

END USER LICENCE AGREEMENT (EULA)

1 DEFINED TERMS

- 1.1 **Affiliate** means an entity that controls, is controlled by or is under common control with such party. For the purposes of this definition, control means the beneficial ownership of more than fifty per cent (50%) of the voting power or equity in an entity;
- 1.2 **Authorized Source** means an authorized channel partner of Semafone from whom the End User acquires the right to use the Software;
- 1.3 **Business Day** means any day which is not a Saturday, Sunday, public or bank holiday in the United States;
- 1.4 **Data Protection Legislation** means the data protection legislation applicable to the protection and processing of personal data of the End User's customers, all as amended, replaced or superseded from time to time.
- 1.5 **End User Environment** means the End User sites, infrastructure, facilities, systems, telephony, software, operating systems and any other End User managed or controlled environment which is relevant to the installation, integration and/or use of the Software;
- 1.6 **Intellectual Property Rights or IPR** means all intellectual property rights (whether or not any of these rights are registered and including applications and the right to apply for registration of any such rights) including patents, patent applications, supplementary protection certificates, petty patents, utility models, trademarks, database rights, rights in design, copyrights (including rights in software) and topography rights and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world in each case for their full term, and together with any renewals or extensions;
- 1.7 **Licence Fee** means the annual fee payable by the Authorized Source to Semafone for the licence and support of the Software;
- 1.8 **Licensed Channel** means the Semafone enabled SIP (session initial protocol) channels by which telephony and data is delivered using VOIP (voice over IP);
- 1.9 **PCI DSS** means the Payment Card Industry Data Security Standards issued by the PCI Security Standards Council LLC from time to time;
- 1.10 **Software** means the Semafone product licensed under this EULA;

2 SOFTWARE LICENCE

- 2.1 In consideration for payment of the License Fee to Semafone by the Authorized Source for or on behalf of the End User, Semafone grants to the End User from the date Semafone receives payment of the Licence Fee in cleared funds, a non-exclusive, revocable, non-transferable licence to use the Software in object code form solely for the End User's internal business requirements during the ____ year term of the license purchased by the End User from the Authorized Source.
- 2.2 The End User's use of the Software shall be limited to the number of Licensed Channels purchased by the End User from the Authorized Source.

3 GENERAL LIMITATIONS

- 3.1 Under no circumstances shall this EULA grant or transfer to the End User any Intellectual Property Rights in respect of the Software. The End User acknowledges and agrees that all right, title and interest in and to the Software and in any modification made to the Software shall vest and remain vested at all times with Semafone.
- 3.2 The End User shall not copy, modify, make error corrections, adapt, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the Software in any form or media or by any means, except to the extent necessary to deploy the Software in a manner consistent with the license rights granted to the End User by this EULA.

- 3.3 The End User shall not reverse engineer, disassemble, decompile, decrypt, translate or modify the Software or any part of the Software (or attempt to do any of the foregoing) except to the extent otherwise expressly permitted under applicable law.

- 3.4 Subject to Clause 4, below the End User shall not sub-license, rent, sell, lease, distribute, transfer, transmit, assign, novate or sub-license its license rights to any other person or entity.

- 3.5 The End User shall not access all or any part of the Software in order to build a product or service which competes with the Software.

4 PERMITTED THIRD PARTY USAGE

- 4.1 The End User may permit its Affiliates to use the Software provided that (i) the Affiliates only use the Software for their internal business purposes; (ii) the actual usage of the Software shall not exceed the Licensed Channels purchased by the End User; (iii) the Affiliates comply with the terms and conditions of this EULA; and (iv) the End User shall be responsible for the acts and omissions of its Affiliates at all times.

5 END USER OBLIGATIONS

- 5.1 The End User shall comply with all applicable laws, statutes and regulations from time to time in force. Semafone may terminate this EULA with immediate effect if the End User breaches this clause 5.1.

