

**PART A – Swyx**

**1. DEFINITIONS**

**EULA** – End User License Agreement;

**License Key** – An encoded character string protecting usage rights for certain Software Products provided to You physically as a paper document or by electronic means. The extent of related usage rights may differ from product to product;

**Order Email Confirmation** means the email provided by the Service Provider confirming acceptance of Your request to order the Service subject to the Agreement;

**Service(s)** – means the “Swyx Phone System Service” defined in the relevant Order Email Confirmation;

**Software** means any software supplied to You by the Service Provider in connection with or to enable You to use the Service;

**Products** – Products within the meaning of these Service Specific Terms and Conditions are those Service Provider products as purchased by You;

**User Licence** means the licence which grants the end user the right to use the software application in question and exists between the Service Provider or the Service Provider’s manufacturer and the end user of the software application;

**2. SERVICE DESCRIPTION – SWYX PHONE SYSTEM**

2.1. The Service provided by the Service Provider is a Swyx Phone System Service. This provides a means for a compatible system to place and receive calls from the PSTN Network. The Service is accessed using the Customer Network and Internet Connection. Connectivity to and from the PSTN Networks is

facilitated through the Service Provider Infrastructure and Upstream Carriers.

2.2. The Service Provider will make the SIP Service available in line with the SLA.

**3. USE OF LICENSE**

3.1. You shall only use the Service in accordance with the Standard Terms and Conditions, these Service Specific Terms and Conditions and the End User Licence Agreement (EULA) terms for Your own purposes.

which require registration by You in the Swyx License Key database. You must accept the EULA for the intentional long term use of Products.

3.2. Swyx products are subject to User Licenses and use regulations. User License rights are secured to a certain extent by User License keys supplied with some Products (“License Keys”)

**4. SOFTWARE UPDATE POLICY**

4.1 The Service Provider will provide technical support in accordance with Appendix A.

4.4 Free of charge updates will normally have no new features but bug fixes only. Free of charge updates will be freely available as downloads.

4.2 Problems arising will usually be resolved by either work-around or temporary bug fixes and finally by a new version of the Product.

4.5 Updates of a Product in a new release with major new features will typically be free of charge to You only if You have purchased a “Software Update Service” license which has not expired.

4.3 At the sole discretion of the Service Provider, version updates will be either free of charge or will be added as a new entry into the price list.

**5. RETENTION OF TITLE**

5.1 The items pertaining to the Supplies (“Retained Goods”) shall remain the Service Provider’s property until each and every claim the Service Provider has against You relating to that specific good/service has been fulfilled.

5.4 Where You fail to make payment due, or otherwise violate Your obligations, the Service provider shall be entitled to rescind the contract in accordance with the termination clause and take back the Retained Goods which the Service provider has not received payment for in the case of continued failure following expiry of a reasonable remedy period set by the Service Provider; the statutory provisions providing that a remedy period is not needed shall be unaffected. You shall be obliged to return the Retained Goods. The fact that the Service Provider takes back retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless the Service Provider so expressly declares.

5.2 For the duration of the retention of title, You may not pledge the Retained Goods or use them as security, and the transfer to of property to You dependent upon You fulfilling Your obligation to effective payment.

5.3 You must inform the Service Provider forthwith of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, You shall, without undue delay, provide the Service provider with the information and/or documents necessary to assert the claims.

**6. RETURNED PRODUCTS AND REPAIRS**

6.1. You shall advise the Service provider of all Products to be returned so that these Products may be handled properly.

prove if Your claim is covered by the Service Provider’s warranty obligation.

6.2. You shall notify the Service Provider in due time in writing of all Products to be returned and arrange the return shipment with the Service Provider to enable the Service Provider to take the required measures. Such returns are subject to prior authorisation by the Service Provider.

6.4. Repairs that are not covered by the Service provider’s warranty obligations shall be performed in consideration of the agreed upon costs, otherwise against payment of the customarily charged amount. You shall assume the costs and risk of shipment and return shipment.

