

MITEL MIVOICE MOBILE APPLICATION Terms of Service - Mitel Office

BEFORE USING THE SERVICES, CAREFULLY READ THE FOLLOWING TERMS OF SERVICE, WHICH INCORPORATE BY REFERENCE, YOUR ORDER, THE SLAs, AUTHORIZED USE POLICY, AND PRIVACY POLICY FOR THE SERVICES, ALL AS FURTHER DESCRIBED HEREIN (THE "AGREEMENT"). ACTIVATION AND USE OF THE SERVICES CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT PROMPTLY DISCONNECT FROM THE SERVICE AND DISCONTINUE ALL USE. LAWFUL USE OF THE SERVICE IS CONDITIONAL UPON YOUR COMPLIANCE WITH THE TERMS OF THIS AGREEMENT. THIS AGREEMENT IS BETWEEN YOU, THE CUSTOMER REFERENCED ON THE APPLICABLE ORDER ISSUED BY YOU ("CUSTOMER") TO EITHER MITEL DIRECTLY, OR THROUGH A MITEL AUTHORIZED PARTNER ("ORDER") AND MITEL NETWORKS CORPORATION, ON BEHALF OF ITSELF AND ITS AFFILIATES (THE "COMPANY", "WE" "OUR" or "US").

CUSTOMER IS ADVISED TO READ SECTION 6 CAREFULLY BEFORE USING THE SERVICE. THIS SECTION EXPLAINS THE OPERATION AND LIMITATIONS OF VOIP E911 EMERGENCY CALLS.

The terms of this Agreement govern and apply to Customer's use of the Services provided by us as described on the Order as well as Customer's access to Our website (the "**Website**"), if applicable.

1. Services.

(a) Activation.

The Services detailed in the Order ("Services") will be activated only after we receive and accept the following: (1) a valid Order; and (2) any amounts payable in accordance with the applicable Order. Customer agrees that its purchase of the Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any discussions, oral or written public comments made by the Company with respect to future functionality or features.

(b) Term of Service.

Customer's acceptance of the Services is deemed to occur on the earlier of (i) first use of the Services, as applicable, by Customer or (ii) thirty (30) days after delivery of the activation email for the Services to Customer by us ("Activation") and shall continue from Activation for the term described in the Order ("Initial Term"). Following the Initial Term, Services shall automatically renew for additional terms equal to the Initial Term at the New Service Fee Commitment (each, a "**Renewal Term**" together with the Initial Term, the "Service Term") unless or until either party notifies the other in writing, at least thirty (30) days prior to the expiration of the Term in effect at the time that it does not wish to renew the Services. FOR AVOIDANCE OF DOUBT, if Customer does not provide a termination notice or if a notice is not timely (i.e., notice is provided less than 30 days before the end of the Term), Customer's Term of Service shall auto-renew. If, during the Initial Term or any Renewal Term, Customer adds any additional services to its use of the Service or adds Add-On Users, the amount of Customer's Service Fees shall increase the sum set forth in the original Customer Order to include such additions (the "**New Service Fee Commitment**") If, during the Term, Customer adds any additional services or Add-On Users to its use of the Service, the term for any such additional Services and/or Add-On Users shall be coterminous with the Term in effect at the time.

(c) Termination.

This Agreement and any Services may be terminated by either party for cause: (a) upon thirty (30) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (b) if either party becomes the subject of a petition in bankruptcy or any

other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, Company may terminate, discontinue or suspend Services to a Customer or a User, or cancel and application for Services on notice, without incurring any liability in the event (i) a violation by Customer of any law, rule or regulation of any governmental authority having jurisdiction over the Services; (iv) suspension or termination of services by a Network Operator; (v) hacking, cracking, phishing, denial-of-service attacks, infection by computer viruses, worms or Trojan horses, or other activities that threaten computer or data security; (vi) activities that Company or its suppliers reasonably determines are defamatory, illegal, or offensive or are otherwise injurious or detrimental to the Service, to the supplier or the Service, to a Network Operator or to another customer; (vii) prohibition against Company from furnishing Services by order of a court or other governmental authority having jurisdiction; (viii) the provision of false or misleading credit information by Customer or violation of Company's Acceptable Use Policy; (ix) the inability of Company to provide comparable services under comparable terms and conditions due to the unavailability of provider services; and (x) violation of any rules or regulations as set forth in Company's applicable state and federal tariffs, as may be amended from time to time ("Company tariffs").

