

SWIPECLOCK® END-USER LICENSE AGREEMENT

IMPORTANT - READ CAREFULLY BEFORE ACCESSING OR USING THE SWIPECLOCK SERVICES, COMPANY SOFTWARE, OR ANY OTHER CONTENT PROVIDED BY COMPANY.

This SwipeClock End-User License Agreement (this “**Agreement**”) is a legal agreement between SwipeClock LLC (“**Company**”), a Delaware corporation located at 10813 South River Front Parkway, Suite 525, South Jordan, Utah 84095, and the legal entity enrolling in or otherwise signing up for Company services through Company’s website (“**End-User**”). This Agreement is effective as of the date End-User has affirmatively indicated its intent to be bound by the terms hereof (the “**Effective Date**”), such as by clicking “I Agree”, “Accept”, or “Submit Order” or otherwise submitting an online order for services from Company. The person completing and submitting End-User’s online order to Company represents and warrants to Company that he or she is authorized to bind End-User to the terms and conditions of this Agreement and that this Agreement is binding on End-User.

The services to be provided by Company are those expressly identified in the online order prepared using Company’s website and submitted by End-User (the “**SwipeClock Services**”):

1. SERVICES.

(a) Subject to the terms and conditions of this Agreement, including payment of all applicable Service Fees, Company agrees to provide End-User with the SwipeClock Services for End-User’s internal business purposes only. End-User acknowledges that some or all of the SwipeClock Services are provided on a “Software as a Service” basis and, for such SwipeClock Services, no copy of any software is or will be made available to End-User. The SwipeClock Services may be subject to additional terms, conditions, restrictions and requirements (collectively, “**Additional Terms**”), which may be made available on Company’s website or by other means (for instance, online terms of use, service terms, privacy policies, and the like, including any additional terms and conditions present at the time of End-User placing its online order for the SwipeClock Services). End-User agrees to be bound by all applicable Additional Terms.

(b) If the Back Office Sales and Support program (“**BOSS Services**”) is selected by End-User, Company shall provide End-User enhanced support services, including priority setup and training with respect to SwipeClock Services. Fees due from End-User to Company for BOSS Services shall be paid in accordance with Section 2.

2. FEES AND PAYMENT.

(a) In consideration for the SwipeClock Services End-User will pay Company the fees and other payments, costs, charges, and amounts set forth at the time of placing End-User’s order for the SwipeClock Services (the “**Service Fees**”). Company will bill End-User on a monthly basis for all Service Fees. Invoices from Company for partial periods shall be prorated. Invoices are due on the 20th of each month for Service Fees incurred the previous month and will be paid in accordance with the terms and conditions outlined at the time of placing End-User’s order for the SwipeClock Services. Unpaid balances over 30 days old are considered delinquent, and if End-User is 60 days or more past due, End-User is in default, and Company may terminate this Agreement upon 10 days’ written notice to End-User as described in Section 3. A late fee of 1.5% per month or the maximum permitted by law (whichever is lower) may be assessed on late balances. Company reserves the right to adjust the Service Fees at any time, effective 30 days after written notice is delivered to End-User.

3. TERM AND TERMINATION

(a) This End-User Agreement shall commence on the Effective Date and shall continue thereafter until terminated by either party in accordance with this Section. Either party may terminate this End-User Agreement for any reason or no reason, effective sixty (60) days after giving written notice of termination to the other party.

(b) If End-User is in default as defined by this End-User Agreement, Company may terminate the End-User Agreement with ten (10) days notice to End-User providing an opportunity to cure the default within that timeframe. Company may, in addition to or instead of termination, suspend the SwipeClock Services until the default is cured.

(c) In the event of any termination or expiration of this End-User Agreement for any reason: (i) the rights and licenses granted to Company under this Agreement with respect to the SwipeClock Services and Company Software shall immediately terminate; (ii) End-User and all of its employees shall immediately cease all use of the SwipeClock Services and Company Software; (iii) each party shall return the Proprietary Information of the other party (and not keep any copies of the other party’s Proprietary Information) in accordance with Section 12. Sections 2, 3(c), 4, 6(b), 8(b), 9, 10, 11, 12, 14(a)(ii), 14(a)(iii), 14(c), 16, and 17 hereof shall survive and continue

in effect despite such termination or expiration, and all Service Fees and other charges related to the SwipeClock Services provided up to the date of such termination shall become immediately due and payable as provided in Section 2.

