

**This End User Licence Agreement is made this .....day of ..... 2016  
between:-**

- (1) Semafone Limited of 3 The Billings, Walnut Tree Close, Guildford, Surrey GU1 4UL (Semafone);  
And ;
- (2) .....(End User)

**NOW IT IS AGREED:-**

- A. Semafone has agreed to licence the Semafone Software to the End User provided the Semafone Software is purchased from an Authorised Source.
- B. The licence to use the Semafone Software shall be subject to the terms contained in this End User Licence Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their authorised representatives as set forth below.

.....  
End User  
  
By: .....  
Name: .....  
Title: .....

.....  
Semafone Limited  
  
By: .....  
Name: .....  
Title: .....

## END USER LICENCE AGREEMENT (EULA)

### 1 DEFINED TERMS

- 1.1 **Affiliates** means an entity that control are controlled by or are 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 **Authorised Source** means either (i) Semafone or (ii) an official reseller of the Software authorised by Semafone;
- 1.3 **Bug Fix Update** means updates that are provided in order to fix identified faults in the Software (but which are not Vulnerability Updates, Product Updates or IP Updates);
- 1.4 **Business Day** means any day which is not a Saturday, Sunday or public or bank holiday in England;
- 1.5 **Design Documentation** means documentation issued by Semafone which determines the End User Environment and the installation, integration and use of the Software;
- 1.6 **Effective Date** means the date on which this EULA is entered into by the parties;
- 1.7 **EULA** means this End User Licence Agreement;
- 1.8 **End User** means you the party who has installed or allowed the Software to be installed in its business environment;
- 1.9 **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 use of the Software;
- 1.10 **Go Live** means the Software has been installed in the End User Environment and ready to take commercial live traffic;
- 1.11 **Hardware** means the hardware to be used with the Software;
- 1.12 **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, supplementary protection certificates, petty patents, utility models, trade- marks, 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 ease case for their full term, and together with any renewals or extensions;
- 1.13 **IP Updates** means updates which are necessary to address IPR infringement issues;
- 1.14 **Licence Fee** means the annual fee payable for the licence to the Software by the End User subject to the terms of this EULA;
- 1.15 **Licensed Seat** means the device on which the Software is accessed, i.e. a single desktop-PC within the End User Environment;
- 1.16 **Minimum Hardware Requirements** means the minimum specification which the Hardware must conform to, as agreed by the End User and Semafone or its Authorised Source;
- 1.17 **PCI Data Security Standards** means the Payment Card Industry Data Security Standards issued by the PCI Security Standards Council LLC from time to time;
- 1.18 **Product Updates** means updates which introduce new functionality to the Software and/or which are required to address changes in the Minimum Hardware Requirements;
- 1.19 **Release Date** means the date on which Semafone releases an Update and notifies the End User of the same;
- 1.20 **Semafone** means Semafone Limited (a company incorporated and registered in England and Wales with company number 06963868) whose

registered office is at 3 The Billings, Walnut Tree Close, Guildford, Surrey, UK GU1 4UL;

1.21 **Software** means Semafone Software purchased from the Authorised Source by the End User;

1.22 **Vulnerability Updates** means updates which are necessary to address a critical vulnerability in the Software;

1.23 **Updates** means IP Updates, Bug Fix Updates, Vulnerability Updates or Product Updates as appropriate.

### 2 SOFTWARE LICENCE

2.1 In consideration for payment of the Licence Fee to the Authorised Source, Semafone grants to the End User from the Effective Date 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 term of the licence purchased from the Authorised Source.

2.2 The End User's use of the Software shall be limited to the number of Licensed Seats purchased by the End User from the Authorised 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 the right, title and interest in 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 licence rights granted to the End User.

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, The End User shall not sub-license, rent, sell, lease, distribute, transfer, transmit, assign or sub-license its licence 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 Seats 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 SUPPORT SERVICES AND UPDATES

5.1 As part of the support services four types of Updates may be made available including Vulnerability Updates, Product Updates, IP Updates and Bug Fix Updates.

5.2 Semafone agrees to provide the End User with support services via remote access for the Software in the event that any IP Update, Product Update, Vulnerability Updates or Bug Fix Updates need to be implemented. The End User shall ensure that Semafone has remote access rights to conduct any update work. Subject to clause 5.3, all IP Updates, Vulnerability Updates and Bug Fix Updates and Product Updates are included in the support services fee paid by the End User.

5.3 The implementation of Product Updates is not included in the support services fee and will be charged at the applicable rate.

## **6 END USER OBLIGATIONS**

6.1 The End User must permit Semafone to install and/or implement each Update as soon as reasonably practicable. If the End User fails to allow Semafone to install and or implement an Update the relevant warranty shall be dis-applied in accordance with clause 8.

6.2 The End User shall ensure that its network and systems comply with the relevant specifications provided by Semafone from time to time, including the provision and maintenance SIP trunks to Semafone or its subcontractor's hosted environment in order to access the Software.

6.3 The End User shall ensure that its Hardware conforms to the Minimum Hardware Requirements.

## **7 LIMITED WARRANTY**

7.1 Semafone warrants to the End User that, subject to the continued receipt of support services and subject to clauses 7.2 and 8 the Software will substantially conform to the functional specifications set out in the agreed Design Documentation.

7.2 In no event does Semafone warrant that the Software is error free.

7.3 If Semafone is notified in writing of a breach of warranty under clause 7.1, Semafone's entire liability and the End User's sole remedy shall be (at Semafone's option); (i) to correct, repair or replace the Software within a reasonable time or (ii) authorise a refund of the Licence Fee for the relevant year.