(d) Use.

Customer, including those Customer employees, consultants, contractors, or agents who are authorized by Customer to use the Service in support of Customer's operations and who have been given access by Customer ("Users") may use the Service and associated materials provided to Customer in conjunction with the Services, including any and all training, marketing, and demonstration materials, diagrams, test plans, and work flows ("Materials") solely as and end user of the Services for Customer's own internal business operations and not for any form of redistribution or resale. Customer may provide access only to the number of Users described in the Order(s). To add additional Users ("Add-On Users"), Customer will issue an Order to Company, or a Company Authorized Partner, as applicable, indicating the number of Add-On Users for the Service, and pay the applicable Service Fees. Upon payment of the Service Fees for the Add-On Users, Customer shall be entitled to activate the Service for the number of Add-On Users detailed in the Order. Company reserves the right, at any time, during the Term to audit the total number of Customer users activated on the Service, and require Customer to pay for any difference between the total number of Users paid for and the total number of Users activated on the Service. Payment for such shall be due immediately upon invoice. The Company's system will not auto configure and activate Add-On Users to the Services, which is the responsibility of the Customer to activate. Customer will comply, and will ensure that its Users comply, with the terms of this Agreement and all applicable local, state, national international and foreign laws, treaties, regulations and conventions in connection with use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer shall, where required by law, inform its Users and third parties of the collection, storage or processing of any communications, personal information or other information, to ensure that any required Users and third parties have opted in to such collection, storage or processing, and to otherwise comply with all applicable data protection and privacy law concerning the collection, storage and processing of personal information concerning such Users and third parties.

(e) Ownership.

Subject to the limited rights expressly granted hereunder, Company or its suppliers and/or its licensors reserves all right, title and interest in and to (i) the Service; (ii) any and all Materials and Confidential Information provided or disclosed to Customer during the term of this Agreement; (iii) any and all derivatives, enhancements or improvements thereof; and (iv) any and all intellectual property rights contained in the foregoing (i), (ii), and (iii). No rights are granted to Customer hereunder other than as expressly set forth herein. Customer shall not (i) copy, reproduce, distribute, republish, download, display, post or transmit in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording or other means or create derivative works based on the Service or, except as expressly authorized herein, the Materials; (ii) alter, remove, obscure, frame or mirror Company or its suppliers branding, proprietary notices or any content forming part of the Service or the Materials; (iii) disassemble, reverse compile, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas,

underlying user interface techniques or algorithms of the Service or the Materials (as applicable to such Materials); (iv) modify, incorporate into or with other software or material, or create a derivative work of any part of the Service or the Materials; (v) attempt to circumvent or circumvent any license, timing or use restrictions that are built into the Service or the Materials; or (vi) access the Service or the Materials in order to (A) benchmark against or build a competitive product or service, or (B) copy any ideas, features, functions, or graphics of the Service or the Materials.

2. Service Fees.

(a) Customer agrees to pay all Service fees ("**Service Fees**") agreed to in each Order in the manner indicated therein, as well as for the number of Add-On Users added during the Term. Service Fees are non-cancelable and non-refundable.

(b) Invoicing.

Customer will be invoiced in advance for Services unless otherwise indicated in the Order.

(c) Payment.

Unless otherwise stated in the Order, Service Fees for the Initial Term and any Renewal Term are due 30 days from the date of the invoice. All Service Fees are quoted in currency detailed in the Order and are based on Services ordered. Any payment not received from the Customer by the due date shall accrue (except with respect to charges then under reasonable and good faith dispute), at the lower of 1.5% or the maximum rate permitted by law of the outstanding balance per month from the date such payment is due until the date paid. Customers are responsible for reviewing invoices for accuracy.

(d) Suspension for Non-Payment.

If any Customer account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute) We reserve the right to suspend or disable the Services, after providing notice to Customer without liability to us, until such account is paid in full.

(e) Taxes and Regulatory Fees.