4. INDEPENDENT RELATIONSHIP

End-User and Company are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this End-User Agreement to create an agency, employment, partnership, or joint venture between the parties. Neither party shall have the authority to incur any contractual, financial, or other obligation on behalf of or in the name of the other party except with the party's express prior written authorization.

5. DATA VERIFICATION

(a) End-User is wholly responsible for all data provided by End-User or its employees to Company (including verifying its accuracy and ensuring End-User has all rights to provide all such data to Company), and Company shall not be liable or responsible for any inaccuracies in any such data.

(b) Prior to preparing payroll, End-User shall confirm that its data matches the information sent by Company. End-User shall inform Company of any discrepancies and End-User and Company shall jointly cooperate in the investigation and correction of such discrepancies.

(c) End-User acknowledges that in virtually all cases, employees of Company are unfamiliar with the typical business operations of End-User, and as a result, employees of Company are not qualified to independently assess the validity of data collected through the SwipeClock Services.

6. DATA OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS.

(a) For all purposes of this Agreement, End-User shall be deemed the author and owner of all timekeeping data it inputs into the SwipeClock Services. Company will make all current and historical timekeeping data of End-User available for download in a computer-generated file available to End-User during the term of this Agreement and for 30 days thereafter. Notwithstanding the foregoing, Company shall have a non-exclusive, perpetual, irrevocable, worldwide license to retain, use, copy, and distribute aggregated and anonymized End-User data for any legitimate business purpose.

(b) The SwipeClock Services, Company Software (defined below) and all copyrights, patent rights, trademarks, trade secrets, source code and other intellectual property and proprietary rights throughout the world ("**Intellectual Property Rights**") therein and thereto are and shall remain the exclusive property of the Company. The SwipeClock Services and Company Software are comprised of and embody substantial trade secrets, copyrights, trademarks and trade names, all of which are solely the Company's. All rights in and to the SwipeClock Services and Company Software not expressly granted to End-User in this Agreement are reserved by the Company. Without limiting the foregoing, End-User may not create Internet "links" to SwipeClock Services or "mirror" any data, information, content, or other material of Company that is provided to it through the use of the SwipeClock Services, or otherwise sell, sublicense, or make available the SwipeClock Services to any third party.

7. ADMINISTRATION; TELEPHONE SUPPORT.

(a) SwipeClock offers a web-based and e-mail-based support ticket system. Answering support tickets received directly from End-User or End-User's designated contacts is considered normal administrative work and included in the standard monthly Service Fees.

(b) Specific types of work, including those set forth below, are typically chargeable at an hourly or other rate. However, Company reserves the right to perform any such services without charge at its discretion, without prejudice to Company's right to charge for similar services in the future.

- Support requests made through Company's premium Professional Services Department.
- Writing of scripts, rules, custom reports, and/or custom exports for the benefit of End-User.
- Requests to import, move, or otherwise manipulate data "from the back end" using database administrative tools (e.g. SQL).
- Requests to restore deleted data from database backups maintained by Company.
- Other services as determined by Company, upon informing End-User, verbally or in writing, that such a request may incur a fee.

8. HARDWARE SALES AND RETURNS

(a) End-User may purchase timekeeping hardware from Company:

- (i) new clock hardware programmed by Company is sold with a warranty as set forth in a separate hardware warranty document;
- (ii) all other hardware and merchandise by Company is sold "AS IS" without any warranty of any kind (including, without limitation, no warranty of fitness for particular purpose or merchantability).

(b) ALL HARDWARE PURCHASES REQUIRE PREPAYMENT UNLESS OTHER ARRANGEMENTS HAVE BEEN MADE IN ADVANCE.

(c) End-User must follow the Company's Returned Merchandise Authorization (RMA) policies (as set forth on Company's website or otherwise delivered in writing, subject to change at any time) in order to receive credit for any hardware returned to Company. Further, all hardware returns and hardware warranty claims must be returned to Company in suitable packaging at End-User's cost, and End-User will bear all risk of damage in transit. End-User must write the RMA number clearly on the returned packaging. Any item returned without a RMA number will not be processed, and Company will not be responsible for any further tracking or credits assessed with the item. End-User shall be responsible for any expedited shipping costs.

9. COMMUNICATION; FEEDBACK.

Except as to matters as to which this Agreement requires written notice, each party agrees to accept communication from the other party via email, the support ticket system, fax, phone, or postal service. Company will own any feedback, comments, suggestions, or input provided by End-User to Company related to the SwipeClock Services ("**Feedback**"), and End-User hereby assigns to Company all right, title and interest in and to any such Feedback, including any Intellectual Property Rights therein.

