



End User License Agreement

Updated January, 2020

SOFTWARE USER LICENSE AGREEMENT

This Software User Agreement ("Agreement") is made and entered into as of the Effective Date by and between SocialSwell, Inc, a Delaware Corporation ("Swell"), and the party accessing the Licensed Deliverables or any Entity on behalf of which the Licensed Deliverables are accessed. ("User", "Customers" or "Licensee"). Swell and User are individually referred to as a "Party" and collectively referred to as the "Parties." "Effective Date" shall mean the earlier on which Licensee accesses the Licensed Deliverables (as defined below)

RECITALS

WHEREAS, Swell is has developed software that is intended to assist business's with online reputation management, social media management and location management. The software package refered to as Swell (the "Software") is described in greater detail in the 'Definitions' section herein; and

WHEREAS, User desires to access and utilize such Software in conjunction with its business;

WHEREAS, Swell and User believe it is in their mutual interest and desire to enter into an agreement whereby User would use Swell's Software pursuant to the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement, the Parties hereto agree as follows:

TERMS DEFINITIONS. The following terms are defined as follows:

'HIPAA' means the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d through d-8, as amended from time to time ("HIPAA"), and the requirements of any regulations promulgated under either the HITECH Act or HIPAA, including, without limitation, the federal privacy regulations as contained in 45 C.F.R. Parts 160 and 164, the federal security standards as contained in 45 C.F.R. Parts 160, 162 and 164, and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.-

'Software' means SocialSwell's software commonly referred to as Swell, which is software that assists businesses in managing their online reviews and reputation, manage social postings, and gather customer feedback. The term 'Software' includes all derivative work, information and materials related to the Software

'Software Deliverables' means the Software (as that term is defined herein), any modifications or alternations thereto, all Software-related derivative work, information, materials, and training, and the Software Platform (as that term is defined herein).

'Software Platform' shall mean the web-based portal and platform that hosts the Software and all Customer-specific data. The Customer is only able to utilize the Software through this Software Platform.

AUTHORIZATION TO USE SOFTWARE. Swell hereby grants to User, for the term of this Agreement, a nonexclusive, nonassignable right to use the Software ("Authorization") in connection with its business, by accessing the Software through the web-based Software Platform. The Customer shall have no right to utilize or access the Software in any other manner, other than by accessing the Software through the web-based Software Platform.

RESTRICTIONS ON USE.



Users. Individuals accessing the Software must be members of the Customer's workforce. Customer agrees that it will not allow the sharing of user names or login credentials to access the Software Platform or Software. Customer shall be solely responsible for ensuring that anyone it gives access to the Software Platform or Software, is a member of its workforce, and authorized under its Company policies and federal and state law, to access the information contained in the Software

Platform and Software. Transfers, Assigns, and Authorization to Others Not Allowed. The Authorization is not assignable and not transferrable. User may not rent, loan, license, market, or sell the Authorization, the Software, the Software Deliverables or copies thereof, in whole or in part, to any party.

Internal Business Use. The Authorization allows User to use the Software Deliverables for User's own use and internal business purposes. User agrees to restrict the use of the Software Deliverables to its employees and authorized agents. Should User become aware of any unauthorized use or access of the Software Deliverables, User shall take all steps reasonably necessary to terminate the unauthorized use and agrees to immediately notify Swell. User also agrees to cooperate and assist Swell in taking measures and actions to prevent or terminate unauthorized use or access of the Software Deliverables by third parties.

Login Credentials. User agrees that it will be solely responsible for authorizing and providing login credentials for any and all agents of User; which login credentials will allow for the access to the Software Platform and Software. Customer shall be solely responsible for ensuring that anyone it gives access to the Software Platform or Software, is a member of its workforce, and authorized under its Company policies and federal and state law, to access the information contained in the Software Platform and Software. If applicable, User expressly represents and warrants that it will fully comply with HIPAA, including ensuring that all individuals it allows to access the Software and the Software Platform are allowed under HIPAA and under relevant state privacy laws. Swell takes no responsibility for any liability associated with Customer's acts or omissions related to whom Customer allows to access the Software and the Software Platform, and Customer shall indemnify and defend Swell against all claims or administrative investigations or actions which arise from User's use, authorization to allow others to use, or failure to prevent unauthorized use, of the Software or the Software Platform. Additionally, Customer agrees that it will not allow the sharing of user names or login credentials to access the Software Platform or Software.