Unless otherwise stated in the Order, Customer shall be responsible for all sales, use, value added, withholding or other taxes or duties, other than the Company's income taxes, with respect to the Services ordered. In addition to any taxes imposed by the government or regulatory agencies, we reserve the right to charge other authorized regulatory fees, including, without limitation, E911 service fees, universal service fees, and regulatory recovery fees ("**Fees**"). Any imposition, modification or increases in Fees by a government or regulatory agency or that are intended to recover costs associated with government or regulatory programs shall become effective upon prior notice to Customer.

(f) Other Networks; Approval and Usage.

The Services require the ability to transmit data through third party networks and carriers, public and private ("**Third Party Networks**"). Customer acknowledges that use of or presence of Third Party Networks may require approval of the owners or operators of such Third-Party Networks and will be subject to the terms and conditions of such Third-Party Networks. Customer understands that the Company does not own or control the Third Party Networks and agrees that the Company shall not be responsible or liable for the performance or non-performance of the Third-Party Networks, or within interconnection points between the Service and the Third Party Networks. Company may subcontract its obligations under this Agreement but will remain responsible for such obligations.

3. Acceptable Use

Customer must at all times comply with Our Acceptable Use Policy found at www.mitel.com/cloudlink-legal ("**AUP**"). If we become aware of Customer's violation of the AUP or illegal use of the Services, facilities, network or third party networks accessed through Our network, or we otherwise receive notice or have reason to believe such use may be occurring, then Customer will cooperate in any resulting investigation by

us or government authorities. Any government determinations will be binding on Customer. If Customer fails to cooperate with any such investigation or determination or fails to immediately rectify any violation of the AUP or illegal use, we may immediately suspend the Service without further liability to us. Further, upon notice to Customer, we may modify or suspend the Service as necessary to protect its networks, customers or comply with any law or regulation. Under no circumstances will Customer take any actions in connection with its use of the Service that could result in any harm or damage to the network, any third-party network(s), Our premises, any of Our equipment or any other Company customer.

4. Fraud.

Company disclaims any express or implied warranty or condition that any Services provided by us prevent toll fraud, unauthorized access, loss or theft of electronic data, or invasion of privacy (collectively, "fraudulent activity"). Company shall have no liability to Customer in the event of such fraudulent activity.

5. Service Levels.

We will use commercially reasonable efforts to minimize service disruptions and outages. In the event of service disruptions or outages, Customer's sole remedy, and Our sole obligation, shall be to provide the service level credits and/or remedies for the applicable Service in accordance with the Service Level Agreement at www.mitel.com/cloudlink-legal ("SLA"). We may update the SLA from time to time upon notice to Customer.

6. E911 Service.

By use of the Service, Customer acknowledges the limitations of E911 service as described in the E911 Policy found at <https://www.mitel.com/911-service>. Customer agrees and acknowledges that while some individual services offer access to E911 service, others may not. Customer is advised to thoroughly understand the Service and the options available. By accepting this Agreement, Customer acknowledges that it has received the information regarding the limitations of E911 services, understands them, and assumes the risks associated with the E911 limitations. We may disclose to the FCC that Customer has acknowledged the E911 Disclosure by virtue of Customer having accepted the terms of this Agreement. We may update the E911 Policy from time to time upon notice to Customer

7. Confidentiality.

As used herein "**Confidential Information**" means all confidential information of a party ("**Disclosing Party**") disclosed to the other ("**Receiving Party**") that is designated in writing as confidential as well as the terms and conditions of this Agreement. Confidential Information shall not include information which: (a) is known publicly; (b) is generally known in the industry before disclosure; (c) has become known publicly, without fault of the Receiving Party, subsequent to disclosure by the Disclosing Party; or (d) has been otherwise lawfully known or received by the Receiving Party. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. The Receiving Party agrees to keep confidential all Confidential Information disclosed to it by the Disclosing Party, and to protect the confidentiality thereof in the same manner as it protects the confidentiality of its own (at all times exercising at least a reasonable degree of care in the protection of Confidential Information). If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. The Receiving Party agrees that monetary damages for breach of confidentiality hereunder may not be adequate and that, if necessary, the Disclosing Party shall be further entitled to seek injunctive relief.

8. Privacy Policy.

Customer acknowledges and agrees that we will provide the Services in accordance with the Privacy Policy posted on Our Website at www.mitel.com/cloudlink-legal.

