

[OCTOBER 1, 2019]

## **SWORDPOINT MOBILE APPLICATION END-USER LICENCE AGREEMENT**

### **IMPORTANT – PLEASE READ CAREFULLY:**

THIS END-USER LICENSE AGREEMENT (“**EULA**”) is a legal agreement between Swordpoint Services, LLC., a Georgia limited liability company (“**Swordpoint**”, “we”, “us” or “our”) and you (“**End-user**” or “**you**”) for our WINGEN mobile application software (the “**App**”).

YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY CLICKING THE “ACCEPT” BUTTON ASSOCIATED WITH THIS EULA OR BY DOWNLOADING, INSTALLING, COPYING, OR OTHERWISE USING THE APP TO WHICH THIS EULA RELATES. IF YOU DO NOT AGREE TO BE BOUND BY THE PROVISIONS OF THIS EULA, YOU MAY NOT DOWNLOAD, INSTALL, COPY, OR OTHERWISE USE THE APP AND YOU MUST IMMEDIATELY DELETE ANY COPIES OF THE APP FROM YOUR DEVICE (AS DEFINED BELOW).

We licence use of the App and related documents (“Documents”) to you on the basis of this EULA, subject to any rules or policies (“**Appstore Rules**”) applied by the Google Android application store from whose site, located at <https://play.google.com/store/apps> (“**Appstore**”), the End-user downloaded the App. We do not sell the App or Documents to you. We shall remain the owners of the App and Documents at all times.

**Operating System Requirements.** This App requires an Android device with a minimum of 250 mb of memory, Internet access and the Android operating system 5.0 (API Level 21 – Lollipop). User must grant the WINGEN App access to camera and location services.

### **AGREED TERMS**

#### **1. ACKNOWLEDGEMENTS.**

- 1.1 The terms of this EULA apply to the App or any of the services accessible through the App (“**Services**”), including any updates or supplements to the App or any Service, unless they come with separate terms, in which case those terms apply.
- 1.2 We may change these terms at any time by sending you a text message with details of the change or notifying you of a change when you next start the App. The new terms may be displayed on-screen and you may be required to read and accept them to continue your use of the Services.

- 1.3 From time to time updates to the App may be issued through the Appstore. Depending on the update, you may not be able to use the Services until you have downloaded or streamed the latest version of the App and accepted any new terms.
- 1.4 You will be assumed to have obtained permission from the owners of the mobile telephone or handheld devices that are controlled, but not owned, by you and described in condition 2.3(a) (**Devices**) and to download or stream a copy of the App onto the Devices. You and they may be charged by your and their service providers for internet access on the Devices. You accept responsibility in accordance with the terms of this EULA for the use of the App or any Service on or in relation to any Device, whether or not it is owned by you.
- 1.5 By using the App or any of the Services, you consent to us collecting and using technical information about the Devices and related Software, hardware and peripherals for Services that are internet-based or wireless to improve our products and to provide any Services to you.
- 1.6 The App or any Service may contain links to other independent third-party websites (**Third-party Sites**). Third-party Sites are not under our control, and we are not responsible for and do not endorse their content or their privacy policies (if any). You will need to make your own independent judgement regarding your interaction with any Third-party Sites, including the purchase and use of any products or services accessible through them.
- 1.7 Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

## **2. GRANT AND SCOPE OF LICENCE.**

- 2.1 In consideration of you having complied with, and that you continue to comply with, all of the provisions of this EULA, we grant you a non-transferable, non-exclusive, non-sublicensable and limited licence to install, run, access and use the App, in object code form only, on the Devices, subject to these terms, our Privacy Policy and the Appstore Rules, incorporated into this EULA by reference.
- 2.2 We reserve all rights related to the App which are not expressly granted to you in this EULA. The App is protected by copyright and other intellectual property laws and treaties. As between Swordpoint and you, we own all right, title and interest in and to the App, including without limitation, all copyright and other intellectual property rights in the App. We cannot and do not guarantee access to information or other content belonging to any third party which is accessible by you through the App or the website from which the App is being downloaded, or otherwise.
- 2.3 You may:

- (a) collect data and information from your Customers and their customers and prospective customers (the **Customer Data**) through the APP and upload Customer Data to the WINGEN web site;
- (b) receive Customer Data and other data pushed to the App from the WINGEN Site or to another site or sites designated by you; and
- (c) use the Documents solely for your own internal business use.

**3. LICENCE RESTRICTIONS.**

Except as expressly set out in this EULA or as permitted by any local law, you agree that you shall not, and that you shall not permit any other person, directly or indirectly, to: (a) sell, resell, transfer, rent, lease, sub-license, loan, assign, distribute, copy, publish, transmit, distribute, create derivative works of or otherwise disseminate, exploit or make available any portion or all of the App; (b) make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs; (c) reverse engineer, decompile, modify, translate or disassemble any portion or all of the Application including, without limitation, any of its underlying ideas, algorithms or structure, or use any portion of or all of the App to create new applications, programs, products or services; (d) remove or otherwise modify any trademarks, service names, graphics, designs, logos, page headers, button icons, scripts and commercial markings appearing through the Application, including without limitation, the trademark “WINGEN”, “Swordpoint”) or (e) display the name, logo, trademark or other identifier of any individual or entity (other than Swordpoint) in such a manner as to give the viewer the impression that such other individual or entity is a publisher or distributor of the Application.