Copies. User is prohibited from making any copies, archival or otherwise, of the Software.

Strict Construction. User is further prohibited from accessing or using the Software in any manner other than as described herein.

Duty to Notify Employees. Company hereby agrees (i) to notify its employees and agents who may have access to the Software or Software Deliverables of the restrictions contained in this Agreement and (ii) to ensure their compliance with such restrictions.

CONFIDENTIALITY. All of the Software Deliverables, including but not limited to, the Software and the Software Platform, shall be considered "Confidential Information" under this Agreement, and User shall comply with all related restrictions. User recognizes that the Software is the proprietary and confidential property of Swell. Accordingly, User shall not, without the prior express written consent of Swell, during the term of this Agreement and for five years thereafter, disclose or reveal to any third party or utilize for its own benefit other than pursuant to this Agreement, any information related to the Software Deliverables, including the Software, provided that such information was not previously known to User or to the general public. This provision prevents User (or any of its agents) from reverse engineering the Software or attempting to reverse engineer the Software; it also precludes User, for User's or a third party's gain, utilizing information related to the Software Deliverables. User agrees to take all reasonable precautions to preserve the confidentiality of Swell's



Software and shall assume responsibility that its employees, agents and related parties will similarly preserve this information against third parties. The provisions of this clause shall survive termination of this Agreement.

COPYRIGHT AND TITLE. The Software Deliverables and any copy thereof, in whole or in part, and all copyrights, trade secrets and other proprietary rights therein, including any derivative work, are the sole property of Swell. The Software Deliverables are protected by certain United States and international copyright laws and trademark laws. The Authorization confers no title of ownership in the Software Deliverables to User, nor does the Authorization constitute any transfer or sale of any of Swell's rights to the Software Deliverables. User agrees to treat the Software Deliverables with at least the same standard of care as it treats any other material copyrighted and/or trademarked by a third party, in no case less than a reasonable standard of care.

TRAINING, AND ACCEPTANCE.

Training. Swell shall provide training to the User regarding the use of the Software. This shall be provided via telephone.

In the event that User fails to notify Swell of any difficulties or problems with the Software within ten (10) days after the Customer begins to utilize the Software, User shall be deemed to have accepted the Software. Prior to acceptance of such Software, Swell shall have the right to repair or replace the Software at its discretion. Upon acceptance of such Software, Swell shall be under no obligation to repair or replace such Software except as provided for in the Warranties provisions of this Agreement.

WARRANTIES

Swell represents that the Software will be available from most devices that have a web-browser, including personal computers and tablets; however, the Software will not be compatible with mobile phones of any kind.

Swell represents and warrants that it has no actual knowledge that the Software infringes any valid rights of any third party.

Swell warrants that the Software will perform in accordance with the specifications provided by Swell to User. THE WARRANTY PROVIDED FOR HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, THAT MAY ARISE EITHER BY AGREEMENT BETWEEN THE PARTIES OR BY OPERATION OF LAW, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

In the event of a claim by User under this warranty, Swell shall have the option to either repair or replace the Software. In the event that Swell fails to repair or replace the Software within a reasonable period, User's sole recourse shall be to terminate the Agreement. In the case of such termination, Swell's financial remedy shall be limited to the actual fees paid to Swell by User since providing notice of the claim to Swell. In no event shall Swell be liable for any incidental, consequential, or punitive damages as a result of its performance or breach of this Agreement.

IMPROVEMENTS. Any improvements or modifications made by Swell to the Software or the Software Deliverables shall be promptly provided to User and shall be automatically included in this Agreement. User is precluded from making or attempting to make any modifications, changes or improvements ("Software Changes") to the Software or the Software Deliverables. Any Software Changes shall remain the intellectual property of the Swell, and shall not affect Swell's legal rights and interest in the Software Deliverables.

POST-TERMINATION RIGHTS. Upon the expiration or termination of the Master Agreement, all rights granted to User shall forthwith terminate. Upon such expiration or termination, Swell shall terminate User's access to the Software through the Software Platform and User shall discontinue all use of the Software and the Software Deliverables.