9. Resale.

Customer represents and warrants that it will be the end user of the Services. Customer shall not in any way resell, license or permit or suffer any third party to use the Services without receiving Our prior written consent.

10. Disclaimers.

(a) Disclaimer of Warranties.

Except as expressly provided herein, Customer acknowledges and agrees that the Services are provided on an "AS IS", as available basis. Other than as expressly provided herein, THE COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR, NON- INFRINGEMENT OR TITLE TO THE MAXIMUM EXTENT PERMITTED BY LAW. We do not warrant that the Services will meet the Customer's requirements or that the operation of the Services will be uninterrupted or error- free. Further, we do not warrant that all errors in the Services can be corrected.

(b) Disclaimer of Third Party Actions and Control.

Customer acknowledges and agrees that we do not and cannot control the flow of data between Our network and Third-Party Networks. Such flow depends on the performance of Third Party Networks and the services provided or controlled by third parties. Action or inactions caused by these Third-Party Networks can produce situations in which customer connections may be impaired or disrupted. Although we will use commercially reasonable efforts to remedy and avoid such events, we cannot issue any warranties over these Third-Party Networks or any disruptions that may occur. THEREFORE, WITHOUT LIMITING THE GENERALITY OF SECTION 12 ABOVE, THE COMPANY DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE PERFORMANCE, NONPERFORMANCE OR INCORRECT PERFORMANCE OF THIRD PARTY NETWORKS.

11. Limitation of Liability.

In no event will Company or its suppliers be liable to Customer for any loss of profits or savings, loss of data, loss of business, loss of reputation or goodwill or any economic loss or indirect, incidental, consequential, punitive, special or exemplary damages arising out of or in connection with this Agreement or the breach of any express or implied warranty or condition in connection with the Services, Materials, or this Agreement even if Company or its suppliers have been advised of the possibility of such damages and regardless of the nature of the cause of action or theory asserted regarding such damages. Under no circumstances will Company be responsible for any damage, loss or injury resulting from hacking, tampering or other unauthorized access or use of the Service or your account or the information contained therein. In no event shall Company's or its suppliers' total liability for any damages, direct or indirect, arising from or in connection with the Services, Materials or this Agreement exceed the fees paid by Customer for the Services, whether such liability arises from any claim based upon contract, warranty, tort or otherwise, including negligence. The amount of proven direct damages for the Services shall not exceed an amount equal to the charges applicable under the Agreement for the time period during which Services were affected. No action against either party arising out of this Agreement may be brought by the other party more than one year after the cause of action has arisen.

12. Indemnification.

(a) The Company's Indemnification of Customer.

The Company shall indemnify and hold harmless the Customer against any loss, damage or cost (including reasonable attorney's fees) incurred in connection with claims, demands, suits or proceedings ("**Claims**") made or brought against Customer by a third party arising from damage to tangible personal property located at, or from injury to or the death of any person occurring at, Customer's premises that result from any negligent or willful acts or omissions of the Company or of any agent, employee or contractor of the Company that occur in the course of the performance of any Service installation or maintenance work at the Customer's premise.

(b) Customer's Indemnification of the Company.

The Customer agrees to indemnify and hold the Company harmless against any loss, damage or costs (including reasonable attorney's fees) incurred in connection with Claims made or brought against the Company by a third party arising from or relating to: (i) any act, error, omission, fault, negligence, or misconduct of Customer or any user of the Service; (ii) Customer's material breach of the AUP; (iii) any claim by any employee or invitee of Customer or user other than a claim based on the gross negligence or willful misconduct of the Company; (iv) any claim by any customer of Customer, User, or any other third party relating to, or arising from, Customer's use of the Services; or (v) violation of any law or regulation by Customer, any User, or any Customer employee, contractor, or agent.

(c) Mutual Provisions.

Each party's indemnity obligations are subject to the following: (i) the aggrieved party shall promptly notify the indemnifier in writing of the Claim; (ii) the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to the Claim (provided that the indemnifier may not settle or defend any Claim unless it unconditionally releases the aggrieved party of all liability); and (iii) the aggrieved party shall cooperate fully to the extent necessary, and execute all documents necessary for the defense of such Claim.