10. WARRANTIES.

(a) Warranties for hardware and merchandise purchased from Company are set forth in Section 8.

(b) EXCEPT FOR THOSE WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT, THE SWIPECLOCK SERVICES, OR COMPANY SOFTWARE (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF ACCURACY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY).

(c) ALL SERVICES (INCLUDING ALL SWIPECLOCK SERVICES) PROVIDED BY COMPANY TO END-USER AND ALL COMPANY SOFTWARE IS PROVIDED "AS IS" AND "WITH ALL FAULTS". THERE IS NO GUARANTEE OR WARRANTY OF ANY KIND THAT SWIPECLOCK SERVICES OR COMPANY SOFTWARE WILL MEET THE NEEDS OF END-USER.

11. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, COMPANY ASSUMES NO LIABILITY FOR ANY LOSS, INJURY, CLAIM, LIABILITY OR DAMAGE OF ANY KIND INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOST PROFITS, LOST DATA OR FAILURE OF SECURITY RESULTING IN ANY WAY FROM THE END-USER OR ITS USE OF THE SWIPECLOCK SERVICES, COMPANY SOFTWARE, OR THIS AGREEMENT. COMPANY SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER, WHETHER OR NOT FORSEEABLE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES). IN NO EVENT SHALL THE TOTAL, CUMULATIVE LIABILITY OF COMPANY UNDER THIS AGREEMENT EXCEED THE AMOUNTS RECEIVED FROM END-USER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

END-USER AGREES TO BRING ANY AND ALL CLAIMS IT MAY HAVE AGAINST COMPANY WITHIN THE EARLIEST OF ONE YEAR FROM THE DATE THE CLAIM ARISES, OR THE TERMINATION DATE OF THIS AGREEMENT, AND ANY AND ALL CLAIMS NOT BROUGHT WITHIN THE APPLICABLE TIME PERIOD ARE HEREBY WAIVED AND RELEASED IN THEIR ENTIRETY BY END-USER.

12. CONFIDENTIALITY.

The parties acknowledge that in the course of performing their respective obligations pursuant to this Agreement each will have access to and contact with Proprietary Information (as defined below) of the other. Each party agrees that it will not, during the term or at any time thereafter, disclose to others, or use for its benefit or the benefit of others, any Proprietary Information of the other party unless this Agreement expressly permits such use or disclosure or such disclosure is required by law. For purposes of this Agreement, “**Proprietary Information**” means any information relating to a party or a party’s affiliate, including all Intellectual Property Rights, customer lists and customer data, provided that Proprietary Information will not include information that: (a) is or becomes generally available to the public other than as a result of a wrongful disclosure, (b) was lawfully in the receiving party’s possession prior to disclosure by the disclosing party, as can be shown by the receiving party’s written records, (c) is independently developed by the receiving party without resort to the Proprietary Information, as can be shown by the receiving party’s written records, (d) was or becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party without a wrongful act, or (e) is required by law or judicial order, provided that the receiving party shall give the disclosing party prompt written notice of such required disclosure in order to afford the disclosing party an opportunity to seek a protective order or other legal remedy to prevent the disclosure, and shall reasonably cooperate with the disclosing party’s efforts to secure such a protective order or other legal remedy to prevent the disclosure. For clarity, all Company Software is and will be deemed to be the Proprietary Information of Company. Upon the termination or expiration of this Agreement for any reason each party will return or destroy the other party’s Proprietary Information and not keep any copies thereof.

13. PERSONALLY IDENTIFIABLE INFORMATION (PII), SSN

(a) Company hereby advises End-User that Company expressly disclaims any need to know the Social Security Number of End-User’s employees, as well as any other legally protected or privileged personal information, notwithstanding the possible presence of fields available in Company’s systems in which to enter such data.

(b) End-User is prohibited from disclosing, uploading, importing, or otherwise performing any transfer of Social Security Numbers, as well as all protected personal information held on behalf of End-User’s employees, to any system or network owned by Company.