6 DATA PROTECTION

- 6.1 For the purposes of this Clause 6, "Controller", "Data Subject", "Personal Data" and "Processor" shall each have the meanings given in the applicable Data Protection Legislation.
- 6.2 Where Semafone is Processing Personal Data in order to provide products and/or services to the End User under the terms of this EULA, the parties acknowledge and agree that in respect of the Personal Data that is being processed by Semafone, the End User is the Controller and Semafone is a Processor respectively.
- 6.3 Both Semafone and the End User warrant that they shall comply with all applicable requirements under the Data Protection Legislation. This Clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. Without prejudice to the generality of this Clause 6.3, the End User will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Semafone for the duration and purposes of this EULA.
- 6.4 Both Semafone and the End User have described the processing of Personal Data being undertaken by Semafone in Exhibit 1 hereto.
- 6.5 To the extent that the performance of Semafone's obligations, and any supporting and/or ancillary activities under this EULA involves processing Personal Data on behalf of the End User, Semafone acknowledges and agrees that as Processor it shall:

- a) process the Personal Data only to the extent necessary for the purposes of performing its obligations under the EULA and otherwise in accordance with the End User's reasonable and lawful documented instructions and applicable laws. Where Semafone is relying on applicable laws as the basis for processing Personal Data, Semafone shall promptly notify the End User of this before performing the processing required by the applicable laws unless those applicable laws prevent Semafone from so notifying the End User;
- b) not transfer the Personal Data in any country outside the United States or the European Economic Area (EEA) (or post-Brexit the United Kingdom and the European Economic Area) unless:
 - i. Semafone has ensured that there are appropriate safeguards in relation to the transfer in accordance with Article 46 of GDPR and as determined by the End User;

- ii. *the Data Subject has enforceable rights and effective legal remedies;*
- iii. *Semafone complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and*
- iv. *Semafone complies with the End User's reasonable instructions notified to it in advance by the End User with respect to the processing of the Personal Data.*

If Semafone is required by applicable laws to transfer the Personal Data outside of the United States or the EEA, Semafone shall inform the End User of such requirement before making the transfer (unless Semafone is prevented from making such notification under the relevant applicable law).

- c) take reasonable steps to ensure that, in addition to any confidentiality provisions in the EULA, all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - d) have at all times during the term of the EULA, taking into account the nature of the processing, appropriate technical and organisational measures in place to:
 - i. *provide a necessary level of security to protect any Personal Data against unauthorized or unlawful processing and against accidental loss, alteration, destruction or damage; and*
 - ii. *assist the End User, where reasonably requested by the End User (and at the End User's cost) and to the extent possible, with fulfilling the End User's obligations to respond to requests from a Data Subject for access to, rectification, erasure or portability of, or for restriction of, or objections to, the processing of, that Data Subject's Personal Data;*
 - e) assist the End User, where reasonably requested by the End User (and at the End User's cost) and to the extent possible, with the End User's compliance obligations in respect of security of Personal Data, notifications of breaches of Data Protection Legislation to supervisory authorities, communications of breaches of Data Protection Legislation to Data Subjects, the carrying out of data protection impact assessments and any consultations with supervisory authorities or regulators;
 - f) cease processing the Personal Data in connection with this EULA on the termination or expiration of the EULA and, at the End User's election (and at the End User's cost), delete or return all Personal Data to the End User, and delete all existing copies unless applicable laws require their retention;
 - g) make available to the End User information reasonably necessary to demonstrate compliance with the obligations set out in this Clause 6.5 and where requested by the End User (and at the End User's cost) allow for and contribute to audits, including inspections, conducted by the End User or its representative; and
 - h) on reasonable written notice provide the End User with all reasonable assistance and information required by the End User to satisfy the End User's record keeping obligations under the Data Protection Legislation and, at the End User's reasonable request, adhere to any applicable code of conduct or certification method approved under GDPR.
- 6.6 The End User acknowledges and agrees that Semafone may engage third party sub Processors in connection with the processing of such Personal Data and in order to meet its obligations under the EULA from time to time. In such circumstances the End User hereby authorizes Semafone to engage with such third party sub Processors and in respect of Semafone's use of sub Processors:
- a) Semafone will notify the End User of the identity of the sub Processor and any intended changes to either the identity of the sub Processor or the terms that apply to the sub Processing;
 - b) within twenty (20) Business Days of Semafone's notification the End User can object to the intended changes on the basis such changes place Semafone in breach of Data Protection Legislation and/or applicable laws, and such objection by the End User shall

be in writing to Semafone setting out in detail the End User's specific reasons for its objection;

- c) where the End User legitimately objects to an intended change of sub Processor within the period in Clause 6.6(b) and Semafone cannot reasonably accommodate the End User's objection, Semafone will notify the End User and the End User may terminate this EULA by providing Semafone with written notice within one (1) month of Semafone's notice of the intended change;
 - d) Semafone shall remain fully liable to the End User for the acts and omissions of a sub Processor; and
 - e) Semafone shall ensure that such sub Processor is subject to a written agreement containing data processing obligations no less onerous than those set out in this EULA and that such agreement will meet the requirements of the Data Protection Legislation.
 - f) If Semafone appoints sub Processors who process Personal Data outside the United States or the EEA, Semafone shall notify the End User of such sub Processors and the jurisdiction in which Personal Data shall be processed and Clause 6.6(c) shall apply in respect of any objection by the End User.
- 6.7 Semafone shall without undue delay after having become aware, notify the End User of any unauthorised or unlawful processing of any of the Personal Data to which this Clause 6 applies and of any loss or destruction or other damage and shall take such steps consistent with good industry practice to mitigate the detrimental effects of any such incident on the Data Subjects and co-operate with the End User in dealing with such incident and its consequences.