6.3. If the Service provider has no warranty obligation, You shall assume the costs and risk of shipment. You are required to

### 7. DEFINITIONS

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### 8. LICENSE TERMS AND TERMS OF USE

- 8.1. The Products are protected by copyrights and ancillary copyrights that are not sold under the purchase agreement for Products. The Service Provider retains all titles in these rights.
- 8.2. By purchasing a Product, You acquire the non-exclusive right to install and use the purchased product as follows:
  - (a) The Product "MyContactCenter Server" can be installed and used only on one of Your Computer Systems. The extent of licensed use is dependent on the number of acquired licenses ("MyContactCenter Agent", "MyContactCenter Wallboard", "MyContactCenter Administration") and function wise by number and type of acquired optional function Licenses ("Option Packs").
  - (b) The PC based Products ("MyContactCenter Agent", "MyContactCenter Wallboard", "MyContactCenter Administration") may be installed and used on multiple PCs. Nevertheless, the number of executing instances must not exceed the number of PC based Products Licenses acquired for the related MyContactCenter Server.
- 8.3. The control algorithms for generating Your specific license keys as described in the following do not exculpate You from Your obligations to correctly supply registration information and to control and obey the correct use of the Products and from Your liabilities arising from violations of this Agreement.
- 8.4. After installing the Products, You initially have a limited right to use the product for a period of 30 days after installation in accordance with the terms and conditions of this Agreement by entering a supplied "Temporary License Key": Within this period, You shall register the software free of charge with the Service Provider and receive a new timely unlimited license key specific to Your installation key ("unlimited License Key"), thereby transforming the timely restricted right to use into unrestricted right to use.
- 8.5. In consideration of Your consent to this Agreement, the Service Provider irrevocably agrees to allocate, free of charge, an Unlimited License Key to Your installation which will enable You to use the software for an indefinite term, unless the Product is an "evaluation" or "demo version". For technical reasons, subsequent changes to the originally selected hardware configuration may require You to request and re-load a new Unlimited License Key to maintain the unlimited right to use the software ("Spare License Key"). The Service Provider will provide a respective Spare License Key without delay and free of charge if You reassure not to use the originally delivered Temporary License Key from this point in time and not to pass on those Temporary License Key to any third party.
- 8.6. The Service Provider has a database in place that stores the hardware characteristics relevant for the licensing process and assigns the end-user to the licenses. Those end-user data are not non-transferable and reassignment is excluded. The use of the software is only allowed on the system a license activation is made for. A change of the hardware bound to licenses is only permitted with the explicit written consent of the Service Provider and can only be reset by the Service Provider. By this, licenses are bound to a specific hardware/computer system and the right to use of the software is limited to this specific hardware/computer system.
- 8.7. The use on any other hardware/computer system is only permitted with the explicit written consent of the Service Provider. Reproduction, lending, rent, barter, exchange, leasing, hosting, operation as managed services, Software as a Service (SaaS) or any operation in a similar way of the products are not permitted without the explicit written consent of the Service Provider. Any use or purchase or sell of the Products in transactions circumventing the terms of this Agreement are explicitly excluded.

### 9. DUE CARE AND CAUTION OF DURING USE OF PRODUCTS

- 9.1. As with all software products, and although rigid quality assurance measures have been taken by the manufacturer and the Service Provider, the use of Products involves a certain risk of hidden defects that may have an adverse effect on the intended full functionality of the overall system. However, problems may also be caused by any kind of combination of defective third-party products (that are not part of Products) but installed with Products on the same system or sharing the same network. For this reason, You shall be prepared for temporary failures of Products at all times and, thus, the temporary failure of certain functionalities provided by these products during normal operation. In view of this fact, You agree to take reasonable and appropriate measures with regard to Your own

business requirements to limit the effects of such a potential unavailability on his business. This shall include state-of-the-art measures to maintain the local IP data network operational and appropriate measures to re-start the Products as soon as possible after a potential program failure (automatically or manually) to minimize downtime and - in particular for companies with increased security requirements - measures to ensure alternative phone access to the company in case of an emergency.

- 9.2. The Service Provider expressly advises You that no binding availability guarantees regarding the uninterrupted operational availability of all functionalities provided by the Products (as under normal operation) may be derived from general product information material for Products.