(c) If Company believes in good faith that such data is being stored in its system, Company reserves the right to take any or all of the following actions in its sole discretion:

- i. Offering to purge the data from its systems with End-User’s approval, or upon End-User’s request.
- ii. Purging the data from its systems without prior notice to End-User.
- iii. Charging a surcharge of \$2.00 per privileged datum (e.g. SSN) per month, in the event End-User is unwilling to approve Company’s request to purge such data from its systems.
- iv. Declaring that End-User is in breach of contract and moving to terminate for cause as described in Section 3, in the event End-User is unwilling to approve Company’s request to purge such data from its systems.
- v. Offering to amend the End-User Agreement to document the intended reason for storing such data on Company’s systems, and to grant permission to do so. Such an amendment may require a fee payable to Company.

(d) End-User acknowledges that in the event that data is purged from Company’s systems, whether at End-User’s request or upon Company’s own initiative, purged data may continue to remain in offline backups and/or archives maintained by Company, and that a complete purge from all of Company’s equipment and media is likely impossible.

(e) Whether or not Company accepts any surcharge or fee associated with, or in exchange for, storing Social Security Numbers or other privileged data on its systems, End-User acknowledges that despite commercially reasonable efforts, absolute security from any Internet-connected system is impossible. Accordingly, Company unconditionally disclaims liability associated with its facilities being used to store such data.

14. SOFTWARE LICENSE AGREEMENT

(a) Some products offered by Company, including but not limited to time clocks, voice clocks, biometric devices, downloadable software, packaged software, and other products, may contain intellectual property of Company such as source code, object code, or program documentation (“**Company Software**”). In such case,

except where expressly superseded by another license agreement the following terms shall apply:

- (i) Company grants to End-User a non-exclusive and non-transferable license to use Company Software during the term of this Agreement, only on equipment provided or approved by Company, and only in conjunction with the use of the SwipeClock Services for End-User's internal business purposes.
- (ii) Except as expressly authorized above, End-User shall not: copy, in whole or in part, software or documentation; modify the software; reverse compile or reverse assemble all or any portion of the Company Software or otherwise attempt to derive the source code to any Company Software; or rent, lease, distribute, sell, sublicense, or create derivative works of the Company Software.
- (iii) End-User agrees that aspects of the Company Software, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of Company. End-User agrees not to disclose, provide, or otherwise make available such trade secrets or copyrighted material in any form to any third party without the prior written consent of Company. End-User agrees to implement reasonable security measures to protect such trade secrets and copyrighted material. Title to the Company Software and documentation shall remain solely with Company.

(b) During use of the SwipeClock Service, End-User may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the SwipeClock Services. Any such activities, and any terms, conditions, warranties or representations associated with such activities, are solely between End-User and the applicable third-party. Company and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between End-User and any such third-party. Company does not endorse any sites on the Internet that are linked through the SwipeClock Services. Company provides these links only as a matter of convenience, and in no event shall Company or its licensors be responsible for any content, products, or other materials on or available from such sites. End-User recognizes that certain third-party providers of ancillary software, hardware or services may require End-User's agreement to additional or different license or other terms prior to the use of or access to such software, hardware or services.

(c) End-User shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the SwipeClock Services or the data contained therein; or (v) attempt to gain unauthorized access to the SwipeClock Service or its related systems, networks, or data contained therein.

15. CUSTOMIZATION WORK

(a) As part of the suite of services Company offers to End-User, Company may from time to time create programming, scripts, or rules ("**Customization Code**") designed to accommodate feature requests, programming needs, and/or customizations on behalf of End-User. For example, a client may need a custom script to accommodate an unusual shift schedule or non-standard overtime rules. All Customization Code is and will be exclusively owned by Company and deemed Company Software hereunder.

(b) Projects of work proposed by End-User and accepted by Company to be performed that would increase the scope of this Agreement will be added as an amendment in to this agreement in the form of a Statement of Work(SOW) and signed by both parties.

16. INDEMNIFICATION

(a) End-User will indemnify, hold harmless, and, at Company's option, defend, Company, its service providers, agents, affiliates, and licensors from and against any and all claims, demands and actions, and any liabilities, damages and expenses (including court costs and attorney's fees) (collectively "**Liabilities**") resulting therefrom, caused by or relating to (i) End-User's employees or any data provided by End-User; (ii) End-User's breach or failure to act in a manner consistent with terms or conditions of this Agreement; (iii) any use or misuse of the SwipeClock Services or Company Software; (iv) Company's reliance on or performance consistent with any instructions, requests, or information provided to Company by or on behalf of End-User, in all cases except to the extent such Liabilities result from Company's gross negligence or intentional misconduct.