**4. DISCLAIMER OF WARRANTIES.**

YOUR USE OF THE APPLICATION IS AT YOUR OWN RISK. THE APPLICATION IS PROVIDED “AS IS”, “AS AVAILABLE” AND WITH ALL FAULTS, AND SWORDPOINT HEREBY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, RELIABILITY OR AVAILABILITY, ACCURACY OR COMPLETENESS, QUALITY, SAFETY, SUITABILITY, WORKMANLIKE EFFORT, LACK OF VIRUSES, LACK OF NEGLIGENCE, OR THAT THE APPLICATION WILL PERFORM IN ANY PARTICULAR FASHION OR PRODUCE ANY PARTICULAR RESULT, OR OTHERWISE ARISING OUT OF OR RELATED TO THE USE OF THE APPLICATION BY YOU OR ANY OTHER PERSON. SWORDPOINT ALSO IS NOT RESPONSIBLE FOR THE PROVISION OF ANY SUPPORT OR ANY OTHER SERVICES, OR THE FAILURE TO PROVIDE SUPPORT OR ANY OTHER SERVICES, IN CONNECTION WITH OR RELATED TO THE APPLICATION. THERE ARE INHERENT RISKS IN THE DOWNLOADING

AND USING OF ANY SOFTWARE, AND SWORDPOINT CAUTIONS YOU TO MAKE SURE THAT YOU COMPLETELY UNDERSTAND THE POTENTIAL RISKS BEFORE DOWNLOADING, INSTALLING OR OTHERWISE USING THE APPLICATION. NEITHER SWORDPOINT NOR ANY PARENT, SUBSIDIARY OR AFFILIATED ENTITY OF SWORDPOINT, NOR ANY OF THEIR PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, LICENSORS, SUPPLIERS, EMPLOYEES, CONTRACTORS, AGENTS OR REPRESENTATIVES (COLLECTIVELY, THE "SWORDPOINT PARTIES") SHALL BE LIABLE FOR ANY DAMAGES THAT YOU OR ANY THIRD PARTY MAY SUFFER IN CONNECTION WITH OR RELATED TO YOUR DOWNLOADING, INSTALLING, UNINSTALLING, MODIFYING OR OTHERWISE USING THE APPLICATION.

**5. LIMITATION OF LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SWORDPOINT OR ANY OF ITS AFFILITES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, (INCLUDING WITHOUT LIMITATION FOR LOST PROFITS, BUSINESS OR GOODWILL, OR FOR ANY ANTICIPATED LOST PROFITS, BUSINESS OR GOODWILL, FOR LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING THAT OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER MONETARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR RELATED TO YOUR USE OF THE APPLICATION (OR YOUR INABILITY TO USE THE APPLICATION) OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT. THE FOREGOING SHALL APPLY WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, FAULT, BREACH OF WARRANTY, BREACH OF CONTRACT OR OTHERWISE, EVEN IF SWORDPOINT OR ANY OF ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY DAMAGES THAT YOU MIGHT INCUR FOR ANY REASON WHATSOEVER INVOLVING THE APPLICATION (INCLUDING, WITHOUT LIMITATION, ANY OF THE DAMAGES REFERENCED HEREIN), THE ENTIRE LIABILITY OF THE SWORDPOINT PARTIES COLLECTIVELY, AND YOUR EXCLUSIVE REMEDY HEREUNDER, SHALL BE LIMITED TO THE AMOUNT OF THE LICENSE FEES PAID TO SWORPOINT DURING THE TWELVE (12) CONSECUTIVE MONTHS IMMEDIATELY PRECEDING THE DATE OF ANY CLAIM. THIS LIMITATION OF LIABILITY PROVISION IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE PROVEN INEFFECTIVE.

**6. INDEMNITY.**

You shall indemnify, defend and hold Swordpoint and its affiliates harmless from and against any and all threatened or actual claims, actions, suits and demands and any and all resulting losses, liabilities, damages, expenses and costs, including without limitation reasonable attorneys' fees and disbursements, which arise in connection with or which are related to (a) your breach of this Agreement, including without limitation your use of the Application in any manner not expressly permitted hereunder; (b) your negligence or misconduct, or (c) your violation of any law or regulation.

**7. PRIVACY.**

Swordpoint views the protection of your privacy as an important responsibility. The terms regulating the handling of personally identifiable information (“**PII**”) and other information submitted by you in connection with the app is described in the Swordpoint App privacy policy (the “**Privacy Policy**”) located via the homepage of our website at: [wingeapp.com](http://wingeapp.com). By using the App, you consent to the collection and use by us of your PII as well as all other information as described in the Privacy Policy.

**8. TERMINATION.**

This EULA remains effective until expiration or termination. If you fail to comply with any of the provisions of this EULA, Swordpoint may terminate this license without notice. Upon termination you may no longer use the App and you shall permanently delete all copies of the App from your Devices or which otherwise are then in your possession.

**9. EVENTS OUTSIDE OUR CONTROL.**

9.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by any act or event beyond our reasonable control, (an “**Event Outside Our Control**”) including but not limited to failure of public or private telecommunications networks.

9.2 If an Event Outside Our Control takes place that affects the performance of our obligations under this EULA:

- (a) our obligations under this EULA will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
- (b) we will use our reasonable efforts to find a solution by which our obligations under this EULA may be performed despite the Event Outside Our Control.

**10. OTHER IMPORTANT TERMS.**

- 10.1 You may not assign or transfer any of your rights or obligations under this EULA to a third party without the prior written consent of Swordpoint. Swordpoint may freely assign this EULA.
- 10.2 If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 10.3 Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 10.4 This EULA, and the relationship between you and Swordpoint will be governed by the laws of the State of Georgia, excluding its conflicts of law provisions. You agree to submit to the personal and exclusive jurisdiction of the courts located in Atlanta, Georgia to resolve any dispute or claim arising from this EULA. As to intellectual property rights, you specifically agree that Swordpoint may file an action in any jurisdiction to protect or enforce its rights. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this EULA. You agree that any claim or cause of action related to this EULA or the use of the Software must be filed within one (1) year after the cause of action arose or be forever barred.