### 10. WARRANTY

- 10.1. According to industry's experience and due to the technical complexity of "off-the-shelf" (Standard) software products, it is not possible to manufacture Standard software products completely free from defects. In principal this applies as well for Products. The Service Provider therefore does not make any statements if the Products can meet Your requirements at any time.
- 10.2. The Service Provider grants to You a warranty period of 180 days for defective Products. Warranty claims of You must be made during this term, starting with the day of purchase, and shall be made towards the reseller of the product as the Service Provider's auxiliary person. Products are considered "defective" only if
  - (a) the recording media of the Product cannot be read
  - (b) material characteristics described in the documentation cannot be provided and the generally intended use of the Products cannot be achieved

resulting in significant impacts on the usability of the Products ("Critical Defects").

In case a) the Service Provider will replace the media free of charge, while in case b) You have the right of subsequent improvement by receiving a Product free of the claimed warranty defect.

- 10.3. Under warranty claim for subsequent improvement, the Service Provider shall inform You of the date by which this Critical Defect shall be removed by providing a new free of charge software version. During this period the warranty period is put on hold. If the announced date of replacement lies more than 60 days after the original delivery date and the Service Provider is not able to suggest a generally acceptable method to circumvent the Critical Defect, You may return the Products and rescind from the purchase agreement.

10.4. Permanent or sporadic malfunctions of the Products during the warranty period which do not meet the criteria of Critical Defects do not justify warranty claims. Software bug fixing in these cases is provided by delivery of free of

#### 11. LIABILITY AND INDEMNITY

11.1. The Service Provider's liability for lost profits, unachieved cost savings, indirect damages and atypical, unforeseeable consequential damages (for instance, due to third party claims) are excluded and disclaimed. In particular, the Service Provider excludes liability for financial loss resulting from fees charged for the use of Products in combination with public communication networks or from the loss of recorded or transmitted data.

#### 12. LICENCE ACCESS AND LICENCING SYNCHRONISATION

12.1. Licenses and licensing status of each licensed installation is stored in the licensing database of the Service Provider. On a regular timely base the licensing information stored in the local installed and licensed system must be synchronized with the licensing information in the licensing database of the Service Provider. To ensure this, the local

#### 13. TEST VERSIONS OF PRODUCTS

13.1. If You are provided with a Product version that is expressly referred to as "Evaluation Version" or "Beta Version; typically, free of charge, any liability of the Service Provider - except in case of wilful misconduct and fraudulent non-disclosure of a defect - is excluded and disclaimed. These product versions are undergoing final testing so that You shall assume that not all product properties are fully functional and fully reliable at this time.

13.2. You bear the full and exclusive risk of the use of such product versions. The Service Provider shall provide You of such Evaluation or Beta Versions with free and enhanced support and assistance so that any defects in these product versions may be discovered and removed at the earliest possible date. On the other hand, You agree to implement

#### 14. DEMO VERSIONS OF PRODUCTS

14.1. Any liability and warranty is excluded with regard to versions that are referred to as "demo version" of the Products. These product versions are intended to be used for technology demonstrations only and NOT released for

charge version updates by the Service Provider or respectively under the terms and conditions of separately closed "Software Up-date Service Agreements".

11.2. The Service Provider's liability for any damages that are caused by wilful misconduct or gross negligence of the You, Your user, Your legal representatives or agents is excluded. The same applies to liability for default and impossibility. The liability which results from a delay in product activation is excluded, the license is purchased through an unauthorized sales channel of the Service Provider.

installed and licensed system must be able to connect to the licensing system over the internet. This synchronization is encrypted and without any personal data. The licensing server is reached via https and must be reachable at any time.

such versions, to monitor closely the operation of these Products, to immediately notify the Service Provider of any problems, and not to disclose any information regarding the functions or defects for these product variants to third parties without the written consent of the Service Provider.

13.3. Upon delivery of a newer variant of an Evaluation or Beta Version, the right to use the earlier version shall expire. The right to use the Evaluation Version shall expire upon delivery of the final product version of a Product and the warranty and liability duties of the Service Provider shall take effect. Nevertheless, the Service Provider is free at any time to revoke the license to use the Evaluation Version of the Product and to request to return the delivered test version to the Service Provider.

permanent operation. You shall assume that not all product properties are fully functional and reliable at this time. You bear the full and exclusive risk of use of such product versions.