(b) Company will indemnify, hold harmless, defend End-User from and against any and all claims, demands and actions, and any Liabilities resulting therefrom, brought against End-User by a third party and caused by Company's gross negligence or intentional misconduct, provided that: (i) End-User promptly notifies Company in writing of the applicable claim, demand, or action; (ii) Company is granted sole control of the defense and/or settlement thereof; and (iii) End-User furnishes to Company, on request, all relevant information available to End-User and reasonable cooperation for such defense.

17. MISCELLANEOUS

(a) This End-User Agreement (including all Additional Terms and Amendments hereto and policies and procedures referenced herein) contains the entire agreement among the parties concerning its subject matter, and replaces all earlier agreements among them, whether written or oral, concerning its subject matter. In the event of any conflict or inconsistency between the terms of this End-User Agreement and any other document provided to End-User, the terms of this End-User Agreement shall govern.

(b) This End-User Agreement (including all Additional Terms and/or Amendments hereto and policies and procedures referenced herein) will be governed by and construed under the laws of the State of Utah without regard to conflicts-of-laws principles that would require the application of any other law. Any proceeding arising out of or relating to this End-User Agreement (including all Additional Terms and/or Amendments hereto) shall be brought only in a federal or state court located in Salt Lake County, Utah, and each of the parties hereto irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding and waives any objection it may now or hereafter have to venue or to convenience of forum.

(c) Unless otherwise indicated in this Agreement, all notices, consents, waivers and other communications required or permitted under this End-User Agreement (including all Additional Terms and Amendments hereto) may be delivered electronically via electronic mail ("email"). All notifications under this Agreement may also be delivered via certified mail or overnight courier addressed, in the case of End-User, to the mailing address Company has on file for End-User, and in the case of Company, to:

SwipeClock LLC
10813 So. River Front Pkwy, Suite 525
South Jordan, Utah 84095
Attn: Director of Operations

With a copy to: billing@swipeclock.com

(d) Captions in this End-User Agreement are for convenience only and shall be deemed irrelevant in construing the provisions of this End-User Agreement.

(e) If any provision of this End-User Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this End-User Agreement will remain in full force and effect. Any provision of this End-User Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(f) No provision hereunder shall be deemed waived unless such waiver shall be in writing signed by the parties. No waiver by any party hereto of any of its rights or remedies on any one occasion shall operate as a waiver of any other of its rights or remedies or any of its rights or remedies on a future occasion. The rights and remedies of the parties to this End-User Agreement are cumulative of themselves and of every other right or remedy.

(g) Neither party may assign this Agreement in whole or in part without the prior written consent of the other party, except that either party (the "**Assigning Party**") may assign this Agreement without the written consent of the other party (the "**Non-Assigning Party**") to a corporation or other business entity succeeding to all or substantially all the assets or business of the Assigning Party relating to this Agreement, whether by merger, change of control, purchase, or otherwise. Any attempted assignment, delegation or transfer by an Assigning Party in violation hereof shall be null and void.

(h) This End-User Agreement may be signed in one or more counterparts, each of which shall be deemed to be an original copy of this End-User Agreement and all of which shall be deemed to constitute one and the same End-User Agreement.

(i) Notwithstanding anything contained herein to the contrary, neither party shall be liable for any delay or failure in performance due to any reason or circumstances beyond the affected party's reasonable control, including acts of God or public authorities, war and war measures (whether or not a formal declaration of war is

in effect), civil unrest, fire, epidemics, floods, earthquakes, or delays in transportation, delivery or supply, failures of third-party service providers or other reasons beyond their control. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

(j) For purposes of this Agreement, “**affiliates**” means any persons or entities that control, are under the control of, or are under common control with the specified entity. “**Control**” means the direct or indirect ownership, either legal or beneficial, of at least fifty percent of any class of voting or equity interests of the specified entity.

BY CLICKING “I AGREE”, “ACCEPT”, “SUBMIT ORDER”, PLACING AN ORDER FOR SWIPECLOCK SERVICES, INDICATING AN AFFIRMATIVE INTENT TO BE BOUND BY THIS AGREEMENT, OR BY OTHERWISE DOWNLOADING, ACCESSING, OR USING THE SWIPECLOCK SERVICES, COMPANY SOFTWARE, OR OTHER CONTENT OF COMPANY, END-USER ACKNOWLEDGES, WITHOUT LIMITATION OR QUALIFICATION, THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS AND AGREES TO BE BOUND TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.