13. Force Majeure.

Neither party will be liable for any failure or delay in its performance under this Agreement, due to any cause beyond its reasonable control, including any act of war, act of God, earthquake, flood, embargo, riot, sabotage, terrorist attack, cyber-attack (hacking and DDOS), acts of public enemies, civil disturbances or general restraint or arrest of government and people, boycott, strike (including a general strike), lockout or other similar industrial disturbance, service interruption by a telecommunications services provider, or connectivity delays with internet providers outside of the Company's reasonable control, provided that the delayed party (a) gives the other party prompt notice of such cause and (b) uses reasonable commercial efforts to correct promptly such failure or delay in performance.

14. No Lease.

Except as otherwise provided herein, this Agreement represents a services agreement and is not intended to and will not constitute a lease of any real or personal property. In particular, Customer acknowledges and agrees that Customer has not been granted any interest whatsoever (leasehold or otherwise) in any premises, real or personal property, equipment or servers of the Company or in any personal property or server space leased by the Company, and Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations, or ordinances.

15. Government Regulations.

Customer will not use the Company's network or the Services to export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. without

first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations to whose jurisdiction Customer is subject.

16. Assignment.

Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the Company. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

17. Notices.

Notices regarding the following may be posted on Our Website: (i) modifications, impositions or increases to regulations and Fees; (ii) new or modified documentation, including but not limited to the terms of this Agreement, which include by reference the AUP, SLA, Privacy Policy, and other applicable documents; (iii) changes to rates, other than those affecting Customer under this Agreement; and (iv) new Services and information. The changes will become effective and will be deemed accepted by Customer, (a) immediately for those Customers who purchase the Services after the updated version is published on Our Website, or (b) for those having pre-existing accounts, the updated Terms will be deemed effective with Customer's continued use of the Service. Any notice, communication or demand, including address changes, required by Customer will be effective when mailed, properly addressed, with postage prepaid to Company **at the address on the Order**, unless otherwise set out herein. Notices regarding: (a) material changes to the terms of this Agreement; (b) internal or external changes materially impacting Our ability to do business; (c) breach; (d) termination; or (e) any other material information required to be in writing, will be in writing and deemed to have been given if delivered personally, by confirmed email or facsimile, or on the third day after mailing by first-class, registered or certified mail, postage prepaid to either party at the addresses given in the Order or to such other address as a party may, from time to time, designate by notice to the other Party.

18. Choice of Law.

These Terms will be governed by and construed in accordance with the laws of the Province of Ontario, excluding its conflict of laws principles. In the event of any controversy or claim arising from or related to these Terms, its performance or interpretation, the parties, in good faith, will initially attempt to resolve the dispute between them.

19. Entire Agreement.

This Agreement (which incorporates by reference the SLAs, AUP, Privacy Policy), and any Order(s) issued hereunder represent the complete agreement and understanding of the parties with respect to the subject matter hereof and supersede, to the extent of any conflict, any other agreement or understanding, written or oral, between the parties with respect to the subject matter hereof. In the event of an inconsistency between the terms and conditions of the Order, this Agreement and the Order Form(s) now or hereafter appended hereto, the terms of this Agreement shall govern. Both parties represent and warrant that they have full corporate power and authority to execute and deliver each Order Form and to perform their obligations under this Agreement and that Customer representative accepting this Agreement is duly authorized to bind Customer. In the event of any conflict between the terms of this Agreement and a separate agreement for the Services that You have signed with Mitel (the "Executed Agreement"), the terms and provisions of the Executed Agreement will govern.

20. Publicity.

Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except Customer agrees that Company may profile or disclose Customer as a Company customer in standard marketing materials, including press releases, corporate presentations and digital properties and/or other marketing vehicles as Company may deem appropriate.

21. Surviving Provisions.

The parties agree that any limitations of liability, exclusions, and disclaimers of warranties and indemnification obligations are essential to the parties' entering into these Terms; will survive the termination of the Agreement and will apply even if the Agreement is found to have failed of its essential purpose. In the event a provision contained herein is for any reason be held to be unenforceable, such unenforceability shall not affect the validity of any other provision of this Agreement, and this Agreement shall then be construed as if such unenforceable provision had never been contained herein. The parties agree to work in good faith to substitute the invalid provision with one that best achieves the original intent of the parties.