7 TERM AND TERMINATION

- 7.1 This EULA shall commence from the Effective Date and will terminate immediately if (i) the End User (whether itself or by the Authorized Source on its behalf) fails to pay the Licence Fee to Semafone in accordance with the agreed payment terms; or (ii) the End User fails to comply with any of the terms and conditions of this EULA; or (iii) the End User takes or suffers any action on account of debt or becomes insolvent. The survival of such clauses is necessary for the interpretation or enforcement of this EULA and shall continue to have effect after such expiration or termination.
- 7.2 Within five (5) Business Days after the date of termination of this EULA the End User must supply written certification to Semafone that the Software is no longer being used within the End User Environment or by the End User in any way.
- 7.3 The End User's right to use and access the Software will automatically terminate on termination or expiration of this EULA. All Licence Fees paid or payable are non-refundable to the maximum extent permitted by law.

8 LIMITATION OF LIABILITY

- 8.1 In no event shall Semafone be liable to the End User for any loss of revenues, profits, sales, loss of agreements, contracts, business interruptions, failure to realize anticipated savings, any loss of or damage to goodwill or reputation, any loss of use or corruption of software, data or information (in each case whether direct or indirect) or for any other indirect, consequential, incidental or special loss or damage of any kind in each case suffered or incurred by the End User in contract, tort (including negligence) or for breach of statutory duty or otherwise arising out of or in connection with any matter under this EULA, and even if Semafone has been advised of the possibility of such loss or damage.
- 8.2 In no event shall Semafone's aggregate liability to the End User arising out of or in connection with this EULA from all causes of action including, without limitation, negligence exceed, in relation to all events occurring in any relevant year (meaning a calendar year from the Effective Date and each calendar year thereafter), an amount equal to one hundred and five per cent (105%) of the Licence Fee paid or payable during such relevant calendar year.

- 8.3 Nothing in this Clause 8 shall limit either party's liability for death or personal injury resulting from negligence or for fraud or fraudulent misrepresentation.

9 COMPLIANCE WITH LAWS AND REGULATIONS

- 9.1 Semafone agrees that it is responsible for the security of cardholder data it possesses, including the functions relating to storing, processing and transmitting the cardholder data. Semafone confirms that it has complied with all applicable requirements to be considered PCI DSS compliant and has performed the necessary steps to validate its compliance with PCI DSS.
- 9.2 The End User will at all times be responsible for complying with its PCI DSS obligations including obtaining any validation of compliance.
- 9.3 The End User shall allow Semafone to implement all updates to the Software necessary for the Software to remain PCI DSS compliant. Semafone shall have no liability to the End User in the event that the End User fails to allow Semafone to implement Software updates.

10 GENERAL PROVISIONS

- 10.1 A waiver of any right under this EULA shall only be effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the EULA are cumulative and do not exclude rights provided by law.
- 10.2 No amendment or variation of this EULA shall be effective unless in writing and signed by a duly authorized representative of each of the parties to it.
- 10.3 This EULA shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the parties shall submit to the exclusive jurisdiction of the state and federal courts in Massachusetts for any dispute concerning this EULA.

Exhibit 1
Data Processing

Subject matter	The subject matter of the Processing of the End User's Personal Data is set out in this EULA.
Duration of Processing	The duration of this EULA.
Purpose of Processing	The purpose for the Processing of the Personal Data is to provide and maintain the Software to allow individual customers of the End User to enter sensitive payment card details via their telephone keypad and to mask key tones, in accordance with PCI DSS.
Types of Personal Data	<ul style="list-style-type: none">• Name• Postal address• Email address• Phone number• Bank account details• Name on card• Date of birth• Credit or debit card number• Transaction details• Card verification code or value (CSC, CID, CVV2, CVC2, CVD, CVN2, CVE)• Expiry date• IP address
Data Subjects	The individual customers of the End User and/or an End User Affiliate.