7.4 Subject to the End User's use of the Software being in accordance with PCI Data Security Standards (including as to the End User Environment) Semafone warrants to the End User that the Software shall comply with PCI Data Security Standards on installation, and shall, subject to clause 8 and the continued receipt of support services, continue to comply with PCI Data Security Standards throughout the term of this EULA.

7.5 No Update issued by Semafone shall adversely affect the performance or functionality of the Software in any material respect as initially installed for the End User.

7.6 The warranties in clauses 7.1 and 7.4 shall not apply if (i) the Software has not been used in accordance with the terms and conditions of this EULA; or (ii) maintenance or modification or alteration of the Software has been carried out by unauthorised personnel; or (iii) the relevant issue has been caused by the failure of the End User to allow Semafone to have remote access to apply Updates; or (iv) the End User fails to comply with any Minimum Hardware Requirements; or (v) the issue results from any cause outside of Semafone's reasonable control.

## **8 UPDATES**

8.1 If the End User does not permit Semafone to install and/or implement a Product Update within twelve (12) months of the Release Date or such shorter period as may be prescribed by PCI Data Security Standards then:

- a) the warranty in clause 7.1 shall not apply from the Release Date until such a time as such Product Update (or further subsequent Product Update) is installed to the extent that the Product Update would have resolved the relevant functionality issue;
- b) the warranty in clause 7.4 shall not apply between the Release Date until such time as such Product Update (or further, subsequent, Product Update) is installed, to the extent that the Product Update would have rectified any issue of non-compliance with PCI Data Security Standards; and
- c) Semafone (and/or the Authorised Source) shall be entitled to levy reasonable additional charges for additional support calls which would not have been necessary if the Product Update had been installed.

8.2 If the End User does not permit Semafone to install and/or implement a Vulnerability Update immediately then the warranty in clause 7.4 shall not

apply until such time as such Vulnerability Update (or further, subsequent, Vulnerability Update) is installed, to the extent that the Vulnerability Update would have rectified any issue of non-compliance with PCI Data Security Standards.

8.3 If the End User does not permit Semafone to install and/or implement an IP Update within thirty (30) days of it being made available to the End User then the IPR indemnity in clause 9 shall, to the extent that the IP Update would have rectified any issue of infringement, not apply from the end of such thirty (30) day period until such time as such IP Update is installed, provided that the IP Update is clearly identified as such when it is made available to the End User.

8.4 If the End User does not permit Semafone to install and/or implement a Bug Fix Update immediately upon it being made available to the End User then:

- a) the warranty in clause 7.1 shall not apply until such time as the such Bug Fix Update is installed, to the extent that the Bug Fix Update would have resolved the relevant functionality issue; and
- b) Semafone (and/or the Authorised Source) shall be entitled to levy reasonable additional charges for additional support calls which would not have been necessary if the Bug Fix Update has been installed.

## **9 IPR INDEMNITY**

9.1 Semafone shall indemnify and keep the End User fully and effectively indemnified on demand from and against any and all losses, claims, damages, costs, charges, expenses and liabilities which arise from any claim or proceeding alleging that the End Users use of the Software infringes any third party Intellectual Property Rights provided that: (i) Semafone is given prompt notice of any such claim; (ii) the End User provides information and reasonable co-operation to Semafone in the defence and settlement of such claim, at Semafone's expense; (iii) Semafone is given sole authority to defend or settle the claim; and (iv) the End User shall not make any admissions which may be prejudicial to the defence or settlement of any claim without Semafone's prior written consent.

9.2 In the defence or settlement of any claim referred to in clause 9.1, Semafone shall (at Semafone's option) obtain for the End User the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or if such remedies are not reasonably available terminate this EULA.

9.3 Clauses 9.1 and 9.2 state the End User's sole and exclusive rights and remedies and Semafone's entire obligations and liability for infringement of any Intellectual Property Rights.

## **10 TERM AND TERMINATION**

10.1 This EULA shall commence from the Effective Date and will terminate immediately if: (i) the End User fails to pay the Licence Fee to the Authorised Source 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. Such clauses the survival of which are necessary for the interpretation or enforcement of this EULA shall continue to have effect after such expiry or termination.

10.2 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 has ceased to be used within the End User Environment.

10.3 The End User's right to use and access the Software will automatically terminate on termination of this EULA. All Licence Fees paid or payable are non-refundable to the maximum extent permitted by law.

## **11 LIMITATION OF LIABILITY**

11.1 Subject to clause 9.1, in no event shall Semafone be liable to the End User for any loss of profits, loss of contracts, business interruptions, loss of or corruption of data (in each case whether direct or indirect) nor for any other indirect, consequential, incidental or special loss or damage of any kind in each case whether such liability arises under contract or tort (including negligence) or otherwise and even if Semafone has been advised of the possibility of such loss or damage.

11.2 Subject to clause 9.1, 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 year, an amount equal to one hundred and five per cent (105%) of the Licence Fee paid or payable during such year

11.3 Nothing in this clause 11 shall limit either party's liability for death or personal injury resulting from negligence or for fraud.

## **12 COMPLIANCE WITH LAWS AND REGULATIONS**

12.1 Semafone agrees that it is responsible for the security of cardholder data it possesses, including the functions relating to storing, processing and transmitting of the cardholder data. Semafone affirms 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 the PCI DSS. Semafone agrees to supply the current status of Semafone's PCI DSS compliance status and evidence of its most recent validation of compliance to the End User. Semafone must supply to the End User a new status report and evidence of validation of compliance at least annually.

## **13 GENERAL PROVISIONS**

13.1 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.

13.2 No amendment or variation of this EULA shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

13.3 A person who is not a party to this EULA has no right under the Contracts (Right of Third Parties) Act 1999 to rely upon or enforce any terms of this EULA but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

13.4 This EULA shall be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the exclusive jurisdiction of the English courts.