conflict between the terms of these Terms and the terms of any Proposal Form, the conflicting term of the Proposal Form shall supersede solely to the extent of such conflict. If any provision of these Terms is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be interpreted or limited so as to best accomplish the intent of the parties within the limits of applicable law, and the remaining provisions contained in these Terms shall remain in full force and effect (so long as such remaining provisions continue to substantially reflect the original intent of the parties).

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