**SUPPORT LEVEL SLA**

Severity	Description	Target Response Time (SLA)		
		Platinum	Gold	Silver
P1 Critical Outage	Problems that severely affect an entire site, or multiple sites. 100% of users cannot connect to Swyx No inbound calls can be placed using Swyx No outbound calls can be made using Swyx	1 hour – <b>Usually Immediate</b> (Updates every 1 hour)	2 hours (Updates every 2 hours)	4 business hours (Updates every 4bh)
	Critical Component Replacement Engineer on-site**	24 hours	48 hours	96 hours*
P2 Major Impact	Problems that cause conditions that significantly affect system operation, maintenance, and administration. Call processing issues with 60% or more users. System performance severely degraded. There is no reasonable workaround.	2 hours (Updates every 2 hours)	4 business hours (Updates every 4bh)	4 business hours (Updates every 4bh)
P3 Minor Impact	Problems do not significantly impair the functioning of the system and do not significantly affect service to customers. Individual agent issues. Problem is non-critical or not service affecting. There is a reasonable workaround.	4 hours (Updates every 4bh)	4 business hours (Updates every 4bh)	4 business hours (Updates every 4bh)
P4 Informational	Information needed concerning Swyx product capabilities. Advice or basic configuration to overcome a minor problem. Non-service impacting Configuration questions. Training issues, documentation problem. There is an easy workaround or no workaround required.	1 business day (Updates every 1bd)	1 business day (Updates every 1bd)	1 business day (Updates every 1bd)

Gold & Silver support 9.00am to 5.30pm on normal business days. Platinum support 24/7.

\* Subject to supply lines availability

\*\* First visit is free. Subsequent visits may be subject to call-out charges.

**What we Maintain**

1. SwyxWare Server Application
2. MCC Server, Logger, Dispatcher, Wallboard, Administrator (on server only)
3. 3<sup>rd</sup> Party Applications installed by an elitetele.com engineer
4. Extended Call Routings and any bespoke work undertaken
5. SIP connectivity (connectivity only if purchased via elitetele.com)
6. ISDN Boards and Connectivity (only if purchased via elitetele.com)
7. Configuration of PBX(s) and hardware (if hardware is purchased via elitetele.com)
8. Leased Lines (if purchased via elitetele.com)
9. Any additional hardware (if purchased via elitetele.com during the warranty of that hardware)
10. IP Phones (return to base 1 year warranty on faulty device)
11. Headsets (return to base 1 year warranty on faulty device)
12. Databases created by elitetele.com
13. Disaster Recovery for SIP (if through our DR Servers and part of maintenance contract)

**What we Monitor**

1. Hard Disk Space
2. Event Logs
3. Server Performance
4. ECR Failure
5. Swyx/MCC application Failure (on server only)
6. SQL Database size (as of 15/05/2014)
7. License validation
8. Connectivity (SIP and INET)

9. Server Status (powered on/off)
10. Service State (paused, stopped)
11. Hacking attempts
12. ISDN Connectivity
13. SIP Connectivity
14. Leased Line/Broadband Connectivity
15. SQL Express/Standard service

**Demarcation Points**

1. Swyx Server and applications installed (excluding SwyxIt and Administrator on end users PC)
2. MCC Server applications installed (excluding Agent, and Administrator on end users PC)
3. MCC Wallboards (application only)
4. Leased Line from WAN to router including direct SIP (when supplied by the Service Provider)

**What we do not take responsibility of but assist with:**

1. Installation of SwyxIt, Swyx Admin, MCC Agent, MCC Administrator on end user PC's
2. Internal Network Infrastructure faults and diagnostics
3. Firewall configuration NAT and PAT
4. We will assist with queries that are raised by customers that have a valid maintenance contract

\* - The responsibility to back up these databases lies with the customer

We also troubleshoot and aid with applications such as Swyx and MyCC Agent on end user computers but do not maintain them